



Kenya National Commission on Human Rights



GUIDANCE NOTE

FOR GENDER RESPONSIVE OPERATIONAL LEVEL GRIEVANCE MECHANISMS

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May 2024

This Guidance Note is intended to provide direction only. While this Guidance Note is general, it is recommended that business enterprises move beyond it to developing a sector based or company specific tool. The focus is limited in implementation to business enterprises setting up or having established operational level grievance mechanisms. The tool is not prescriptive but only provides indicative direction.



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22359



www.knchr.org | <https://bhr.knchr.org>

Printed in Kenya by:

Cover Design and Layout:

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STUDIO INFERNO CO LTD
studioinferno.info@gmail.com

KNCHR would appreciate receiving a copy of any materials in which information from this report is used.

ISBN: 978-9914-740-16-5

Contents



PAGE	v	Acknowledgments
PAGE	vi	Abbreviations
PAGE	vii	Glossary
PAGE	1	Background
PAGE	3	Rationale
PAGE	4	Guidance points for gender-responsive OGMs
PAGE	13	Principles and Guidance Points for Designing Effective Operational Level Grievance Mechanisms
PAGE	14	Conclusion
PAGE	15	Appendix

We Commit to promoting gender equality & women empowerment to strengthen the protection of human rights & support equal contribution & benefits to all members.

Grievance Submission Channels

- Through the Supervisor, Manager(s), or Directors
- Suggestion Boxes
- Grievance Form
- Worker's Committee
- Phone or SMS
- Training Sessions
- Company Website

Acknowledgements

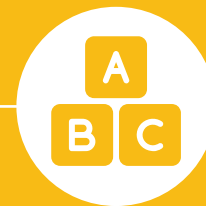


This Guidance Note was researched and written by Christina Arrumm, Senior Human Rights Officer - Economic, Social and Cultural Rights (ECOSOC) Division at the Kenya National Commission on Human Rights. Special thanks to James Mwenda (Assistant Director - ECOSOC), Brian Kituyi, Janet Kabaya, Catherine Mbui, Abel Sauti and Anderson Mwaniki for their insightful comments and invaluable guidance in reviewing of the draft. Appreciation goes to Mr. Dominic Kabiru - Public Affairs and Communication for editing and proof-reading of the document and Jude Boy for design and layout.

We would also like to express gratitude to the KNCHR Chief Executive Officer Dr. Bernard Mogesa for his stewardship; The Director of Research, Advocacy and Outreach Directorate, Ms. Anne Okutoyi; and Deputy Director ECOSOC, Mr. Cyrus Maweu for the strategic guidance and leadership.

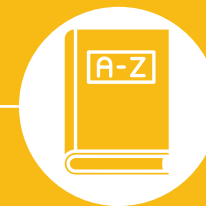
The KNCHR would like to thank the Danish Institute for Human Rights for its continued collaboration and support towards promoting responsible business conduct in Kenya.

Abbreviations



KNCHR	Kenya National Commission on Human Rights
NAP	National Action Plan on Business and Human Rights
OGM	Operational-Level Grievance Mechanism
UNGPs	United Nations Guiding Principles on Business and Human Rights

Glossary



Gender

Socially ascribed differences in roles and responsibilities between men and women and how this affects their enjoyment of rights. It is important to note that business activities may impact them in varying ways.

Gender Equality

The right to access equal economic, social and political opportunities by all, irrespective of gender. It does not connote treating men and women the same.

Gender Mainstreaming

A strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all spheres, so that both benefit equally, and inequality is not perpetuated.

Gender Neutral

Policies and programmes that are silent on the different needs and opportunities of people of different genders.

Gender Responsive

Acknowledges and accommodates gender differentiated needs and the ability to address the differences when formulating policies and programmes aimed at reducing gender inequalities within communities.

Gender Transformative

Addresses the root causes of gender inequality within society and works to transform harmful gender roles and power relations.

Grievance

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 persons or communities. For purposes of this Guidance Note grievance and complaint are used interchangeably.

Grievance Mechanism

Any available platform where aggrieved persons or communities can lodge a complaint or report violations and seek remedy. In the context of business and human rights, this can be judicial or non-judicial in nature.

Operational-level Grievance Mechanisms

Grievance mechanisms established by business enterprises to address complaints or grievances from their stakeholders or clients.

Background

While appreciating the fact that gender encompasses men and women, the impact of business activities on gender is differentiated. Women and girls tend to be most affected by the adverse impacts be it in the formal context or as part of a community. In Kenya, women are mainly engaged in precarious, informal or casual forms of work leaving them vulnerable to violations including sexual and gender-based violence (*sex for work*)¹ and other discriminatory practices such as; low or unequal pay for equal work done, lack of personal protective gear,² pregnancy discrimination,³ inadequate provision of maternal benefits,⁴ health and child care facilities which exacerbates the care burden on women,⁵ among others.



1 <https://www.bbc.com/news/world-africa-64724722> ; <https://www.globalsistersreport.org/news/ministry/news/lake-victoria-fishmongers-try-escape-sex-fish-trap-and-hiv-outcome>

2 <https://www.capitalfm.co.ke/business/2023/01/kilifi-cashew-nut-firm-on-the-spot-over-workers-neglect/>; <https://f24.my/9BeQ>

3 <https://www.businessdailyafrica.com/news/Windsor-to-pay-hostess-Sh2-6m-for-sacking-over-pregnancy/539546-5061376-1238900/index.html>

4 G M V v Bank of Africa Kenya Limited [2013] eKLR

5 Kenya Human Rights Commission- 'Wilting in Bloom': The Irony of Women Labour Rights in the Cut-flower Sector in Kenya, 2012. <https://bhr-navigator.unglobalcompact.org/issues/gender-equality/#:~:text=Gender%20imbalance%20on%20corporate%20boards,the%20economy%20across%20the%20world.>

Businesses carry on their activities within communities. This means that business enterprises must consider gender roles and relations when engaging communities and when developing policies and programs that are likely to impact communities. Women's participation is often overlooked, excluding their voices from issues that concern them and this further disenfranchises them. Failure to identify gender differentiated impacts of business activities means businesses may not appreciate the need to have in place gender-responsive grievance mechanisms that can effectively address corporate abuses of human rights. Whichever grievance mechanism a business enterprise adopts to remedy violations should ensure a systematic change to the factors that underpin gender issues such as patriarchal norms and unequal power relations.

Gender issues are a cross cutting concern spanning all the thematic areas of Kenya's National Action Plan on Business and Human Rights, Sessional Paper No. 3 of 2021. One of the strategic objectives of the NAP is to enhance access to remedy for victims of business-related human rights abuses. One of the policy actions under Pillar 3: Access to Remedy, calls for the Government to *"Develop and disseminate guidance for businesses on the establishment of credible operational-level grievance mechanisms that are consistent with international standards. Such grievance mechanisms should be responsive to the needs and rights of vulnerable groups such as women, persons with disabilities, children and indigenous persons."* There is a general lack of proactive sensitivity on gender risks that should be addressed by a grievance mechanism.



The National Action Plan on Business and Human Rights,
Sessional Paper No. 3 of 2021
Simplified Version "PROTECT RESPECT REMEDY"



Rationale

This **Guidance Note** gives advice on how to establish gender responsive operational-level grievance mechanisms or mainstream gender in already existing OGMs such that business enterprises ensure access to effective remedy for business-related human rights abuses by all irrespective of gender. The underlying aim of enhancing the gender-responsiveness of operational-level grievance mechanisms is to:

1 **Promote** gender justice in business and human rights



2 **Eliminate** existing barriers hindering the right to access to remedy for women, girls and gender minorities



3 **Change** existing power structures that mostly discriminate against women's right to access remedy



Guidance Points for Gender-Responsive OGMs

Business enterprises should strive to have bottom-up grievance mechanisms respectful of all levels of employees in appreciation of the different engagements they have with stakeholders. It is advisable to begin with an assessment of the prevailing gender dynamics and to effectively assess the gender responsiveness of any existing mechanisms, develop gender transformative measures and in the event of any violations provide gender transformative remedies to avoid further engendering the problem.



Design of the Mechanism

1



Guidance Point #1: Ensure gender inclusivity during stakeholder engagements

A business enterprise engages with different stakeholders in execution of its activities. The business ultimately also becomes part of the community within which it operates. As a result, it is advisable that when designing a mechanism, a business should make deliberate efforts to actively engage with all stakeholders to gain an understanding of the societal context and local realities. For the mechanism to address the concerns of men and women alike, it is prudent to ensure that stakeholder engagements are gender inclusive even if this calls for separate meetings for men and women.

When designing the mechanism consider also the intersectionality of gender with other factors such as age, religion, social and economic status. The aim is to have an OGM that addresses the gender-based rights violations and does not exacerbate the situation any further.

2



Guidance Point #2: Factor in gender dynamics to safeguard credibility of the mechanism

Gender considerations must be factored into the design of the mechanism as the credibility of the mechanism is highly dependent on how best it addresses gender issues and how all stakeholders can relate to it.

The mechanism must take into account the existing inequalities between men and women in terms of time, mobility and security amongst others; as this will have an impact on who has access to the mechanism.

Expert Resources

3



Guidance Point #3: Establish a network of gender experts or resources

Information is power and both the business and aggrieved person(s) stand to benefit where grievances are resolved effectively and expeditiously in a practical and culturally appropriate manner. A violation which is technical in nature and affects a specific gender may not be easily addressed and effectively resolved as would a general complaint. It may require involvement of a gender expert and a community liaison officer for a good understanding of the power dynamics of men and women in a particular community.

It is advisable to establish a network of experts or resources for consultations on gender specific issues towards effective resolution of grievances.

Maintaining such a network will also address the power imbalance between a business enterprise and aggrieved person(s) by building the confidence of users of the mechanism as they can refer to the network for information and knowledge rather than feel like they are being coerced by the business.

Depending on the circumstances, leverage on expertise from independent entities such as; the State Department for Gender and Affirmative Action, Kenya National Commission on Human Rights, the National Gender and Equality Commission, relevant Civil Society Organisations and other associations like; trade unions to avoid potential conflict of interest. Should there be need for a business enterprise to avail funds to engage an expert, ensure there is transparency and this is communicated to all parties. To the extent possible, the community should participate in the process of identifying the experts.

Access

4



Guidance Point #4: Publicise the mechanism and how it functions using channels that are accessible to all particularly women and girls

The intended users across the value chain as well as the community within which operations are being conducted must be aware of the mechanism and how to access it. One can only access and use something if they have knowledge of it.

Once the OGM has been established, have proactive awareness raising strategies and where necessary let this be targeted at both men and women separately, taking into account the local context, gender dynamics and societal attitudes. Consider using local languages to popularize the system and have a wider reach.

5



Guidance Point #5: Reiterate that the grievance mechanism is without prejudice to other legal processes especially for cases of sexual and gender-based violence

When publicising its existence, it is important to be clear that accessing the mechanism does not preclude one from seeking redress through other legal channels. This is key for sexual and gender-based complaints.

6



Guidance Point #6: **Eliminate barriers to access**

Businesses should put in additional measures to eliminate any barriers to access especially for women and girls to avoid further disenfranchising them. The mechanism should provide alternative modes of reporting taking into account gender power relations and patriarchal systems, to address issues of intimidation and fear of reprisal that take away confidence of aggrieved person(s).

Provide multiple points of access to allow the intended users to use the platform they are most comfortable with. This could include both formal mechanisms (telephone, SMS, e-mail and hotlines) and informal mechanisms (social dialogues, barazas, community gender champions, women's groups). One of these access points should be independent of the business enterprise. This is especially key when reporting cases of sexual exploitation, abuse and harassment, in which case the grievance mechanism should be survivor-centred. Ensure physical access points are well lit but not too public. There should be presence of both male and female officers managing and handling complaints. Children may require a friendly access point and this should be factored into the design.

Transparency

7



Guidance Point #7: Communicate each stage of the process

Each step of the complaints handling process should be well outlined to all stakeholders to instil confidence in the process and the resulting outcome. The mechanism should promote mutual dialogue and each resolution ought to be properly documented.

8



Guidance Point #8: Protection of identity and confidentiality

Create a safe and confidential environment for reporting. Have in place measures to ensure confidentiality and privacy when reporting and during investigation and safeguards to protect against any retaliation of persons who report.

Depending on the nature of the grievance, safeguards should be put in place to protect the identity of the complainant if they prefer to remain anonymous.

Complaints Handling

9

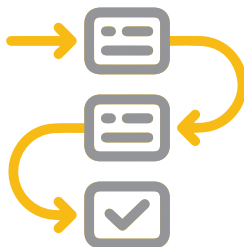


Guidance Point #9: Complaints/Grievances should be handled by officers trained on gender

Businesses should have an officer with a managerial role overseeing the OGM. It is instrumental that this officer be well adapt to gender dynamics with regards to access to remedy.

A gender responsive OGM must comprise of proper representation in the complaints handling team. Presence of male and female complaints handling officers is key and they should have a high level of gender knowledge and skill. This instils confidence in users. Employees, middle level managers and the leadership should also receive gender awareness training to equip them with an understanding and appreciation of basic gender concepts and issues. The training should be a lot deeper for employees engaging with communities and those directly involved in the OGM. The rule against bias and the right to a fair hearing should be observed.

10



Guidance Point #10: Clearly describe the complaints process

Ensure there is concise and clear guidance on the criteria used to identify complaints that can be addressed through the mechanism, how to register a complaint, the expected process after a complaint is lodged and the timelines of the mechanism. Constantly share updates on progress and notify the aggrieved party of any gender expert resources and referral pathways that are available.

All documentation should consider gender sensitive parameters and forms to be filled in by intended users should be simple and user friendly.

11



Guidance Point #11: Addressing gender-based violence

It is important to reiterate that businesses must not preclude an aggrieved party from seeking remedy through other avenues for gender-based violations that are criminal in nature (for example sexual exploitation, assault or harassment), but in such instance, facilitate the victim through the process.

The process of addressing gender-based violence complaints should be swift and discrete to avoid re-traumatizing the aggrieved person. This includes considering the venue where any dialogue is held and the mode of communication to be used. Ensure that the OGM provides adequate protection to those who have suffered gender-based rights violations.

In the case of an employee, seek consent before divulging any information of sexual exploitation, abuse or harassment with a human resource officer or management team to avoid them holding back for fear of reprisal.

12



Guidance Point #12: Establish dialogue whenever it is necessary

Create an environment that is conducive for both men and women to feel encouraged to dialogue with the business towards arriving at a remedy. Moreover, in consideration of the power imbalance between businesses, employees and communities, the mechanisms should be flexible enough to allow for users to have representatives accompany them during the dialogue process, to facilitate resolution of concerns.

When addressing a community grievance, support equal participation of men and women in mediation processes and ensure equal access to compensation or any other form of remedy. Identify gender champions from within the community to act as liaisons.

Reporting

13



Guidance Point #13: Identify lessons, monitor, evaluate and report

The process in a gender responsive OGM should not stop at compensation; there should be follow up to see the outcome of the compensation as the aim is structural change to address a communal harm. While the intention is restitution, men and women have different practical needs. Hence, remedy should take into account gender dimensions of the society particularly where the aggrieved is a woman or girl.

Develop clear gender indicators that can be monitored. Ensure the data collected is gender disaggregated. Collect feedback from both internal and external stakeholders including women's organizations and networks, men and women, to evaluate effectiveness of the mechanism to address gender-sensitive grievances.

The OGM should help identify concerns before they escalate to become problems. The mechanism should be a source of continuous learning. Identify any gaps or shortcomings as well as the good practices and report on trends. The lessons should inform change, improve the system and it ultimately results in minimizing risks in future.

Principles and Guidance Points for Designing Effective Operational Level Grievance Mechanisms

A gender lens should be adopted when interpreting the effectiveness criteria of an OGM.

Principle	Guidance Point
1. Legitimate and trusted	#2: Factor in gender dynamics to safeguard credibility of the mechanism #5: Reiterate that the grievance mechanism is without prejudice to other legal processes especially for cases of sexual and gender-based violence
2. Accessible and publicised	#4: Publicise the mechanism and how it functions using channels that are accessible to all; particularly women and girls #6: Eliminate barriers to access
3. Transparent	#7: Communicate each stage of the process #8: Protection of identity and confidentiality
4. Based on engagement and dialogue	#1: Ensure gender inclusivity during stakeholder engagements #10: Clearly describe the complaints process #12: Establish dialogue whenever it is necessary
5. Predictable in terms of process	#6: Complaints handling #11: Addressing gender-based violence
6. Equitable and fair	#3: Establish a network of gender experts or resources #9: Complaints/grievances should be handled by officers trained on gender
7. A source of continuous learning	#13: Identify lessons, monitor, evaluate and report

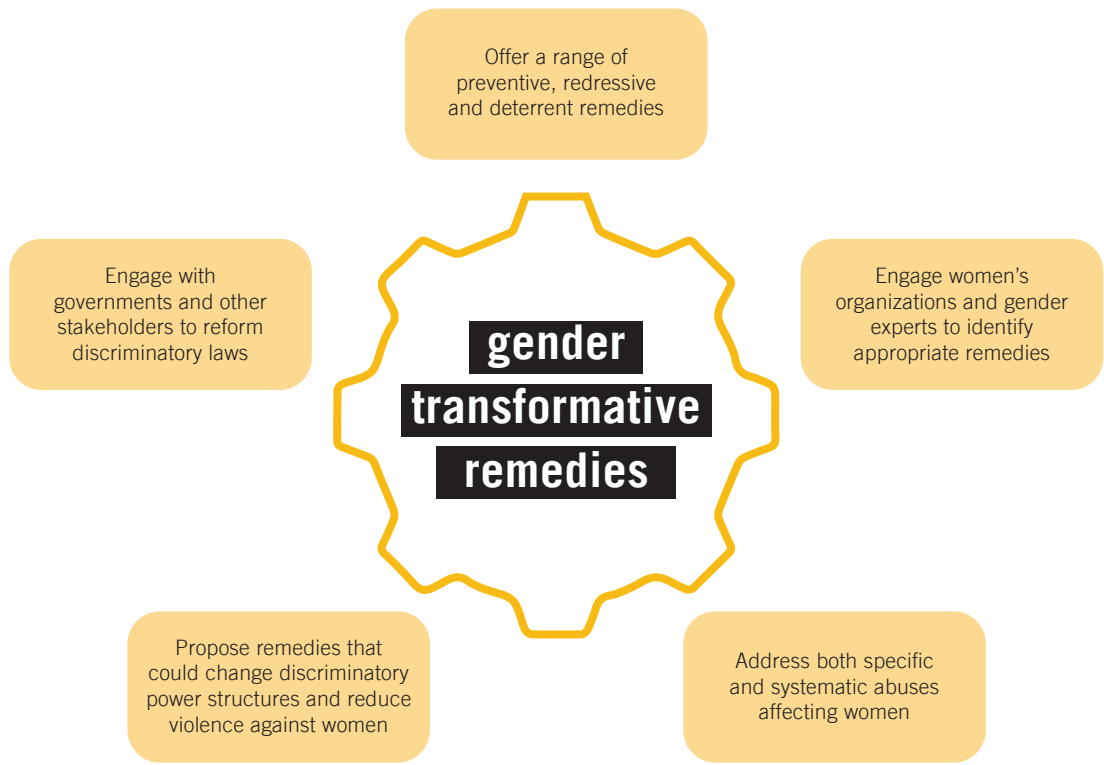
Conclusion

Business enterprises should integrate gender equality dimensions into their OGMs as part of responsible business conduct. They should strive for OGMs that promote not only individual reparation, but also transformative reparation to help mitigate or altogether eliminate the gender dynamics that exacerbate business-related violations.



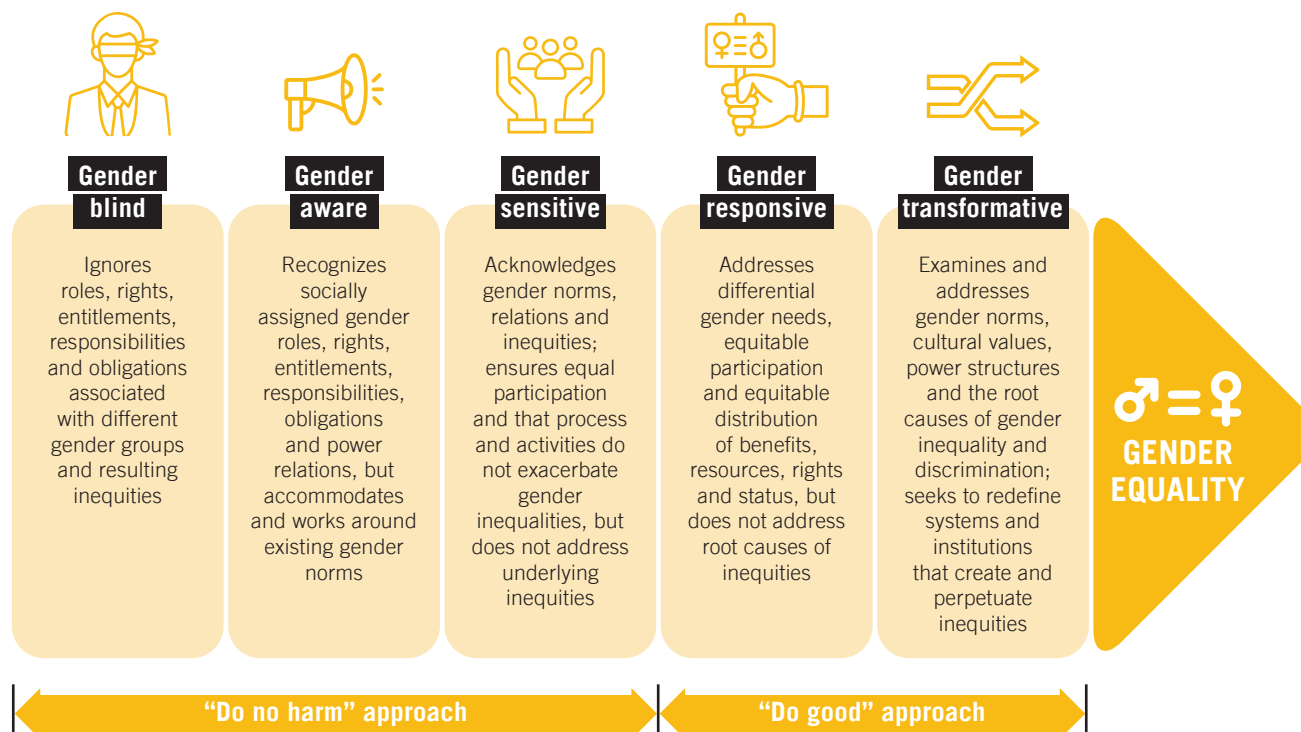
Appendix

Gender Framework for the UNGPs



Source: Gender guidance for the Guiding Principles on Business and Human Rights

Gender Equality Spectrum



Source: Gender Guidance Document for Implementing Entities (IEs) on Compliance with the Adaptation Fund Gender Policy



FURTHER READING

- United Nations Guiding Principles on Business and Human Rights.
- Kenya National Action Plan on Business and Human Rights, Sessional Paper No.3 of 2021.
- Gender guidance for the Guiding Principles on Business and Human Rights
- United Nations Sustainable Development Goals; Goal 5 and Goal 16.
- International Finance Corporation, Unlocking Opportunities for Women and Business, A Toolkit of Actions and Strategies for Oil, Gas and Mining Companies.

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ISBN 978-9914-740-16-5



9 789914 740165