

# ACCESS TO REMEDY IN CASES OF BUSINESS-RELATED HUMAN RIGHTS ABUSE

An Interpretive Guide

*Advance Version*



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER

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## **An Interpretive Guide**

***Advance Version***

New York and Geneva, 2024



**UNITED NATIONS  
HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

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# CONTENTS

- Foreword ..... 8**
- I. Introduction ..... 9**
- II. Key concepts ..... 15**
- III. Foundational principle on access to remedy ..... 19**
  - Principle 25: As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy. .... 19
  - Question 1. Why does this matter? ..... 19
  - Question 2. Is ensuring access to effective remedy a legal requirement of States? ..... 19
  - Box 1: International standards on substantive remedy ..... 19
  - Question 3. How is ensuring access to effective remedy relevant to the State duty to protect under the Guiding Principles? ..... 21
  - Question 4. How does a State ensure access to effective remedies through judicial means? ..... 21
  - Question 5. How does a State ensure access to effective remedies through administrative means? ..... 22
  - Question 6. How does a State ensure access to effective remedies through legislative means? ... 22
  - Question 7. What other appropriate means could be relevant for ensuring access to effective remedies? ..... 23
  - Question 8. What is the difference between “territory” and “jurisdiction”? ..... 23
  - Question 9. What have international bodies said about ensuring access to remedy in cross-border cases? ..... 24
  - Box 2: Comments by human rights treaty bodies on the geographic scope of States’ duty to protect against business-related human rights abuse ..... 24
  - Question 10. What does it mean to have “access” to an effective remedy? ..... 25
  - Question 11. Is “access to remedy” the same as “access to justice”? ..... 25
  - Question 12. Is “access to remedy” the same as “accountability” for business-related human rights harm? ..... 26
- IV. State-based judicial mechanisms ..... 27**
  - Principle 26: States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. .... 27
  - Question 13. Why does this matter? ..... 27
  - Question 14. What are domestic judicial mechanisms? ..... 27
  - Question 15. What is an “effective” judicial mechanism? ..... 27
  - Question 16. What kinds of appropriate steps can States take to ensure the effectiveness of domestic judicial mechanisms? ..... 28
  - Question 17. What kinds of remedies are potentially available through judicial mechanisms? .... 28
  - Question 18. Are there any kinds of remedy that are accessible only through judicial mechanisms? ..... 29
  - Question 19. What is a denial of access to remedy in the context of judicial mechanisms? ..... 29
  - Question 20. What kinds of legal barriers do affected stakeholders encounter with judicial mechanisms? ..... 30
  - Question 21. How can legal barriers be addressed? ..... 30

Question 22. What kinds of practical barriers do affected stakeholders encounter with judicial mechanisms? .....	31
Question 23. How can practical barriers be addressed?.....	31
Question 24. What other relevant barriers do affected stakeholders encounter with judicial mechanisms? .....	32
Question 25. How can other barriers be addressed?.....	32

**V. State-based non-judicial grievance mechanisms ..... 33**

Principle 27: States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse. ....	33
Question 26. Why does this matter? .....	33
Question 27. What are State-based non-judicial grievance mechanisms? .....	33
Box 3: What role can national human rights institutions play in relation to access to remedy? ....	35
Box 4: What role can OECD national contact points for responsible business conduct play in relation to access to remedy? .....	35
Question 28. What is an “effective and appropriate” State-based non-judicial grievance mechanism?.....	36
Question 29. What does it mean for States to “provide” effective and appropriate non-judicial grievance mechanisms?.....	37
Question 30. What kinds of remedies are potentially available through State-based non-judicial grievance mechanisms?.....	37
Question 31. What techniques are used by these mechanisms to help resolve business and human rights grievances? .....	37
Question 32. Can State-based non-judicial grievance mechanisms deliver effective remedies on their own?.....	38
Question 33. What does a comprehensive State-based system for the remedy of business-related human rights abuse entail?.....	38

**VI. Non-State-based grievance mechanisms ..... 40**

Principle 28: States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms. ....	40
Question 34. Why does this matter? .....	40
Question 35. What are non-State-based grievance mechanisms? .....	40
Box 5: Multilateral development banks and independent accountability mechanisms.....	42
Question 36. What is an “effective” non-State-based grievance mechanism? .....	42
Question 37. What does it mean for States to “facilitate access” to effective non-State-based grievance mechanisms?.....	42
Box 6: How can non-State-based grievance mechanisms contribute to a well-functioning “remedy ecosystem”? .....	43
Question 38. Can non-State-based grievance mechanisms deliver effective remedies on their own? .....	43
Box 7: Parallel proceedings .....	44
Question 39. Are regional and international human rights bodies “judicial” or “non-judicial” grievance mechanisms?.....	45
Box 8: Contribution of regional human rights bodies to access to remedy for business-related human rights harms .....	45

Principle 29: To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. ....	47
Question 40. Why does this matter? .....	47
Question 41. Is it not up to the State to redress human rights abuse? .....	47
Question 42. What are operational-level grievance mechanisms? .....	48
Box 9: Are whistle-blower reporting channels operational-level grievance mechanisms? .....	48
Question 43. To whom should operational-level grievance mechanisms be available?.....	49
Question 44. What issues should operational-level grievance mechanisms be able to address? ..	50
Question 45. When might an enterprise “participate in” an operational-level grievance mechanism?.....	50
Box 10: Participating in operational-level grievance mechanisms: questions to ask .....	52
Question 46. What kinds of remedies are potentially available through operational-level grievance mechanisms?.....	52
Question 47. How might the kinds of remedies available through operational-level grievance mechanisms differ from the remedies available through other types of mechanisms mentioned in the Guiding Principles? .....	53
Question 48. How should the work of trade unions and other workers organizations be taken into account in the development and operation of operational-level grievance mechanisms? .....	53
Question 49. How do operational-level grievance mechanisms relate to human rights due diligence? .....	54
Box 11: What is human rights due diligence? .....	54
Question 50. How can operational-level grievance mechanisms work in combination with other kinds of mechanisms?.....	55
Box 12: The use of legal waivers in the context of operational-level grievance mechanisms.....	56

Principle 30: Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.....	57
Question 51. Why does this matter? .....	57
Question 52. What are industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards? .....	57
Question 53. What does it mean to ensure that effective grievance mechanisms are available? ..	58
Question 54. What issues should such grievance mechanisms be able to address?.....	58
Question 55. What kinds of remedies are potentially available through such grievance mechanisms? .....	58
Question 56. How do these grievance mechanisms relate to human rights due diligence? .....	59

## **VII. Effectiveness criteria for non-judicial grievance mechanisms ..... 60**

Principle 31: In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning. Operational-level mechanisms should also be based on engagement and dialogue. ....	60
Question 57. Why does this matter? .....	60
Question 58. Which mechanisms do these criteria apply to? .....	60
Question 59. Why these criteria? .....	61
Question 60. Does a mechanism need to meet each criterion to be considered effective?.....	61
Question 61. How should a grievance mechanism’s effectiveness be assessed? .....	61
Question 62. What does it mean for a grievance mechanism to be considered legitimate?.....	62
Box 13: Adopting a gender-sensitive approach .....	62

Question 63. What does it mean for a grievance mechanism to be considered accessible? .....	64
Box 14: Protecting people from the risk of retaliation .....	65
Question 64. What does it mean for a grievance mechanism to be considered predictable? .....	65
Question 65. What does it mean for a grievance mechanism to be considered equitable? .....	66
Question 66. What does it mean for a grievance mechanism to be considered transparent?.....	66
Question 67. What does it mean for a grievance mechanism to be considered rights-compatible?.....	67
Question 68. What does it mean for a grievance mechanism to be considered a source of continuous learning? .....	68
Question 69. What does it mean for an operational-level grievance mechanism to be based on engagement and dialogue? .....	69
Box 15: What is “meaningful stakeholder engagement” in this context? .....	70
Box 16: Additional resources .....	71

## FOREWORD

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When a person's human rights have been violated, that person has a right to an effective remedy for the harm they have suffered. This fundamental principle of international law is enshrined in each of the instruments comprising what is now known as the [International Bill of Human Rights](#), which encompasses the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Without effective remedies for harm, it is difficult for people to feel that their rights are real. The [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law](#) remind us how, "in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field".

When human rights abuses are connected to business activities, deciding the elements of an effective remedy, how it is to be delivered and by whom, can be a complex task. The [Guiding Principles on Business and Human Rights](#) provide an important and authoritative framework for action on remedy, which uses, as its starting point, the obligations of States to take "appropriate steps to prevent, investigate, punish and redress" business-related human rights abuses within their territory or jurisdiction. Pillar III of the Guiding Principles sets out an international standard for delivering remedies for all kinds of business-related human rights harms, taking into account the attributes and roles of key State-based institutions, such as courts and administrative bodies, as well as non-State-based mechanisms.

As the work of my Office has shown, in particular through the [Accountability and Remedy Project](#), the delivery of effective remedies to people often depends not only on the effectiveness of individual mechanisms but on how well those mechanisms can support and reinforce each other. By working constructively and proactively together, we can strive to make effective remedies for business-related harms the norm, rather than the exception. My hope is that this interpretive guide, which seeks to ground these efforts squarely and solidly on the original meaning and intent of the Guiding Principles, will help to make this happen.



Volker Türk  
United Nations High Commissioner  
for Human Rights

# I. INTRODUCTION

## A. Background

Human rights are vested in people simply by virtue of their being human. The Universal Declaration of Human Rights, adopted by the General Assembly in 1948, was the first international instrument to set out the fundamental human rights to be universally protected. This important and influential instrument continues to be the foundation of all international human rights law.

Since the adoption of the Universal Declaration, States have come together to develop the substance of different human rights, and the obligations of States in relation to them, by way of treaties and other instruments. As a result of these efforts, the duties of States under international law to **respect, protect and fulfil human rights** are now well established.<sup>1</sup>

The roles and responsibilities of non-State actors within the human rights framework, on the other hand, have been subject to much debate. By the 1970s, the human rights impacts of business enterprises had emerged as a pressing international issue, particularly against the background of wider concerns about accelerating globalization. However, in the decades that followed, there was little sign of an emerging consensus on how international human rights law might relate to business enterprises, or on what the next stages of legal development should be. At the turn of the century, with stakeholder positions at risk of becoming more and more polarized, the time had arrived for an authoritative legal and policy response.

In recognition of this need, the Secretary-General appointed a Special Representative on the issue of human rights and transnational corporations and other business enterprises in 2005. The Special Representative was given a mandate to identify and clarify standards of corporate responsibility and accountability with regard to human rights, and to elaborate on the role of States in this regard. This work – which encompassed several years of in-depth research, extensive consultations with States, businesses, civil society, affected individuals and communities, lawyers, investors and other stakeholders, and the practical road testing of proposals – culminated in the development of the Guiding Principles on Business and Human Rights.

### Guiding Principles on Business and Human Rights

The Guiding Principles on Business and Human Rights comprise 31 principles, divided into three pillars, all of which are necessary for the realization of human rights:

- **Pillar I: The State duty to protect human rights.** Under international human rights law, States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. This means that States must prevent, investigate, punish and redress such abuses.

The State duty to protect human rights under the Guiding Principles reflects how States' existing obligations under international human rights law are to be understood in relation to business activities.

- **Pillar II: The corporate responsibility to respect human rights.** Business enterprises have a responsibility to avoid infringing on the rights of others and to address adverse human rights impacts with which they are involved. This responsibility entails having a standard of conduct, and it exists independently of whether States fulfil their obligations. To meet their responsibility to respect human rights, business enterprises are expected to make a policy commitment to respect human rights, to exercise human rights due diligence, and to remedy adverse human rights impacts that they cause or contribute to.

<sup>1</sup> See Office of the United Nations High Commissioner for Human Rights (OHCHR), "International human rights law".

The Guiding Principles set out a three-part typology to explain the different ways in which business enterprises can become involved in adverse human rights impacts. A business can

- “Cause” adverse human rights impacts on their own
- “Contribute” to adverse human rights impacts, directly alongside or through some outside party, or
- Be involved in an adverse human rights impact because the impact is “directly linked” to the operations, products or services of the business via a business relationship.

This “involvement framework”, and the consequences that flow from these different types of involvement, are explained in more detail in the interpretive guide produced by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on *The Corporate Responsibility to Respect Human Rights*.<sup>2</sup> Examples of how business enterprises can have an impact on a range of human rights, along with case studies and advice on practical actions to take in different operational scenarios, can be found in *Human Rights Translated 2.0: A Business Reference Guide*.<sup>3</sup>

- **Pillar III: Access to remedy.** When abuses occur, those affected must have access to an effective remedy. The present guide explains the legal underpinnings and other sources of this standard, who it applies to and what it means in practice for States, business enterprises and other stakeholders.

In June 2011, the Human Rights Council, the main United Nations intergovernmental body responsible for the promotion and protection of human rights, unanimously endorsed the Guiding Principles on Business and Human Rights. This endorsement marked a significant breakthrough in the decades-long debate about how the international human rights system relates to business actors and activities, and it helped to establish the Guiding Principles as the internationally accepted framework for enhancing standards and practices with regard to business and human rights.

The Guiding Principles help to clarify every State’s obligations under international law to respect, protect and fulfil human rights in the way they regulate and otherwise engage with business enterprises and their activities. They also set out a comprehensive and globally relevant blueprint for companies for meeting their own responsibilities to respect human rights. The normative contribution of the Guiding Principles lies not in the creation of new international law obligations, but in elaborating on the implications of existing standards and practices for States and businesses and in integrating them within a single, logically coherent and comprehensive template.

The extent to which the Guiding Principles are referenced in, and continue to shape, national and international discourse and initiatives relating to responsible business is a testament to their authority and credibility as a conceptual framework and source of guidance. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of the International Labour Organization (ILO) and the Guidelines for Multinational Enterprises on Responsible Business Conduct of the Organisation for Economic Co-operation and Development (OECD) have both been updated to integrate and align with the Guiding Principles. Key mechanisms in the international human rights system, such as the universal periodic review and the human rights treaty bodies, have included references to the implementation of the Guiding Principles in recommendations and statements. The Guiding Principles have been endorsed by many international and regional organizations, business associations, companies, civil society organizations, trade unions, national institutions (including national human rights institutions), multi-stakeholder initiatives and other stakeholder groups. Moreover, they are increasingly referred to in laws, national policies, judicial decisions, guidance, codes of conduct and corporate standards. Their importance as a reference point in the development of legal standards for human rights due diligence further cements their reputation as the foundational and global normative framework for business and human rights.

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<sup>2</sup> OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (New York and Geneva, 2012).

<sup>3</sup> Monash University, Castan Centre for Human Rights Law, *Human Rights Translated 2.0: A Business Reference Guide* (Melbourne, Australia, Monash University, 2017).

OHCHR and the Working Group on the issue of human rights and transnational corporations and other business enterprises (also called the Working Group on business and human rights) are the two main bodies within the United Nations system that are responsible for promoting the dissemination and implementation of the Guiding Principles. Both bodies have developed numerous publications, reports, guidance documents and outreach programmes in fulfilment of their respective mandates. The present interpretive guide, which focuses on the access to remedy pillar of the Guiding Principles, is a key addition to a growing collection of resources.

## **B. Access to remedy and the OHCHR Accountability and Remedy Project**

The Guiding Principles, and their access to remedy pillar in particular, are grounded in a recognition of the need for rights and obligations to be matched to appropriate and effective remedies when they are breached. Concerns have been expressed by human rights observers and stakeholder groups about serious deficiencies in the implementation by many States and business enterprises of their respective international obligations and responsibilities as regards access to remedy.

In 2014, OHCHR launched the Accountability and Remedy Project in response to those concerns and in order to strengthen accountability and access to remedy in cases of business-related human rights abuse. The access to remedy pillar of the Guiding Principles refers to three categories of remediation mechanisms in such cases, and the first three phases of the Project focused on how to enhance the effectiveness of these mechanisms:

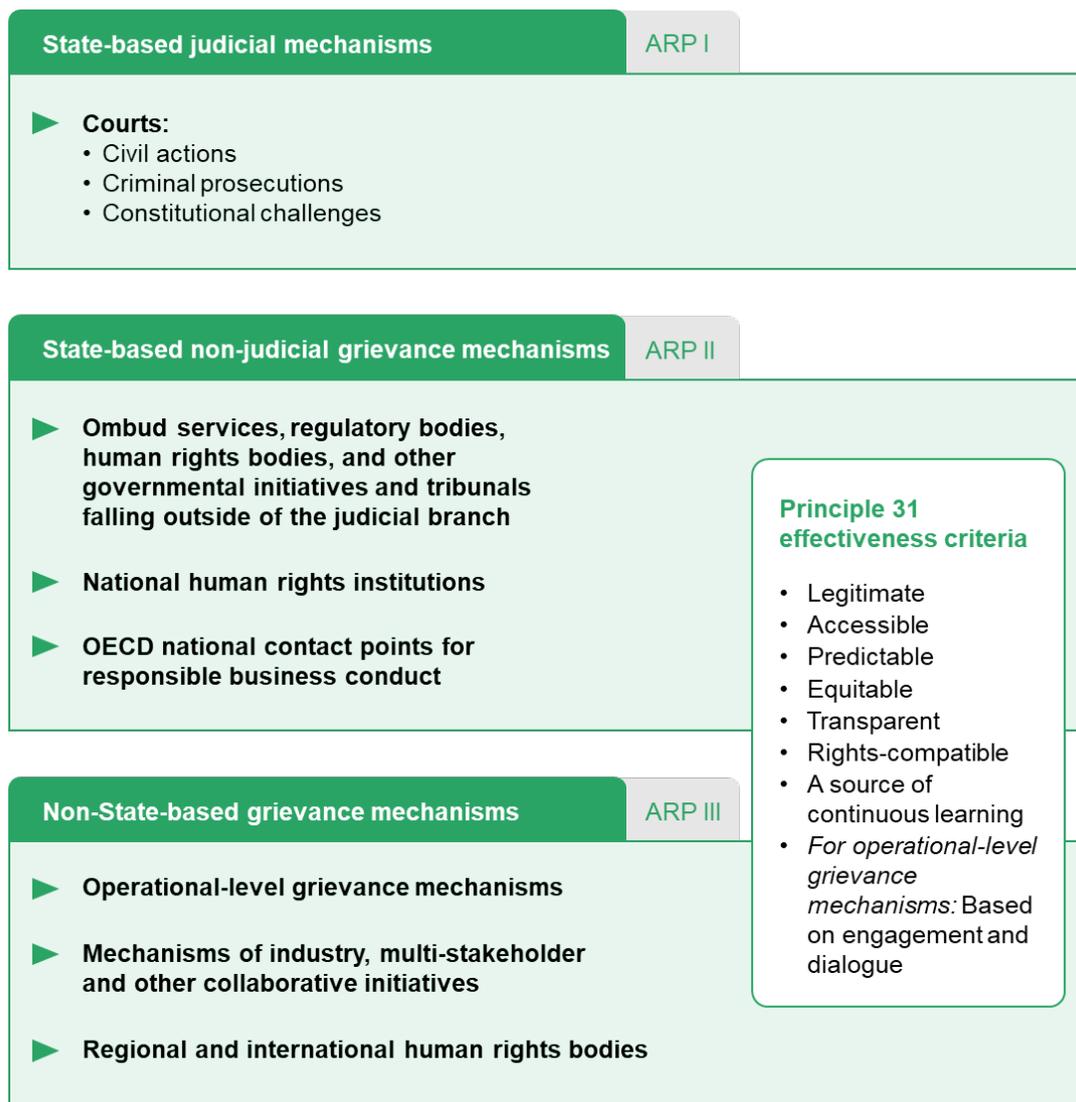
- I: Judicial mechanisms;
- II: State-based non-judicial grievance mechanisms;
- III: Non-State-based grievance mechanisms.

This work was requested and subsequently welcomed by the Human Rights Council through successive resolutions from 2014 to 2020.<sup>4</sup> At the conclusion of each phase of the Accountability and Remedy Project, major reports were submitted to the Human Rights Council, detailing key observations on the functioning of these mechanisms and providing technical guidance for enhancing their effectiveness, drawing on good practices identified during the Project.

The content of the present interpretative guide, which focuses specifically on the access to remedy pillar of the Guiding Principles, draws heavily from Accountability and Remedy Project reports and the extensive empirical research, stakeholder consultations and expert reviews that informed them. The guide brings together in one place the key concepts, underlying principles and learning points from the many years of work that led up to the Guiding Principles themselves, the findings from the Accountability and Remedy Project, and the reports and recommendations of the Working Group on business and human rights.

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<sup>4</sup> See Human Rights Council resolutions 26/22, 32/10, 38/13 and 44/15. For more information on the Accountability and Remedy Project, see [www.ohchr.org/en/business/ohchr-accountability-and-remedy-project](http://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project).



Abbreviation: ARP, Accountability and Remedy Project.

## C. Purpose of the guide

The purpose of the present guide is to provide additional background explanation on the principles of the access to remedy pillar of the Guiding Principles on Business and Human Rights so as to support a full understanding of their meaning and intent.

This is an interpretive guide, meaning that it clarifies how the content of the Guiding Principles should be understood. It is not an operational manual that will explain how to put the Guiding Principles into practice. Rather, the guide provides an overview of the access to remedy pillar, explains the key principles and concepts that underpin it, and addresses some common misconceptions. The guide is complemented by a set of compilations of guidance from the Accountability and Remedy Project, which provide recommended actions for enhancing the effectiveness of the different types of remedial mechanisms relevant to resolving cases relating to business and human rights. Numerous other operational tools have been developed since the endorsement of the Guiding Principles, including targeted and theme-based guidance published by OHCHR and the Working Group on business and human rights. In addition, other organizations continue to develop their own approaches, focusing on implementation of the access to remedy pillar. It is hoped that this guide will assist them in doing so by explaining further the intent behind the Guiding Principles as regards access to remedy.

Ensuring access to remedy demands action from many different kinds of actors, both State based and non-State based. While “effective judicial mechanisms are at the core of ensuring access to remedy”,<sup>5</sup> many other kinds of mechanisms and actors also play an essential role in complementing and supplementing the vital work of law enforcement bodies, prosecutors and courts. It is hoped that, by highlighting the different ways in which these diverse actors may contribute to access to remedy, the present guide will encourage further policy innovation, for example by fostering a greater understanding of the value of coordinated action between different types of actors and mechanisms and of the conditions under which this can take place.

## D. For whom is the guide intended?

The present guide is intended for anyone seeking to better understand how the Guiding Principles address issues of remedy. It is designed to be readily accessible to all, and uses an easy-to-read question-and-answer format. It is intended as a resource not just for people working in governments and business enterprises, but also for civil society organizations, trade unions, financial institutions, lawyers, prosecutors, judges, regulators, mediators, arbitrators and others who may engage with States, businesses and rights holders on such issues. It aims to equip all actors, whether specialist or non-specialist, with the knowledge and insights needed for more productive engagement and advocacy in relation to access to remedy for business and human rights harms in a wide range of contexts.

## E. Structure of the guide

Chapter II briefly defines some key concepts used in the Guiding Principles and in the present guide.

Chapters III to VII focus on the substance of the Guiding Principles covered in the access to remedy pillar, with a series of basic questions and answers to help interpret each principle, its intent and the implications of its implementation. They are addressed here in the same order as the order in which they are found in the Guiding Principles:

- III. Foundational principle on access to remedy
- IV. State-based judicial mechanisms
- V. State-based non-judicial grievance mechanisms
- VI. Non-State-based grievance mechanisms
- VII. Effectiveness criteria for non-judicial grievance mechanisms

Additional reference material on the access to remedy pillar may be found on the OHCHR website, where there is a [dedicated web page with resources on accountability and remedy](#).

### Principle 22: Remediation

The Guiding Principles also address the issue of remediation under the second pillar (the corporate responsibility to respect):

**Principle 22: Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.**

As the present guide is focused only on the third pillar (access to remedy), it does not address Principle 22 in depth. Therefore, issues relevant to access to remedy that are more connected to pillar

<sup>5</sup> OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (New York and Geneva, 2011), p. 28.

II of the Guiding Principles are not addressed in detail in the present guide. These issues include, but are not limited to:

- How business enterprises can be involved in human rights abuse
- What is expected of business enterprises in cases of causation, contribution and direct linkage
- What it means for a business enterprise to cooperate in remediation
- The legitimate processes through which remediation should take place
- Strategic lawsuits against public participation (commonly referred to as SLAPP suits).

For further guidance on such issues, other relevant resources on the corporate responsibility to respect human rights may be consulted, including *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* by OHCHR.

## F. Status of this guide

The present guide does not change or add to the provisions of the Guiding Principles or to the expectations that they set for States or businesses. The formal commentary provided in the Guiding Principles is not reproduced in this guide, although it is occasionally quoted. The questions and answers provided here go beyond that commentary to provide additional detail and assistance in understanding the Guiding Principles. As such, they complement the commentary but do not replace or supersede it.

## G. How was the guide developed?

The present guide draws from numerous authoritative sources relating to access to remedy for business-related human rights abuse, including international instruments, statements from international and regional human rights bodies and reports by recognized experts in the field, some of which can be found on the OHCHR "[Resources on accountability and remedy](#)" web page. Extensive consultations and information-gathering activities carried out during the Accountability and Remedy Project and the development of the Guiding Principles themselves have further informed the contents and approach of the guide. A call for input on questions to address in the guide resulted in over 350 suggested questions. The selection of the questions, as well as the answers found in the guide, benefited from close collaboration with the Working Group on business and human rights, as well as from feedback provided by those involved in developing the access to remedy pillar of the Guiding Principles and by business and human rights practitioners with direct experience of access to remedy issues in a range of contexts.

## II. KEY CONCEPTS

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**Accountability.** Accountability arises when a person or entity has taken responsibility for their actions, has answered for them to those affected, and has been held to certain standards if their conduct or decision-making were found to have been deficient. Depending on the context, accountability on the part of corporate actors may be achieved through legal means (such as a court order imposing certain measures) or non-legal means (for instance, due to the commercial or reputational consequences of wrongful behaviour being publicized). The concept of accountability is discussed further in question 12 below.

**Adverse human rights impact.** An adverse human rights impact occurs when an action or omission removes or reduces the ability of an individual or community to enjoy their human rights.

**Business enterprise.** A business enterprise is an entity or group of entities that is engaged in commercial activities with a view to creating or adding value and/or generating revenue. Business enterprises can take many different legal forms, including single corporate entities, corporate groups comprising parent companies and subsidiaries, partnerships, joint ventures, State-owned enterprises and other forms of equity-based or contractual arrangements. The Guiding Principles apply to all business enterprises, whether transnational or not, and regardless of their size, sector, location, ownership or structure.

**Business relationships.** Business relationships are those relationships that a business enterprise has with entities that are relevant to that enterprise's commercial activities. The term encompasses the relationships a business enterprise has with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services, including, but not limited to, joint ventures, suppliers, service providers, distributors, licensees and franchisees. This concept is not limited to "first tier" relationships in value chains, but can encompass more indirect relationships, such as those with entities that are in the "second tier" of a value chain (such as suppliers of raw materials to direct suppliers of the business enterprise in question) and beyond. Business relationships can take many different legal and organizational forms. It may be relevant, for instance, to distinguish between relationships that are based on contractual relationships and those that arise as a result of shareholdings. However, the existence of a business relationship does not depend on the ability of one party to control or influence the other. Therefore, a business relationship may exist between a parent company and a subsidiary in which it has only a minority shareholding, or between a company and another entity with which the company has no contractual relationship, but which is directly linked in some way to that company's operations, products or services.

**Complicity.** Complicity refers to a situation where one person is involved with others in some activity that is unlawful or harmful. The term is sometimes used to refer to situations where one party acquiesces in, or benefits from, the wrongful or harmful actions of another. Complicity can be a basis of legal liability, and notably criminal liability, where a person or entity has facilitated or encouraged an unlawful act, but was not the primary perpetrator or the last actor in a chain of causation. The legal tests that are used to determine whether or not a person is legally liable on the basis of complicity are laid down in applicable domestic law.

**Cross-border case.** A cross-border case refers to a situation of alleged business-related human rights harms where the relevant facts, actors or evidence needed to prove a case are located in more than one State.

**Dialogue-based methods.** Dialogue-based methods are communication processes between parties to a grievance that are aimed at resolving the grievance and/or fostering greater mutual understanding and trust. They may be facilitated by mediation, and their aims can vary from case to case. In some cases, the aim will be to achieve a mutually agreed set of decisions and actions designed to address a specific grievance. In other cases, the processes may be more open-ended, for instance where parties seek to enter

an ongoing dialogue as a way to improve their understanding of the perspectives of different stakeholder groups.

**Extraterritorial jurisdiction.** Extraterritorial jurisdiction refers to the assertion of power by a State, through various legal, regulatory or judicial mechanisms, to prescribe, adjudicate or enforce laws with respect to actors or activities outside its own territory.

**Forum State.** This refers to the State in which a legal case concerning business-related human rights harms is (or will be) litigated.

**Grievance.** A grievance is understood as a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice or general notions of fairness of aggrieved communities.

**Grievance mechanism.** The term "grievance mechanism" is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.

**Home State.** The home State of a business enterprise is the State in which that business enterprise is domiciled.

**Human rights abuse.** The term "human rights abuse" refers to actions or omissions which may result in or amount to a breach of international human rights standards. There is a considerable overlap between the term "human rights abuse" and "adverse human rights impact" (defined above), although the latter, which is defined by reference to degrees of enjoyment of human rights, has a broader scope. There is also a considerable degree of overlap between the concepts of human rights abuse and human rights violation (defined below). In the Guiding Principles, the term "human rights abuse" is used to refer to abuses committed by non-State actors, including business enterprises.

**Human rights due diligence.** In the context of the Guiding Principles, human rights due diligence refers to the processes and activities by which businesses identify, prevent, mitigate and account for how they address the adverse human rights impacts with which they are involved. The Guiding Principles provide standards for how human rights due diligence should be conducted, which are further explained in box 11 and in *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* by OHCHR.

**Human rights risks.** A business enterprise's human rights risks are the risks whereby its own actions or omissions, or those of an entity with which it has a business relationship, may lead to one or more adverse human rights impacts in connection with its operations, products or services. Human rights risks are conceptualized as risks to people, rather than risks to the business enterprise itself.

**Human rights violation.** A human rights violation is a violation of an obligation under international human rights law. Under international law, the primary addressees and ultimate guarantors of human rights are States. Thus, a reference to a human rights violation (as opposed to human rights abuse, defined above) will almost always refer to a breach of international human rights law by a State. States become subject to international human rights obligations in various ways, including through customary international law, and by virtue of their treaty commitments.

**Internationally recognized human rights.** As noted in the Guiding Principles, the responsibility of business enterprises to respect human rights refers to internationally recognized human rights, which are understood, at a minimum, as being those expressed in the [Universal Declaration of Human Rights](#), the [International Covenant on Civil and Political Rights](#), the [International Covenant on Economic, Social and Cultural Rights](#), and the principles concerning fundamental rights set out in the [ILO Declaration on Fundamental Principles and Rights at Work](#). Depending on circumstances, business enterprises may need to consider additional standards, such as those found in other [human rights instruments](#) and in [international humanitarian law](#).

**Legal liability.** Legal liability refers to the fact of an individual or entity being held responsible under the law. Legal liability carries legal consequences for the responsible party, which, depending on the type of liability, could include criminal or administrative sanctions, or obligations to provide specific kinds of remedy, such as financial compensation, to an affected stakeholder (see box 1). The term “corporate legal liability” refers to the legal liability of an entity, such as a company, as opposed to the legal liability of individual officers and employees of that entity. In some jurisdictions, entities such as companies cannot be held criminally liable because criminal law is applicable only to natural persons.

**Leverage.** Leverage is an advantage that gives a person or an entity the power to influence others. In the context of the Guiding Principles, it refers to the ability of a business enterprise to bring about changes in the behaviour or business practices of another party that may cause or contribute to an adverse human rights impact.

**Meaningful stakeholder engagement.** Meaningful stakeholder engagement refers to an ongoing process of interaction and dialogue with stakeholders in order to hear, understand and respond to their interests and concerns (see box 15).

**Mitigation.** The mitigation of an adverse human rights impact refers to actions taken to reduce its extent, with any residual impact then requiring remediation. The mitigation of a human rights risk refers to actions taken to reduce the likelihood of a certain adverse human rights impact occurring.

**Prevention.** The prevention of an adverse human rights impact refers to actions taken to ensure that such an impact does not occur.

**Remediation/remedy.** The terms “remediation” and “remedy” are often used interchangeably. These terms may refer to either the processes of providing remedy for an adverse human rights impact, or the substantive outcomes that can counteract or make good the adverse impact (see box 1), or both. These outcomes may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, or punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through injunctions or other guarantees of non-repetition, for example.

**Remedy ecosystem.** The term “remedy ecosystem” refers to the laws, policies, institutions, mechanisms and actors, and the relationships between them, that are relevant to whether or not people will receive remedies for human rights-related harm. It encompasses not only the rules, practices and procedures relevant to the functioning of specific judicial and non-judicial mechanisms, but also the background legal regimes (which may not necessarily be framed or understood in human rights terms) that are potentially relevant to whether an effective remedy can be delivered in specific cases (see question 6 and box 6).

**Reparation.** Reparation refers to the act of redressing or repairing human rights harms. Although the terms reparation, remediation and remedy are often used interchangeably, reparation refers specifically to the substantive outcomes of remediation processes.

**Retaliation.** Retaliation refers to action taken by one person or entity against another to prevent or discourage a person from, or punish a person for, speaking out and defending their rights or the rights of others. While people drawing attention to adverse human rights impacts may be at particular risk of retaliation, others may be affected, too, including family members and associates, human rights defenders, representatives of trade unions, witnesses in proceedings or people involved in the administration of grievance processes. Retaliation can take many different forms. It may include physical, psychological or economic harm, it can take place both online and offline, it may take place through abusive legal proceedings, and it may be perpetrated by both State and non-State actors. Economic forms of retaliation can include negative actions connected with a person’s employment, including demotion, disciplinary action, firing, salary reduction, job or shift reassignment, anti-union discrimination and blacklisting. The term “retaliation” is commonly used interchangeably with terms such as “reprisal” or “reprimand”.

**Rights holder.** Rights holders are the beneficiaries of the rights that are recognized in international human rights law. All human beings are rights holders. In certain circumstances, some rights can be enjoyed in community with others. In cases where human rights have been adversely impacted, the terms “rights holder” and “affected stakeholder” (see definition of “stakeholder” below) may be used interchangeably. In cases where there is a risk of human rights being adversely impacted, the terms “rights holder” and “potentially affected stakeholder” (see definition of “stakeholder” below) may be used interchangeably.

**Stakeholder.** A stakeholder, in relation to a business enterprise, is any individual or community who may affect or be affected by that business enterprise’s operations, products or services, including through business relationships. The term may also refer to others involved in representing the interests of such individuals or communities, such as human rights defenders, trade unions or civil society organizations. “Affected stakeholders” refers specifically to stakeholders whose human rights have been adversely impacted by a business enterprise’s operations, products or services, including through business relationships. The term “potentially affected stakeholders” refers to those who may be at risk of having their human rights adversely impacted. There is substantial overlap between the concept of “affected stakeholders” and the concepts of “rights holder” and “victim” (and also between the terms “potentially affected stakeholder” and “rights holder”). However, these concepts are not always identical in meaning and scope, as is explained further in the definitions above and below.<sup>6</sup>

**Standing.** Standing refers to the rules that govern who has the right to bring legal action and/or to initiate a complaint-handling or dispute resolution process under the procedures of a grievance mechanism.

**Value chain.** A value chain of a business enterprise refers to the activities, operations and business relationships relevant to the production, supply and distribution of products and/or the provision of services by that business enterprise, both upstream and downstream. Within a value chain:

- Upstream business relationships include those concerned with the supply of goods or services relevant to the operations of the company or the development, production or supply of the company’s own products or services, whereas
- Downstream business relationships include those relevant to the distribution, use or consumption of the business enterprise’s products or services, and may extend to the entities involved in the disposal of products.

**Victim.** Victims are persons who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, as a result of human rights abuses or violations. The term is not necessarily limited to those who have been most directly affected, but may extend to people who suffer because of certain relationships to those most directly affected, such as immediate family or dependants. All victims of business-related human rights abuse are “affected stakeholders” (see definition of “stakeholder” above).

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<sup>6</sup> People have different views and preferences as regards the terminology used to refer to those whose human rights have been adversely impacted. The Guiding Principles primarily use the term “affected stakeholder”. As this is an interpretive guide for the Guiding Principles, that terminology is most prevalent in the guide.

### III. FOUNDATIONAL PRINCIPLE ON ACCESS TO REMEDY

Principle 25: As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

#### Question 1. Why does this matter?

Principle 25 emerges from a foundational principle of international human rights law: that State responsibility for failures to comply with international human rights standards extends beyond the responsibility to prevent and redress human rights violations that may be attributed to the State itself. States must also protect against human rights abuses by third parties, including companies. Whereas Principle 1 sets out the implications of this foundational principle for business and human rights in general terms, Principle 25 focuses on its implications for access to remedy in particular. The wording of Principle 25 highlights that ensuring access to effective remedies goes well beyond passing laws that create access to remedy on paper or having relevant institutions in place. Depending on the context, an array of connected measures (judicial, administrative and legislative measures, as well as others) may be needed to fulfil the legal obligations of States with respect to access to remedy. The key elements of each of these areas are discussed more fully in the answers below.

#### Question 2. Is ensuring access to effective remedy a legal requirement of States?

Yes. It is a fundamental principle of international human rights law that when abuses of human rights take place, there must be effective remedy. Several international and regional human rights instruments explicitly set out an obligation on the part of the State to provide victims with access to effective remedy. For example, the International Covenant on Civil and Political Rights requires States parties to ensure that any person whose rights or freedoms are violated has an effective remedy, and it emphasizes that States are required to develop opportunities for judicial remedy in particular. Similarly, the International Covenant on the Elimination of All Forms of Racial Discrimination requires States parties to assure effective protection and remedies to everyone within their jurisdiction through competent national tribunals and other State institutions. It also establishes the right of victims to seek just and adequate reparation for, or satisfaction in respect of, the harm that has been suffered. Similarly, regional instruments, such as those in Africa, the Americas and Europe, and decisions by the institutions associated with these instruments, have confirmed ensuring access to remedy as a legal requirement of States.

#### ***Box 1: International standards on substantive remedy***

As is noted in the Guiding Principles, access to effective remedy has both procedural and substantive aspects (see definition of “remediation/remedy” under “Key concepts” above). The substantive aspects of remedy are explored in many international instruments relating to human rights, of which the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross

Violations of International Human Rights Law and Serious Violations of International Humanitarian Law is a notable example. Statements made by human rights bodies – such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights – help to shed further light on the substantive forms that remedies should take in different contexts and the manner in which they should be delivered.

To meet international standards, it is generally accepted that outcomes of remediation processes should be:

- **Adequate:** proportionate and appropriate in light of the degree of illegality or blameworthiness of the behaviour in question and the nature and gravity of the harm suffered
- **Effective:** bringing an end to actions and other factors giving rise to the abuse, and putting the affected stakeholder(s) back in the position that they would have been in had the abuse not occurred, or as close to this as is possible in the circumstances
- **Prompt:** provided in a timely manner.

International legal statements on the substantive forms that remedies can take often divide them into the following categories:

- **Restitution:** measures to restore an affected person or group to their original situation before the harm occurred (e.g. restoration of employment or return of property)
- **Compensation:** measures to compensate for harm that can be economically assessed (e.g. physical or mental harm, or loss of earnings)
- **Rehabilitation:** measures to facilitate a person's recovery from harm, which may include medical or psychological care as well as legal and social services
- **Satisfaction:** measures that may include cessation of a continuing abuse; an apology, including acknowledgement of the facts and acceptance of responsibility; declarations restoring the dignity, reputation and rights of affected stakeholders; judicial and administrative sanctions; and symbolic remedies, such as commemorations
- **Guarantees of non-repetition:** measures to avoid the recurrence of similar harms in the future (e.g. injunctions or changes to laws, policies or corporate practices).

Depending on the context and type of harm, a substantive remedy that meets international standards may require a mix of approaches, drawing from the categories listed above. For instance, in cases where an effective remedy demands action for the purposes of restoring someone's dignity, acknowledgment of the harm caused and an apology are likely to be important components of remedy, alongside any financial compensation.

The perspectives of affected individuals and communities are of fundamental importance in any assessment of whether the substantive outcomes of a remedial process meet international standards in fact. However, different groups of rights holders (and different people within such groups) may have varied expectations with regard to remedying the harm suffered. To understand what kinds of substantive outcomes would amount to an effective remedy in any given situation, those affected should be meaningfully consulted about the type of remedy that would be appropriate and the manner in which it should be delivered.

The Working Group on business and human rights examined the concept of access to effective remedies under the Guiding Principles on Business and Human Rights in a 2017 report (A/72/162).

### **Question 3. How is ensuring access to effective remedy relevant to the State duty to protect under the Guiding Principles?**

Ensuring access to effective remedy is relevant to the State duty to protect in two important ways. First, as recognized in pillar I of the Guiding Principles, the State duty to protect against human rights abuse requires States to take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. The extent to which people can access effective remedies for the business-related human rights abuses they have suffered depends on the extent to which States fulfil this duty, as well as the extent to which the State protects and promotes the rule of law more generally. Second, as noted under question 2 above, ensuring access to remedy is itself a substantive human right, which States must respect, protect and fulfil.

Additionally, by demonstrating that there will be some form of recourse in cases of business-related human rights abuse, with the possibility of criminal or administrative sanctions for breaches of human rights standards, States can make an important contribution to harm prevention by deterring others from causing similar harms. As explained in box 1 above, preventing future harm can be a vital element of an effective remedy.

### **Question 4. How does a State ensure access to effective remedies through judicial means?**

Judicial mechanisms provide a forum through which affected individuals and communities (or their representatives) can defend their rights through legal action and obtain legally enforceable remedies for harm. Judicial mechanisms also provide a forum for criminal prosecutions and sanctioning of companies (in certain jurisdictions) and of individual offenders. The Guiding Principles make it clear that effective judicial mechanisms are at the core of ensuring access to remedy. In order to ensure access to effective remedy, such mechanisms should be sufficiently empowered to respond to allegations of business-related human rights abuse and to enforce laws effectively.

It can be helpful to draw a distinction between the steps that States can take to reduce the barriers faced by individual claimants (which are discussed in more detail in the answer under question 26 below) and the steps that States can take to improve the effectiveness of the judicial system more generally. As regards the latter, some examples of concrete steps that States can take may include:

- Ensuring that domestic laws provide the necessary coverage to address the human rights risks connected with business activities, and that they provide a legal setting for doing business that is conducive to respecting human rights
- Ensuring that members of the judiciary and other relevant court officials receive appropriate training on international standards relevant to preventing and addressing business-related human rights abuse and their application in different contexts
- Ensuring that State agencies responsible for investigating allegations of business-related human rights abuses and enforcing legal regimes have a clear mandate, sufficient resources and political support
- Ensuring that the courts have the power to impose financial and non-financial remedies, in particular preventive remedies
- Putting in place suitable arrangements for legal and judicial cooperation with other States in order, for instance, to expedite the exchange of information and the gathering of evidence in cross-border cases or to enable the recognition and enforcement of court judgments from other States
- Raising awareness among the public about their rights and the different ways that these rights can be adversely affected by business activities, about the role of judicial mechanisms in helping people to defend their rights and about how affected stakeholders can obtain further help and assistance.

## **Question 5. How does a State ensure access to effective remedies through administrative means?**

Within domestic legal systems there may be many administrative bodies with a role in preventing and addressing business-related human rights harms. These may include labour inspectorates, health and safety bodies, consumer protection bodies, environmental agencies, bodies with oversight of laws relating to discrimination, child protection bodies and other regulatory bodies. Their mandates may be general in nature, focused on specific human rights-related themes or sector specific. For example, national human rights institutions may exercise functions that would class them as key administrative bodies in this regard (see box 3).

Administrative bodies may provide mechanisms through which people can raise grievances relating to a business's non-compliance with human rights-related standards or regarding business involvement in adverse human rights impacts more generally. Such State-based non-judicial grievance mechanisms are discussed in more detail under Principle 27 below.

While directly resolving human rights-related grievances is an important way for States to ensure access to effective remedies through administrative means, other regulatory functions are also relevant. For instance, administrative bodies may have the authority to act on their own to detect and sanction non-compliance with legal standards (for instance, in relation to workplace safety or the protection of the environment) or to order timely corrective action. Such actions (which may result in fines, disqualification from government contracts or suspension of licences) can make an important contribution to the prevention and mitigation of human rights-related harms.

Depending on their mandates, administrative bodies can play a part in ensuring access to remedy through other kinds of remediation mechanisms, for instance by referring matters to prosecutors or acting as expert witnesses in other processes. Some administrative bodies can monitor the effectiveness of other remediation mechanisms (see questions 32–33) and issue recommendations or guidance on how they could be improved.

## **Question 6. How does a State ensure access to effective remedies through legislative means?**

A key way in which States ensure access to effective remedies through legislative means is by passing laws that clarify, codify and apply legal force to rules that govern the way in which business enterprises interact with people and communities, and setting out the consequences of non-compliance. In most jurisdictions, legislation will also be the means through which State-based judicial and non-judicial mechanisms, as well as other administrative bodies relevant to business respect for human rights (see question 5), are established and their mandates made clear.

In some jurisdictions there may be sources of law other than legislation to which courts will refer to determine whether a business enterprise is legally liable for human rights harms. These include judicial precedent (as applies in common law systems) and customary law. However, even in cases where a claimant relies on standards that have not been enshrined in legislation, there are still likely to be legislative regimes in the background that can have a profound bearing on whether a person has access to an effective remedy in practice. Examples of such background regimes include:

- Whistle-blower protection laws that enhance the protections of people who want to draw attention to corporate wrongdoing, including in a courtroom setting
- Freedom of information or transparency laws that make it easier for claimants to obtain the evidence needed to prove their claims
- Rules of procedure that ensure that judicial proceedings are conducted in a fair way that ensures respect for rights.

## Question 7. What other appropriate means could be relevant for ensuring access to effective remedies?

There are a range of other means by which States can help ensure access to effective remedies in business and human rights cases. For example, States can:

- Encourage companies to develop grievance mechanisms by making support (e.g. using export credits or official investment insurance) conditional on establishing such mechanisms and ensuring their effective operation
- Enhance public awareness and understanding of different grievance mechanisms and how they can be accessed, and of any support that can be made available to victims, such as financial aid or expert advice
- Make available suitable training for legislators, government officials and regulators on the international standards relevant to preventing and addressing business-related human rights abuse and their application in different contexts
- Invest in initiatives and institutions, such as national human rights institutions or research and knowledge-sharing “hubs”, which can assist and channel resources to victims
- Develop national action plans on business and human rights and take concrete steps to comprehensively enhance the effectiveness of the State’s remedy ecosystem (see box 6).

## Question 8. What is the difference between “territory” and “jurisdiction”?

The *territory* of a State refers to the physical areas of the Earth’s surface enclosed by the boundaries of that State. Under international law, a State’s territory includes not just land and inland waters, but also surrounding seas and the airspace above. *Jurisdiction*, on the other hand, is a legal concept that refers to the authority of States to assert their powers over and in relation to situations and people. The scope of State jurisdiction and the circumstances in which it can or must be exercised are defined by domestic and international law.

### Examining the concept of jurisdiction

The concept of jurisdiction is used in different ways in international law. In international human rights law, the word “jurisdiction” is used to define the relationships between the State and people and/or between the State and places that give rise to legal duties to respect, protect and fulfil human rights. In short, it is used to define where, and in relation to whom, a State *must* act. In international law more generally, the concept of jurisdiction can be used to describe the basis on which a State *may* enforce its laws or extend them to situations and/or people, including extraterritorially. The most certain basis for exercising jurisdiction under international law is the presence of a person, or the fact of something occurring, within the territorial boundaries of a State. This is referred to as “territorial” jurisdiction. However, there are several other bases recognized under international law on which a State may assert extraterritorial jurisdiction – that is, jurisdiction over people and/or situations outside the boundaries of its own territory. In other words, the concept of “jurisdiction” under international law has acquired both a mandatory dimension and a permissive dimension. Principle 25 is concerned with the scope of mandatory jurisdiction (that is, where and in relation to whom the State *must* act) in ensuring access to remedy.

The concepts of territory and jurisdiction, in the sense used in Principle 25, are very closely related. This is because, as noted above, international law grants each State jurisdiction over people and situations within their respective territories. The use of the words “territory and/or jurisdiction” in Principle 25 is an acknowledgement that, legally speaking, the scope of a State’s territory and its jurisdiction over people and situations may not coincide exactly.

## Question 9. What have international bodies said about ensuring access to remedy in cross-border cases?

The questions of when and how States should provide access to remedy in cross-border cases raise complex issues that have been considered in a range of international settings, including regional and international human rights bodies (see question 39), treaty bodies and other institutions working in the field of business and human rights.

For regional and international human rights bodies, the issue typically arises in the context of advisory opinions and legal petitions by affected stakeholders seeking to assert their rights under a human rights treaty. The geographic scope of treaty obligations has been considered by the Inter-American Court of Human Rights, for example. In its advisory opinion OC-23/17, the Court held that States parties have a duty under the American Convention on Human Rights to respond to human rights risks arising from environmental damage caused by activities that are under the jurisdiction or control of the relevant State, even when the harms are experienced outside their territory.

Committees responsible for monitoring human rights treaties have offered their own views on this question, often as part of general comments or general recommendations, which are periodically published to help States parties interpret and apply their treaty obligations in different contexts. Some key statements from treaty bodies are set out in box 2 below.

### **Box 2: Comments by human rights treaty bodies on the geographic scope of States' duty to protect against business-related human rights abuse**

**Committee on Economic, Social and Cultural Rights.** In its General Comment No. 24 (2017) on State obligations in the context of business activities, the Committee on Economic, Social and Cultural Rights observed that “extraterritorial obligations arise when a State party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its national territory” (para. 28). After detailing the particular challenges that affected stakeholders may face in obtaining remedies for transnational corporate abuse, the general comment states that “States parties have the duty to take necessary steps to address these challenges in order to prevent a denial of justice and ensure the right to effective remedy and reparation” (para. 44).

**Human Rights Committee.** The Human Rights Committee (which monitors the International Covenant on Civil and Political Rights) stated in its general comment No. 36 (2018) on the right to life that “States parties must take appropriate measures to protect individuals against deprivation of life by ... foreign corporations operating within their territory or in other areas subject to their jurisdiction. They must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities undertaken by corporate entities based in their territory or subject to their jurisdiction, are consistent with article 6, taking due account of related international standards of corporate responsibility and of the right of victims to obtain an effective remedy” (para. 22).

**Committee on the Rights of the Child.** In its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, the Committee on the Rights of the Child stated that home States have obligations “to respect, protect and fulfil children’s rights in the context of businesses’ extraterritorial activities and operations” and that they “should enable access to effective judicial and non-judicial mechanisms to provide remedy” when those rights have been

violated, provided “there is a reasonable link between the State and the conduct concerned” (paras. 43 and 44).

The question of when and how States should provide access to remedy in cross-border business and human rights cases has been considered by OHCHR through its [Accountability and Remedy Project](#). In this context, OHCHR has called on home States of business enterprises to ensure that regulatory regimes designed to promote business respect for human rights and provide remedies in cases of business-related human rights harms are clear about the geographic scope of the rights and responsibilities enshrined within them. Measures should also be put in place to ensure that enforcement agencies and judicial bodies can readily and rapidly seek legal assistance and respond to requests from their counterparts in other States with respect to the detection, investigation, prosecution and enforcement of cross-border cases concerning business involvement in severe human rights abuses. The Working Group on business and human rights detailed ways in which States can improve on the effectiveness of cross-border cooperation with respect to law enforcement in a 2017 report ([A/HRC/35/33](#)).

### **Question 10. What does it mean to have “access” to an effective remedy?**

As the Guiding Principles make clear, access to effective remedy has both procedural and substantive aspects. It refers both to the processes through which allegations can be raised and remedy sought and to the substantive outcomes of those processes for the affected individual or community.

States must provide mechanisms through which victims can raise grievances about business-related human rights harms and seek redress. To make mechanisms accessible, it is important to address the legal, practical and procedural barriers people may face in seeking to use them, as discussed under questions 20 to 25 and 63 below. However, having accessible remediation processes in place does not in itself ensure access to effective remedy. States also need to pay attention to the outcomes of such processes, especially regarding what kinds of substantive remedies the processes can deliver in practice and whether those remedies meet international standards (see box 1).

To ensure access to remedy, particular attention should be paid to the needs of people who may be at risk of marginalization. Groups of persons who may be at heightened risk of vulnerability or marginalization and who may face additional barriers to accessing remedy include children, persons with disabilities and Indigenous Peoples, as well as women and individuals belonging to ethnic or other minorities in certain contexts. For example, children may find the formality of grievance mechanisms and the legalistic language used in documentation particularly intimidating; child-friendly language and specially trained staff may be needed to ensure that mechanisms are fully sensitive to the needs of younger users. Due to their often generally marginalized position in society, members of indigenous communities may experience particular challenges in accessing grievance mechanisms on equal terms with others, and the remedial outcomes obtained may not accord with their cultural preferences or needs. Those designing and administering remediation mechanisms should be aware of the compounding and mutually reinforcing effects of different forms of discrimination that people can face in life, which may be based on race or ethnicity, age, sex, gender, religion, disability, sexual orientation or gender identity, and on how these factors can intersect.

### **Question 11. Is “access to remedy” the same as “access to justice”?**

Access to remedy and access to justice are two distinct concepts, although they interlink. As noted above, “access to remedy” refers both to the process of pursuing remedy in specific cases and to the substantive outcomes of that process. “Access to justice”, on the other hand, is a broader concept. The Working Group on business and human rights has explained:

“In a narrow sense, access to justice can be equated with the right or access to effective judicial remedies, and in this sense effective remedies should often result in justice being provided to rights holders. Nevertheless, access to justice can also be used in a broader sense to deal with larger issues of injustice that may not be addressed through individualized remedies offered for a given set of human rights abuses, but would require more fundamental changes in social, political or economic structures.” (A/72/162, para. 16)

In other words, an effective remedy should result in a sense of justice for victims of harm (see box 1). However, an effective remedy in an individual case may not necessarily right all the wrongs that have occurred or resolve any broader issues of injustice that contributed to them.

## **Question 12. Is “access to remedy” the same as “accountability” for business-related human rights harm?**

As noted above, “access to remedy” refers both to a person’s ability to access the procedures through which a remedy may be delivered and to the person’s ability to obtain an effective remedy from those procedures.

“Accountability,” on the other hand, is characterized by the taking of responsibility for actions, being answerable to those affected and being held to certain standards if conduct or decision-making have been found to be deficient (see the definition of “accountability” under “Key concepts” above).

It can be difficult to disentangle the two concepts in practice. This is because many of the remedies that may be relevant in a case of business-related human rights harm – such as the imposition of monetary fines, a requirement to make an apology or pay compensation, or exclusion from certain government contracts – can be important for corporate accountability, too. At the same time, accountability can be an important element of an effective remedy in practice. If a company is held accountable for business-related human rights harm, whether willingly or because of legal or other types of pressure, this can be an important element of an effective remedy for an affected person or community (see box 1), and can help to produce a sense of satisfaction that relevant facts have been established, wrongs have been recognized and appropriate punishments have been imposed – all of which can contribute to a restoration of dignity.

There is not a perfect correlation between these two concepts, however, because the objectives of accountability can sometimes be broader than those of remedy. This can be the case, for instance, when seeking to maintain common standards and values within a society. Thus, while the delivery of effective remedies in a specific case is an important aspect of accountability, it might not represent the totality of what is needed if there is to be full accountability in the sense in which the term is used in this guide. Conversely, the measures taken to help achieve corporate accountability may not necessarily equate to an effective remedy in a given case. For instance, while the imposition of a fine may be important for signalling accountability to the public at large, it may not amount to an *effective* remedy to those most directly affected.

## IV. STATE-BASED JUDICIAL MECHANISMS

Principle 26: States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

### Question 13. Why does this matter?

Effective judicial mechanisms are an essential component of all State-based systems for ensuring access to remedy for human rights harms. This is because of the unique role that such mechanisms play in interpreting and applying the law and in ensuring that justice is delivered fairly. The effectiveness of domestic judicial mechanisms is a strong indicator of levels of respect for the rule of law within a jurisdiction. Even in the many cases where affected stakeholders may prefer to resolve their grievances through non-judicial means, the presence of effective domestic judicial mechanisms in the background, or within the mix of available remediation options, will often be a material factor in whether an effective remedy is ultimately obtained or not. The direct link between effective domestic judicial mechanisms and access to remedy for human rights harms is clearly acknowledged in a series of international human rights instruments (including those comprising the International Bill of Rights) and in the commentary to the Guiding Principles.

People affected by business-related human rights harms may find it difficult to access domestic judicial mechanisms in practice, however. This can be because of many factors, including the costs of initiating court action, difficulties in finding suitable legal counsel, the lack of a clear basis for bringing a claim, or the time it may take to secure a positive outcome. People are often deterred from going to court because they believe there may be a low probability that an effective remedy will ultimately be obtained through this route. These barriers to remedy, and the steps that can be taken to reduce them, are discussed further below.

### Question 14. What are domestic judicial mechanisms?

In many jurisdictions, “domestic judicial mechanisms” can be taken to refer to courts – that is, institutions operating under the judicial branch of government. Such institutions typically operate highly formalized procedures for hearing applications, resolving disputes or determining legal liability, and their determinations are legally binding.

Domestic judicial mechanisms can encompass many different types of courts, such as criminal and civil courts, constitutional and administrative courts, specialized courts established to adjudicate cases arising under a particular legal regime (such as labour or environmental law), tribunals and other quasi-judicial bodies (such as employment tribunals).

### Question 15. What is an “effective” judicial mechanism?

The Guiding Principles do not explicitly set out what an effective judicial mechanism is. However, the commentary to Principle 26 suggests that “impartiality, integrity and ability to accord due process” are all fundamental. These standards ultimately stem from, and are shaped by, the overarching duties of States to

protect and promote the rule of law, “including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency.”

Relevant factors for assessing the effectiveness of courts will include the susceptibility of relevant officials to corruption, the extent to which the institutions are able to function independently from vested interests (such as agents of the State or business actors), and the ease with which access may be obstructed through abusive lawsuits. The OHCHR [Accountability and Remedy Project](#) has produced detailed guidance on what it means for judicial mechanisms to be effective in business and human rights cases, and on what States and other relevant actors can do to ensure that judicial mechanisms are effective in practice.

### **Question 16. What kinds of appropriate steps can States take to ensure the effectiveness of domestic judicial mechanisms?**

Many different local legal, structural, political, cultural and economic factors will determine what steps are necessary to ensure the effectiveness of domestic judicial mechanisms. The concept of appropriateness provides a reminder of the need for careful consideration of the context in which a programme of reforms is to be implemented and of the complementary measures that may be needed to ensure that the reforms achieve the intended results. There are a number of fundamental measures that States can take to ensure the effectiveness of domestic judicial mechanisms, such as:

- Devising and implementing policies to protect and promote the independence of the judiciary, including measures to ensure that the administration of justice is not undermined or prevented by the corruption of the judicial process
- Ensuring that courts are properly funded and resourced
- Ensuring that suitable arrangements are in place to enable law enforcement bodies, judges and other relevant court personnel to request assistance from their counterparts in other jurisdictions in cross-border cases
- Investing in continuing professional development for lawyers and judges to raise awareness about international, regional and domestic standards relating to business and human rights and about opportunities for promoting the accountability of business enterprises and access to remedy for affected stakeholders.

### **Question 17. What kinds of remedies are potentially available through judicial mechanisms?**

The types of remedies that can be provided by judicial mechanisms will depend on the type of legal action that is taken. Depending on the applicable domestic law and relevant legal structures, there may be opportunities to seek legal recourse under civil law, criminal law, administrative law or constitutional law, or through specialized courts, such as those concerned with employment or environmental matters. In some cases, a combination of approaches involving different modes of legal recourse may be needed in order to deliver an effective remedy.

For civil actions by affected stakeholders or relevant public bodies, a range of remedies may be available. Depending on the jurisdiction, civil actions may result in financial compensation, punitive damages, declarations of wrongdoing, injunctions, orders to perform contractual obligations or other orders for corrective or preventive action. Settlement agreements that have been obtained through litigation and registered with a court can grant the court the power to legally enforce commitments made as part of such agreements. This can include, for example, commitments by a company to take certain actions such as cleaning up environmental spills, providing restitution or taking steps to ensure future prevention of harms. In those jurisdictions that allow criminal actions against corporate defendants, the most common remedy is a fine. Some courts may also demand restitution, remedial orders, community service, a public notice and

apology, disgorgement of profits, a period of probation, prohibitions on engaging in certain business or receiving government contracts or, in extreme cases, dissolution of the business entity. Individual offenders (such as corporate executives) can also be subject to criminal penalties, including in jurisdictions that do not permit corporate criminal liability. This can result in some of the same penalties, although it can also lead to the incarceration of corporate agents. Much depends on the structure and content of the prevailing legal regimes. In some jurisdictions, for instance, companies may be subject to administrative or civil liability only, because criminal liability is only applicable to natural persons as opposed to business enterprises. In such a situation, individual officers in a company can be found liable if they have committed or been complicit in a criminal act, but the corporation itself cannot be convicted under criminal law.

Depending on the relevant domestic legal system, there may also be constitutional grounds on which affected people and communities can seek a remedy for the human rights harms they have suffered. Through this route, it may be possible to challenge governmental decisions that authorized a potentially harmful project or exacerbated the human rights risks involved, on the basis that the decision-making did not meet the standards laid down in the constitution or other relevant statutory guarantees. The remedies that may be achievable through this legal route could include injunctions, declarations of illegality, orders for restitution (e.g. recovery of property), financial compensation and the cancellation of licences or projects.

### **Question 18. Are there any kinds of remedy that are accessible only through judicial mechanisms?**

Yes. As a general rule, only judicial mechanisms are able to impose criminal liability on companies and/or their agents for business-related human rights abuses that amount to crimes under domestic law. Courts therefore have a particularly important role to play to hear and adjudicate cases of business-related human rights harms that involve allegations of serious wrongdoing.

Civil courts are an important channel through which victims may be able to obtain remedy in the form of financial compensation for harms. While monetary damages can sometimes also be obtained through other means (such as mediation), court orders to pay financial compensation are legally binding. It may also be possible, as part of court proceedings, to obtain an injunction requiring the relevant business enterprise to suspend certain activities, pending the resolution of a legal claim, or to refrain from going ahead with measures that adversely affect human rights, such as forced evictions. A further remedy that is particularly associated with civil courts is that of specific performance, which sets out the specific actions that need to be taken by a party in order, for example, to remedy a breach of contractual obligations, such as may exist between entities in a value chain.

Domestic judicial mechanisms can be used to enhance the effectiveness of remedies that have been obtained through other grievance mechanisms. This might be achieved, for example, where parties that are dissatisfied with the outcome of a non-judicial process refer matters to a court. Another example of complementarity between judicial mechanisms and non-judicial mechanisms is where the outcome of a remediation process has been recorded as a contract, making it enforceable through the courts. It is for all the above reasons that effective judicial mechanisms are recognized in the Guiding Principles as being “at the core of ensuring access to remedy.”

### **Question 19. What is a denial of access to remedy in the context of judicial mechanisms?**

There is no universally accepted definition of what would amount to a denial of access to remedy, but it usually implies the existence of serious flaws in the administration, functioning or resourcing of judicial mechanisms that deprive someone of a remedy or the opportunity to pursue a remedy to which they would otherwise have been legally entitled.

Victims of business-related human rights abuse face many procedural and other barriers when seeking remedy through the courts. On occasions, these can prove insurmountable, creating a risk of denial of access to remedy if no alternatives are available. The Guiding Principles make it clear that States should work to reduce such barriers.

Courts are formal, rule-based institutions, meaning that claimants can expect to face some checks. They may have to prove, for instance, that they have the necessary standing in law to make the claim, that the claim is based on some legally recognized cause of action and that the evidence required to establish a claim has been provided. There is no simple test for easily distinguishing procedural requirements that are unacceptable (that is, on the basis that they would contribute to a denial of access to remedy) from those that are needed for the proper administration of the courts and the justice system. For this reason, it is important that States keep rules of court procedure under review, consulting with affected stakeholders on a regular basis, so that procedural measures or requirements that could give rise to a denial of justice in certain circumstances are identified and modified, thus preserving access to remedy.

The questions that follow will consider some of the common barriers that victims face and will outline some of the ways in which States seek to address them.

## **Question 20. What kinds of legal barriers do affected stakeholders encounter with judicial mechanisms?**

The commentary to Principle 26 provides some illustrative examples of legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed by judicial mechanisms. While it is impossible to provide an exhaustive list, it is possible to identify the problems from which many of the legal barriers stem. These include:

- A lack of clarity in domestic legal regimes regarding the principles for assessing the legal liability of business actors, including between different corporate members of a group enterprise
- A lack of clarity in the legal standards relating to the identification, prevention and mitigation of human rights impacts associated with or arising from group operations, or within value chains
- Absence of any cause of action or criminal offence that adequately describes the harm suffered (which makes the determination of an effective remedy unlikely)
- A lack of clarity as regards the basis on which the courts will assert their jurisdiction (including in cross-border cases)
- Legal rules that severely limit the remedies that can be obtained in cross-border cases (e.g. rules that limit remedies to those that would be obtained in the place where the harm occurred, rather than in the place where management decisions were taken).

## **Question 21. How can legal barriers be addressed?**

Legal barriers may be addressed through legislative and policy reform, or through judicial decisions, although some complementary measures (for example in the form of training or additional resources) may be needed to make reforms effective. Many existing barriers can be addressed by States acting unilaterally (for example through the introduction or clarification of laws). Some States have sought to improve access to remedy through mandatory human rights due diligence regimes. Such laws can help to clarify the legal obligations of companies with respect to the management of human rights risks within their value chains, as well as creating causes of action through which affected stakeholders can seek remedy for harm. However, a high level of cooperation between interested States (and State agencies) is needed to respond proactively to the challenges that commonly arise in cross-border cases, for example to enhance arrangements for mutual legal assistance or to clarify the rules governing the exercise of jurisdiction.

## Question 22. What kinds of practical barriers do affected stakeholders encounter with judicial mechanisms?

The commentary to Principle 26 provides some illustrative examples of the many practical and procedural barriers to accessing judicial remedy. While such barriers will vary greatly from case to case and from place to place, in practice many of these barriers tend to arise from, or be connected with:

- The typically very high costs of accessing judicial mechanisms (which can require legal counsel, expert witnesses, travel and translation services, for example)
- Rules and legal principles that can significantly increase the financial risks to people seeking to access the courts to defend their rights, such as the “loser pays principle”, whereby the losing party in litigation pays the legal costs of the winning party
- The length of judicial proceedings in business and human rights cases, which can take several years, and even decades in complex cases
- The psychological effects of documenting a legal claim and/or giving evidence in judicial proceedings, especially in cases involving significant personal trauma, such as gender-based violence
- The difficulties of accessing information (especially from the business enterprise(s) concerned and/or in cross-border cases)
- A lack of appreciation of the range of levels of literacy that may exist among those seeking to access the courts
- Linguistic differences, which have implications for the conduct of judicial proceedings (including how evidence is gathered and presented)
- Imbalances in power and resources between affected stakeholders and the business enterprise(s) and other actors concerned
- Lack of resources, expertise or personnel within the relevant law enforcement bodies or the judiciary
- Lack of cooperation – formal and informal – between enforcement authorities in cross-border cases.

## Question 23. How can practical barriers be addressed?

Various options are potentially open to States to help reduce any practical barriers to seeking remedy, depending on the nature of the barrier and the context. For instance, it may be possible to reduce the costs of going to court by enabling group actions, which allows individual claimants to pool their resources and avoid duplication of legal costs. In some cases, the provision of direct financial support to people to help cover their legal costs may be an effective way to help them overcome financial barriers to remedy, or they can be directed to sources of pro bono help.

The costs and practical difficulties involved in proving a legal claim, especially where there is unequal access to relevant information between the parties, can sometimes be alleviated by changing the rules on disclosure of documents to make it easier for claimants to access the information they need. In addition, the disadvantage to claimants caused by unequal access to resources and information (that is, compared with those available to well-resourced corporate defendants) may be reduced by making adjustments to the way that “burdens of proof” are allocated. For instance, instead of the claimant having to prove all aspects of wrongdoing, after an initial case has been demonstrated, based on the available facts and evidence, the onus could be placed on the defendant company to substantiate the reasons why it should not be held legally liable.

In many jurisdictions, court administrators are making use of new technologies to enable remote hearings, to speed up the process for filing cases and to facilitate the exchange of information. While it is vital that such technologies are deployed in a rights-respecting way, they can offer benefits by reducing court delays and costs. In cross-border cases, systems that enable a rapid response to requests for legal and investigation assistance from counterparts in other countries can help to expedite proceedings and reduce costs (see further [A/HRC/35/33](#)).

## **Question 24. What other relevant barriers do affected stakeholders encounter with judicial mechanisms?**

People seeking to defend their rights in court can face many other barriers to remedy due to failures by the relevant authorities – legislators, judges, court officials and others – to anticipate and respond to their needs adequately. Different groups in society, and different individuals within groups, may face particular barriers, or they may experience such barriers differently from others, depending on particular characteristics (such as race or ethnicity, age, sex, gender, religion, disability, sexual orientation and gender identity), cultural backgrounds or personal circumstances (see box 13). Some groups who may experience marginalization in society, such as migrant workers or Indigenous Peoples, often have low levels of trust in judicial mechanisms and their ability to address their grievances.

Fear of retaliation poses a serious barrier because it can deter affected stakeholders from making claims or coming forward to assist with investigations if they believe that they may be punished for doing so. It is important to remember that the nature of the retaliation, and the extent to which it can pose a barrier to seeking remedy, may not be obvious to people of a different cultural background or gender from the affected person. It takes proactive and meaningful engagement with different groups in society to begin to appreciate those challenges, and any other relevant barriers that may be in play, and to develop an effective strategy for addressing them (see box 15).

## **Question 25. How can other barriers be addressed?**

Systemic and structural issues that undermine people's access to and/or trust in judicial mechanisms, such as poverty or a lack of respect for the rule of law, need concerted and often long-term corrective efforts by States. Depending on the nature of the underlying problems, this may include legal reforms to better protect human rights and to address broader political, social and economic challenges to the rule of law, such as corruption, lack of judicial independence and the deficiencies in capacity that exist in many domestic legal systems.

Addressing risks of retaliation will typically involve ensuring that such harmful and threatening behaviour is prohibited by law and that law enforcement agencies work to deter and punish acts of retaliation. States should not neglect other legal avenues to reduce the risk of retaliatory behaviour and to sanction such behaviour. These may involve laws protecting fundamental labour rights and the activities of trade unions, whistle-blowers and human rights defenders, and rights that are important for public participation, such as those of freedom of expression and non-discrimination.

Additionally, providing training to judges, lawyers, court officials and other relevant personnel can help to raise awareness of such barriers and of practical ways to address them.

## V. STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS

Principle 27: States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

### Question 26. Why does this matter?

Judicial mechanisms are at the core of a comprehensive State-based system for the remedy of business-related human rights abuse (see questions 13–18), but they may not always provide the most favoured route to an effective remedy in specific cases. This may be because the remedies that are sought by affected stakeholders are not available through judicial mechanisms, perhaps because the domestic legal framework does not provide for appropriate causes of action on the basis of which to bring claims, or because the long duration of judicial proceedings could undermine the value of any remedy obtained. There may also be reasons why people seeking remedy might prefer a less formal process for resolving their grievances than what judicial mechanisms can offer—for example, through mediation.

In practice, and especially in more complex cases, it is not unusual for victims to pursue remedy through a combination of judicial mechanisms and non-judicial mechanisms, sometimes in parallel (see box 7). This demonstrates the importance of providing affected stakeholders with choices about how best to pursue a remedy for harm, so that they can evaluate likely outcomes from different processes and consider the strategies or sequencing most likely to deliver an effective remedy in the circumstances. It is crucial that States provide non-judicial mechanisms that can work as a complement to judicial mechanisms to ensure that affected stakeholders have such choices.

### Question 27. What are State-based non-judicial grievance mechanisms?

State-based non-judicial grievance mechanisms come in many different forms. Their mandates may often not be expressed in human rights terms or business and human rights terms specifically, and they are therefore not always easy to recognise as relevant grievance mechanisms for business and human rights cases.

## State-based non-judicial grievance mechanisms\*

### ► Ombud services, regulatory bodies, human rights bodies, and other governmental initiatives and tribunals falling outside of the judicial branch

For instance...

- **Mechanisms addressing human rights generally**
- **Mechanisms addressing themes relating to business and human rights, such as:**
  - Labour (e.g. a labour inspectorate)
  - Environment (e.g. an environment agency)
  - Public health and safety (e.g. a health and safety board)
  - Consumer protection
  - Equality and non-discrimination
  - Finance, development and trade (e.g. a financial arbitrator)
  - Privacy
- **Mechanisms addressing the protection of particular groups, such as:**
  - Employees
  - Women (e.g. an equality commission)
  - Children (e.g. an ombudsperson for children)
  - Migrant workers
  - Persons with disabilities
  - Victims of modern slavery (e.g. a reporting instances helpline)
  - Members of indigenous communities

### ► National human rights institutions

### ► OECD national contact points for responsible business conduct

\* These examples are illustrative only. In practice, some of these categories may overlap.

These types of mechanisms can differ in terms of their mandates, functions and powers. Some non-judicial mechanisms are mandated to address a wide range of human rights-related issues, while others have a specialized focus (e.g. in relation to specific sectors or human rights themes). Some may have a particular function connected to the enforcement of a specific regulatory regime, while others may receive a broader range of human rights-related grievances, including grievances that relate to structural problems, regulatory failures or systemic injustices. Some State-based non-judicial grievance mechanisms (and particularly those concerned with the enforcement of specific regimes) may have legal powers of investigation (e.g. to compel the production of documents and testimony from witnesses), while others (especially those with a broader remit) may rely to a greater extent on mediation, dialogue and cooperation between relevant business enterprises to achieve a suitable remedy. What they have in common, however, is that they fall outside of the judicial branch, and the State is involved in their establishment and in at least some aspects of their operation or administration.

Examples of State-based non-judicial grievance mechanisms include labour inspectorates, consumer protection bodies, mechanisms for resolving environmental disputes, government ombud services, specialized bodies (e.g. those concerned with the protection of children or migrant workers), national contact points for responsible business conduct under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, and national human rights institutions.

### **Box 3: What role can national human rights institutions play in relation to access to remedy?**

National human rights institutions are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. They can play an important role in relation to access to remedy, which may include fact-finding work on business-related human rights abuses and providing advice on the regulatory reforms that may be needed to ensure more effective access to remedy for victims. The principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), which were adopted by the General Assembly in 1993, provide a set of international standards against which the effectiveness and credibility of national human rights institutions can be judged.

In its 2021 report to the Human Rights Council ([A/HRC/47/39/Add.3](#)), the Working Group on business and human rights described the direct, indirect and foundational contributions of national human rights institutions to remedy in the following terms.

*Direct* contributions include accepting complaints, investigating abuses, conducting public inquiries, mediating and conciliating disputes and making orders regarding compensation.

*Indirect* contributions include helping to build the capacity of various actors, providing legal assistance, intervening in remediation processes, supporting human rights defenders and monitoring the effectiveness of corporate grievance mechanisms.

*Foundational* contributions include raising awareness about rights and remedies, conducting research, recommending legal reforms, supporting the development and implementation of national action plans on business and human rights, and strengthening the rule of law.

The role played by national human rights institutions in relation to access to remedy for business-related human rights harms was further explored in the course of the OHCHR [Accountability and Remedy Project](#).

### **Box 4: What role can OECD national contact points for responsible business conduct play in relation to access to remedy?**

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct require adhering Governments to establish a national contact point for responsible business conduct to act as a non-judicial grievance mechanism. Governments have flexibility on how to structure their national contact points. Some national contact points are based in ministries, some are multi-stakeholder bodies, and some are composed of government-appointed independent experts.

The OECD Guidelines, which provide the normative framework for the work of national contact points, are not legally binding; rather, they reflect a set of recommendations addressed by Governments to multinational enterprises about responsible business conduct. Consistent with this non-binding status, national contact points do not have the authority to issue legally binding orders to rectify any non-compliance with the Guidelines or to impose sanctions. They instead seek to resolve grievances (referred to as “specific instances”) through “good offices” by using dialogue-based methods such as mediation to facilitate agreements between those bringing the grievance and the business enterprise that is the subject of the grievance. Agreements facilitated by national contact points have included commitments by companies to improve their practices in the future, but also to

remedy past harm (through compensation or repairs to damaged property, or by reinstating dismissed workers, for example).

At the conclusion of a specific instance process, the national contact point will issue a public statement describing the outcome of the process. Such statements will generally include an analysis of the issues raised and recommendations to the company on how to address those issues, in particular if no agreement has been reached. Some national contact points also choose to make determinations on whether the company has observed the OECD Guidelines. Agreements and their contents will be published only with the consent of the parties.

Although recommendations cannot be legally enforced by the national contact point, the outcomes of specific instance processes can have reputational, and sometimes commercial, effects, which can act as drivers of positive change in management practices. Some Governments adhering to the OECD Guidelines have sought to strengthen their systems by linking good-faith participation with access to formal State support, including under export credit schemes. Additionally, national contact points can follow up with the parties on whether the company has implemented any agreement reached or recommendations made.

National contact points have a unique role to play in the resolution of cross-border cases. This is because their mandates encompass the global operations of business enterprises based within their respective States, as well as covering cases involving foreign companies operating within those States.

More information about the role and work of national contact points regarding remedy is available in OECD, *National Contact Points for Responsible Business Conduct: Providing Access to Remedy – 20 Years and the Road Ahead* (2020), as well as in the [OECD database of specific instances](#).

## Question 28. What is an “effective and appropriate” State-based non-judicial grievance mechanism?

The Guiding Principles provide a broad set of criteria, known as the effectiveness criteria, by which the effectiveness of non-judicial mechanisms – both State-based and non-State-based – can be evaluated (see questions 57–69). These criteria (set out in Principle 31) provide a principled basis for tracking the performance and impact of State-based non-judicial mechanisms. The OHCHR [Accountability and Remedy Project](#) has produced detailed guidance on what it means for State-based non-judicial mechanisms to be effective in business and human rights cases, and on what States and other relevant actors may do to ensure that such mechanisms are effective in practice.

The use of “appropriate” as an additional qualifier in Principle 27 serves as a reminder to States of the importance of designing and implementing non-judicial mechanisms in a manner that is aligned with international human rights standards and informed by a proper understanding of the issues they are meant to target, including underlying structural or systemic issues. In this sense, the word “appropriate” as it is used in Principle 27 refers to the design of the relevant mechanism: its mandate, structure, legal powers, finances and other resources, including the skills and expertise of its staff.

There is an important overlap between “effectiveness” and “appropriateness”: an inappropriately designed and implemented grievance mechanism is unlikely to be effective in practice.

### **Question 29. What does it mean for States to “provide” effective and appropriate non-judicial grievance mechanisms?**

Providing effective and appropriate non-judicial grievance mechanisms means that States are creating such mechanisms and making them available to affected stakeholders. In practical terms, “providing” such mechanisms can potentially entail a wide range of interventions, including

- Adopting appropriate legislation (especially for mechanisms that rely for their authority on a formal mandate from the State)
- Ensuring political and financial support and suitable frameworks for governance and accountability
- Establishing mechanisms on an ad hoc basis to respond to specific needs.

### **Question 30. What kinds of remedies are potentially available through State-based non-judicial grievance mechanisms?**

The answer to this question will depend on the type of mechanism and, most importantly, on the mandate, functions and legal powers it has been given. Some mechanisms may have the ability to impose punitive measures, such as fines, cancellation or suspension of licences or government contracts, and disqualification from government procurement programmes or from investment support schemes (including those involving export credits). Others may be more geared towards the prevention of future harm. Mechanisms that have the power to order the production of remediation plans – the implementation of which is then closely monitored – will fall into this latter category. Other mechanisms, such as the OECD national contact points for responsible business conduct (see box 4), may be unable to make legally binding orders with respect to remedy, but they can still make recommendations as to the kinds of remediation that would be appropriate in the circumstances.

State-based non-judicial mechanisms may have a role in facilitating the delivery of remedies, even if they cannot provide them directly. For instance, some State-based non-judicial mechanisms may have the option to commence legal action on behalf of affected individuals or to refer the matter to other law enforcement agencies. Depending on the powers conferred on them, some remediation mechanisms – such as those concerning consumer protection law, labour regimes and environmental protection regimes – may be able to order payment of compensation to those affected, which creates a debt that can subsequently be enforced in a court.

Non-judicial mechanisms that make use of dialogue-based methods to resolve disputes may have more flexibility to fashion tailor-made remedies, subject to the mutual consent of the relevant parties. Additionally, State-based non-judicial grievance mechanisms may make the outcomes of remediation processes public, which can help to identify systematic, legal or structural problems in relation to the particular areas of work of the mechanisms in question.

### **Question 31. What techniques are used by these mechanisms to help resolve business and human rights grievances?**

Depending on what powers are conferred on them, State-based non-judicial grievance mechanisms can use a variety of different techniques to resolve grievances. Some mechanisms will rely on dialogue-based methods, such as mediation or conciliation, as the principal method for reaching agreement between parties. Such agreements are not legally binding as such, but some mechanisms may have the legal authority to bring an agreement of this kind to court for legal enforcement. Specialized tribunals, for their part, will typically make use of more adversarial methods such as arbitration, and they may also be able to issue legally binding decisions. Other mechanisms, for example labour inspectorates, may have more formal fact-finding powers (such as the authority to visit facilities and to compel companies to provide information),

and they may be able to pursue legal action on behalf of affected individuals. It is not uncommon for such mechanisms to draw from a combination of approaches in a “staged” process (for instance, whereby initial attempts are made to resolve the grievance through informal, dialogue-based processes, with the option to move to more formal processes in the event that the initial attempts fail to yield an acceptable outcome).

### **Question 32. Can State-based non-judicial grievance mechanisms deliver effective remedies on their own?**

The ability of State-based non-judicial mechanisms to deliver effective remedies on their own depends on the nature of the harm, their permitted scope of action under the relevant law, and what an effective remedy to the harm would be. In cases of serious business-related human rights harms, where an effective remedy would demand the imposition of criminal sanctions on the business actors concerned, the answer to this question would almost certainly be no. In serious and complex cases, the best prospect of an effective remedy might lie in the use of more than one type of grievance mechanism. Some State-based non-judicial grievance mechanisms may be able to help facilitate access to remedy through judicial means, for instance by performing an initial investigation of a grievance, by referring matters to the courts or by acting as expert witnesses in court proceedings.

However, there are also circumstances in which State-based non-judicial grievance mechanisms can offer a quicker, more predictable and less costly route to an effective remedy than other types of remediation mechanisms. This may be because they have greater flexibility (than judicial mechanisms, for example) to tailor bespoke remedies to respond to specific contexts and needs, or it may be because a mechanism is well targeted to address specific types of human rights harms, has ready access to relevant expertise, or is responsive to the needs of relevant stakeholders and enjoys their trust. As will be discussed further below, the level of observable success in delivering effective remedies to people in previous cases is one of the major determinants in the willingness of affected stakeholders to place their trust in such mechanisms. The key characteristics of effective non-judicial mechanisms are discussed in more detail in the answers to questions 57 to 69 below.

### **Question 33. What does a comprehensive State-based system for the remedy of business-related human rights abuse entail?**

A comprehensive State-based system should ensure that, whatever the nature of the human rights that have been adversely affected, there are realistic and readily identifiable routes to obtain effective remedies. Here, “realistic” means that remediation options are real and accessible, not merely theoretical. “Readily identifiable” means that those options are sufficiently publicized among people for whose use they are intended, in languages and formats they can readily access and understand (see question 63), and in sufficient detail to allow them to compare the advantages and disadvantages of different courses of action.

While judicial mechanisms are inevitably at the core of ensuring access to remedy, State-based non-judicial grievance mechanisms play an important complementary role. They do so by providing affected stakeholders with viable alternatives to judicial processes, opening up opportunities to fashion flexible, context-specific remedies, and by helping to fill gaps in accountability that may exist in legal systems.

Within a comprehensive State-based system of remedy, different types of mechanisms – both State-based and non-State-based – have a mutually reinforcing role to play. The extent to which State-based non-judicial grievance mechanisms can contribute to delivering effective remedies will often depend on the attention given by policymakers to the linkages that exist, or could be forged, between mechanisms of different kinds. In practice, these linkages can take many forms. Some that can be particularly valuable in this context include:

- Arrangements so that people who raise grievances have the flexibility to escalate their grievance from one mechanism to another (for example, through an appeals process or using a petition to enforce an outcome)
- Arrangements to facilitate coordination between State-based mechanisms in cross-border cases
- Allowing non-judicial mechanisms to submit evidence to, or act as expert witnesses in, judicial proceedings
- Ensuring that there are arrangements for the joint supervision or monitoring of remedial outcomes.

## VI. NON-STATE-BASED GRIEVANCE MECHANISMS

Principle 28: States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

### Question 34. Why does this matter?

States are the ultimate guarantors of human rights, and they are obligated under international human rights law to ensure access to effective remedy for human rights harms. However, States are not the only potential source of effective remedies for such harms. On the contrary, it may be possible for victims to seek and obtain remedies through a variety of remediation mechanisms, including those operated by companies or third parties, such as multi-stakeholder initiatives, industry associations and the special procedures of the Human Rights Council. The important complementary role that non-State-based grievance mechanisms can play is recognized in the Guiding Principles. This is in part because they might provide a potential additional avenue for victims to pursue a remedy that can best meet their needs. It is important to note, however, that non-State-based grievance mechanisms do not exist in a vacuum, and there are many ways in which the actions of States can positively or negatively affect access to such mechanisms and their success in delivering effective remedies. Principle 28 emphasizes the important role that States can play to foster opportunities for people to have their grievances resolved through such grievance mechanisms, and it brings to light the benefits that this category of mechanism can have for victims, which include potential speed of access and remediation, reduced costs and transnational reach.

### Question 35. What are non-State-based grievance mechanisms?

Non-State-based mechanisms have similarities with the grievance mechanisms discussed above (see questions 13–33) in that they are mechanisms through which grievances concerning business-related human rights harms can be raised and remedy sought. However, non-State-based grievance mechanisms are distinguishable from the non-judicial mechanisms discussed in questions 26–33 above on the basis that they are administered by non-State actors, such as companies, multi-stakeholder initiatives or industry associations.

## Non-State-based grievance mechanisms\*

### ► Operational-level grievance mechanisms

For instance...

- **Community liaison office**
- **Human resources department**
- **Worker complaints hotline**
- **Responsible sourcing compliance mechanism**
- **Worker-driven mechanism**

### ► Mechanisms of industry, multi-stakeholder and other collaborative initiatives

For instance...

- **Mechanisms of certification bodies**
- **Mechanisms of multi-stakeholder initiatives (e.g. administering a code of conduct)**
- **Mechanisms associated with global framework agreements**
- **Independent accountability mechanisms of multilateral development (see box 5)**

### ► Regional and international human rights bodies

For instance...

- **Regional human rights commissions or courts**
- **United Nations treaty bodies**
- **Special procedures of the Human Rights Council (e.g. communications)**

\* These examples are illustrative only. In practice, some of these categories may overlap.

Worker- or community-driven grievance mechanisms, and mechanisms established as a result of agreements between global trade union organizations and multinational companies (often referred to as “global framework agreements”) all fall within the category of “non-State-based grievance mechanisms” under the Guiding Principles.

Mechanisms that originate from State action or from international organizations, but which are independent of any individual State, are also regarded as non-State-based grievance mechanisms. For instance, independent accountability mechanisms that are associated with some multilateral development banks, and through which people can raise objections about the adverse human rights impacts of funded projects, are non-State-based grievance mechanisms (see box 5). Regional and international human rights bodies are also regarded as non-State-based grievance mechanisms, having been established by agreement between States, but operating outside the influence or control of any one State (see question 39).

### **Box 5: Multilateral development banks and independent accountability mechanisms**

Many multilateral development banks have established their own independent accountability mechanisms to receive and address grievances from individuals and communities that have been adversely affected, or believe they will be adversely affected, by projects or activities funded by the institutions.

These mechanisms can usually conduct formal investigations or compliance reviews to examine whether the financial institution itself has complied with its operational policies, including its social and environmental safeguard policies. Safeguard policies typically cover a wide range of thematic areas, including involuntary resettlement, Indigenous Peoples, occupational health and safety, stakeholder engagement and – albeit not always expressly – human rights. Such policies often require the establishment of project-level grievance mechanisms. Increasingly, independent accountability mechanisms are able to facilitate mediated dialogue or dispute resolution between project-affected people and the borrower (which will be a company in the case of private sector investment).

The types of remedial outcomes that can be obtained from independent accountability mechanisms depend on the powers that have been conferred on them. Through dialogue-based methods, some mechanisms may be able to facilitate mutually acceptable agreements with respect to some or all of the issues raised in the grievance. Compliance reviews, on the other hand, usually result in recommendations to the parent institutions on how to bring the project into compliance with relevant policies. In some instances, independent accountability mechanisms are authorized to recommend specific remedial measures for those raising the grievance. Some of them also have an advisory role. In this capacity, they may provide advice to their institutions on systemic challenges that may need to be addressed to avoid future harms to project-affected individuals and communities.

For additional information on remedy in the context of development finance, see [OHCHR, \*Remedy in Development Finance: Guidance and Practice\*](#) (New York and Geneva, 2022).

### **Question 36. What is an “effective” non-State-based grievance mechanism?**

An effective non-State-based grievance mechanism is one that meets the effectiveness criteria that have been elaborated in Principle 31 (see questions 57–69). These criteria provide a robust framework for ensuring that a mechanism can achieve the benefits for which it is intended, and they can help to reduce barriers to remedy for business-related human rights harms (see questions 40 and 57). The OHCHR [Accountability and Remedy Project](#) has produced detailed guidance on what it means for non-State-based grievance mechanisms to be effective in business and human rights cases, and on what States, developers and operators of such mechanisms and other relevant actors can do to ensure that such mechanisms are effective in practice.

### **Question 37. What does it mean for States to “facilitate access” to effective non-State-based grievance mechanisms?**

The Guiding Principles encourage States to facilitate access to effective non-State-based grievance mechanisms. There are many ways in which States can do this, both within their own territories and more broadly. For example, States can:

- Establish and maintain an enabling legal and policy environment for non-State-based grievance mechanisms (for example by incentivizing or requiring companies to establish or participate in such mechanisms, for instance as a condition for granting a permit, participating in public procurement processes or entering into contracts with government agencies)
- Ensure that rights holders are able to access grievance mechanisms of their choosing without fear of retaliation
- Help affected stakeholders identify and use non-State-based grievance mechanisms (for example by raising awareness about the existence of these types of grievance mechanisms, how they work, how they can be accessed, and the types of remedies they may be able to offer)
- Take action to ensure that non-State-based grievance mechanisms can contribute to effective remedies (for example through technical assistance, capacity-building or providing guidance to companies)
- Seek ways to promote non-State-based grievance mechanisms through international cooperation
- Facilitate access to regional and international human rights bodies (for example by accepting their competence to hear individual cases).

### **Box 6: How can non-State-based grievance mechanisms contribute to a well-functioning “remedy ecosystem”?**

Under the “remedy ecosystem” approach, the focus is not on what individual remediation mechanisms can or cannot do to provide remedy, but on what their contribution can be to broader remedial efforts. In a well-functioning remedy ecosystem, different mechanisms – State-based and non-State-based – and the laws, policies, regulatory systems and structures that enable these mechanisms to exist and function operate in a way that is both mutually reinforcing and enabling of access to effective remedy for human rights harms.

The practical contribution to remedy that each grievance mechanism makes will vary from mechanism to mechanism and from case to case. Some mechanisms might be able to make a substantial contribution in their own right, while others are more likely to be viewed as complementary to efforts to achieve remedies in other ways (for example through regulatory or judicial routes). Whatever their contributions are to remedy in specific cases, it is important not to overlook the value of non-State-based grievance mechanisms in promoting and fostering corporate behaviour that is aligned with the Guiding Principles and in providing a form of accountability when adhering companies do not live up to the human rights commitments that they have made.

### **Question 38. Can non-State-based grievance mechanisms deliver effective remedies on their own?**

Yes, in some cases, but it depends on the nature of the harms involved, the extent to which there may have been breaches of the law (especially criminal law), the needs of affected stakeholders and the extent to which the mechanism meets the effectiveness criteria that have been set out in Principle 31 (see questions 40 and 57–69).

In some cases, non-State-based grievance mechanisms may be well placed to deliver an effective remedy to affected stakeholders, particularly in cases where an effective remedy depends on a quick response and can be delivered by the business enterprise directly. Business enterprises are therefore encouraged in the Guiding Principles to establish or participate in effective operational-level grievance mechanisms (see questions 40–50). While it would be unrealistic to expect non-State-based grievance mechanisms to be able to deliver effective remedies for every type of human rights harm on their own, they may offer a quick and inexpensive route to remedy in relation to specific types of abuse, especially where affected stakeholders

have had a role in helping to define the relevant mechanism's scope, priorities and modes of operation (see questions 62–63 and 69). Worker-driven grievance mechanisms, for example, have been purposefully designed to ensure quick and well-targeted responses to grievances concerning harassment, forced labour, anti-union activities and factory safety.

There will inevitably be cases where non-State-based grievance mechanisms will only be able to deliver, at best, a partial remedy to affected stakeholders. This may be because the mechanism in question lacks the mandate or powers to do all the things that would be required to deliver an effective remedy. Where the impacts are cumulative or wide-ranging or have complex causes, the delivery of an effective remedy to affected stakeholders may demand much more than the intervention of a single non-State-based grievance mechanism, or even a combination of such mechanisms. In cases of serious business-related abuse that involve the commission of a crime, and where the imposition of penal sanctions would be an essential element of an effective remedy, non-State-based grievance mechanisms may have a rather limited remediation role compared with those of State-based institutions, such as courts.

Even in cases where non-State-based mechanisms have only limited scope to deliver remedies directly, they can still make important contributions to the delivery of effective remedies in multiple other ways. For instance, effective mechanisms can empower affected stakeholders, influence business behaviour, enhance human rights due diligence processes, assist with information-gathering and highlight cases of abuse and their underlying causes.

### **Box 7: Parallel proceedings**

Sometimes, and particularly in complex cases involving multiple business actors or rights holders, affected stakeholders may decide to approach more than one remedial mechanism to try to obtain a remedy for the harm they have suffered. For instance, they may raise a grievance with a company-based mechanism in the hope of bringing at least some of the harmful business practices to an end while also cooperating with a regulatory body with a view to ensuring proper enforcement of the legal standards they claim have been breached. The affected stakeholders may also consider the possibility of private legal action against the company for compensatory damages, which would most likely be pursued through the courts. Additionally, they may seek a communication through the special procedures of the Human Rights Council in order to pursue action from mandate holders.

When an affected stakeholder (or a group of affected stakeholders) raises a grievance or legal claim through more than one remediation mechanism at the same time in relation to the same (or a similar) set of facts, this can lead to “parallel” or “overlapping” proceedings.

The use of parallel proceedings by affected stakeholders should not be regarded as a form of opportunism or gamesmanship. On the contrary, it is legitimate for affected stakeholders to have recourse to multiple processes – State-based and non-State-based, judicial and non-judicial – in order to seek remedy for the harm they have suffered. As noted in box 1 above, an effective remedy in the circumstances may not be limited to compensation, the satisfaction of receiving an apology or the imposition of criminal sanctions. Different forms of remedies may be needed, perhaps in combination, for an effective remedy ultimately to be delivered. Thus, it may be unwise and unrealistic for affected stakeholders to pin their hopes for an effective remedy on a single remediation process. Instead, different types of mechanisms will often have a distinctive, and perhaps complementary, role to play. It is important, therefore, not to place arbitrary restrictions on the ability of affected stakeholders to pursue parallel proceedings (see box 12). Rather, mechanisms should plan for how to respond to such a situation and for the possibility of conflicting outcomes. Fundamentally, choice should be facilitated so that affected stakeholders can pursue different potential remediation options in the manner they consider most likely to result in an effective remedy.

### Question 39. Are regional and international human rights bodies “judicial” or “non-judicial” grievance mechanisms?

The Guiding Principles refer to three categories of grievance mechanisms – State-based judicial mechanisms, State-based non-judicial grievance mechanisms, and non-State-based grievance mechanisms (see page 7) – and the commentary to Principle 28 classifies regional and international human rights bodies as a form of non-State-based grievance mechanism.

Such a classification may seem counterintuitive, given that these bodies are created by States and may administer processes that are adjudicative in nature and that can appear similar to judicial proceedings. For instance, some of these bodies (notably the European Court of Human Rights and the Inter-American Court of Human Rights) have powers to issue precautionary or interim measures, which have similarities to injunctions issued by domestic courts.

However, there are important differences between these types of bodies and domestic courts. The designation of “non-State-based grievance mechanisms” in the Guiding Principles reflects the fact that regional and international human rights bodies are not related to the judiciary of any single State, and that they are structurally independent from the States that were involved in their formation and the standards that they oversee.

#### **Box 8: Contribution of regional human rights bodies to access to remedy for business-related human rights harms**

A number of **regional groupings of States** have developed human rights systems specifically for their regional context. Some of these systems have independent, supranational regional human rights bodies with judicial and quasi-judicial characteristics. The European Court of Human Rights, for instance, is able to receive complaints from individuals, legal entities and States regarding violations by a State party of the rights enshrined in the European Convention on Human Rights. The African Commission on Human and Peoples’ Rights can issue recommendations based on complaints received regarding violations of the African Charter on Human and Peoples’ Rights. The African Court on Human and Peoples’ Rights supplements the work of the Commission by issuing binding decisions on cases that the Commission refers to it. The Inter-American Court of Human Rights similarly adjudicates cases referred to it by the Inter-American Commission on Human Rights regarding violations of the American Convention on Human Rights. Additionally, these three regional courts can issue advisory opinions on legal matters related to their respective conventions.

Regional human rights bodies of this kind contribute to access to remedy for business-related human rights harms in multiple ways. First, regional human rights bodies can be a direct source of remedy for people seeking action from States, particularly where such bodies have the power to order reparations. For instance, in *Vera Rojas et al. v. Chile* (a case concerning the termination of health insurance, which was held to have resulted in violations of several rights under the American Convention on Human Rights), the Inter-American Court of Human Rights ordered reparations for the affected person and her family, including monetary and in-kind compensation, as well as guarantees of non-repetition. In *African Commission on Human and Peoples’ Rights v. Republic of Kenya*, the African Court on Human and Peoples’ Rights ordered reparations for the eviction of an indigenous group from their lands, which included an order to the State to commence consultations between the group and any corporations that had been granted concessions over the land to work out a benefit-sharing agreement; if such an agreement could not be reached, then compensation would have to be provided.

Second, regional human rights bodies play a vital role in enhancing the legal accountability of States when they fail to meet their duty to protect human rights in the context of business activities, including through failures to ensure remedy against business enterprises at the domestic level. In the

case of *Kaliña and Lokono peoples v. Suriname*, the Inter-American Court of Human Rights found the State responsible for, among other things, the violation of the right to collective property and political rights of Indigenous Peoples. This was in part due to the State's failure to ensure that an independent social and environmental impact assessment was conducted prior to the start of mining operations on traditional lands. Among the reparations ordered, the Court ruled that the State must ensure the availability of domestic remedies to allow effective collective access to justice for indigenous and tribal peoples.

Third, and as the cases mentioned above demonstrate, regional human rights bodies help to clarify the content of the State's duty to protect human rights in specific circumstances and contexts, including in relation to access to remedy. For instance, in the case of *Fadeyeva v. Russia*, the European Court of Human Rights held that States can violate the European Convention on Human Rights when they fail to regulate the private sector and must therefore take reasonable and appropriate measures to regulate business enterprises whose activities may adversely affect people's rights under the Convention.

Fourth, regional human rights bodies can contribute to access to remedy through promotional, educational and awareness-raising roles. The African Commission on Human and Peoples' Rights has created a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, a special mechanism that has researched and reported on the possible liability of non-State actors for human and peoples' rights violations. Since the early 2000s, the Inter-American Commission on Human Rights has convened numerous public hearings on alleged corporate abuses, with a particular focus on the impacts of extractive industries on Indigenous Peoples. For its part, the Council of Europe has put in place a number of initiatives designed to support implementation of the Guiding Principles by States, including a framework for State monitoring and reporting (in accordance with a 2016 recommendation of the Committee of Ministers) and the development of educational resources for legal professionals.

The contributions of regional human rights bodies to access to remedy vary from system to system. The nature of these contributions, and their practical impact, depend on many factors, including the mandate, powers, institutional structures, governance and procedures of the bodies and the levels of political commitment from States parties. However they are constructed, regional human rights systems and their implementing bodies form an important normative backdrop for the interpretation and evaluation of domestic law. Regional human right bodies act as a driver of better regulation and improved prevention of harm by business enterprises, so their contribution to access to remedy for business-related human rights harms is not limited to specific cases of abuse, and their work can have a far-reaching and systemic significance.

**Principle 29:** To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

#### **Question 40. Why does this matter?**

A business enterprise cannot meet its responsibility to respect human rights if it causes or contributes to an adverse human rights impact and then fails to provide for or cooperate in its remediation. One important way in which business enterprises can provide for or cooperate in the remediation of such impacts is through effective operational-level grievance mechanisms (see question 42).

From the perspective of affected stakeholders seeking remedy for human rights harms, effective operational-level grievance mechanisms may offer important advantages over other types of remediation mechanisms. Their processes may be less complex, lengthy and expensive to access and engage with. Effective operational-level grievance mechanisms may not require a fully fledged allegation of human rights abuse or a breach of other standards before they can be approached, and they may be able to provide quick and early resolution of grievances before they escalate to bigger problems. Such mechanisms can also help lay the foundations for creative, context-specific solutions that can help build trust between business enterprises and affected stakeholders, fostering more constructive and durable relationships.

As discussed below (see question 49), effective operational-level grievance mechanisms also have a vital role to play in human rights due diligence. Not only can these mechanisms help business enterprises to identify adverse human rights impacts with which they may be involved; they may also help identify ways to address these risks effectively, for instance through engagement with affected stakeholders as part of grievance processes. More broadly, they can yield data that is useful for tracking the effectiveness of the business enterprise's human rights risk mitigation efforts over time.

It is important not to overlook the importance of the word “effective” in this Guiding Principle. While operational-level grievance mechanisms can be useful from a risk management point of view, their success is ultimately judged not by reference to the benefits they may deliver to the company concerned but in terms of their contribution to the realization of human rights. If such mechanisms are used as a means of limiting accountability (see, for example, box 12 on legal waivers), they risk making human rights situations worse, not better. As noted in question 69 below, the idea that companies might be their own “judge and jury” regarding adverse human rights impacts in which they themselves may be involved can be problematic for a mechanism's legitimacy (see further question 62). Strenuous efforts need to be taken to avoid conflicts of interest that could result in company interests being prioritized over human rights. Principle 31 provides important guidance about how effectiveness from a human rights perspective is to be achieved in the form of eight effectiveness criteria. These criteria are explained in more detail in questions 52–69 below.

#### **Question 41. Is it not up to the State to redress human rights abuse?**

States are the primary addressees and ultimate guarantors of human rights, and an important part of the State's duty to protect human rights is to ensure that, when human rights abuses occur within its territory and/or jurisdiction, affected people and communities have access to effective remedy. The Guiding Principles describe effective judicial mechanisms as being “at the core” of ensuring access to remedy. Moreover, as noted above, the effectiveness of domestic judicial mechanisms is a strong indicator of levels

of respect for the rule of law within a jurisdiction (see question 13). Other State-based mechanisms also have a vital complementary role to play in delivering effective remedies, alongside effective judicial mechanisms (see questions 26 and 32).

As recognized in the Guiding Principles and elsewhere, business enterprises have a responsibility to respect human rights, which exists independently of States' abilities or willingness to fulfil their own human rights obligations. As part of this responsibility, business enterprises are expected to provide for or cooperate in the provision of remedy when they identify that they have caused or contributed to an adverse human rights impact. Further, business enterprises are expected to establish or participate in effective operational-level grievance mechanisms to enable remedies to be provided quickly and directly to affected stakeholders (see questions 42 and 57–69).

### **Question 42. What are operational-level grievance mechanisms?**

Operational-level grievance mechanisms are a subset of non-State-based grievance mechanisms, distinguishable by their close connections to the operations of a company (or group of companies). They are a means through which individuals or groups can raise grievances about actual or potential human rights impacts directly with the company (or companies) concerned and seek a remedy. A mechanism can be considered an operational-level grievance mechanism regardless of whether it is labelled as such or whether it was developed with human rights or the Guiding Principles in mind. What matters is that such mechanisms provide a readily accessible means through which grievances can be quickly identified and resolved, preventing harms from compounding and grievances from escalating.

These grievance mechanisms are referred to as “operational-level” because they seek to respond to grievances that have, or could have, human rights implications, and that arise from an aspect of a company's operations. In this way, a mechanism administered by a human resources department of a corporate group for use by employees can be just as much an operational-level grievance mechanism as a community liaison office at a mining site, a system for logging workplace safety concerns with the management of a factory or a process for complaining about abusive online content in the case of a social media company. The term “operational-level grievance mechanisms” may also be used to refer to mechanisms established to respond to human rights issues taking place within the value chain of a business enterprise, perhaps covering impacts connected to the facilities (such as factories or farms) from which the enterprise purchases goods.

The scale and complexity of operational-level grievance mechanisms will depend on the extent of the relevant company's likely impacts. The mechanisms need not be cumbersome in their nature in order to be effective, and some or all of their functions may be outsourced to, or shared with, other companies or entities, such as industry associations, multi-stakeholder initiatives or other relevant stakeholders. Where functions have been shared or outsourced, it is important that the relevant external parties have sufficient access to company management, as well as to the necessary support and resources, to enable grievances to be swiftly resolved and remediation to be promptly made, and to allow the learning points from the mechanism to be incorporated into the company's human rights due diligence processes (see question 49).

#### **Box 9: Are whistle-blower reporting channels operational-level grievance mechanisms?**

Operational-level grievance mechanisms operate as a channel for people (whether inside or outside the enterprise concerned) to raise concerns about adverse human rights impacts in which the enterprise may be involved, and to seek remedy. The people accessing these mechanisms could be those who are directly affected or those raising concerns on behalf of others (such as civil society organizations, human rights defenders or whistle-blowers).

Whistle-blower systems, on the other hand, are typically designed to enable people to raise concerns about breaches of the law (for instance relating to fraud or corruption), company policies (particularly on ethical matters) or a provision of a company code of conduct. While these systems may provide a way of redressing harm in practice, they primarily seek to identify issues that may present a legal, reputational or commercial risk to the business.

Depending on their design and scope, whistle-blower systems could potentially be regarded as a form of operational-level grievance mechanism. However, a whistle-blower reporting system may not be sufficient on its own to satisfy the expectations reflected in Principle 29 regarding direct remediation of human rights-related grievances. This is particularly the case in relation to whistle-blower systems that:

- Are available to only a narrow group of people (e.g. direct employees of the company)
- Are designed primarily as a risk management tool for the company, rather than as a way of obtaining early warning of possible adverse human rights impacts and remedying them quickly and effectively
- Have been designed to align with corporate policies and codes of conduct, rather than addressing the salient human rights risks identified through human rights due diligence processes
- Do not provide a readily identifiable or realistic route through which business-related harms can be remedied.

Nevertheless, whistle-blower systems can serve as a useful starting point for companies that are considering how to develop and implement effective operational-level grievance mechanisms. For instance, it can be useful to draw from experiences that companies have had with internal whistle-blower systems in designing effective operational-level grievance mechanisms for more diverse issues and groups of stakeholders.

### **Question 43. To whom should operational-level grievance mechanisms be available?**

The answer to this question depends on the nature of the business enterprise's actual and potential human rights impacts. Whatever configuration of operational-level grievance mechanisms is used, the goal should be to ensure that any person whose human rights have been (or may be) adversely impacted should have a trusted channel open to them through which they can raise a grievance directly with the business enterprise.

The best way of meeting this goal, including in terms of the number and scope of mechanisms needed, will vary from case to case. In some cases, it may be advantageous to establish one or more specialized grievance mechanisms that are designed specifically for use by certain pre-defined groups, such as members of local communities or indigenous groups, company employees or, in the case of companies that conduct consumer-facing business activities, consumers and end users (see question 42). Other mechanisms may be open to a broader range of stakeholders, or perhaps even the public at large.

If operational-level grievance mechanisms are designed for specific stakeholder groups, it is important to ensure that the mechanism operates in such a way that it is readily accessible by all members of those groups. This means that measures should be put in place to ensure that individuals within those groups who may be at risk of vulnerability or marginalization, such as women, Indigenous Peoples or migrant workers, are not disadvantaged or excluded because of, for example, procedural requirements or modes of communication that do not take account of their circumstances or needs (see question 63 and boxes 13–15). If prioritization of effort is needed, companies should begin by ensuring that those who may be at most

risk of severe or irremediable harm are well served by a suitable operational-level grievance mechanism (or combination of complementary mechanisms).

#### **Question 44. What issues should operational-level grievance mechanisms be able to address?**

Given that the ultimate goal is to ensure that all affected or potentially affected stakeholders have a channel open to them to raise grievances (see question 43), the answer to this question depends on the types of adverse human rights impacts the business enterprise is, or may be, involved in, and the extent to which it may be possible to address those impacts through operational-level grievance mechanisms.

Some mechanisms may have developed processes for addressing grievances relating to adverse impacts that stand out as posing particular risks – for instance, if a pollutant escapes into a waterway or if an employee is injured. The risk of taking such an issue-specific approach is that there is no clear process available when a less foreseeable impact occurs. It is therefore generally preferable to have agreed processes in place for the remediation of adverse human rights impacts arising in any area of operations, even if this requires more than one type of process. For instance, one type of process may be set up for issues that are likely to be faced by direct employees, and another might be established for those faced by other communities affected by business operations. In some contexts, it may be useful for grievance mechanisms to be tailored to specific, salient issues. However, to achieve the intended benefits of operational-level grievance mechanisms, such mechanisms should be available (whether individually or collectively) to address the full range of impacts that may arise from a company’s operations.

To be fully effective, a grievance mechanism should not be limited to addressing complaints that amount to alleged breaches of human rights or other specific standards. Such limitations would exclude a host of concerns that may, if neglected, harm human rights or lead to protests or violent action, which in turn may increase the risk of human rights abuses. For instance, communities who find that an enterprise persistently ignores their concerns about noise, dust or work opportunities may feel driven to take action to disrupt its operations as the only way to get its attention, which could potentially lead to physical confrontation and even risk to life. As noted above, one of the potential advantages of an operational-level grievance mechanism over other types of grievance mechanism is its ability to identify and address problems at an early stage, before they escalate. By being open to a wide array of issues, such mechanisms can also help companies understand the broader human rights landscape and respond to systemic issues.

It is reasonable for a mechanism to exclude clearly vexatious complaints, but great care should be taken before concluding that a complaint falls into this relatively rare category. A complaint that appears vexatious may mask other, genuine concerns with potential human rights implications or wider risks to the enterprise. The default approach should be to take every complaint seriously in the first instance.

#### **Question 45. When might an enterprise “participate in” an operational-level grievance mechanism?**

Principle 29 offers business enterprises a choice as to whether they *establish* effective operational-level grievance mechanisms, or *participate* in them. This flexibility is important for several reasons. First, it takes account of the fact that many companies (and especially smaller companies) may not have the resources to establish effective operational-level grievance mechanisms or to administer them in-house. Second, it allows for the possibility that participating in operational-level grievance mechanisms (perhaps in collaboration with other companies, or in external mechanisms operated by third parties) may offer the best prospects for early and direct remediation of grievances.

Large enterprises and enterprises where there are significant human rights risks will often opt to establish their own operational-level grievance mechanisms, and in many cases they would be well advised to do so.

However, enterprises of any type and size may find it advantageous, from the perspective of access to remedy, to participate in other, external mechanisms than can address grievances arising from their own adverse human rights impacts. Mechanisms in which several business enterprises participate can offer particular benefits in situations where a group of enterprises may be connected to the same adverse human rights impacts (for instance, where several companies purchase goods from the same factory).

Where business enterprises participate in an external grievance mechanism, they do not outsource any aspect of their corporate responsibility to respect human rights as a result of such an arrangement. This includes their responsibilities to provide for or cooperate in remediation when they identify that they have caused or contributed to adverse human rights impacts (see Principle 22 and *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* by OHCHR).

### Examples of potential “participation” situations and structures

The types of situations in which *participation* in operational-level grievance mechanisms could be beneficial include those

- Where affected stakeholders may prefer the simplicity of dealing with a single mechanism, rather than having to navigate between many overlapping mechanisms
- Where the involvement of multiple companies demands a coordinated response to deliver an effective remedy
- Where participating in an external mechanism with independent oversight can offer greater legitimacy and credibility among stakeholders
- Where there is a particular need for specialist expertise or local knowledge that is not readily available to the company in question
- Where coordination with other companies can enhance leverage, and hence be more likely to deliver effective remediation for affected stakeholders
- Where there are opportunities to avoid duplication of effort and to reduce costs by acting collaboratively
- Where there are opportunities for peer learning, which could help companies better identify and analyse the nature of their involvement in adverse human rights impacts and in the root causes of specific problems
- Where collaboration has the potential to address more widespread structural problems.

Just as there are many reasons for participating in external mechanisms, there are many different structures through which this participation can be formalized. Depending on the circumstances and context, options open to companies may include

- Working with like-minded companies and trusted local experts to develop a single, common mechanism for a specific location or set of operations
- Supporting mechanisms administered by an external expert or body (such as a multi-stakeholder initiative or civil society organization) or by workers or unions
- Working proactively and constructively with local communities to establish and maintain community-driven grievance mechanisms.

Companies will need to evaluate such options carefully in order to decide upon the optimal set of arrangements for direct remediation of human rights-related grievances. Opportunities for participation in external mechanisms may raise a number of legal, commercial, practical and other issues to consider, as highlighted further in box 10 below. The effectiveness criteria for non-judicial grievance mechanisms provide a robust framework for evaluating the pros and cons of the different types of grievance mechanisms (or combinations of grievance mechanisms) and for identifying where there may be deficiencies or gaps (see questions 57–69).

### **Box 10: Participating in operational-level grievance mechanisms: questions to ask**

The discussion above provides a sense of when *participating in* operational-level grievance mechanisms can have advantages from the perspective of enabling early and direct remediation of human rights-related grievances. In deciding whether and how to collaborate with others, there are usually a number of important issues to consider. Depending on the setting and the mechanism concerned, these may include:

#### **Foundational and entry issues**

- How is the mechanism to be funded, resourced, staffed and governed?
- What will it cost to join?
- What are the preconditions for joining?

#### **Quality and performance issues**

- Is the mechanism effective? (See questions 57–69.)
- How will standards (e.g. regarding ethical issues) be maintained?

#### **Legal, commercial and reputational issues**

- Who decides who the other participants will be?
- Will other corporate participants abide by the decisions made?
- How will non-compliant corporate participants be dealt with?
- Are there any legal restrictions on the kinds of collaboration that might be possible?
- How should confidential or commercially sensitive information be protected?

### **Question 46. What kinds of remedies are potentially available through operational-level grievance mechanisms?**

Operational-level grievance mechanisms vary widely in terms of the types of human rights issues that they consider and their powers to address them. Thus, the kinds of remedial outcomes that such mechanisms can potentially offer depend on the mechanism in question.

As noted in the Guiding Principles, operational-level mechanisms are typically expected to focus on reaching agreed solutions through dialogue as the means to address and resolve grievances (see question 69). Such a flexible approach increases the potential to obtain tailored remedies in different cases (see box 1 and question 47). Some operational-level grievance processes have resulted in acknowledgement of wrongdoing, apologies, agreements to stop practices, corrective actions (e.g. reinstatement of dismissed workers), financial compensation, the development of social programmes and other forms of non-financial compensation.

Being non-State-based processes, remedial outcomes from operational-level grievance mechanisms may not be binding in law. However, depending on the jurisdiction and process, it may be possible to formalize some remedies through a binding contract, which could then be enforced through the courts if need be.

### **Question 47. How might the kinds of remedies available through operational-level grievance mechanisms differ from the remedies available through other types of mechanisms mentioned in the Guiding Principles?**

Effective operational-level grievance mechanisms (see questions 57–69) can sometimes offer advantages over State-based mechanisms for affected stakeholders, including in relation to the speed and cost of the process. As the mechanisms that are potentially closest to the commercial operations in question, they may have the best access to the technical and managerial insights and expertise needed to find an effective and durable solution. Because operational-level mechanisms typically rely on dialogue-based and problem-solving methods to resolve grievances, remedial outcomes from these mechanisms can at times be more creative and better adapted to the needs of victims than those that may be obtained from more formal State-based processes. Furthermore, given the connections between human rights due diligence and grievance mechanism processes (see question 49), such mechanisms can contribute to the delivery of tailored preventative measures.

There are many things, however, that operational-level grievance mechanisms cannot do by way of remedy that State-based mechanisms can do. For example, operational-level grievance mechanisms cannot impose criminal penalties. Their role will also be limited where the grievances raised indicate systemic problems that can be addressed only through regulatory reforms. State-based grievance processes are typically more public and transparent, and because of this they can have significant deterrent effects. Further, the outcomes of the processes of operational-level grievance mechanisms are often confidential between the parties concerned, and they are rarely legally binding, because they tend to be based on voluntary commitments by companies. Remedies that have been obtained through judicial processes, on the other hand, are more likely to be legally enforceable.

### **Question 48. How should the work of trade unions and other workers organizations be taken into account in the development and operation of operational-level grievance mechanisms?**

Trade unions and other relevant workers organizations are key stakeholders for companies. Where they exist at factory, sectoral, national or global levels, their active involvement in the design and implementation of operational-level grievance mechanisms will invariably be key to the credibility and the legitimacy of those mechanisms.

Principle 29 makes it clear that operational-level grievance mechanisms “should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes”. This implies that companies should:

- Recognize and respect the right of all workers to form and join organizations of their choice without previous authorization or fear of retaliation
- Closely work with representatives of trade unions and/or other workers organizations when designing mechanisms, especially regarding decisions about what the mechanism will consider and how it will work in practice, including with respect to the role of trade union and other worker representatives in grievance processes
- Involve trade union and other worker representatives in the administration and continuous improvement of relevant mechanisms, particularly those that consider labour-related disputes
- Draw on the expertise of enterprise-level, sectoral, national and/or international trade unions in relevant individual cases, for example in the determination of appropriate remediation.

### Question 49. How do operational-level grievance mechanisms relate to human rights due diligence?

Operational-level grievance mechanisms offer benefits that go beyond quick and early resolution of human rights-related grievances (see question 40). An effective grievance mechanism is an invaluable source of information for companies about human rights-related risks, including emerging risks that may not have been highlighted in initial human rights due diligence scoping exercises. Such mechanisms may be able to indicate a human rights situation that has implications beyond the concerns of those raising the grievance in the first instance, and which could prove a source of legal, commercial or reputational risk. The mechanisms provide a ready-made platform for dialogue with affected stakeholders about how a company’s activities are affecting them and about the type or types of remediation that are most likely to address the issues raised. Moreover, a well-designed mechanism can help strengthen community relationships and foster stakeholder trust (see question 69).

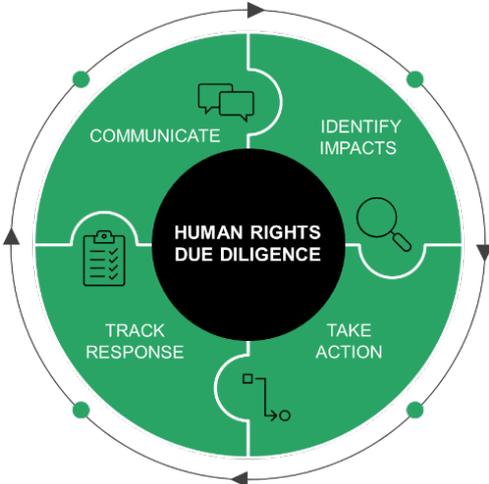
Operational-level grievance mechanisms are thus relevant to human rights due diligence in multiple ways:

- As a platform for ongoing stakeholder engagement
- As a means by which adverse human rights impacts with which a company is involved can be identified and assessed
- As a means by which such impacts can be addressed (or a strategy for addressing such impacts can be identified)
- As a source of data for the purposes of tracking the effectiveness of a company’s efforts to prevent and mitigate human rights-related risks
- As a source of information that can be used to enhance the quality of human rights due diligence more generally, and hence the effectiveness of a company’s efforts to prevent and mitigate human rights-related risks (see question 68).

#### Box 11: What is human rights due diligence?

“Human rights due diligence” refers to the continuous process of identifying and addressing the human rights impacts of a company across its operations and products, and throughout its value chain. The Guiding Principles outline four key steps for businesses:

1. To identify and assess any actual or potential adverse human rights impacts with which they may be involved;
2. To integrate findings across internal functions and processes and take appropriate action to prevent and mitigate such impacts;
3. To track the effectiveness of responses; and
4. To communicate about how they address their human rights impacts.



In other words, human rights due diligence helps companies to know and show how they respect human rights in practice. Human rights due diligence should include assessments of internal procedures and systems, as well as external engagement with groups potentially affected by its operations. As operations, context and impact may change, a company should periodically reassess its potential or actual impact on all human rights as part of its due diligence processes.

For further information on human rights due diligence, see *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* by OHCHR.

Human rights due diligence can help to define the types of operational-level grievance mechanisms that a company may need to establish or participate in to ensure that it can meet its responsibility to respect human rights. Operational-level grievance mechanisms should at least be available to those most at risk of severe or irremediable harm (see question 43), and they should be responsive to a company's salient human rights risks (see question 44). Thus, findings from human rights due diligence processes can inform where operational-level grievance mechanisms may be needed most. However, companies should bear in mind that operational-level grievance mechanisms with more limited terms of reference, or which are restrictive in terms of who can access the mechanism, may experience more difficulties in fully gathering information, which would represent a missed opportunity from the perspective of sound human rights risk management. As a general rule, the more flexible the grievance mechanism (e.g. in terms of who may access it and why), the more useful it is likely to be as a key element of a robust human rights due diligence system.

Mandatory human rights due diligence regimes can help reinforce the key contribution made by effective operational-level grievance mechanisms to broader human rights risk management systems. For all the reasons discussed above, establishing or participating in effective operational-level grievance mechanisms is an important aspect of compliance with the relevant laws, regardless of whether such mechanisms are explicitly required under the regime in question.

## **Question 50. How can operational-level grievance mechanisms work in combination with other kinds of mechanisms?**

While operational-level grievance mechanisms can sometimes deliver effective remedies for human rights harms on their own (see question 38), they can enhance their impact by recognizing and capitalizing on synergies that may exist between their own mandates and those of other types of mechanisms, including State-based mechanisms. For instance, in the course of a company-based grievance process, allegations may be made that indicate regulatory non-compliance or criminality. In such cases, information collected by the mechanism may be of value to a range of State-based processes, and its disclosure to the relevant authorities may be a legal requirement in some circumstances.

Cooperation among companies, for example through industry, multi-stakeholder or other collaborative initiatives (see question 45), can help to make the processes of operational-level grievance mechanisms more effective, for instance by providing for the escalation of grievances from such mechanisms to other schemes. The possibility of referral or escalation from one non-State-based mechanism to another can help to drive improvements in many different kinds of mechanisms, by developing the idea of a "community" of mechanisms working together (see further the discussion of the "remedy ecosystem" approach in box 6).

Industry and multi-stakeholder initiatives (see questions 51–56) can enhance the effectiveness of company-level schemes by making the provision of effective operational-level grievance mechanisms a condition of membership or participation – for instance, through a code of conduct. In this way, the failure of companies to provide or participate in effective grievance mechanisms could itself be the basis of a complaint to another mechanism. This dynamic may also exist between operational-level and State-based grievance mechanisms. For example, national contact points for responsible business conduct under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct have made recommendations

for companies to take steps to establish or improve the effectiveness of operational-level grievance mechanisms.

However operational-level grievance mechanisms are designed, and whatever their relationships and dynamics with other mechanisms, it is important that affected stakeholders retain the flexibility to pursue different remedies through different mechanisms, perhaps in combination, as part of a remedial strategy that best meets their needs. For those reasons, people seeking remedies through operational-level grievance mechanisms should never be asked to waive their rights to seek remedies elsewhere as a condition of accessing or participating in grievance processes.

***Box 12: The use of legal waivers in the context of operational-level grievance mechanisms***

There have been occasions on which people seeking remedy for a harm through operational-level grievance mechanisms have been asked to sign a “legal waiver” prohibiting them from seeking a remedy for that harm from other remediation mechanisms, including the courts.

This type of practice is unlikely to be consistent with the corporate responsibility to respect human rights under the Guiding Principles. The commentary to Principle 29 clearly states that operational-level grievance mechanisms should not preclude access to judicial or other non-judicial grievance mechanisms.

Asking people to sign legal waivers impedes access to remedy in several ways. In cases where an operational-level grievance mechanism is unable to deliver an effective remedy on its own, those affected by business-related human rights harm may need to access a variety of mechanisms to obtain a remedy that meets their needs. Requirements on them to observe legal waivers can curb their flexibility to do so, and thus can pose a serious barrier to remedy. Even where there is a prospect that an operational-level grievance mechanism may be able to deliver an effective remedy in a specific case, affected stakeholders will still need the ability to take further action (including recourse to the courts) if they are dissatisfied with the process or the outcome. In guidance arising from the Accountability and Remedy Project, OHCHR has taken the position that non-State-based grievance mechanisms should never require any person to waive their rights to seek a remedy using an alternate grievance mechanism (whether State-based or non-State-based) as a condition of access or participation. In cases where waivers are used, they should be construed as narrowly as possible, and in no circumstance should they preclude criminal proceedings or prevent victims from participating in any criminal case.

**Principle 30: Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.**

### **Question 51. Why does this matter?**

Industry, multi-stakeholder and other collaborative initiatives have important roles in the remedy ecosystem for addressing business-related human rights harms (see box 6). In many jurisdictions, sector-specific initiatives are used actively to target such harms in the extractive, forestry, fishing, garment and textile industries, among others. Companies often commit to certain human rights-related standards as a condition of being part of an initiative, sometimes through a requirement to sign up to a code of conduct. Providing suitable and effective grievance mechanisms to address complaints about non-compliance with such standards is important for the credibility of these initiatives. The mechanisms associated with such initiatives can potentially facilitate access to remedy for business-related human rights harms by providing additional avenues through which people can raise grievances and seek to obtain remedies for harm.

### **Question 52. What are industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards?**

Industry, multi-stakeholder and other collaborative initiatives may be said to be “based on” human rights-related standards when they

- Have mandates that encompass human rights-related goals
- Promulgate standards for companies that are aligned with internationally recognized human rights, and/or
- Integrate human rights-related standards into their own policies and procedures (e.g. regarding stakeholder engagement and rights to effective remedies for harm).

These types of initiatives can involve a multitude of different actors, such as States, civil society organizations and trade unions, as well as business enterprises themselves. They can be concerned with activities across multiple jurisdictions or they can focus on addressing specific issues in a particular region or State, or both. They may be established specifically to address human rights issues, or they may cover a broader range of issues and concerns, of which the furtherance of human rights-related goals is one. What is common to all such initiatives, however, is that those involved in them commit to upholding certain human rights standards.

Such initiatives can help to promote corporate respect for human rights in several different ways. For example, membership-based initiatives may require members to adopt certain principles that are inspired by human rights standards or to agree to abide by a code of conduct that incorporates such standards. Certification-based initiatives may require certified companies to undergo external inspections or audits of their human rights performance in order to retain their certification. Global framework agreements between companies and trade unions may require the observance of certain labour rights across a company’s global operations, regardless of whether those rights are protected in an individual State. Other initiatives may rely on a combination of the types of approaches described above.

### **Question 53. What does it mean to ensure that effective grievance mechanisms are available?**

Industry, multi-stakeholder and other collaborative initiatives that promote human rights-related commitments are expected to ensure that some effective grievance mechanism is “available” and is able at least to address concerns regarding whether those commitments are being met. Ensuring that effective grievance mechanisms are available does not necessarily mean that the mechanisms have to be housed within the initiative itself, although that is a possibility. Effective grievance mechanisms associated with industry, multi-stakeholder and other collaborative initiatives could also be situated at the level of individual members of or adherents to an initiative. Additionally, such mechanisms could be outsourced to other, independent bodies. Whatever mechanism is made available, it should meet the effectiveness criteria provided for by Principle 31 (see questions 57–68).

### **Question 54. What issues should such grievance mechanisms be able to address?**

The question of which issues grievance mechanisms associated with industry, multi-stakeholder and other collaborative initiatives should be able to address depends on the scope and activities of the initiative in question, and on the human rights commitments that are involved. There is considerable variety in the range of issues that such grievance mechanisms can address. Their mandate and powers will typically reflect the commitments made by adherents – for instance, in the form of a code of conduct, through a set of principles, under a certification scheme or by way of an agreement to protect the rights of specific groups of stakeholders. At a minimum, these mechanisms should be available to affected stakeholders or their representatives so that they can raise concerns if they believe the commitments that are promoted by the initiative have not been met.

### **Question 55. What kinds of remedies are potentially available through such grievance mechanisms?**

The extent to which industry, multi-stakeholder and other collaborative initiatives can deliver remedies in specific cases and the kinds of substantive remedies that may be available will depend on the aims, mandate, powers and effectiveness of the mechanisms in question.

For schemes in which corporate membership is conditional on adherence to human rights-related standards, the kinds of remedies that may be available in the event that non-compliance is established through a grievance process could include revocation of membership and ejection from the scheme, imposition of conditions on continued membership (such as the termination of certain business relationships or a public apology), publication of a statement of non-compliance along with key findings, or an obligation to develop and implement a corrective remediation plan in consultation with stakeholders (which would be vetted and subsequently monitored by the initiative in question).

For initiatives that provide companies with certification or an ethical mark, remedies could also include removal of the certification or authorization to display the mark on the company’s products, or suspension of this authorization until certain corrective action is taken. While the mechanisms for such initiatives often do not impose fines on companies or order the payment of financial compensation, this would not prevent companies from agreeing to make compensation available as part of an agreed settlement.

One condition of membership of a scheme (or certification) could be that, in the event of a grievance, companies must submit to dialogue-based processes, such as mediation, through which a wide range of bespoke and targeted remedies could potentially be obtained. Even stricter accountability models might require that companies submit to a formal dispute resolution process and be legally bound by the outcomes. These can range in formality from processes that draw from mediation techniques up to adjudicative processes such as arbitration. Arbitration may be preferred when legally binding outcomes are an

imperative, such as in cases where workers who have been unlawfully dismissed need to be reinstated immediately.

### **Question 56. How do these grievance mechanisms relate to human rights due diligence?**

Grievance mechanisms that are associated with industry, multi-stakeholder and other collaborative initiatives can yield valuable information that can help to shape and inform the human rights due diligence processes of the companies named in specific grievances, as well as among the broader membership of the scheme and beyond. Allegations made in the course of grievance processes, and key findings delivered at the conclusion of those processes, can help to identify new or emerging risks and to clarify deficiencies in existing human rights due diligence methodologies and practices. Allegations, insights and findings emerging from such grievance processes can also be helpful in identifying broader, more systemic, risks relating to particular sectors, value chains or operating contexts. Additionally, they can provide an important basis for peer learning and knowledge sharing between companies about risks and how they should be addressed.

## VII. EFFECTIVENESS CRITERIA FOR NON-JUDICIAL GRIEVANCE MECHANISMS

Principle 31: In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning. Operational-level mechanisms should also be based on engagement and dialogue.

### Question 57. Why does this matter?

The Guiding Principles make repeated references to the importance of effectiveness as a benchmark for assessing the performance and impact of non-judicial grievance mechanisms. For States, ensuring that their mechanisms are effective is an important part of meeting their duty to protect. Similarly, a company that fails to establish or participate in effective grievance mechanisms cannot claim to be meeting its corporate responsibility to respect human rights under the Guiding Principles.

Ineffective mechanisms are a waste of time and resources – not only of those who develop and administer them, but also of those who might wish to make use of them to raise a grievance and seek a remedy. By raising expectations which cannot be met, ineffective mechanisms can compound a rights holder’s sense of grievance, and they can contribute to further disempowerment and loss of dignity. For companies, ineffective operational-level grievance mechanisms will be less useful as a source of stakeholder feedback on existing and emerging human rights risks and on the success of efforts to address such risks, to the detriment of sound risk management (see questions 40 and 49).

Effectiveness is a difficult concept to define, however. Principle 31 provides an authoritative and globally relevant set of criteria for assessing the effectiveness of any type of non-judicial mechanism. These effectiveness criteria, which address substantive as well as procedural aspects of remedy (see questions 10 and 67 and box 1), have formed the basis of numerous international, regional and domestic frameworks for assessing the effectiveness of a wide range of mechanisms, both by way of soft law and in legally binding contexts. Such criteria are also used by many benchmarking organizations around the world for the purposes of assessing and ranking the performance of different kinds of mechanisms. In the course of the Accountability and Remedy Project, OHCHR produced guidance on the practical steps that various institutions and companies can take to meet the effectiveness criteria in practice.

### Question 58. Which mechanisms do these criteria apply to?

The effectiveness criteria set out in Principle 31 apply to non-judicial mechanisms, both State-based and non-State-based. They apply to all types of mechanisms referred to in Principles 27–30 (see questions 27, 35, 42 and 53). The first seven effectiveness criteria apply to all non-judicial grievance mechanisms that are relevant to respect by business enterprises for human rights.

An eighth criterion applies specifically to operational-level mechanisms and calls for this category of mechanisms to be based on engagement and dialogue. It has been included partly because of the recognition that business enterprises cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome. This eighth effectiveness criterion also highlights the importance of engaging with

affected stakeholder groups to ensure that such mechanisms meet their needs, and to ensure that these stakeholders will feel able to use the mechanisms in practice. While the criterion is concerned with operational-level grievance mechanisms specifically, the effectiveness of other types of non-judicial mechanisms may also be enhanced by meeting this criterion.

### **Question 59. Why these criteria?**

The criteria set out in Principle 31 were developed through a process of extensive research, consultation and testing in the field. During the development of the Guiding Principles, a pilot project was conducted to test the benefits of an initial set of criteria, after which the effectiveness criteria were revised to take better account of operational realities (see [A/HRC/17/31/Add.1](#)).

Taken together, these criteria provide the basis of a robust framework for a holistic assessment of the effectiveness of a wide range of grievance mechanisms, to be applied in any sector or operational context (see question 61).

### **Question 60. Does a mechanism need to meet each criterion to be considered effective?**

The effectiveness criteria are intended to be applied in a holistic way. They are interrelated and mutually reinforcing, in that overlooking or excluding one may have consequences for the ability of the mechanism to meet the others, making the mechanism less effective overall. For instance, the extent to which a mechanism is transparent in its dealings with stakeholders and with the public at large has obvious implications for its accessibility and predictability. Similarly, a mechanism that ensures that it operates in a predictable and equitable manner is more likely to be trusted, and hence to be seen as legitimate.

All of the criteria should hence be taken into account when designing, assessing and revising non-judicial grievance mechanisms (see question 61). While the ways in which the criteria can be met in practical terms may vary (depending on, for example, the sector or the intended users), operators of non-judicial grievance mechanisms should strive to meet all the criteria, rather than cherry-picking those criteria that may seem the easiest to achieve.

### **Question 61. How should a grievance mechanism's effectiveness be assessed?**

The effectiveness criteria set out in Principle 31 provide the obvious starting point for any assessment of how well a grievance mechanism is performing in practice, and specifically its success as a route through which human rights-related grievances can be swiftly and successfully resolved and effective remedies delivered. However, it is important to remember that the effectiveness criteria are presented not as a gold standard in themselves or as a maximum that grievance mechanisms should be striving for, but as a basic framework to be built upon through experience and lessons learned. In other words, they are intended as a floor, not a ceiling.

Since the endorsement of the Guiding Principles in 2011, numerous tools have been developed by organizations showing how the effectiveness criteria can form the basis of a detailed performance assessment.

Guidance published by OHCHR as part of its [Accountability and Remedy Project](#) sets out a series of suggestions as to how different types of grievance mechanisms can meet each of the effectiveness criteria in practice in a wide range of operating contexts. These insights can be integrated into an assessment framework in various ways, potentially as the basis for quantitative and qualitative indicators that could be used for performance tracking. A range of additional sources could be consulted on how best to implement

the criteria in specific contexts, for example by Governments, industry associations, civil society organizations, human rights defenders or trade unions.

Whatever assessment tools and methodologies are used, stakeholder input on the performance of the mechanism against each of the effectiveness criteria, both in general and in specific cases, is fundamental. For instance, without meaningful stakeholder engagement, it would be difficult to sufficiently understand and address the barriers to access that people face (see question 63). Meaningful engagement would also be needed to ensure that outcomes and remedies are effective, culturally appropriate and gender sensitive (see question 67).

## Question 62. What does it mean for a grievance mechanism to be considered legitimate?

In the sense used in Principle 31, legitimacy conveys the idea that a mechanism is worthy of support and that there are no objective reasons to challenge its existence and mandate. Legitimate mechanisms generate authority, respect and trust on the part of stakeholders.

Different stakeholders can have different views on what features a given mechanism should have in order to be considered legitimate, and this may depend on the particular experiences and needs of those stakeholders. However, there are steps that grievance mechanisms can take to enhance their legitimacy in the eyes of stakeholders in many contexts. For instance, a grievance mechanism is more likely to be regarded as legitimate when those involved in developing and operating the mechanism:

- Seek out and take into account the views of rights holders when designing, assessing and revising the mechanism
- Ensure that the mechanism can maintain a sufficient level of independence from those whose activities may be the subject of grievances
- Take steps to minimize the risk of, and respond to, conflicts of interest
- Allow the delegation of dispute resolution and decision-making to independent third parties in appropriate cases
- Proactively disseminate information to rights holders about what the mechanism can and cannot offer, how it works, and policies on safeguarding against retaliation
- Ensure gender parity among personnel and adopt a gender-sensitive approach (see box 13)
- Ensure that personnel are suitably qualified for the tasks they are expected to perform.

The characteristics needed to confer and enhance legitimacy can be different depending on whether the mechanism is State-based or non-State-based. For State-based mechanisms, being protected from corruption and undue political interference and having a legislative mandate can be important factors for establishing and maintaining legitimacy. Non-State-based grievance mechanisms, on the other hand, may need to demonstrate impartiality and good governance in other ways, for example through suitable in-house policies and robust oversight systems.

### **Box 13: Adopting a gender-sensitive approach**

Developers and operators of grievance mechanisms need to be aware of the various sources of conscious and unconscious bias in relation to gender that may influence their decision-making, and they should be prepared to confront the various ways that this could inadvertently result in discrimination against or disadvantage to people, in particular women, girls, non-binary persons and LGBTI+ persons.<sup>7</sup>

<sup>7</sup> LGBTI+ is an acronym for lesbian, gay, bisexual, transgender and intersex persons. The plus sign represents persons with diverse sexual orientation, gender identity, gender expression and/or sex characteristics who identify with other terms. For more information, see OHCHR, *Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law* (New York and Geneva, 2019).

Lack of attention to lived realities in the design and administration of grievance mechanisms, or to the multiple and intersecting forms of discrimination that people can experience, can have a profound effect on the extent to which people may be prepared to trust such mechanisms and make use of them. Depending on the context, the issues that may need particular attention could include:

- Methods of communication between affected stakeholders and the mechanism (For instance, do women have the same access to and proficiency in communications technologies as men?)
- Modes of engagement (Are there contexts for engagement and discussion that women, girls, non-binary persons or LGBTI+ persons may not have full access to, or trust in, perhaps for reasons that derive from gender stereotyping or discriminatory laws or interpretations of cultural norms?)
- The need for personal attendance at hearings, and the hours during which hearings are scheduled (Might requirements to appear in person at certain times of the day exclude women or others who cannot get time off work, or who have caring responsibilities which have been imposed upon them as a result of gender stereotyping?)
- The extent to which women, girls, non-binary persons and LGBTI+ persons using the mechanism may be subject to risks of retaliation and stigma, the particular forms this can take (e.g. sexual or gender-based violence, harassment or threats, victim-blaming narratives or social marginalization) and differences in the social and economic consequences of retaliatory behaviour (which, in the case of women, can be particularly long-lasting and severe)
- The extent to which the outcomes of grievance processes will address the needs of women, girls, non-binary persons and LGBTI+ persons in particular
- The material scope of admissible grievances, the standards of proof and the type of evidence required
- Ensuring that grievance mechanisms and remedies are not based on and do not reinforce gender stereotypes, including in relation to women, men and non-binary persons.

Grievance mechanisms that do not adopt a gender-sensitive approach to help inform their design and to evaluate their performance – both generally and in specific cases – are unlikely to meet the effectiveness criteria, whereas if the developers and operators of mechanisms adopt a gender-sensitive approach, they can identify the adjustments that may be needed to ensure that the mechanisms

- Can be trusted by everyone, regardless of gender (i.e. they are legitimate)
- Do not discriminate on the basis of gender, directly or indirectly, in terms of who is able to access them (i.e. they are accessible)
- Can operate in a manner that can achieve substantive equality (i.e. they are equitable)
- Are capable of taking into account the differences between women, men, non-binary persons and LGBTI+ people in the way harms and remedies can be experienced and of considering what may be needed to ensure that remedies improve the enjoyment of the full range of human rights (i.e. they are rights-compatible).

The starting point of a gender-sensitive approach to developing and operating grievance mechanisms involves meaningful engagement with affected (or potentially affected) women, girls, non-binary persons and LGBTI+ persons (see further box 15).

The Working Group on business and human rights further explored the gender dimensions of the Guiding Principles on Business and Human Rights in a 2019 report ([A/HRC/41/43](#)). Additionally, the [standards of conduct for business on tackling discrimination against lesbian, gay, bi, trans and intersex people](#) provide specific guidance on how companies can align their policies and practices with international standards on the human rights of LGBTI+ persons.

### Question 63. What does it mean for a grievance mechanism to be considered accessible?

A mechanism is accessible if people who may need or wish to use the mechanism

- Know that it exists, what it is for, and how it can help them
- Know how to use it
- Can readily access and participate in the grievance process.

In most cases, ensuring the accessibility of a mechanism requires concerted and targeted outreach to relevant stakeholder groups, with a particular focus on people who are at most risk of being adversely affected by the business activities in question. The awareness-raising activities required will vary from context to context, but may include

- Face-to-face engagement (e.g. meetings and discussion groups)
- Educational sessions (ideally delivered by people to whom rights holders can readily relate, such as peers, union representatives or community members)
- Prominently displayed notices in locations where they are likely to be seen by people for whose use the mechanism is intended
- Sharing of information, including online (e.g. through websites, social media, leaflets, newspapers and other media)
- Enlisting help from relevant civil society organizations (e.g. case workers).

Ensuring the accessibility of a mechanism also requires a detailed understanding of the types of barriers that are likely to be encountered by those who may seek to raise grievances, and action to overcome those barriers. This is often referred to as a “user-friendly” approach to the design and operation of grievance mechanisms. The level of awareness and knowledge needed to overcome barriers fully is unlikely to be obtained without meaningful engagement with affected people and communities. While the adaptations that may be needed will inevitably vary from case to case, accessibility can often be greatly enhanced by:

- Making it easy to lodge grievances and to engage actively in the grievance process
- Minimizing the criteria for accessing the mechanism (eligibility criteria) and ensuring that they are communicated clearly
- Setting time limits for accessing the mechanism that are flexible enough at least to take account of the length of time that it may take for abuses to become apparent, or for the rights holders to find out about the mechanism
- Avoiding burdensome pleading requirements (for instance, by not requiring grievances to be framed in legal or policy terms or not requiring specific affected human rights to be identified)
- Minimizing financial barriers
- Ensuring that rights holders can participate in their own language
- Making available multiple channels of communication (e.g. in-person communication, toll-free phone lines, electronic or regular mail and online forms)
- Responding proactively to barriers faced by people who may be at heightened risk of vulnerability or marginalization (e.g. relating to physical security, job security, costs associated with participation, difficulty accessing childcare, literacy barriers or a lack of digital skills)
- Ensuring that resources and services are available in accessible formats and in languages spoken by affected (or potentially affected) stakeholders
- Providing a range of resources to help people navigate the grievance process and engage with it confidently, such as model submissions, templates and other offline and online resources (e.g. instructional pamphlets and videos), free advisory and support services (e.g. helplines and designated caseworkers), and materials accessible to children, people facing challenges with literacy and persons with disabilities.

Fear of retaliation constitutes a major barrier in seeking effective remedy for harms, and grievance mechanisms are unlikely to be used if people fear that they will be punished for raising their concerns. Because of that, it is important that grievance mechanisms identify and address risks of retaliation against rights holders, others who are associated with them (such as family members or lawyers), and those associated with the grievance handling process (such as interpreters or mediators) (see box 14).

### **Box 14: Protecting people from the 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 such risks will inevitably undermine stakeholder trust (and hence the “legitimacy” of the mechanism – see question 62) and presents a serious psychological and practical barrier to people’s willingness to make use of a grievance process (undermining its accessibility – see question 63). 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 marginalization (for instance, due to poverty or a lack of personal autonomy) can dramatically increase the levels of risk, with implications for the extent to which a person can engage in a grievance process on fair, informed and respectful terms (hence affecting the “equitability” of the process – see question 65).

Practical actions that can be taken to manage risks of retaliation include:

- Adopting a public zero-tolerance position to retaliation and actively communicating this position as part of awareness-raising efforts about the mechanism
- Ensuring that staff of the mechanism have the necessary expertise to identify and manage risks of retaliation
- Engaging with rights holders and others at the outset about potential concerns over retaliation, and providing advice on the steps they can take for their own personal safety and the safety of those associated with them
- Preparing case-specific risk assessments and implementing appropriate measures to prevent and mitigate risks
- Ensuring that there are explicit prohibitions on retaliation in contractual arrangements with entities in a business enterprise’s value chain
- Ensuring that people can have their identities kept confidential and taking measures to ensure that this confidentiality is maintained (for example by redacting any information that could be used to identify them)
- Reporting, in aggregate form, on any concerns that have been raised about retaliation, and about any instances of retaliation that have come to light
- Cooperating in good faith and in a responsible manner with law enforcement agencies, prosecutors and judicial proceedings.

### **Question 64. What does it mean for a grievance mechanism to be considered predictable?**

A predictable mechanism has clear, publicized procedures and provides clarity regarding its processes, the available outcomes and the means of monitoring outcome implementation. Predictability implies being open about what the grievance mechanism is for and how it works, what it can and cannot deliver, and what to expect at each stage of the process. It also implies that similar factual situations will produce similar results, as opposed to arbitrary or inconsistent outcomes. It is more than just a courtesy to rights holders; predictability is fundamental to gaining and retaining stakeholder trust and buy-in.

While the features of a predictable mechanism will vary from case to case, they will often include:

- Publication of clear information on the mechanism's policies and processes
- Clear and realistic timeframes for handling grievances, which are communicated to parties and respected
- Clear policies regarding cooperation with other mechanisms and State agencies, taking risks of retaliation into account
- Proper management of expectations about the remedies that can be achieved and about the extent to which they can be enforced and their implementation monitored.

### **Question 65. What does it mean for a grievance mechanism to be considered equitable?**

The concept of equitability is strongly underpinned by notions of fairness. The Guiding Principles stress the importance of procedural fairness through “reasonable access to sources of information, advice and expertise” so that aggrieved parties are able to engage in grievance processes on “fair, informed and respectful terms”. Inadequate attention to the imbalances that often exist between aggrieved parties and the business actors in question – specifically in terms of power and access to information – can undermine the ability of a mechanism to function in an equitable manner. An equitable mechanism will work proactively to address problems arising from such imbalances so that rights holders can participate fairly and confidently in grievance processes, including by

- Providing appropriate advisory, technical, financial and other forms of support (or referring people to external sources of support)
- Making appropriate, gender-sensitive adjustments to grievance processes to accommodate the particular needs of people who may be affected by injury or trauma or who may be at heightened risk of vulnerability or marginalization.

Other steps that can be taken to enhance the ability of a mechanism to function in an equitable manner include:

- Allowing parties to have third party representation and to decide who should represent them throughout a grievance process
- Ensuring that affected stakeholders have (and are aware of) the option to withdraw from the process whenever they choose to do so
- Ensuring that people have timely access to information obtained by the mechanism that is relevant to the grievance (written submissions or other relevant evidence), and giving parties an equal opportunity to comment on such information before material decisions are made
- Providing records of the process, the outcomes and the reasons for any decisions made
- Informing parties about their rights to challenge decisions, providing them with readily understandable information about how they can do so, and allowing them adequate time in which to do so.

### **Question 66. What does it mean for a grievance mechanism to be considered transparent?**

The concept of transparency, as a criterion of effectiveness under the Guiding Principles, has two dimensions:

- The transparency required for parties to a grievance process to be kept informed about its progress

- Sufficient transparency about the mechanism’s performance to build confidence in its effectiveness and to satisfy any public interest.

The first dimension is concerned with the conduct of specific cases. A demonstrable commitment to transparency towards the parties in specific cases will enhance the effectiveness of the mechanism as a whole through building stakeholder trust (providing legitimacy – see question 62) and by improving the predictability of the mechanism for subsequent cases (see question 64). Transparency towards the parties to a grievance can be achieved by:

- Ensuring ongoing and proactive engagement between the mechanism and the parties to a grievance with respect to the status of each step in the grievance process (including periodic updates irrespective of the timing of major developments)
- Sharing information on next steps and available options at each stage of the grievance process.

The second dimension is concerned with transparency towards affected stakeholders more broadly, and towards the public at large. In this sense, transparency can be viewed as complementary to other effectiveness criteria (in particular legitimacy and predictability).

Careful consideration should be given to the nature, format and timing of communications. For instance, for company-based grievance mechanisms, if only partial or highly aggregated information is reported – such as basic statistics regarding numbers of grievances received and resolved without any contextual analysis or reflections on trends or lessons learned – this may raise legitimate questions among stakeholders as to whether the grievance mechanism reflects a genuine commitment on the part of the company concerned to meet its corporate responsibility to respect human rights. At the same time, it is imperative that disclosures relating to the performance of grievance mechanisms take account of the risks of retaliation towards affected individuals and communities (see box 14).

Examples of disclosures that can enhance the transparency of grievance mechanisms in the public interest include:

- The number, types and nature of grievances received
- The number of requests rejected and the grounds on which they were rejected
- The number of completed cases, their outcomes, any follow-up activities, and the average duration of grievance processes
- Stakeholder satisfaction levels
- Any other data that will enhance public understanding of the mechanism’s performance.

In many cases, this information (which may take the form of statistics, case databases or anonymized case studies) can be usefully complemented with further trends analyses and actions to be taken, with a view to improving the functioning of the mechanism or preventing future harm (see question 68). Communication should ideally be made using the most accessible formats, including through websites, and as part of periodic reporting.

## **Question 67. What does it mean for a grievance mechanism to be considered rights-compatible?**

Having a rights-compatible grievance mechanism ensures that, regardless of how grievances are framed or of the issues that they raise, the outcomes and remedies of the grievance process will accord with internationally recognized human rights. This criterion is notable for being directly and explicitly concerned with the *outcomes* of a remediation process – in other words, with the *substantive aspects of remedy*.

While it is possible to identify certain broad categories of remedies that could individually or collectively constitute an effective remedy in human rights cases (see box 1), the extent to which an outcome of a

remediation process is effective in practice is context dependent and is a subjective matter for those affected to determine. It is thus not appropriate to prescribe the elements of an effective substantive remedy in the abstract. The effectiveness criteria in Principle 31 have been structured in recognition of this challenge. However, this is not to imply that the substantive aspects of remedy are of less importance than the procedural aspects. While the other effectiveness criteria set out the features of grievance mechanisms that will in many cases have a bearing on the likelihood of an effective *substantive* remedy ultimately being delivered, this criterion of having a rights-compatible grievance mechanism sets a minimum standard for *all outcomes* of such processes: that they are in line with internationally recognized human rights.

Ensuring the rights compatibility of outcomes can be a complex exercise. It involves taking note of relevant guidance on the content of human rights, such as rights to health, privacy and family life, as well as considering the manner in which different human rights should be balanced (for instance, between different groups of stakeholders) in different situations. It means ensuring that remedies are consistent with international human rights standards on equality and non-discrimination and with any special rules that apply to specific groups of people, such as the principle of free, prior and informed consent in relation to Indigenous Peoples.

Ensuring the rights compatibility of remediation outcomes also involves applying a human rights lens to the arrangements through which such an outcome might be implemented. A failure to do this can worsen the human rights situation of affected groups, for example by exacerbating community tensions (e.g. between younger and older people) or by entrenching existing inequalities (e.g. between men and women). A rights-compatible mechanism can anticipate and take appropriate steps to avoid such situations, and can ensure that sustainable, rights-respecting solutions are achieved. All arrangements for subsequently monitoring the implementation of remediation outcomes should be subject to a human rights analysis.

Actions that can be taken to establish and enhance rights compatibility include:

- Consulting affected stakeholders about the type of remedy needed and the manner in which it should be delivered
- Analysing remedies to ensure that they are adequate, effective, prompt, culturally appropriate and gender-sensitive, making adjustments where necessary
- Assessing proposals for the delivery of remediation outcomes to ensure that they do not lead to further harms (for instance, by exacerbating community tensions)
- Evaluating the effectiveness of remedies and addressing any deficiencies
- Having a plan to address the non-implementation of remedial outcomes.

### **Question 68. What does it mean for a grievance mechanism to be considered a source of continuous learning?**

A grievance mechanism should be a source of continuous learning in two principal ways. First, it should use the lessons learned from grievance processes to improve the mechanism itself. Gathering feedback on the performance of a mechanism can help identify ways to improve its procedures and practices so as to make it more effective over time. Actions that indicate that a mechanism is a source of continuous learning in this sense include:

- Seeking feedback on parties' experiences of the mechanism, as well as feedback on the mechanism's performance from internal and external stakeholders
- Tracking and evaluating the effectiveness of the management, processes and outcomes of the mechanism
- Keeping records on the frequency, patterns and causes of grievances
- Implementing strategies to improve the mechanism, based on the information referred to above.

Second, a mechanism should be a source of continuous learning by using the lessons learned from grievance processes to prevent future adverse human rights impacts. Regularly analysing the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify the policies, procedures or practices that should be altered to prevent future harm. Actions that indicate that a mechanism is a source of continuous learning in this sense include:

- Contributing to and influencing the human rights due diligence activities of the relevant company by
  - Helping to identify the nature and patterns of adverse human rights impacts connected to a company, and how such impacts affect different groups
  - Influencing and helping to assess the appropriate action that should be taken in response to impacts
- Contributing to wider discussions on sector-specific or systemic issues which may contribute to or exacerbate human rights harms.

### **Question 69. What does it mean for an operational-level grievance mechanism to be based on engagement and dialogue?**

The first aspect of this criterion, engagement, means that affected and potentially affected stakeholders should be consulted about the design and performance of the mechanism. Involving such groups in the development and improvement of a mechanism's processes helps ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Actions that demonstrate that a mechanism is based on engagement include:

- Meaningful and regular engagement with affected (and potentially affected) stakeholders about their needs and expectations, including as they relate to the functioning of the mechanism (for instance, regarding the scope of issues covered, how grievances can be submitted, and methods of communication)
- Seeking out sources of expertise on local contexts and on how the mechanism can contribute to the resolution of grievances
- Designing and improving the mechanism based on the above activities and other feedback.

The second aspect of this criterion, dialogue, refers to the methods used to resolve grievances. The idea that companies might be their own "judge and jury" regarding adverse human rights impacts in which they themselves may be involved can be problematic for a mechanism's legitimacy (see question 62). For this reason, dialogue-based approaches to resolving grievances assume particular importance for operational-level grievance mechanisms. Operational-level grievance mechanisms that operate in a high-handed or adversarial manner, or that seek to impose solutions on affected stakeholders, will often not be regarded as "effective" mechanisms under the Guiding Principles. The call for such mechanisms to be based on dialogue reinforces the need for companies to work together with those affected to arrive at a shared understanding of underlying problems and the optimal solutions.

There are a number of possible indicators that a mechanism is based on dialogue – for instance:

- The mechanism relies on mediation and joint problem-solving to resolve grievances
- The mechanism adopts methodologies that enable underlying assumptions and cultural biases, which may distort the identification and analysis of problems, to be explored and challenged
- Mechanism personnel are trained in dialogue-based methods of resolving grievances and keep pace with developments in mediation best practice
- Policies and processes are in place to ensure that, where adjudication is needed or the circumstances would otherwise make it appropriate, grievances can be referred to legitimate, independent third parties.

While the Guiding Principles specifically call for operational-level grievance mechanisms to be based on engagement and dialogue, other types of non-judicial grievance mechanisms can also realize important benefits by meeting this criterion.

### **Box 15: What is “meaningful stakeholder engagement” in this context?**

**WHAT:** Meaningful stakeholder engagement is an ongoing process of interaction and dialogue with stakeholders to hear, understand and respond to their interests and concerns. Engaging with stakeholders – in particular those who have raised or may raise grievances – is necessary to appreciate the types of risks and harms that people experience, the barriers that they face in seeking remedies and the types of remedies they might consider to be effective in a given context. Meaningful stakeholder engagement is crucial to ensure that an operational-level grievance mechanism will be effective for those who are likely to use it, and the effectiveness of other types of non-judicial mechanisms may also be enhanced by engaging with stakeholders.

**WHO:** In this context, stakeholders are principally the people whose rights have been (or may be) adversely affected by business activities, as well as their legitimate representatives, such as trade unions or other workers organizations. However, other groups of stakeholders can also play a fundamental role in helping to design and assess mechanisms so that they can respond effectively to the human rights harms they seek to address. In general, mechanisms should try to consult:

- Directly affected stakeholders and their legitimate representatives: people whose human rights have been or may be adversely impacted by a company
- Credible proxies: individuals or entities such as local civil society organizations with in-depth experience of engaging with people from a particular region or context, who are capable of diligently representing their views and best interests and who can help convey their concerns effectively
- Human rights experts: individuals who can bring particular knowledge or expertise in relation to remediation mechanisms. They can play an important role in supplementing (but not replacing) engagement with affected stakeholders directly.

**WHEN:** Meaningful stakeholder engagement is vital at various different stages of a remediation process. Research suggests that the quality of stakeholder engagement during the design of a grievance mechanism is the single most important determinant of whether stakeholders will be prepared to trust and use the mechanism. This is also of key importance in any exercises undertaken to review the performance of a mechanism and in identifying areas for improvement (see question 61).

In individual cases, meaningful stakeholder engagement can play a valuable role in identifying the form of remediation needed to address the concerns of people raising grievances and to remedy any harm suffered. Such engagement is also needed to ensure that people are able to benefit from remediation measures on a fair and equal basis (see box 13).

**HOW:** There are a number of ways in which stakeholder engagement can help ensure effective grievance mechanisms:

- Engaging proactively with directly affected stakeholders through community discussions, town hall meetings, surveys and other methods of gathering input
- Seeking the views of relevant public bodies, including national human rights institutions
- Asking parties to complete user feedback questionnaires at the conclusion of a grievance process and carrying out follow-up work with those who have used the mechanism.

### ***Box 16: Additional resources***

For additional reading and guidance relating to the access to remedy pillar of the Guiding Principles on Business and Human Rights, please consult the OHCHR "[Resources on accountability and remedy](#)" web page.



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