



# Handling and Resolving Local-Level Concerns and Grievances

Human Rights in the Mining and Metals Sector

# Acknowledgements

The development of this publication would not have been possible without the input and support of the individuals below. ICMM gratefully acknowledges the following contributions:

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This report was developed by a team at Shift led by Lloyd Lipsett and supported by Daniel Berezowsky, David Kovick and Francis West.

## About Shift

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team of experts works across all continents and sectors to challenge assumptions, push boundaries, and redefine corporate practice, in order to build a world where business gets done with respect for people's dignity. Shift is a non-profit, mission-driven organization, headquartered in New York City. Visit [shiftproject.org](http://shiftproject.org) and follow us at [@shiftproject](https://twitter.com/shiftproject).

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## Special Thank You

The ICMM Community Support Group were key contributors to this document. The group provided direction, input and expert review to the guide. The working group comprised:

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Liesel Mack Filgueiras (Vale)  
Liam McHugh (World Coal Association)

A practitioner focus group in Peru provided valuable practical expertise in the development of this guidance. A special thanks to the ICMM members that provided the example case studies in this guide.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of December 2019. The International Council on Mining and Metals cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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# Executive Summary





For any project with potentially significant impacts – even those managed to the highest standards – community grievances are inevitable.

Having effective operational-level grievance mechanisms in place to systematically handle and resolve the grievances that arise helps to diffuse potential problems and provides channels for resolving issues that might otherwise escalate into protests, conflicts or legal disputes. They also provide an important tool to help companies assess the state of community relations and indicate where problems may arise. Investors understand this and are placing increasing emphasis on the need for robust grievance mechanism processes as part of their environmental, social and governance assessment of companies.

In recent years, the UN Guiding Principles on Business and Human Rights (UNGPs) effectiveness criteria have become the key international benchmark for implementing operational-level grievance mechanisms in a way that supports companies' broader responsibility to respect human rights including cooperating in remediation where a company has caused or contributed to harm. These criteria state that to be effective, a grievance mechanism should be legitimate, accessible, predictable, equitable,



transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue.

This guidance presents an updated version of ICMM's 2009 *Human Rights in the Mining and Metals Industry – Handling and Resolving Local Level Concerns and Grievances* guide.

Like the earlier version, guidance is provided on the ways in which companies can develop robust, credible and trusted mechanisms that give local communities a way to raise grievances. It also provides frameworks for dealing with grievances fairly in the eyes of both the community and the company. The updated guide integrates the eight UNGPs effectiveness criteria and leading good practice to set out how mining and metals companies can handle and resolve local community grievances effectively and in line with the UNGPs.

As well as exploring good practice in relation to the UNGPs effectiveness criteria, this guidance also discusses the internal aspects of grievance management, based on lessons learned from ICMM

members and other organisations. These internal aspects relate to a company's organisational structure and culture and are essential factors in developing and implementing an effective grievance mechanism that benefits both companies and communities.

The starting point for these internal factors – and for this guidance – is the understanding that grievance management is necessary and beneficial in order to support a proactive rather than reactive or defensive approach to grievances. But there are also other practical aspects, such as resource mobilisation, cross-team collaboration and senior management buy-in that companies need to consider.

Finally, the guidance includes a list of additional resources about operational-level grievance mechanisms, a checklist for reviewing existing mechanisms against the UNGPs effectiveness criteria, and some suggested considerations for adapting grievance mechanisms for different phases of the mining lifecycle.



# Overview of Good Practices for Effective Grievance Management



Companies can ensure grievance mechanisms have **legitimacy** by:

- Involving communities in the co-design of the grievance mechanism.
- Establishing an independent process for complex issues.
- Ensuring formal accountability for the grievance mechanism.



Companies can ensure grievance mechanisms are **accessible** by:

- Promoting the grievance mechanism.
- Providing multiple channels for accessing the grievance mechanism.
- Adapting channels to local culture and language.
- Making the grievance mechanism easy to use.
- Ensuring there is no retaliation for using the mechanism.
- Considering additional steps to ensure at risk or vulnerable groups can access the mechanism.



Companies can ensure grievance mechanisms are **predictable** by:

- Defining a clear process.
- Communicating clearly the outcomes that are available.
- Maintaining flexibility to adapt the process where necessary to respect rights.





Companies can ensure grievance mechanisms are **equitable** by:

- Providing access to information.
- Facilitating independent representation where necessary.
- Establishing an independent process if there is a perceived imbalance of power.



Companies can ensure grievance mechanisms are **transparent** by:

- Updating complainants regularly.
- Being transparent with communities about outcomes.
- Applying international standards for public reporting on the grievance mechanism.
- Balancing the need for transparency with respect for complainants' confidentiality.



Companies can ensure grievance mechanisms are **rights-compatible** by:

- Ensuring the process and outcomes respect human rights.
- Enlisting human rights expertise as necessary.
- Respecting affected stakeholders' rights not to use the grievance mechanism and to use other available channels.



Companies can ensure grievance mechanisms are a source of **continuous learning** by:

- Soliciting feedback from grievance mechanism users.
- Acting upon lessons for improving the mechanism and preventing future harm.
- Regularly assessing trends about grievances, including how outcomes are implemented.
- Establishing and continually refining grievance mechanism KPIs.



Companies can ensure grievance mechanisms are based on **engagement and dialogue** by:

- Resolving grievances through dialogue and joint problem-solving.
- Deepening community involvement in the grievance process.
- Engaging meaningfully with at risk or vulnerable groups about the grievance process and outcomes.
- Conducting a participatory evaluation of the grievance mechanism.



Companies can **strengthen** organisational structure and culture to support effective grievance management by:

- Promoting understanding that grievance management is normal and beneficial.
- Securing senior level management support for effective grievance management.
- Promoting cross-functional coordination and collaboration.
- Focusing on developing the right skills and competencies.
- Maintaining robust management systems.



# Glossary

**Affected stakeholders** are individuals whose human rights have been affected by a company's operations, products or services.<sup>1</sup>

**Grievances** are issues between a company and an affected stakeholder that should be received and resolved through the formal grievance mechanism. One of the overarching aims of operational-level grievance mechanisms is to avoid minor issues escalating into more serious issues or conflicts. As such, it is important to maintain a relatively low threshold for grievances.

**Grievance mechanisms** are a formalised means through which individuals or groups can raise concerns about a company's impact on them – including, but not exclusively, the impact on their human rights – and can seek remedy.<sup>2</sup>

**Human rights** are understood to be the rights included in the International Bill of Rights<sup>3</sup> and the principles concerning fundamental rights set out in the International Labour Organization (ILO) declaration on Fundamental Principles and Rights at Work. Depending on the circumstances, additional standards may also be relevant – not least those international conventions that protect the rights of potentially at risk or vulnerable groups (ie women, children, persons with disabilities, migrant workers and their families, ethnic minorities and Indigenous Peoples).

**Human rights based approach** is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.<sup>4</sup>

**Human rights grievances** relate to an actual or potential adverse impact on human rights. Not all human rights grievances are necessarily expressed in human rights terms.

**Human rights due diligence** is a systematic process used by companies to identify, prevent, mitigate and account for adverse human rights impacts from their operations and business relationships. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.<sup>5</sup>

**Remedy/remediation** refer to both the processes of providing remedy for an adverse human rights impact and the substantive outcomes that can counteract or make good the adverse impact. Outcomes may take a range of forms – for example apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines). They may also include the prevention of additional harm through, for instance, injunctions or guarantees of non-repetition<sup>6</sup>

**Stakeholder** refers to any individual who may be influenced by or can influence a company's activities.

**Stakeholder engagement/consultation** refers to an ongoing process of interaction and dialogue with its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaboration.<sup>7</sup>

1. Office of the United Nations High Commissioner for Human Rights (OHCHR), The Corporate Responsibility to Respect Human Rights: Interpretive Guide (2012), p. 8.

2. Ibid, at p. 68.

3. The International Bill of Rights consist of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (1966).

4. United Nations Human Rights Business Approach, <https://hrbportal.org/faq/what-is-a-human-rights-based-approach>

5. UNGP 17.

6. OHCHR (2012), at p. 7.

7. Ibid, at p. 8.







## 1.1 Why Have a Well-Designed Grievance Mechanism?

For any project with potentially significant impacts – even those managed to the highest standards – community grievances are inevitable. And it is right and responsible for companies to have an effective operational-level grievance mechanism in place to systematically handle and resolve the grievances that arise.

The UN Guiding Principles on Business and Human Rights (UNGPs) have made clear that having an effective operational-level grievance mechanism is a key part of all companies' responsibility to respect human rights and cooperate in remediation where a company has caused or contributed to harm. These principles set out eight criteria for effective operational-level grievance mechanisms, around which this guidance is structured (see Table 1).

### Mutual Benefits for Communities and Companies

Effective grievance mechanisms benefit both communities and companies by providing channels for raising and resolving issues that might otherwise escalate into protests, conflicts or legal disputes. For communities, the design and implementation of an effective grievance mechanism should signal a company's intention to formally respond to community issues, address potential impacts and respect human rights.

For companies, grievance mechanisms can serve as a tool to build local trust and strengthen stakeholder support for projects, as well as helping to identify potential and actual impacts that the company needs to address through operational changes or other forms of remedy.

Experience shows that operational-level grievance mechanisms are most effective when they are approached as a tool for dialogue, mediation and mutual problem-solving rather than as a fault-finding exercise. Having a predictable and fair process that enables community members to speak to – and be heard by – the company can be equally important to them as the resolution of particular issues. For companies, an effective grievance mechanism

should also support human rights due diligence processes and stakeholder engagement and can provide a legitimate process for addressing misperceptions or opportunistic claims.

### Respect for Human Rights

From a rights-based perspective, effective grievance mechanisms can serve several important functions in terms of accountability, providing remedy and supporting ongoing human rights due diligence. Not all mechanisms will necessarily serve all these functions at once. As such, many companies have multiple grievance mechanisms that support different objectives. For example, a whistle blower hotline that accepts anonymous grievances can contribute to accountability, but it may be less effective in providing a specific remedy to an individual issue.

Companies now have greater experience and more tools for tracking grievances, which provide greater opportunities for grievance mechanisms to contribute to ongoing human rights due diligence. Grievance mechanisms may be particularly useful as a source of information about actual and potential human rights impacts that require remediation (where there have been actual impacts) and/or mitigation (where there are trends that point to potential impacts in the future).

This reinforces the earlier point that grievance mechanisms can provide benefits to both companies and communities and act as a sort of 'early warning system' to help address issues before they result in actual human rights impacts or infringements or before less severe impacts escalate.

### Alignment with International Standards and Societal Expectations

Membership of ICMM requires companies to commit to our 10 principles for sustainable development and our 38 performance expectations. This includes a commitment to implement the UNGPs and provide local stakeholders with access to effective mechanisms for seeking resolution of grievances related to the company and its activities.

### An Increasing Focus on Grievance Mechanisms

Since the publication of ICMM's initial guidance in 2009, there has been increased international attention paid to operational-level grievance mechanisms.

- The UNGPs were adopted in 2011 and clarified the responsibility of all business enterprises to establish or participate in effective operational-level grievance mechanisms.
- The alignment and revision of other standards for responsible business with the UNGPs (eg OECD Guidelines for Multinational Enterprises in 2011 and IFC Performance Standards in 2012) has also clarified the importance of effective operational-level grievance mechanisms.
- Financial institutions and export credit agencies increasingly refer to the standards mentioned and include requirements that their clients implement effective grievance mechanisms as a condition for financing projects.
- Good practice guidance about grievance mechanisms has been produced for many different sectors (Appendix A).
- The UN Office of the High Commissioner for Human Rights is supporting a multi-year, multi-stakeholder 'Accountability and Remedy Project', which began in 2014. The project has already developed guidance on judicial mechanisms and state-based non-judicial mechanisms and will produce additional guidance on companies' operational-level grievance mechanisms.
- ICMM's performance expectations includes a commitment to provide local stakeholders with access to effective mechanisms for seeking resolution of grievances related to the company and its activities.

## 1.2 About This Guidance

### Background

This guidance on operational-level grievance mechanisms builds upon ICMM's overall work on business and human rights and is one of a number of good practice guidance publications and toolkits that ICMM has produced to encourage improved sustainable development performance.

It looks in depth at one of the key focus areas for human rights in the mining and metals sector by helping companies design and implement the mechanisms through which affected stakeholders can raise and resolve issues of concern using dialogue and mediation. The focus on grievance mechanisms complements the extensive, on-the-ground work by ICMM members to build strong, trusting relationships with local communities around their operations.

This edition of the guidance updates and builds upon ICMM's 2009 Handling and Resolving Local Level Concerns and Grievances guide, which was published in 2009. The update integrates the effectiveness criteria from the UNGPs and leading practices that are relevant to grievance mechanisms and access to remedy.

In recent years, the UNGPs effectiveness criteria have become the key international benchmark for implementing operational-level grievance mechanisms in a manner that supports companies' broader responsibility to respect human rights.

They state that, to be effective, operational-level grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue. For full definitions, see Table 1 in the practical guidance section of this chapter.

Mining and metals companies can use this guidance to inform the design, implementation and continuous improvement of their operational-level grievance mechanisms in line with the effectiveness criteria in the UNGPs. It may also be of interest to companies in other sectors, such as agriculture, oil and gas and infrastructure.





## Focus and Principles

This guidance focuses on how companies can resolve grievances at the operational level, rather than in other local, national or international forums; while community grievances are sometimes raised at these higher levels, their roots are at the operation. And, as a matter of good practice, this is also where companies should focus their resolution efforts – engaging directly with communities and their representatives in the vicinity of operations to resolve issues.

We start from the perspective that handling and resolving grievances is a natural extension of good community relations and stakeholder engagement, and rests on a foundation of effective and responsible management of interactions with communities.

Grievance mechanisms should be rooted within a company's community relations programmes and can substantially reinforce other efforts to build local trust. But, at the same time, they should not be considered a substitute for other important elements of community relations, such as local consultation processes and social investment programmes, nor should they be developed in isolation from these activities. It is also important that the mechanism has sufficient independence to avoid situations where community relations programmes are able to unduly influence grievances related to their activities.

## Lessons for Other Types of Operational-Level Grievance Mechanisms

This guidance is focused on grievance mechanisms for local communities and does not cover mechanisms designed specifically for workers or contractors and suppliers to raise grievances. However, there is a significant degree of overlap in the basic approach and criteria that should be applied to these other types of grievance mechanisms.

Additionally, local workers, contractors and suppliers – who are also community members – may use the community grievance mechanism because they do not have access to, or do not know of, other effective mechanisms.

Operational-level grievance mechanisms for workers, contractors and suppliers can equally benefit from review and continuous improvement based on the effectiveness criteria in the UNGPs. For companies across all industries, including ICMM members, there is an opportunity to reflect on the lessons learned from the last decade of practice related to community grievance mechanisms and to see how the good practices can be applied internally to grievance mechanisms for workers and in the value chain for contractors and suppliers.

## Practical Guidance

This updated guidance uses the eight UNGPs effectiveness criteria as a central reference point. It first outlines core concepts and terminology and is then structured around a summary of good practices and case studies that illustrate each of the eight UNGPs effectiveness criteria (Table 1).

In addition to the effectiveness criteria in the UNGPs, company experience shows that an appropriate organisational structure and culture are key factors or preconditions for having an effective grievance mechanism that provides mutual benefits to companies and communities. Therefore, this guidance also discusses the following internal aspects of grievance management:



- Companies should understand that grievance management is beneficial in order to support a proactive rather than reactive or defensive approach to grievances.
- It is important to demonstrate support for effective grievance management from top leadership to help focus the necessary attention, time and resources at the site level.
- Cross-functional coordination and collaboration is necessary to respond effectively and ensure that any necessary operational changes are made to avoid similar grievances in the future. It is also important to ensure that outcomes from a grievance mechanism are implemented in practice.
- Good grievance management requires that people within the company have the necessary training and soft skills to respond with empathy and solve problems collaboratively.
- Management systems are part of good grievance management as they provide the necessary tools to ensure that timelines are followed, responses and corrective actions are implemented, and that the issues raised are analysed and tracked over time.

**Table 1: The Eight UNGPs Effectiveness Criteria: Definitions and Good Practices Explored in This Guidance**

Definitions	Good practices
<b>UNGPs Effectiveness Criteria for Grievance Mechanisms<sup>1</sup></b>	
<b>Legitimacy</b> means enabling trust from the stakeholder groups for whose use the mechanism is intended and being accountable for the fair conduct of grievance processes.	<ul style="list-style-type: none"> <li>— Involve communities in the co-design of the grievance mechanism.</li> <li>— Establish an independent process for complex issues that can't be resolved unilaterally by the company.</li> <li>— Ensure formal accountability for the grievance mechanism.</li> </ul>
<b>Accessibility</b> means making sure the mechanism is known to all stakeholder groups for whose use it is intended and providing adequate assistance for those who may face particular barriers to access.	<ul style="list-style-type: none"> <li>— Promote the grievance mechanism.</li> <li>— Provide multiple channels for accessing the grievance mechanism.</li> <li>— Adapt the channels to local culture and language.</li> <li>— Make the grievance mechanism easy to use.</li> <li>— Ensure there is no retaliation for using the mechanism.</li> <li>— Consider whether additional steps need to be taken to ensure vulnerable groups can access the mechanism.</li> </ul>
<b>Predictability</b> means providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.	<ul style="list-style-type: none"> <li>— Define a clear grievance process.</li> <li>— Communicate clearly the outcomes that are available.</li> <li>— Maintain flexibility to adapt the process where necessary to respect rights.</li> </ul>
<b>Equitability</b> means seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.	<ul style="list-style-type: none"> <li>— Provide access to information.</li> <li>— Facilitate independent representation where necessary.</li> <li>— Consider establishing an independent process if an imbalance of power is perceived.</li> </ul>

<sup>1</sup> The definitions in this section are taken verbatim from UNGP 31.

Definitions	Good practices
<b>Transparency</b> means keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.	<ul style="list-style-type: none"> <li>— Update complainants regularly</li> <li>— Be transparent about outcomes with communities</li> <li>— Apply international standards for public reporting on the grievance mechanism</li> <li>— Balance the need for transparency with respect for complainants' confidentiality.</li> </ul>
<b>Rights-compatible</b> means ensuring that outcomes and remedies accord with internationally recognised human rights.	<ul style="list-style-type: none"> <li>— Ensure the process and outcomes respect human rights</li> <li>— Enlist human rights expertise as necessary</li> <li>— Respect the rights of affected stakeholders not to use the grievance mechanism and/or to use other channels that may be available.</li> </ul>
<b>A source of continuous learning</b> means drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.	<ul style="list-style-type: none"> <li>— Solicit feedback from grievance mechanism users</li> <li>— Ensure that lessons for improving the mechanism and preventing future harm are acted upon</li> <li>— Regularly assess grievances trends</li> <li>— Establish and continually refine the KPIs for grievance mechanisms.</li> </ul>
Operational-level mechanisms should be <b>based on engagement and dialogue</b> : consulting the stakeholder groups for whose use they are intended on their design and performance and focusing on dialogue as the means to address and resolve grievances.	<ul style="list-style-type: none"> <li>— Resolve grievances through dialogue and joint problem-solving</li> <li>— Deepen community involvement in the grievance process</li> <li>— Meaningfully engage vulnerable groups in the grievance process and outcomes</li> <li>— Conduct a participatory evaluation of the grievance mechanism.</li> </ul>

### 1.3 Terminology

A grievance is a type of community issue involving interaction between the community and the company that has risen to a degree of concern that it becomes a source of resentment and/or one that is more formally registered with the company.<sup>9</sup>

Grievances may also be referred to as 'concerns', 'disputes' and 'complaints'. Some companies and stakeholders prefer not to use the term 'grievance mechanism' because of possible negative connotations. Instead, they may use terms such as 'dialogue mechanism' or 'feedback mechanism'.

We use the terms 'grievance' and 'grievance mechanisms' throughout this guidance (see following page for guidance on when a concern should be recorded as a formal grievance). But we recognise that,

as the UNGPs note, these terms may not always be appropriate or helpful when applied to a specific mechanism or context, though the criteria for effectiveness remain the same.<sup>10</sup>

We encourage companies to use whatever terminology supports a clear internal and external understanding of the mechanism's purpose and its effective implementation in the local context, while refraining from using terminology that may confuse or mislead affected stakeholders with regards to the mechanism's use or objective.

One reason for seeking greater consistency in the definitions of 'concerns' and 'grievances' relates to public reporting. Companies are now reporting more information about grievances in their sustainability and corporate reports, and external stakeholders and

9. This definition is aligned with the definitions used in other guidance on grievance mechanisms, notably by the Mining Association of Canada (2016), IPIECA (2012), IFC (2009) and ICMM (2009).

10. See: Commentary to UNGP 31.

company managers will have more useful and comparable information if all companies and operations use a similar definition for grievances. Otherwise, one company (or operation) may report on hundreds or even thousands of grievances whereas another company (or operation) may report only a small number of grievances – even though both are facing very similar issues and dynamics with local communities.

#### When Is a Concern or Issue a Formal Grievance?

The purpose of having an operational-level grievance mechanism is to resolve issues before they escalate into more serious disputes or conflicts. So, it is important to have a relatively low threshold for registering a concern or issue as a formal grievance.

On the other hand, it would be challenging if every issue raised by community members needed to be characterised as a grievance and resolved through a formal process.

For companies, this means striking a careful balance between providing flexibility for operations to resolve some issues informally and maintaining a degree of oversight to ensure that adequate remedies are being provided.

If a concern or issue meets any one or more of the following criteria, it is recommended that the concern or issue be registered as a formal grievance:

- The issue raises potential human rights impacts.
- The affected stakeholder does not want to resolve the issue informally.
- The issue has been raised previously by this person or by other stakeholders.
- The issue requires the involvement of other departments or actors to be resolved.
- The issue should be tracked by the company.



The important conceptual link between human rights and grievance mechanisms has presented questions about what constitutes a ‘human rights grievance’. In this regard, the UNGPs note that grievances are frequently not framed in terms of human rights and many do not initially raise direct human rights related issues. Regardless, wherever a grievance raises potential impacts on and/or implications for human rights, care should be taken to ensure that they are addressed in line with internationally recognised human rights good practice.<sup>11</sup> As will be discussed in the following section, good practice suggests that companies should try to understand the potential human rights impacts of all grievances rather than only considering human rights if and when they are mentioned explicitly.

<sup>11</sup>. See Commentary to UNGP 31(f).



The following section provides guidance for companies to enhance their grievance mechanisms by applying the effectiveness criteria from the UNGPs. Each sub-section provides the relevant definitions from the UNGPs followed by practical guidance derived from company experience.



## 2.1 Ensure Grievance Mechanisms Have Legitimacy

Legitimacy means enabling trust from the stakeholder groups for whose use the grievance mechanism is intended and being accountable for the fair conduct of grievance processes.

Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust.<sup>12</sup>

Legitimacy encompasses the basic notions of trust, accountability and fairness that are essential for satisfactory dispute resolution and as such is the first and overarching criterion for effective grievance mechanisms.

In many respects, the implementation of the other effectiveness criteria below should all contribute to reinforcing the overarching goal that a company's grievance mechanism should be perceived to be legitimate by those who use it.

### Involve Communities in Co-Design of the Grievance Mechanism

Meaningfully involving communities in the co-design of a grievance mechanism is the surest way to ensure its legitimacy. It also reflects the eighth effectiveness criteria: that the design and conduct of grievance mechanisms should be based on dialogue and engagement (discussed later in this chapter).

<sup>12</sup>. UNGP 31(a) and commentary.

And as companies have become more familiar and comfortable with grievance mechanisms, opportunities to do this at the outset of new projects have opened up.

For existing projects where there may not have been extensive prior consultation about grievance mechanisms, companies can involve communities in the evaluation and re-design of a mechanism to improve its legitimacy and effectiveness.

Involving communities in the design and implementation of a grievance mechanism is both a rights-based approach and a pragmatic approach. Rights-based approaches emphasise the importance of empowering affected stakeholders and facilitating their participation in process design and decision-making. Practically speaking, consulting with communities should remove much of the guesswork about how to customise the mechanism to the local context and can send an important signal about respecting people and their rights from the outset of a project.

While it may be difficult to involve an entire community in the design of a grievance mechanism, companies can work with their appointed representatives to understand the needs, customs and preferences of local communities. When doing so, it is essential to consider at risk or vulnerable groups needs and the potential barriers they face as part of the design process. For example, in some communities, members of a certain sex or ethnic origin may be less likely to participate in public consultations and may need to be engaged in other ways.

- **Access to grievance mechanisms:** Individuals in communities may be exposed to some barriers that prohibit their access to grievance mechanisms. In other words, they are “involuntarily excluded” ie there are some societal barriers to inclusion. The companies firstly need to optimise accessibility of/to grievance mechanisms. They can do this by improving “Access” ie actual physical/other ways of ensuring that all community members can access grievance.
- **Use of grievance mechanisms:** Once access is assured companies need to think about “use”. ie the fact that a grievance mechanism exists does not necessarily translate to use (we have seen this in many developing projects), so companies need to

encourage awareness/knowledge about the mechanisms in place, and regularly test the communities’ awareness of the mechanism’s effectiveness. In effect, each community member should know how to go about lodging a grievance.

### **Establish an Independent Process for Complex Issues**

In particularly complex situations, it may make sense for the project to establish an independent process for particularly serious issues or allegations, or where there is a systematic pattern of grievances, that cannot be resolved by the company’s regular grievance mechanism.

Some companies have established independent processes to address issues of Indigenous Peoples’ rights or gender-based violence – see Sakhalin II case study. Others have used independent processes proactively to tackle systematic issues connected to a particular phase of the mining lifecycle – for example, compensation issues related to a land acquisition and resettlement.

Establishing an independent process will involve surrendering a certain amount of control over outcomes, but it can provide a legitimate path forward for resolving issues that would otherwise likely escalate. And by ‘removing’ more serious or systemic issues from the scope of the normal grievance mechanism, an independent process can help ensure that other issues raised by affected stakeholders are addressed in a timely and effective way. Without an independent process and if the normal grievance mechanism were unable to address the serious or systematic issues, this may undermine its overall credibility and legitimacy to address more routine issues as well – see the MMG case study on social incident management.

## Case Study

### Involving Indigenous Communities in Russia

During the construction phase of the Sakhalin II (operated by Shell) oil and gas operation in Russia, it became apparent that the needs of Indigenous Peoples were not sufficiently reflected in the design of the project's community grievance mechanism.

*'An independent monitoring team on the Sakhalin indigenous Minorities Development Plan (SiMDP), a Sakhalin Energy sponsored project aimed at generating benefits to the island's indigenous population, noted concerns expressed by Indigenous Peoples related to the distribution of benefits; these concerns were not reaching the community grievance procedure.'*

*'To address these concerns, the company offered to discuss setting up a separate grievance procedure to address issues related to SiMDP. ... This grievance procedure was designed to deal solely with grievances and concerns related to the SiMDP. The new grievance procedure was discussed with and approved by indigenous communities during public consultations in all seven districts where Indigenous Peoples reside. These discussions included the procedure's principles, governance structure, communication and accessibility. The procedure was accepted at a special conference of indigenous communities and the discussion and approval process was documented on video and in minutes.'*

Learn more in Annex C of [Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned](#).

## Case Study

### Social Incident Management

MMG has well established grievance procedures aligned to the UNGPs. Operating in complex jurisdictions, MMG is always looking for new ways to manage social risks before these pose significant risks to the business or the community.

In 2018, MMG through its Research Partnership Agreement with the University of Queensland Centre for Social Responsibility in Mining (CSRSM) initiated a research project to examine social incidents in MMG, and to assess the extent to which existing safety incident investigation methodologies could be applied to support better learning from events and to develop a predictive model and enhance controls.

The research enabled MMG to evaluate its "grievance tipping point" that is a point at which a grievance about an issue escalates into an incident, which may be a physical or reputational event. The research project assessed the potential application of several common incident investigation approaches, and identified where these suit a social incident, as well as the challenge of assessing events catalysed by actions internal to MMG, as opposed to those which might arise due to the roles of external actors, including non-community actors.

MMG is reviewing the learnings from the CSRSM research to identify opportunities to improve the effectiveness of its social incidents management process and to ensure that clear criteria are developed for when investigations should be conducted within the relevant site; within MMG but independent of the site; and with the involvement of external independent stakeholders.



Before establishing an entirely new independent process, companies should consider the range of judicial and non-judicial mechanisms that already exist in a particular country context; there may well be institutions or organisations that have a mandate and the expertise to address the issue(s) at hand. For example, some companies have worked with national human rights institutions (NHRIs)<sup>13</sup> as a complement or alternative to their own operational-level grievance mechanism.

In some cases, a customised process may provide the most effective path forward – particularly where existing judicial and non-judicial mechanisms present significant barriers to access, are widely distrusted or are unsuited to the particular task of reconciliation.

In practical terms, different sorts of independent processes can be established, and there are many different actors who can play helpful third-party roles (eg local village elders, process experts/mediators, NGOs, government representatives and administrative bodies). The local context and the particular issues to be addressed will likely dictate what is most appropriate. Whatever the choice, it is critical that the process and the third-party actors involved are trusted by both the community and the company.

Three possible options are:

- **Engaging a respected third party as a mediator or facilitator.** In some operations, for example, third parties have facilitated ‘dialogue tables’, bringing

both sides together to build agreement on particularly contentious issues. Mediators can help facilitate dialogue and problem-solving while leaving the ultimate decision in the hands of the company and community members. Some companies have also used respected third parties as ombudspersons to act as conduits between an affected stakeholder and the company or to conduct independent investigations and make recommendations to the company.

- **Establishing a multi-stakeholder commission,** including company, community and third parties, to investigate and resolve specific issues. This approach can be helpful to resolve, for example, land compensation issues or allegations of human rights abuses, where involving a third-party expert in the process can help the company and community agree on the application of the relevant standards.
- **Appointing an independent panel of experts** to investigate and make recommendations on specific issues. This approach can help establish positive relationships from the outset of operations – particularly where there may be historical mistrust or legacy issues associated with mining. It can also help existing operations conduct a credible review of their past performance or identify ways to tackle ongoing challenges that command broad support. It is important to ensure governance is in place to maintain perceptions of and actual independence.



## Case Study

### Establishing an Independent Grievance Mechanism in Chile

Alianza Valor Minero is a multi-stakeholder institution that brings together unions, civil society organisations, universities, private companies and government agencies in Chile. In September 2018, it presented a proposal to create an Agency for Territorial Dialogue (ATD).

The purpose of the ATD is to ensure meaningful dialogue, under equal conditions, to inform the decision-making of future investments and large-scale extractive projects. It also aims to help inform

all parties about the project and to build trust among them.

In its first phase, the ATD would be a voluntary mechanism; long term, it is intended to allow all stakeholders to reach binding commitments and to serve as an alternative means for handling grievances.

The ATD has five key components: a permanent roundtable for dialogue, an alternative mechanism to resolve grievances, an evaluator of the quality of dialogue, certified facilitators and a fund to support dialogue. [Learn more about the ATD on the Alianza Valor Minero website.](#)

Whichever approach is chosen, implementing an independent process can be challenging. As already mentioned, the process should run alongside and not be a substitute for the company's normal grievance mechanism. Similarly, it should reinforce and not undermine existing channels of communication between the operation and local communities. Care should also be taken to make sure it does not divert attention or resources from efforts to improve judicial and non-judicial remedies in countries where these are in need of reform.

Additional resources may be needed for an operation to adopt an independent process. For example, communities may need training and other support to engage effectively with the process. And third parties will need to be chosen carefully to avoid selecting individuals or groups that have an inherent bias either for or against industry and to select those who will be genuinely trusted by the local community. The operation must also make efforts to ensure all parts of the

community are involved in the process and that any proposed solutions are understood and accepted by all affected stakeholders.

Finally, the operation will need to adopt a mindset of openness to criticism and to potential outcomes with which it may not agree. Many independent processes involve an explicit agreement at the start for all sides to be bound by the outcomes – or at least for the company as well as other parties involved to explain publicly if they decide not to implement the recommendations from the independent process.

Despite these challenges, a number of operations have judged that establishing an independent process is likely to be the most effective way to address complex, challenging and intractable issues that may otherwise impact adversely on human rights and undermine their social licence to operate. While the independence of the process takes matters outside the company's direct control, this is also precisely what gives it additional credibility and legitimacy with stakeholders.

13. NHRIs are created by governments but operate independently to provide public education about human rights, as well as to investigate and provide remedy for infringements on human rights. They often have specialised expertise on business and human rights and can therefore play a role in mediating between companies, communities and governments in complex situations.

## Case Study

### Undertaking Independent Fact-Finding Mission Into Land Dispute

In response to a protracted land dispute at the Conga copper and gold project between Minera Yanacocha and the Chaupe family, the operation's majority owner Newmont Goldcorp commissioned an independent fact-finding mission.

The mission was conducted by non-profit organisation RESOLVE and aimed to develop a fact-based understanding of the situation. It aimed to provide Newmont Goldcorp with an independent examination of its adherence to international human rights standards, including the Voluntary Principles on Security and Human Rights, throughout the land dispute.

RESOLVE established an independent team led by a former Canadian Ambassador to Colombia and two other civil society representatives with mining sector experience. It also established an Advisory Group of experts with NGO, human rights and industry knowledge to assure the mission's independence, integrity and credibility. The mission was funded through a project agreement with Newmont Goldcorp requiring them to pay unrestricted, scheduled instalments that were under the sole authority of RESOLVE.

The mission team visited Peru three times to collect information and interview key individuals, and then prepared a report that identified findings and areas for improvement related to the land dispute in the areas of security management and understanding risks to human rights. The mission team acknowledged the complex circumstances surrounding the dispute and emphasised the importance of understanding facts (though acknowledged a number remained unclear) and of using available management systems, risk and conflict resolution tools to better understand, assess and manage outcomes.

Newmont Goldcorp and Yanacocha committed to internally socialising the report and its findings to improve company performance. While the report did not fully agree with some of the report's interpretation of events, the company recognised that it could improve in certain areas and developed an action plan to make changes in a transparent and collaborative manner.

In its public response to the mission's report, the company was hopeful that the 18-month long process and the final report would open pathways to begin a dialogue with the family on reaching a fair and responsible resolution to the dispute with Yanacocha.

[Learn more about the mission and read the final fact-finding report on the RESOLVE website.](#)





## Ensure Formal Accountability for the Grievance Mechanism

It is important for companies to establish a clear structure of formal accountability for the grievance mechanism to demonstrate, both internally and externally, that it takes it seriously. Many companies have developed formal governance and reporting structures that involve oversight from senior leadership from corporate headquarters – and even from their boards of directors. Internally, these formal oversight and reporting requirements help prioritise grievance management amid the company’s many other responsibilities and can help embed an approach that is aligned with its human rights commitments.

For some external observers, formal accountability is an important indicator of the overall legitimacy of a company’s approach to grievance management. For local community members, it can also be important to know there is oversight from corporate headquarters.

At the site level, there are other aspects of day-to-day accountability for follow-up on individual grievances that may be equally important to local community members. These are discussed in greater detail in the following chapter on the internal aspects of grievance mechanisms.

Effective accountability requires clear and transparent processes for documenting and recording grievances. Informality in how grievances are handled may seem to be friendly and efficient, but it can lead to serious inconsistencies in the process and outcomes for different grievances. It can also result in uncertainty over whether grievances have been closed out properly, any agreed remedy has been provided or other follow-up action has been taken. In short, it deprives the company of the tools to ensure that the grievance mechanism is operating effectively and serving its objectives. This is explained further in the chapter on the internal aspects of grievance mechanisms below.



## Case Study

### A mediated solution

The Oyu Tolgoi (OT) project (operated by Rio Tinto) is in Mongolia's Desert where nomadic camel herding is a way of life for many families. In 2012 and 2013 a group of herders raised concerns they had not been adequately consulted about a government-endorsed diversion planned for the Undai River, a water body that runs through OT's mining area. They also said herding families were being inadequately compensated to move their winter shelters or change grazing patterns to make way for project infrastructure. The herders, supported by two Mongolian Non-Government Organisations (NGOs), lodged two complaints with the World Bank's Compliance Advisor Ombudsman (CAO). The CAO is an independent accountability mechanism established by the World Bank to receive and help resolve complaints about projects that receive funding support from the International Finance Corporation (IFC).

OT committed to engage with the herders through a voluntary dispute resolution process, to be mediated by the CAO. While at the time OT had (and continues to have) a robust complaints and grievance process which can be activated in these circumstances, the herders preferred to go through an externally mediated process. Through maintaining a steadfast focus on sustainable long-term solutions, the parties signed two resolution agreements in May 2017 which featured robust milestone-specific action plans. Four years of negotiation included OT designating adequate resources to prepare for, attend and report on meetings. Support from Rio Tinto's global team was continuously available for the local site-based team. OT also established an internal cross-functional working group led by the Communities Manager, comprising colleagues from the communities, human resources, procurement, environment and legal functions. OT and Rio Tinto's senior leadership were also kept informed. Agreed milestones were devised to ensure a common understanding was reached on key issues and included the completion of independent studies on water impacts and herder compensation.

The CAO also provided conflict resolution training to all parties participating in the mediation process, which helped to upskill and build trust between

participants. The 2017 agreements included commitments from OT, as well as local governments, to construct new water wells and upgrade existing ones, develop a pasture management plan, and conduct regular participatory monitoring of the project's environmental impacts. OT also committed to review compensation outcomes and agreed to undertake further initiatives to boost the livelihood sustainability of all local herders, including enhanced training and employment initiatives. The CAO's administrated process formally closed in March 2019 – seven years after the complaint was lodged and six years after the mediation started. Today, OT continues to implement the agreements along with herders and local government.

### Lessons to share

- Sustainable dispute resolution is unlikely to come from looking for quick solutions and having 'one winner'
- Successfully resolving a dispute needs time and resources and a 'commitment from the top' to reach a meaningful solution
- Setting up governance frameworks that can ensure long-term implementation of remediation outcomes is key – implementation may be required long after an agreement is signed and the project needs to be equipped to do it, including taking into account staff turnover
- Community concerns can only be effectively addressed by truly understanding local communities' concerns and drivers – this understanding can only be built by open, honest and regular communication
- Do not underestimate the importance of consulting with community members in a range of project studies, including to help build technical understanding so that community members can better understand project impacts. Constructive relationships depend on trust including procedural fairness – this is true of consultations around project decisions and grievance handling. It is important to have a level playing field for all parties and provide a process through which the parties can and will find mutually satisfactory solution.



## 2.2 Make Grievance Mechanisms Accessible

**Accessibility means ensuring the grievance mechanism is known to all stakeholder groups for whose use it is intended and providing adequate assistance for those who may face particular barriers to access.**

Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal.<sup>14</sup>

### Promote the Grievance Mechanism

A basic starting point for accessibility is for operations to publicise and promote the grievance mechanism. Put simply: if people don't know about the mechanism, they won't use it.

In some cases, a company's proposed grievance mechanism will be outlined during the initial public hearings about a mining project. When mechanisms have been established at a later phase of project development, they are often promoted less widely.

But to be accessible, a mechanism needs to be explained and promoted on an ongoing basis. This both increases awareness of the mechanism within the community and reinforces the message that the company is open to receiving and resolving grievances.

Community relations staff often play an important role in promoting grievance mechanisms as part of their broader responsibility to engage with and provide information to community members. They are often responsible for receiving grievances through different channels and providing the initial acknowledgment and response on behalf of the company.

These staff tend to be well known among community members and are regularly 'in the field' consulting on issues of mutual concern. As such, they are well-positioned to remind people of the existence of the grievance mechanism and its procedures. Companies should empower community relations staff to encourage and help people to use the mechanism in circumstances when an issue or concern cannot be simply or informally resolved.

Company managers can also play an important role in accessibility by highlighting the grievance mechanism in meetings with community members and showing management support for proactive grievance handling.

Information about the grievance mechanism may be included in local publications and the company's informational materials (eg newsletters, flyers, posters) that are distributed locally. And companies can also provide detailed briefings to local leaders, community representatives and NGOs, so that they can in turn direct community members to the mechanism when they become aware of an issue that merits the company's attention.

It is important that companies promote the grievance mechanism among vulnerable groups within communities. By definition, vulnerable groups are most likely to experience adverse impacts. But they may also be the least able to or comfortable with raising issues to the company. They may be excluded from meetings at which grievance mechanisms are explained and promoted.

Companies should therefore consider additional strategies and means to promote the grievance mechanism within different vulnerable groups. Working with NGOs that support vulnerable groups at the local level may be an effective way to do this.

### Provide Multiple Channels for Accessing the Grievance Mechanism

The more channels that community members have to raise grievances, the more likely it is that the grievance mechanism will be used effectively. Channels may include face-to-face meetings; community information centres; dedicated telephone lines; email addresses and instant messaging systems or applications; letters and other written notes.

One practical reason for consulting with communities about the initial design of the grievance mechanism is to help identify which channels affected stakeholders are most likely to use. It is also probable that different demographic groups within the community will have different preferences in terms of how they would access a grievance mechanism, which reinforces the importance of providing multiple channels.

Feedback from companies and communities suggests that community information centres are particularly effective channels for grievance mechanisms because they are located in the community and are usually

<sup>14</sup>. UNGP 31(b) and commentary.



staffed by community relations staff with whom community members are familiar and comfortable.

Community members are increasingly using social media and instant messaging platforms to express concerns, grievances and other criticisms about a company's operations. As a result, some companies engage in social media monitoring (see case study on the future of mobile apps as access channels below) to understand potential issues and impacts, while others have begun using social media platforms as an official channel for affected stakeholders to lodge a formal grievance.

Social media platforms can contribute to greater accessibility and transparency about grievance

mechanisms and mean that companies more quickly receive information that is needed to investigate and address issues. At the same time, social media channels may also present some challenges in terms of identifying the person raising the grievance, as many people use pseudonyms or nicknames.

Ultimately, companies can decide whether to use social media to promote the existence of their grievance mechanism, or as a specific channel by which community members can access the mechanism. In communities where internet access may be limited, social media channels should not be the only point of contact or entry.

## Case Study

### The future of mobile apps as access channels

Some companies have developed specific applications ('apps') for mobile devices that give community members and workers an alternative channel by which to lodge grievances.

One example from another industry sector is the Fair Labor Association's (FLA) Connect app. It offers agricultural supply chain workers various pathways for two-way communication including information sharing, providing general feedback and raising concerns and grievances directly to the FLA.

The app is designed to be accessible to people of different ages, genders, cultures, levels of education and those with specific needs, and aims to give workers the opportunity to provide ongoing feedback on their workplace conditions.

Compared to other social media platforms, FLA-Connect, by being structured around specific themes related to workers' rights, can provide the company with more targeted feedback from affected stakeholders. This should in turn facilitate a more constructive response to their queries or grievances.

Mining sector companies have also begun to experiment with mobile applications and social media platforms to support stakeholder engagement, communications and grievance management. A number of companies have developed customised platforms for logging and tracking grievances, some of which are integrated into broader systems for social performance management and enterprise risk management. While it is too early to evaluate their effectiveness, the potential for social media and mobile applications should be considered in the future design of grievance mechanisms – and in stakeholder engagement more broadly.

### **Adapt Channels to Local Culture and Language**

It is important to design the grievance mechanism so that language, literacy and other cultural factors don't present a significant barrier to community members wanting to lodge grievances. The mechanism must be open – and seen to be open – to all sections of the community, including women, minorities and vulnerable groups.

In certain societies, some individuals may be reluctant to report concerns or grievances to members of a different ethnic group, the opposite sex or of a specific sexual orientation or gender identity. Being accessible may therefore necessitate having a team of community relations staff that reflect the community's ethnic, sexual and gender diversity.

A grievance mechanism also needs to be culturally sensitive, allowing for concerns to be presented in local languages and in a form that is sensitive to local needs. This reinforces the important role that community relations staff can play – especially those that are familiar with and accepted by the local community. They can help translate issues raised by community members into the working language of the company, rather than putting the onus on the community member to do so.

Incorporating traditional ways of resolving grievances can be a powerful means of enhancing the mechanism's accessibility and perceived legitimacy (albeit care needs to be taken that this does not disenfranchise less influential parts of the community). Accounting for different languages, literacy and other cultural factors should not, however, interfere with the requirement to formally record grievances internally in order to ensure proper follow-up and tracking.

### **Make the Grievance Mechanism Easy to Use**

An accessible mechanism should be easy for local people to use. Expecting local people to fill out written forms or to visit company facilities to set out their concerns and risks creates unnecessary hurdles. Local community information centres that support a variety of stakeholder engagement functions can be a very accessible channel for submitting grievances.

It is good practice to allow grievances to be conveyed verbally by affected stakeholders to community

relations staff or other personnel, but concerns should also be recorded in writing – particularly where community members lack literacy skills. Ideally, the personnel should validate with the complainant that the information recorded accurately captures the grievance.

This also offers an opportunity to provide the complainant with information about the next steps and timelines for the grievance process. The importance of allowing verbal grievances reinforces the need for community relations staff to have relevant skills – language skills, cultural awareness and empathy – so that they are approachable to affected stakeholders.

Open communication and accessibility can be further encouraged by stating explicitly that all sorts of issues can be raised through the mechanism, rather than restricting grievances to certain categories of issues. The mechanism should be capable of receiving grievances about any issue of concern to local people whether environmental, social, cultural or economic, either directly or indirectly related to the operation. However, when the grievance raises issues that are only indirectly related to its operations, the company may need to work with the complainant and other actors during the investigation and follow-up process.

### **Ensure There Is No Retaliation for Using the Mechanism**

It is quite natural for people to fear that grievances will be met with defensiveness or hostility and companies may need to reassure communities that there will be no negative consequences or reprisals made against them if they do raise concerns. It is important that company managers and community relations staff continually reinforce this and the message that the operation is open to receiving and resolving grievances. Reporting back to communities about the resolution of past grievances provides a good opportunity to highlight the mutual benefits of grievance mechanisms and confirm that there have been no reprisals.

Beyond providing assurances to community members, many companies also allow for anonymous or confidential grievances. This may be particularly important in contexts that are characterised by mistrust, conflict, gender-based violence or political repression. While anonymous grievances may be more difficult to investigate and make it harder to provide remedies to

affected individuals, they are nonetheless important to allow community members to flag issues and give the company an opportunity to modify its operational practices as necessary.

‘Whistle-blower hotlines’ are one way of providing a dedicated channel for anonymous or confidential grievances. In other cases, companies may accept anonymous grievances, without complainants’ personal information, through the normal grievance mechanism (eg via an anonymous telephone call, letter or grievance form).

Finally, companies should make clear to communities that the existence of the company’s grievance mechanism does not in any way inhibit their access to the judicial and non-judicial processes available to them. While operational-level grievance mechanisms may have fewer barriers to access than other judicial or non-judicial mechanisms, the fact that other mechanisms exist should be explicitly acknowledged by companies as part of its broader commitment to, and messaging about, access to remedy and respect for human rights.

### **Protecting Human Right Defenders**

Increasing reprisals and violence against those who speak up about human rights and challenge company or government behaviour has brought global attention to the issue of protecting human rights defenders.

While human rights defenders are often characterised as advocates, trade union leaders or the representatives of Indigenous Peoples, any affected stakeholder who speaks up about sensitive issues with human rights implications may be considered a human rights defender.

This reinforces how important it is that companies design grievance mechanisms that have appropriate safeguards against reprisals or retaliation and which accept that affected stakeholders may legitimately make use of other judicial or non-judicial processes to raise issues.

Allowing anonymous grievances and having in place strict safeguards on the confidentiality of personal information are some ways to protect against reprisals. Companies can also diminish the risk of retaliation by developing an internal organisational

culture of and capacity for openness about grievances, and a better understanding of human rights.

In contexts where reprisals are a significant concern, a company could provide access to third parties such as independent lawyers or NGOs who can represent affected stakeholders at risk of reprisals. These third parties could provide some measure of protection and confidentiality to the affected stakeholders.

In these high-risk contexts, it is also important for companies to ensure the anonymity of affected stakeholders in public reports or statements. Companies should be prepared to speak out publicly about their commitments to human rights and their approach to grievances, to ensure that their position is clear, and their silence is not mistaken for acquiescence with potential infringements of human rights. A company’s real or perceived acquiescence in infringements of human rights that are connected to its operations or business partners not only can undermine trust in its grievance mechanism, but also calls into question the sincerity of its overall commitment to human rights.

### **Consider Additional Steps to Ensure Vulnerable Groups Can Access the Mechanism**

Careful consideration of the rights and needs of vulnerable groups is a key element of good practice to fulfil a number of the UNGPs effectiveness criteria. Accessibility is one of the areas that needs to be carefully considered from the perspective of vulnerable groups to avoid creating barriers that prevent them from using the mechanism in practice.

Depending on the local context and social norms and practices, vulnerable groups may include women, children, Indigenous Peoples, ethnic and racial minorities, migrant populations and people with disabilities. These vulnerable groups are often particularly susceptible to severe human rights impacts and have specific rights under international human rights law. A lack of attention to their needs can create a significant blind spot for any grievance mechanism.



Companies need to consult with vulnerable groups and their representatives to understand what barriers to accessing the grievance mechanism they may face. Barriers may range from physical limitations – for example for people with disabilities or those unable to travel far from their homes – to the psychological fear of retribution from other community members.

There may be specialised local organisations that work with vulnerable groups and who can help facilitate

consultation and insights into the realities they face. The importance of ongoing engagement with vulnerable groups is also discussed under the final effectiveness criteria (2.8, below), which addresses the broader role of engagement and dialogue in grievance mechanisms.

Table 2 provides an overview of the potential barriers to, and suggested good practices for improving, access for different vulnerable groups – specifically children, women, Indigenous Peoples and people with disabilities.

**Table 2: Potential Barriers to Access and Good Practices to Improve Accessibility, by Vulnerability Group**

Vulnerable group	Potential barriers to access	Good practices to improve accessibility
<b>Children<sup>15</sup></b>	<ul style="list-style-type: none"> <li>— Remedial mechanisms are not adapted to children's particular rights and needs nor are they equipped to adequately accommodate complaints from children.</li> <li>— Children are dependent on adults' goodwill to inform and support them in all senses, including financially, logistically and emotionally.</li> <li>— Children often lack standing, meaning that they are not considered eligible to initiate and participate in legal or quasi-legal proceedings because of their age.</li> </ul>	<ul style="list-style-type: none"> <li>— Make it possible for children to bring complaints directly as well as through a representative.<sup>16</sup></li> <li>— Establish, maintain and promote contact points that are accessible to children.</li> <li>— Have expertise on hand to deal with children and children's rights.</li> <li>— Allow for creative and flexible sharing, for example through stories, pictures, and other forms of artistic expression.</li> <li>— Explore the use of technology, which may enable children to share information in more innovative ways, especially those in remote areas.</li> <li>— Hear children as a group where many have been affected, with the assistance of children's organisations, schools, online groups, community meetings or other means of bringing children together.</li> <li>— Empower trusted adults, such as family members, community leaders or staff from children's organisations, who can represent children throughout the process as requested or required.</li> </ul>
<b>Women<sup>17</sup></b>	<ul style="list-style-type: none"> <li>— Gender inequalities may mean female community members have less awareness of their rights.</li> <li>— Cultural norms and traditional roles might make it difficult for women to engage with or bring a grievance to the company.</li> <li>— Victims of sexual harassment or gender-based violence may be fearful of further trauma or victimisation if they lodge a formal complaint.</li> <li>— Company staff may not be aware of women's rights and may not have applied a gender-sensitive lens to their work with communities.</li> </ul>	<ul style="list-style-type: none"> <li>— Provide training on women's rights and gender sensitivity to staff involved in the grievance mechanism.</li> <li>— Appoint female staff to participate in the management of the grievance mechanism and give female complainants the choice to have their grievance managed by a female staff member.</li> <li>— Promote the grievance mechanism with women's groups in the community and allow female complainants to be accompanied or represented by a trusted third party when bringing a grievance.</li> <li>— Develop specific protocols for cases related to sexual harassment and gender-based violence.</li> </ul>

15. See: UNICEF, *Discussion Paper: Operational-Level Grievance Mechanisms Fit for Children* (2018).

16. Note that children should take part in grievance processes only if in their best interests and after giving informed consent.

17. See: IFC, 'Unlocking Opportunities for Women and Business: Toolkit of Actions and Strategies for Oil, Gas and Mining Companies', Tool 3.6 on Gender Sensitivity in Participatory Monitoring and Evaluation and Grievance Mechanisms.

Vulnerable group	Potential barriers to access	Good practices to improve accessibility
<b>Indigenous Peoples<sup>18</sup></b>	<ul style="list-style-type: none"> <li>— Differences between an indigenous community's traditional ways of resolving disputes, and companies' governance and decision-making structures.</li> <li>— Language barriers.</li> <li>— Sensitivities around particular issues such as traditional lands, cultural sites, environmental conservation and gender.</li> </ul>	<ul style="list-style-type: none"> <li>— Provide cultural awareness training and training on Indigenous Peoples' rights to staff involved in the grievance mechanism.</li> <li>— Consider how traditional decision-making and Indigenous justice concepts can be integrated into the design of the grievance mechanism.</li> <li>— Support capacity-building initiatives that develop Indigenous community members' relevant knowledge and skills required for using the mechanism and/or provide independent representation.</li> <li>— Involve community representatives and elders in promoting the mechanism and supporting community members to bring grievances forward.</li> <li>— Provide flexibility to allow the complainant a choice in how their grievance is addressed.</li> <li>— Ensure there are gender diverse Community and Social Performance teams or gender specific meetings for affected stakeholder groups.</li> </ul>
<b>People with disabilities<sup>19</sup></b>	<ul style="list-style-type: none"> <li>— People with disabilities tend to experience disproportionately lower levels of income, education, health, employment, housing, justice and safety, and political inclusion. The combined effect of this exclusion is these people may be blocked from access to rights, opportunities and resources that are available to other members of society.</li> <li>— People with disabilities may be additionally marginalised if they also belong to certain other vulnerable groups (eg children, women or Indigenous Peoples)</li> <li>— Barriers to access will differ depending on the type and severity of the person's disability:</li> <li>— People with mental or cognitive disabilities may be faced with different disadvantages than persons with other types of disabilities.</li> <li>— Transport systems and facilities may not be accessible to people with physical disabilities, preventing them from reaching grievance mechanism access points.</li> <li>— Informational materials may not be accessible in formats for those with communications disabilities.</li> <li>— People with disabilities will likely face further barriers to accessing other judicial or non-judicial mechanisms, so they may have few viable alternatives to the grievance mechanism.</li> </ul>	<ul style="list-style-type: none"> <li>— Ensure that information about the grievance mechanism is available in accessible formats. This may require additional translation (eg into Braille) or interpretation (eg local sign language).</li> <li>— Consider accessibility issues if using social media or internet as one of the access channels for the grievance mechanism.</li> <li>— Ensure that community offices or other locations for bringing grievances are physically accessible.</li> <li>— Consider providing transportation support for people with disabilities and/or provide options for community relations staff to go to meet people at their homes or other locations.</li> <li>— Provide training about the rights of people with disabilities to staff involved in the grievance mechanism.</li> <li>— Promote the grievance mechanism with groups that support people with disabilities in the community and allow people with disabilities to be accompanied or represented by a trusted third party when bringing a grievance.</li> </ul>

18. See: UN Global Compact, *The Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples*

19. See UN, *Toolkit on Disability for Africa: Access to Justice for Persons with Disability* (2017) and Alberta Civil Liberties Research Centre, *Access to Justice and Persons with Disabilities* (accessed July 2019).



## 2.3 Establish Mechanisms that are Predictable

**Predictability means providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.**

In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed.<sup>20</sup>

### Define a Clear Process

Being clear about the process for resolving grievances can help build community trust. It should be evident to community members what basic steps will be followed when they submit a grievance, with defined timeframes given for each stage of the process and for the overall resolution.

It can be helpful to set out a simple flow diagram for the process, as illustrated in Figure 1. A commitment to resolve grievances within a defined and reasonable timeframe is also important to ensure

the community see the mechanism as robust and effective. While there should always be flexibility to extend the timelines when circumstances warrant it, any unusual or unexplained delays in responding to grievances can send a negative message to the affected stakeholders about the company's attitude towards them and their issues.

As companies have gained experience with grievance mechanisms, they have developed increasingly rigorous internal policies and management systems to ensure that their grievance mechanisms are as predictable as possible. Some companies have tools that send reminders to community relations staff and managers about the timelines for different steps in handling individual grievances.

A number of companies also have Key Performance Indicators (KPIs) that relate to resolving grievances within the specified timelines, and these may be reported all the way up to the board of directors. While timely resolution is not the only relevant KPI for effective grievance mechanisms, it does provide a measure of accountability to ensure grievances are addressed promptly and predictably at the site level (see section 2.7).

### Communicate Clearly the Outcomes That Are Available

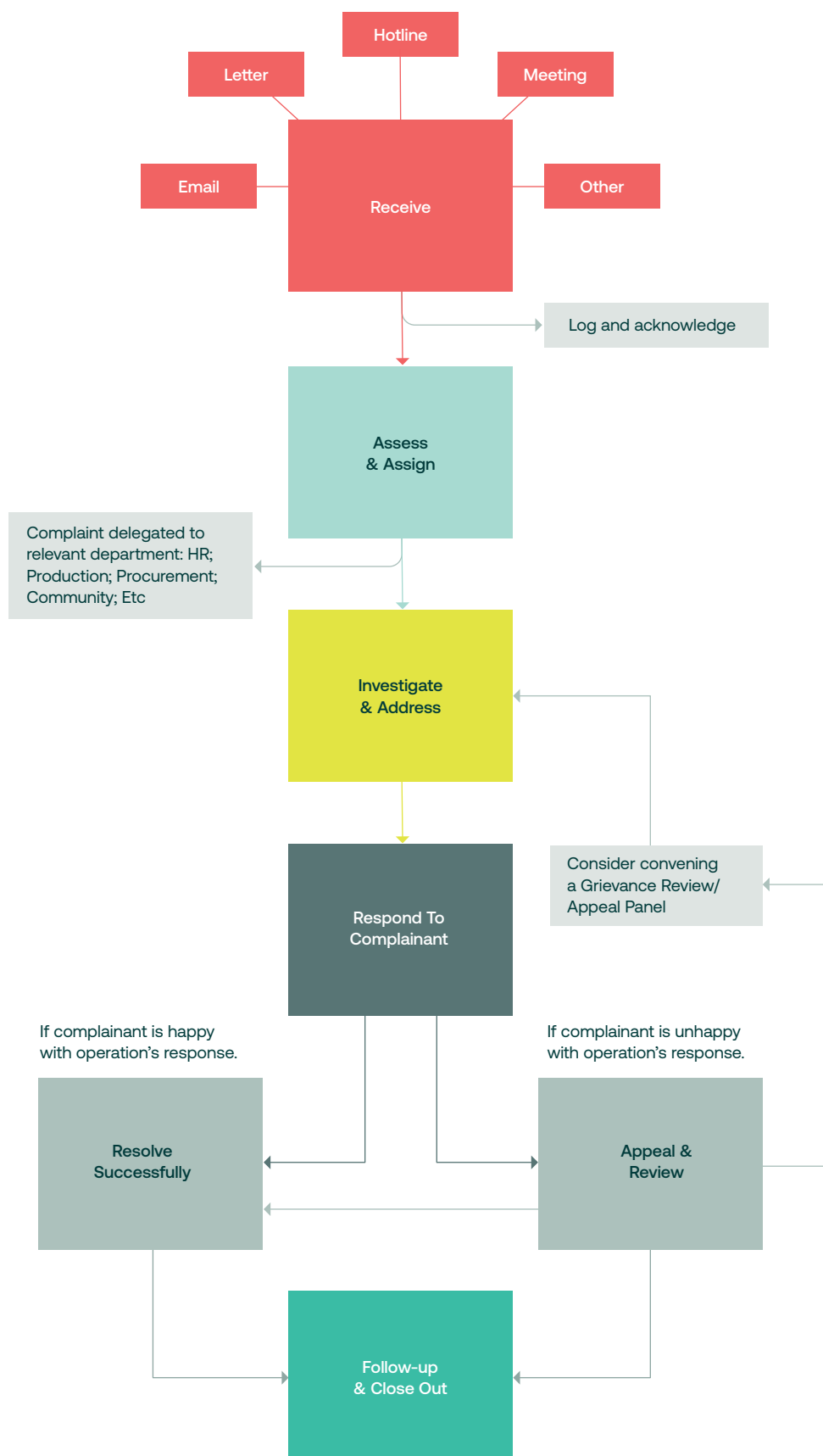
Giving communities an understanding of the range of outcomes that are available through the grievance mechanism can help reinforce the mechanism's predictability and manage expectations. For instance,



20. UNGP 31(c) and commentary.



Figure 1. Example Grievance Process



if community members are seeking a substantial increase in the range or number of jobs available to them but the mechanism can only handle individual work-related complaints, pursuing this through the mechanism will only increase frustrations. The company may instead be able to point them to an alternative forum in which they can raise and discuss these broader issues.

Clarity about the range of potential outcomes can also help raise awareness in the company around the types of remedy that may be of genuine value to complainants in addition to, or instead of, financial compensation or other more conventional forms of remedy. As stated elsewhere in this guidance, it should also be clear to communities that the mechanism does not preclude them seeking remedy through other judicial or non-judicial means.

As well as reinforcing predictability, transparency about the actual outcomes from the grievance mechanism can build community confidence that the types of remedy offered in principle will materialise in practice. It may also assist with setting expectations. For example, where the mechanism has provided remedy in the form of livelihood support and training in response to resettlement concerns from groups of community members, it can help ground expectations from other groups as to what kinds of outcome may be realistic. Considerations related to transparency and the necessary balance with confidentiality are discussed further in the following sections.

### **Maintain Flexibility to Adapt the Process Where Necessary to Respect Rights**

While following timelines is an important aspect of predictability, the UNGPs also highlight the need for flexibility. For example, flexibility is particularly important when an affected stakeholder may need additional support or representation; if the affected stakeholder is invited to participate in an investigation or joint fact-finding activity; or if third parties are involved in facilitating the resolution of complex issues. Moreover, flexibility is often the essence of ensuring that the grievance mechanism is accessible to vulnerable groups.

In such cases, deviating from the standard timeline may be fully justifiable and staff should not be penalised for failing to meet a KPI based only on timelines. What is important is that any delays are justified in terms of adapting the process to achieve the best possible outcome and that the complainant is kept fully informed throughout.



## **2.4 Make Grievance Mechanisms Equitable**

**Equitability means seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.**

In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions.<sup>21</sup>

### **Provide Access to Information**

Community members will never have the same access to information that a company has about its mining operation. This can lead to misunderstandings that give rise to grievances, as well as to real or perceived unfairness during a grievance process.

Involving complainants in investigations or joint fact-finding processes is a positive way that companies can provide information. With systematic concerns or grievances – for example, about potential environmental impacts – companies have had positive experiences of involving community members in site visits and in participatory monitoring bodies. This involvement allowed them to provide information more proactively to communities and to reduce misperceptions and potential grievances over time.

Some aspects of mining operations are quite technical and may be difficult for community members to understand. Companies can address this by preparing non-technical summaries or by providing access to company staff and/or independent experts to explain how technical issues are being managed. Again, this may help to respond to specific grievances as well as to reduce the potential for grievances in the future.

21. UNGP 31(d) and commentary.

## Case Study

### Building Technical Capacity to Develop Shared Understanding in Nicaragua

A grievance over the alleged health impacts on workers (from local communities) of working conditions at a Nicaraguan sugarcane producer was processed through the International Finance Corporation's Compliance Advisor Ombudsman function. The central issue was the disproportionately high numbers of workers suffering and dying from Chronic Kidney Disease (CKD), which workers believed to be due to company practices.

It was important for the company and communities to have a shared understanding of the causes of CKD and so, alongside a skilled mediator, 'two technical experts helped build the parties' capacity to engage on scientific and health matters being explored through the dialogue process'.

This technical capacity-building also allowed the communities to take part and have confidence in the solicitation and evaluation of proposals from various institutions to undertake the necessary research and enabled a joint agreement between company and communities on whom to appoint.

Over the course of the grievance handling process, the parties reached a signed agreement, notwithstanding that the research showed that the causes of CKD are still very unclear and attribution to one factor or another would not be possible. At the same time, the research recommended mitigation measures to the company to reduce some potential risk factors, which the company implemented.

Learn more about the role of technical capacity building in the case of the Nicaraguan dispute on the International Finance Corporation's Compliance Advisor Ombudsman [website](#).

### Facilitate independent representation where necessary

It is good practice to allow affected stakeholders to be represented by third parties in the grievance process in order to enhance the equitability of the process. This may be as simple as allowing a complainant to be accompanied by a family member who is more comfortable engaging with the company representatives. In other cases, companies have permitted and even encouraged complainants to be accompanied by community leaders at different stages of the grievance process.

Operational-level grievance mechanisms are meant to function primarily through dialogue and mediation. As such, there should be some reluctance to encourage representation by lawyers as this may make the process overly adversarial. This also assumes that the company would itself not be represented through its legal team. However, there may be situations where it is appropriate for communities to be represented by lawyers or other advocates and experts, particularly when dealing with grievances that have serious or systemic impacts or where there may be concerns about reprisals – see Nicaragua case study (above).

## Case Study

### Using Independent Ombudspersons to Enhance Equitability

Swedish company Vattenfall has provided independent ombudspersons for internal or external stakeholders to use as intermediaries when raising issues or submitting grievances to the company under its whistle-blower policy.

Stakeholders who don't want to contact the company directly can instead contact one of the external ombudspersons within the whistle-blowing function. The ombudspersons are experienced external

lawyers, independent from the company, and their contact details are listed on the company's website. The ombudspersons are mandated to act according to professional discretion and confidentiality until the complainant allows the ombudsperson to pass on all or part of the information to the company.

This model can help companies provide arm's length support for community members to address particularly sensitive issues with greater equitability and confidence.

[Learn more about Vattenfall's experience of using independent ombudspersons under the internal governance section of their website.](#)

22. Dispute Resolution Conclusion Report: Nicaragua Sugar Estates Limited 01, [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=82](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=82)



### Establish an Independent Process if There Is a Perceived Imbalance of Power

In relation to equitability, establishing an independent process is simply another way to address any perceived power imbalance between the company and community that can affect the grievance mechanism. If efforts to provide information and independent representation do not lead to increased perceptions of fairness of the grievance process, then it is worth (re) considering whether an independent process is needed.



## 2.5 Be Transparent

**Transparency means keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.**

Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism's performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals' identities should be provided where necessary.<sup>23</sup>

### Update Complainants Regularly

It is a basic courtesy to promptly acknowledge receipt of a complainant's grievance. This acknowledgement should be given in a way that the affected stakeholder can easily access and understand it. This is also an opportunity to tell the complainant about the grievance procedure and provide them with indicative timelines.

After acknowledging receipt of the grievance, it is good practice to update complainants regularly throughout the process. This is particularly important when grievances are complex, and the process may deviate from the mechanism's normal procedural steps or timelines. If complainants aren't updated regularly in these cases, they may feel excluded or ignored, which can further escalate tensions. In this sense, transparency is often a key ingredient in affected stakeholders' overall satisfaction about the grievance process, regardless of the final outcome.

Depending on the local context, companies can provide regular updates informally through community relations staff who can meet or otherwise speak with the

<sup>23</sup>. UNGP 31(e) and commentary.

complainant. In other cases, it may be more appropriate to provide a formal update in the form of a letter, which explains the reasons for a delay and the revised next steps. It can be good to allow for additional in-person explanation and discussion, including when formal written updates have been provided.

### **Be Transparent With Communities About Outcomes**

Transparency about the outcomes and performance of the grievance mechanism is a critical factor in building and maintaining its credibility and legitimacy with communities and other external stakeholders.

Ultimately, people will judge the grievance mechanism on the fairness of the process as well as its results in resolving disputes and remedying adverse impacts.

Companies will often have a variety of regular meetings with communities at the local level, such as town hall events, during which they provide updates on their operations. It can be useful to incorporate into these meetings' regular agendas a report on how past grievances have been resolved. The company may also produce regular reports about environmental and social monitoring to communities that can include information about the performance of the grievance mechanism.

Informing communities about the numbers and types of grievances received and the forms of remedy provided gives evidence that the company is serious about resolving grievances in an effective and fair manner. And, when communities do receive sufficient information about the resolution of past grievances, they are also able to see how the grievance mechanism functions in practice.

This can reinforce ongoing efforts to promote and build understanding about the grievance mechanism within the community. It can also be valuable to inform communities about any changes to policies or procedures that result from past grievances. This can help to build their trust in the value the mechanism offers.

### **Apply International Standards for Public Reporting on the Grievance Mechanism**

Increased attention, expectations and requirements for corporate reporting on sustainability, including human rights, is further reinforcing the importance of transparency in grievance management. In particular,

the Global Reporting Initiative (GRI) and the UNGPs Reporting Framework expect companies to report on grievance mechanisms as part of their reporting on social performance and management of salient human rights issues.<sup>24</sup> This information may form part of an annual strategic report, a sustainability or corporate responsibility report, or a stand-alone human rights report.

While these reports are generally intended for a broad international audience, some companies also prepare summary versions and translate these into local languages for communities. Good reporting includes an analysis of overall trends in grievances and remedy provided, and any lessons from the evaluation of a mechanism's performance. Any public disclosure should of course respect legitimate privacy and confidentiality concerns.

The increased emphasis on public reporting about grievances not only enhances transparency but can also drive better performance by incentivising companies to make continual improvements. Additionally, public reporting gives external stakeholders (eg government, investors, NGOs) the opportunity to engage in dialogue with companies about their performance. You can find further information and good-practice examples of company reporting in Appendix B.

24. See GRI Disclosure 103-2 where companies are expected to include a discussion of grievance mechanisms as a component for the management approach for each 'material topic'. Reporting recommendation 1.8 provides details of what should be included as part of that reporting. See also UNGP Reporting Framework, part C6 and supporting questions.

25. Shift, Disclosure on *Grievance Mechanisms and Remedies* (March 2018).

### Global Trends in Corporate Reporting About Grievance Mechanisms

A recent analysis of global trends in public reporting about grievance mechanisms by companies across all industry sectors<sup>25</sup> identified key themes for improved reporting. These are that the company:

- Demonstrates that its overall approach to remedy is aligned with the UNGPs
- Provides information about the specific processes it has for addressing grievances
- Reports on grievance mechanisms for community members and affected stakeholders beyond its employees
- Informs potentially affected stakeholders about its grievance mechanism
- Provides information about how stakeholders are able to input into the type of remedy offered by the company
- Explains how it tracks complaints received and resolved
- Shows that it does not obstruct judicial or administrative claims

### Balance the Need for Transparency With Respect for Complainants' Confidentiality

While seeking to maximise transparency through public reporting, it is important that companies protect complainants' personal information and privacy rights and consider that disclosure of personal information is also regulated by the relevant privacy laws for the region. This applies to all stages of the grievance process and is particularly relevant to preserving the safety of vulnerable groups, such as human rights defenders.

This can create some tension between transparency and confidentiality. But companies can manage it through careful anonymisation of specific grievances and being transparent about the underlying issues that are being addressed rather than the identity of the parties. People are most interested in understanding the process and outcomes of current grievances, as well as the company's assessment of trends and lessons learned from the overall grievance mechanism, rather than the specific identity of the affected stakeholders.

For disclosure at the local level, it may be more difficult to anonymise specific grievances that may be known through hearsay. In such cases, one approach is for the company to discuss the situation with the complainant to see if they are comfortable if certain information is disclosed. In many cases, the complainant may give permission to share the details of the grievance resolution with the wider community. Other cases related to sensitive issues may need to be handled with the utmost discretion and caution. For instance, in some societies, disclosing that financial compensation has been provided to female community members may put them in danger of the compensation being misappropriated.



## Case Study

### Access to Remedy

For companies to provide appropriate access to remedy to those impacted by resources activities, it is critical that companies adapt and respond to stakeholder expectations and the changing external environment. BHP's preparation for reporting under the UK Modern Slavery Act (2015) is an example of one external driver.

BHP recognises that there are potential modern slavery and human trafficking risks in the jurisdictions where it operates. BHP is committed to building an ongoing dialogue with stakeholders, including suppliers and regulators, to improve BHP's understanding of and approach to responding to these risks. Providing an appropriate and accessible grievance mechanism and access to remedy, where appropriate, is not only critical to enhancing BHP's management of modern slavery risks but is also fundamental to operating in a manner consistent with the UNGPs.

In response to the changing regulatory environment for modern slavery disclosure, BHP tailored an aspect of its business conduct and advisory hotline, EthicsPoint. EthicsPoint is a 24-hour, multilingual service available to employees, contractors and other external stakeholders for confidential reporting of potential misconduct. BHP added a new field to EthicsPoint to improve how it identifies concerns that may meet the modern slavery definition. This has allowed for additional screening of responses in relevant 'issues categories' for a potential modern slavery concern.

BHP's *Our Code of Conduct* sets the standard for the company's commitment to working with integrity and respect and the standards of behaviour for their people in their dealings with governments and communities, third parties, and each other. *Our Code* and other relevant standards also outline the human rights commitments applicable to their people, as well as contractors and suppliers (where under relevant contractual obligation). *Our Code* prohibits any form of retaliation against anyone who raises a concern or participates in an investigation.

Community members can raise concerns through asset-level complaints and grievance mechanisms or EthicsPoint. All concerns are acknowledged, investigated as appropriate and documented. Where concerns are investigated and substantiated, the company takes appropriate remedial actions, advises the reporter (where possible) and documents the outcomes.

Ethics Leaders (members of the Ethics team and key Human Resources representatives who have EthicsPoint accountabilities) play a central role in the assessment, investigation and escalation of concerns relating to *Our Code* arising in each of BHP's business regions. In the year ended 30 June 2018, Ethics Leaders received training to develop their ability to identify, investigate and escalate as necessary any modern slavery concerns at BHP or in the supply chain reported via EthicsPoint or to Human Resources personnel.

Categories of complaints or concerns received via EthicsPoint or local complaints and grievance mechanisms are reported annually in BHP's Sustainability Report.



## 2.6 Ensure Outcomes and Remedies are Rights-Compatible

**Rights-compatible means ensuring that outcomes and remedies accord with internationally recognised human rights good practice.**

Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognised human rights standards.<sup>26</sup>

### Ensure the Process and Outcomes Respect Human Rights

Rights-compatibility, as an abstract concept, can be tricky for community members and practitioners to grasp. Ultimately, it comes down to ensuring that the grievance process and its outcomes are reviewed to make sure they're in line with human rights standards.

This could involve referring to ILO standards when addressing a complaint from a local contractor's worker about excessive overtime. Or it could mean designing

specific processes to address allegations of sexual harassment with due consideration to the rights of women as well as the privacy rights of the person accused of misconduct.

If the mechanism produces remedies that are compatible with international human rights standards, there is a much greater likelihood of them being accepted as being fair and legitimate. This is one of the ways that rights-compatibility should reinforce the legitimacy of a grievance mechanism.

### Enlist Human Rights Expertise Where Necessary

To understand the potential human rights dimensions of grievances, it is important to enlist internal or external human rights expertise. Partly the role of these experts will be to spot actual or potential human rights issues raised by grievances (when not explicitly expressed in human rights terms) and to identify the human rights standards that are relevant to addressing them.

Some companies have taken a very practical approach to rights-compatibility, designating internal human rights experts to review proposed remedies against the relevant human rights standards. For instance, when a particular operation finds that a grievance raises a potential human rights issue, it will flag this to the company's head office so that an internal (or sometimes external) expert can provide guidance and support to resolve the issue in a way that is rights-compatible.

## Case Study

### Human Rights "Flag"

While severe impacts on human rights are readily apparent, it may not be as obvious how some operational issues (eg blasting) can evolve into human rights allegations or violations. Newmont Goldcorp is working with its operations to help managers and community relations staff identify grievances that potentially affect human rights and flag them in the company's grievance management system.

The company has developed a tool that helps grievance officers think through human rights issues that could be the subject of grievances. For example, if the reason for the complaint relates to the complainant's physical health, the complaint is flagged as potentially related to human rights.

Regional and corporate human rights experts review each flagged complaint and work with the operation to ensure implementation of appropriate remedy.

To help increase consistent usage of the tool, Newmont Goldcorp provides awareness building training in human rights as well as specific training for grievance officers and other staff directly involved in community relations. It is also important to note that the tool encourages staff to be more proactive in understanding and investigating potential impacts, rather than waiting for an explicit allegation of a human rights violation.

Newmont's complaint mechanism provides staff and management more opportunity to systematically analyse potential human rights impacts and prompts more internal discussions about managing grievances as an opportunity to be more proactive about human rights due diligence.

26. UNGP 31(f) and commentary.



## Case Study

### Beyond the Mining Sector: How Courier Service Hermes Is Ensuring Rights-Compatibility

Some lessons come from beyond the extractive industries. Hermes is the leading courier service in the United Kingdom. As part of its efforts to strengthen its grievance mechanisms for courier drivers, it established an internal complaints panel and an independent whistle-blower hotline. It also appointed an external business and human rights expert as an independent ombudsperson.

The ombudsperson provides recommendations on remedy for human rights-related grievances as well as suggestions to the internal audit committee for strengthening the company's policies and processes, based on the learnings from the grievances received.

[Learn more about Hermes' independent ombudsperson on the code of conduct section of the Hermes website.](#)

### Respect the Rights of Affected Stakeholders Not to Use the Grievance Mechanism

Another component of rights-compatibility relates to ensuring that affected stakeholders can use other judicial or non-judicial mechanisms to seek remedy. Access to remedy is a stand-alone human right as well as a key component of the realisation of all other human rights. The UNGPs situate operational-level grievance mechanisms as part of a broader ecosystem of judicial and non-judicial mechanisms that can provide access to remedy for affected stakeholders.

As part of their human rights policies and grievance procedures, companies increasingly understand and explicitly state that using a grievance mechanism does not prevent the affected stakeholder from accessing other mechanisms if they are not satisfied with the proposed resolution of the grievance.

As already discussed (see section 2.1), a number of companies are proactively collaborating with other types of mechanisms, such as National Human Rights Institutions (NHRIs), to provide affected stakeholders with alternative channels for escalation or appeals when grievances cannot be resolved in a satisfactory manner.





## 2.7 Use the Grievance Mechanism as a Source of Continuous Learning

**A source of continuous learning means drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harm.**

Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm.<sup>27</sup>

### **Solicit Feedback From Users of the Grievance Mechanism**

If a grievance mechanism is to be a source of continuous learning, companies will need to gather feedback. There are various approaches to evaluating grievance mechanisms, which are discussed in the sections to follow, but one simple technique is to request feedback from grievance mechanism users. This can be done through interviews or questionnaires.

Some companies provide users with a feedback form once a grievance has been resolved; others have included interviews with users as part of a specific evaluation of the mechanism or a broader assessment (eg on human rights impacts).

In the short-term, operations can use this feedback to modify the grievance process and improve user experience. In the longer term, it can be aggregated and used in wider analysis of grievance trends and for a more fundamental redesign of the mechanism if needed.

### **Acting Upon Lessons for Improving the Mechanism and Preventing Future Harm**

Companies should make sure that lessons learned from the grievance mechanism are regularly compiled and acted upon. In addition to user feedback, this process of developing lessons learned may involve internal

discussions with managers and staff involved in resolving grievances, as well as consultation between different operation sites.

Lesson-learning should have two distinct areas of focus: first, the functioning of the mechanism itself, which may relate to one or more of the effectiveness criteria covered in this guidance; and second, acting upon lessons that have been learned from specific grievance processes to remediate past impacts and prevent or mitigate those in the future. This second focus goes beyond the continuous improvement of the grievance mechanism towards the continuous improvement of the business itself in terms of avoiding adverse impacts on people.

### **Regularly Assess Grievance Trends**

Companies now have more experience in implementing operational-level grievance mechanisms, as well as more sophisticated tools and management systems for tracking information about grievances. This means they can conduct more detailed and thoughtful analyses of grievance trends.

Part of this analysis should focus on the basic performance of the grievance mechanism according to particular indicators – for example, the number of grievances, the average time for resolving them and the satisfaction of users. This is where convergent feedback from different users can help the company consider adjusting and redesigning the mechanism or establishing more independent processes when necessary.

Another, equally interesting and important part of this trend analysis should be a focus on the issues that underly grievances and the root causes of these issues. This is where the grievance mechanism becomes an important input into ongoing human rights due diligence.

Analysis of grievance trends can provide insight into patterns and systemic issues where, to prevent or mitigate future adverse impacts, companies must adjust their existing policies and procedures. By better understanding underlying issues and their root causes, companies can more proactively manage

27. UNGP 31(g) and commentary.

them – which should, in turn, mean fewer grievances about those particular issues.

Grievance analysis can also inform stakeholder engagement strategies. For instance, a pattern of grievances related to a lack of information or misperceptions suggests that the company needs to provide information about the issue not only to the individual complainants but also to the entire community.

As discussed in the section on transparency, providing information about the resolution of past grievances – particularly in terms of how the grievances have led to changes in company policy or procedure – should address issues that other community members may have been thinking about but have not raised with the company. This reinforces the complementarity between grievance mechanisms and stakeholder engagement, and the usefulness of ensuring a regular review of and alignment between strategies for both processes.

Increasing public reporting requirements provide companies with an opportunity, every year, to compile information about trends in grievances, outcomes and remedies, together with examples. Internally, companies may compile and analyse this information more frequently as part of internal reporting requirements on social performance.

Additionally, external evaluations and assessments of the grievance mechanism (either as a stand-alone assessment or as part of a broader assessment of social performance and/or human rights impacts) can provide valuable insight into grievances, the mechanism and wider company practices.

As will be discussed, some companies are also involving community members in participatory evaluations of grievance mechanisms as an opportunity for learning and continuous improvement. The UNGPs' effectiveness criteria used in this guidance provide the appropriate benchmark for the evaluation of grievance mechanisms.

Companies have emphasised the usefulness of involving internal colleagues from different departments in regular discussions about grievance

trends. It has proved to be an important part of building awareness and support for the grievance function, as well as helping drive changes to policies and operational practices to prevent negative impacts and reduce the number of grievances.

### **Establish and Continually Refine the KPIs for Grievance Mechanisms**

Appropriate KPIs can be very important in focusing operational managers and staff attention on opportunities for continuous improvement.

Companies have now begun developing KPIs related to grievance mechanisms. But up until this point, many of these KPIs have focused on the number of grievances received and the time taken to resolve them. While it is important to capture this data, there are three reasons why care should be taken when using these indicators.

Firstly, they measure inputs and activities related to the grievance mechanism, not the results it is designed to achieve. The results – its near-term outputs and longer-term outcomes – should be some combination of: (a) remedy for people who have been harmed; (b) changes to processes or practices that have caused harm; (c) restored, protected or improved relationships with the communities for which the mechanism exists. Different measures are needed to find out whether the mechanism's inputs and activities actually deliver one or more of these results.

Secondly, an indicator based on the number of grievances received could imply that a decreasing or low number of grievances is necessarily a good thing. But a reduction in grievances may instead indicate that communities have low awareness of, or low trust in, the mechanism.

Similarly, an increased number of grievances might mean that the operation has effectively promoted the mechanism and that the community sees it positively. This data therefore needs to be supplemented with other information that can help in its interpretation, such as feedback from communities about their knowledge and opinions of the mechanism.

Finally, an indicator based on the time taken to resolve grievances may incentivise staff to quickly resolve and ‘close out’ grievances to the detriment of involving the complainant in a joint fact-finding exercise or getting the input of a human rights expert. This data might best be supplemented with an indicator about complainants’ satisfaction with the process provided through the mechanism, as well as the outcome.

As these examples show, when setting KPIs and using data gathered to assess performance against them, companies should take care to consider:

- Different interpretations that could reasonably be drawn from the same data, and how to be confident of any one interpretation.
- The unintended behaviours that indicators can promote when treated as targets, and how to mitigate that risk.
- To what extent information about inputs, activities and even outputs can be justifiably relied upon as leading indicators of intended outcomes, or whether there are too many assumptions and risks to have that confidence.
- Potential for creating indicators that combine different types of data in ways that together provide a more robust indicator of outcomes than any one data type can provide alone.

Additional information about interpreting and applying KPIs for evaluating grievance mechanisms is provided in Appendix D.



## 2.8 Base Grievance Mechanisms on Engagement and Dialogue

**Operational-level mechanisms should be based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.**

For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.<sup>28</sup>

### Resolve Grievances Through Dialogue and Joint Problem-Solving

Resolving grievances through dialogue and joint problem-solving is critical to establishing an approach that empowers affected stakeholders and seeks sustainable resolution of grievances. It also helps to overcome alleged conflict of interests. Where it is not possible to resolve grievances through dialogue and joint problem-solving, companies must consider involving third parties and other independent processes to preserve the legitimacy of the process.

Resolving issues through engagement and dialogue implies that flexibility and compromise should be balanced against the need for rigorous and formal procedures. This can sometimes present an interesting challenge for companies, where depending on the dialogue with different affected stakeholders, the proposed resolutions to similar grievances may vary considerably.

For example, one person may be more insistent on receiving an apology and a promise of non-repetition

28. UNGP 31(h) and commentary.



from the company, while another may want compensation. Because remedy can take many forms, companies will need to balance the flexibility needed to agree upon a resolution with affected stakeholders in individual cases with the importance of predictability and fairness across similar cases.

It is also natural for companies' legal departments to want formal closure to grievances by requiring affected stakeholders to sign release forms or waivers limiting future action. Companies should make sure that the urge to seek future risk-proofing does not conflict with the right of affected people to seek other means of recourse.

Some companies have found it useful to map the other judicial and non-judicial mechanisms available to community members and even to provide information about these other options when the company and community member cannot agree upon the resolution of a grievance.

### Deepen Community Involvement in the Grievance Process

As well as involving the community in the design of a grievance mechanism, there are also opportunities to strengthen a mechanism's legitimacy by involving community representatives and trusted third parties in the grievance process itself.

This kind of involvement is especially important when operations are facing a historical lack of trust and legacy issues, or where grievances are numerous and/or particularly serious. Even in less conflictual situations, involving the community in the process can be an effective way to enhance local awareness of and trust in the mechanism.

Depending on the local context and procedural practicalities, community involvement could be integrated into one or more stages of the grievance process:

- **Investigating and fact finding.** Involving community representatives in investigations and joint fact-finding exercises helps to establish an agreed understanding of the facts that gave rise to a grievance. Without an agreement on facts, it is difficult for parties to move beyond misperceptions and towards sustainable solutions. Increasingly, companies have involved the specific complainant(s) or affected stakeholder(s) in investigations to

develop a shared understanding, overcome suspicions about company-led investigations and support joint problem-solving.

- **Mediating grievances.** Companies are in a difficult position when they make the final decision – or 'adjudication' – about a grievance, given the risk of real or perceived bias and lack of independence. Some have found it to be helpful to appoint a trusted third party to help mediate grievances. Examples of third parties who can play a constructive role in mediating grievances include community elders, religious leaders, academics, NGO representatives and local government officials. There is also a growing number of expert mediators, skilled in company–community dialogue facilitation, in all regions of the world, who lead or support mediation processes.
- **Handling appeals.** Many company grievance mechanisms will have an escalation process whereby a trusted third party will become involved in appeals when the company cannot agree upon the resolution of a grievance directly through dialogue with the complainant. Often this involves a community representative being part of a panel with company officials to review grievances in cases where the complainant has appealed the company's proposed resolution.

As is discussed in the sections on legitimacy and equitability, it may be helpful to design an independent process that can address complex issues or where there is a perceived imbalance of power that affects the use of the grievance mechanism. Having an independent process goes one step further than simply enhancing the involvement of community members in the grievance mechanism, and involves the company ceding control over the mechanism to an independent body.

If the company is involved in identifying a community representative or third party to play a particular role in a grievance process, it is important to ensure that, whichever individual or group is selected, they are genuinely respected and trusted locally. If they are a community leader, they should represent the whole community rather than any particular faction(s) within it. If they are a third party, they should be unbiased and able to accurately represent local perspectives. If they are civil society organisations, they should be grassroots organisations or NGOs that are familiar with the local context.

Companies highlight how important it is that these trusted third parties have a good understanding of mining operations and of the extractive lifecycle and suggest that investment in training may be needed to help them fulfil their role.

Furthermore, third parties may need to be remunerated for their time and expenses, which can potentially raise local labour law issues and even a potential perception of bias if the third party is paid directly by the company. These issues are not insurmountable but should be considered when designing and consulting about options for community involvement in the grievance process.

### **Engage Meaningfully With Vulnerable Groups About the Grievance Process and Outcomes**

We have emphasised the importance of engaging with vulnerable groups throughout this guidance. In relation to engagement and dialogue, the point of good practice is to ensure that vulnerable groups are consulted about potential improvements to the grievance process as well as outcomes to specific grievances.

Without special consideration, and sometimes adapted engagement strategies, the opinions and experiences of vulnerable groups may be neglected or overshadowed by those expressed by community leaders. For instance, on some issues related to land ownership, women may be excluded from property rights and be denied a voice in community consultations about land matters.

A company that wants to ensure that its grievance mechanism is effective and rights-compatible may therefore need to modify it to handle land-related issues affecting women. Ideally, this would involve creating a safe space in which women could discuss both an improved grievance process and desirable process outcomes.

### **Conduct a participatory evaluation of the grievance mechanism**

For many operations, it may be too late to involve community members in the initial design of the mechanism. Many company grievance mechanisms will have been in place before the UNGPs existed and before there was as much good practice guidance available.

Nonetheless, companies can involve community members in participatory evaluations of grievance mechanisms. These evaluations provide an opportunity for collaborative fine-tuning and continuous improvement.

Companies can also create opportunities for participatory evaluation and redesign by adapting a grievance mechanism to different stages of the mining lifecycle. See Appendix C, Table C.1, for things to consider when following this approach.

As suggested in the continuous learning section, ongoing evaluation of trends related to grievance performance will be strengthened by affected stakeholders' involvement. These individuals and groups can provide the necessary feedback on their satisfaction with the process and insight into the underlying issues and impacts that need to be addressed.

Participatory evaluation of a grievance mechanism can be approached in various ways. It necessarily should involve the previous users of the grievance mechanism. But companies should also bring in other community members too, so as to understand any reluctance, suspicion or misunderstanding among non-users, as well as vulnerable groups or their representatives to learn about any barriers to understanding or access that prevent them from using the mechanism.

Company representatives can conduct participatory evaluation, but experience shows that the process may benefit from an external assessor to solicit as open and frank feedback as possible. Participatory evaluations can also be incorporated into broader evaluation or assessment processes that have a strong emphasis on engagement with affected stakeholders, such as social performance evaluations and human rights impact assessments.

## Case Study

### Participatory Evaluation

Newmont Goldcorp operates the Éléonore gold mine in Quebec, Canada, on the traditional lands of the Cree Nation of Wemindji, a First Nations community. The operation formally established a grievance mechanism in 2016. Through discussions with community, a joint decision was made to refer to it as a 'dialogue mechanism', with the intention of facilitating meaningful conversations with their stakeholders about real or perceived impacts of the project.

In 2017, the Éléonore mine management volunteered to pilot a new internal tool developed by Goldcorp's Corporate Social Responsibility team to assess the effectiveness of their grievance mechanism. Through a collaborative process, Éléonore enlisted an independent student from a regional university to conduct 29 interviews (phone and in-person) with stakeholders from Éléonore's social area of influence.

Using the results of the interviews, Éléonore assessed important aspects of the site's grievance mechanism such as its accessibility, predictability and transparency.

According to Éléonore, the evaluation provided an opportunity to better engage and communicate with stakeholders about how the dialogue mechanism works and the reasons why the mine has implemented a formalised process for receiving, investigating and responding to feedback. Through the survey, the mine was also able to learn the specific communications channels that certain stakeholders prefer and trust.

Based on the evaluation results, the Éléonore CSR team developed an improvement plan to increase the effectiveness of the dialogue mechanism. Goldcorp and Newmont merged in 2019, and, based on the positive experience of Goldcorp with the participatory evaluation exercise, the merged company Newmont Goldcorp is evaluating the use of this tool with its other sites.





# The importance of Organisational Structure and Culture 03

Organisational structure and culture are not explicitly included in the UNGPs effectiveness criteria. But experience shows that these are key factors or preconditions for an effective grievance mechanism that mutually benefits companies and communities.

As companies look to establish a new grievance mechanism or to improve the effectiveness of an existing one, they should focus as much attention on building internal awareness and support for grievance management as they do on building trust with community stakeholders.

In this chapter, we set out good practices for strengthening organisational structure and culture for more effective grievance management.

## 3.1 Understand that Grievance Management is Normal and Beneficial

It is important for companies to understand that grievance management is a normal part of doing business and is an opportunity to proactively solve problems and to build better relationships with communities.

Companies will need to accept that grievances cannot always be avoided but also that their occurrence does not necessarily reflect a failure on the company's part to effectively manage its interactions with communities.

As many organisations have come to understand, having zero grievances at a particular site is not necessarily a good indicator of the quality of relationships with affected stakeholders. It may actually mean that the company's grievance mechanism is ineffective, and community concerns, issues and frustrations may escalate into more serious conflict.

## 3.2 Get the Support of Senior Management

To be effective on the ground, grievance mechanisms need senior management support. This support ensures there is operational responsibility for the mechanism as well as sufficient human and financial resources for its day-to-day running.

Buy-in from senior management will help sites mobilise the resources needed to meet the timelines set out in their grievance procedure, which in turn helps improve the predictability and overall effectiveness of the mechanism.



Senior management will need to evaluate whether there are enough human resources – particularly community relations staff – to respond to the number of grievances received at a given stage of the mining lifecycle. They will also be well positioned to consider the other tasks and priorities for community relations staff, in terms of stakeholder engagement or community investment.

It can be helpful to provide some administrative support to facilitate the paperwork and cross-departmental coordination required for effective grievance management. And, as other operational departments often need to be involved in the investigation and resolution of grievances, it is important that management provide clear direction to these other departments, so they don't cause delays that undermine the mechanism's predictability and effectiveness.

Senior managers at site-level can also play an important role in promoting the grievance mechanism through their engagement with community representatives and in encouraging cross-departmental collaboration to resolve grievances (see section 3.3).

Getting senior management buy-in involves assigning responsibility for the mechanism to a particular senior manager within an operation. It can also be beneficial for community relations staff to empower senior managers to support the grievance mechanism by providing them with regular updates about the resolution of specific grievances and the mechanism's overall performance. Some companies provide regular

updates all the way up to the board of directors to strengthen accountability for and attention to grievance management.

### 3.3 Build Awareness across Functions and Teams

Cross-functional coordination and collaboration is essential to investigating grievances, and where necessary, resolving them by adapting operational procedures to avoid recurrence of impacts and harms.

While community relations staff may be responsible for managing the grievance mechanism, other departments will almost invariably need to be involved in addressing each grievance. Building cross-functional awareness about the mechanism's importance is therefore a key precondition for prompt collaboration to address grievances effectively and efficiently.

Cross-functional dialogue is particularly important in coming up with proposals for remediation and future prevention or mitigation measures that are both rights-respecting and operationally feasible.

### 3.4 Provide the Right People, and the Right Training

Human resources are also an important consideration. It is possible that many grievances may need to be managed over time and that there will also be sudden increases in certain types of grievances at particular stages of the mining lifecycle (eg resettlement or construction).

Managing these grievances effectively from a community perspective, respecting the timeframes and procedural requirements, and recording them properly in the company's internal management system (see section 3.5) takes time – and therefore people. As explored in the previous chapter, an effective strategy to reinforce the mechanism's rights-compatibility can be to provide site-level staff with access to internal or external experts with human rights knowledge.

Good human resource management also means finding people with, and cultivating, the right skills. Companies should provide community relations staff with the necessary training to develop the soft skills and attitude to engage effectively with complainants: qualities of empathy, maturity and fair-mindedness are likely to be important to the perceptions of community members that their concerns or issues are taken seriously.

Local language skills and cultural sensitivity are also critical for promoting the accessibility of grievance mechanisms and adapting them to local contexts. Having people from local communities in the community relations team can be important in ensuring effective engagement and trust with communities.

### 3.5 Ensure Robust Systems to Record, Track and Manage Information

Logging and documenting grievances is an important step that allows a grievance mechanism to contribute to ongoing human rights due diligence efforts. Keeping full records can help ensure grievances are handled within a reasonable timeframe and provides an important repository of information if grievances are reopened. Record keeping can also help a company track trends or patterns in concerns and grievances, allowing emerging issues to be flagged and understood at an early stage.

The sort of information that could be recorded on each case upon registration includes:

- The details of the complaint
- The identity of the complainant (if not anonymous)
- Company actions requested.

Additional information about the investigation, resolution (or non-resolution) and follow-up should be added as the grievance progresses.

It may help to rate the importance of complaints according to a standardised scale so as to help

prioritise those cases that require urgent investigation and resolution. Some companies have developed criteria to rate the severity of the social and human rights impacts that are assessed through the grievance process.

These criteria help to translate community concerns and grievances into human rights terms, which can in turn help ensure the rights-compatibility of their responses. Some classification systems may help identify explicit human rights allegations that require immediate escalation and/or grievances that reveal potentially severe human rights impacts.

To support tracking and continuous learning, many companies have developed software and management systems for grievances. These are sometimes integrated into broader systems for managing stakeholder engagement, social investment and other community-related activities.

These systems are particularly useful to enable those at headquarters level to have visibility into the types of risks, impacts and challenges that sites are facing. They also facilitate further analysis of common issues across different sites for the purposes of developing additional internal guidance or support initiatives.

Management systems should also provide the information that is needed for better public reporting on grievance mechanisms. From a headquarters perspective, it is important to have the same systems and to provide guidance and training to site-level managers and staff so that grievances are handled similarly across all the company's sites.

### Conclusion

It is right and responsible for companies to have robust operational-level grievance mechanisms in place to handle and resolve community grievances. This is part and parcel of effective community engagement and helps to prevent issues escalating into protests, conflicts or legal disputes. There is also increasing focus and attention from investors, civil society and others on how well companies ensure community concerns and grievances are addressed as an important aspect of access to remedy. We hope that this updated guidance helps readers to better manage these critical issues and is a useful contribution to improving practice on the ground.



# Appendix A

## Selected further reading on grievance mechanisms

CSR Europe, *Assessing the Effectiveness of Company Grievance Mechanisms* (2013)

Centre for Social Responsibility in Mining, *Community Complaints and Grievance Mechanisms and the Australian Minerals Industry* (2009)

Corporate Responsibility Initiative at Harvard Kennedy School, *Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders* (2008)

Corporate Responsibility Initiative at Harvard Kennedy School, *Piloting Principles for Effective Company-Stakeholder Grievance Mechanism: A Report of Lessons Learned* (2011)

European Bank for Reconstruction and Development, *Guidance Note on Employee Grievance Mechanisms* (2017)

European Bank for Reconstruction and Development, *Guidance Note on Grievance Management* (2012)

IFC – International Finance Corporation, *Good Practice Note: Addressing Grievances from Project-Affected Communities* (2009)

IFC Compliance and Advisory Ombudsman, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* (2010)

IFC Compliance and Advisory Ombudsman, *Grievance Mechanism Toolkit* (2016)

IPIECA, *Community Grievance Mechanisms in the Oil and Gas Industry* (2015)

IPIECA, *Operational Level Grievance Mechanisms* (2012)

IPIECA, *Community Grievance Mechanisms Toolbox* (2014)

Mining Association of Canada, *Site-Level Grievance and Community Response Mechanisms: A Practical Design and Implementation Guide for the Resource Development Industry* (2015)

Shift, *Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights* (2014)

Transparency International, *Reference Guide on Complaint Mechanisms* (2016)

UNICEF – United Nations Children’s Fund, *Discussion Paper on Grievance Mechanisms for Children* (2018)

# Appendix B

## Good Practice Examples of Reporting on Grievance Mechanisms

Reporting on the company’s grievance mechanism and its results supports both internal and external accountability for ensuring that the mechanism is fulfilling its purpose and not merely checking a box.

Good disclosure therefore goes beyond a generic description of the company’s aims and approach to the

provision of grievance mechanisms and instead provides specific examples and evidence of results.

The UNGPs Reporting Framework sets out five types of question that companies should try to answer as best they can, along with guidance on the types of information that are relevant. Table B.1 shares examples from actual company reporting that correspond to each of the five questions and our summary of the report’s value.

Table B. 1

Question: Through what means can the company receive complaints or concerns related to each salient human rights issue?	
Objective: To describe any formal or informal means through which the reporting company is able to hear from individuals inside and outside the company who believe the company is involved with human rights impacts related to a salient issue.	
Rio Tinto company report:	Value:
<p>‘The site CSP [Community and Social Performance] team administers the community feedback system – a formalised process whereby members of the local community can provide both positive and negative feedback on the company’s operations, including adverse human rights impacts. The Weipa community feedback system reflects the six overarching principles for non-judicial grievance processes – legitimate, accessible, predictable, equitable, transparent, and rights-compatible. To ensure accessibility, multiple contact points are available, including a toll-free phone number and direct contact with Rio Tinto Weipa personnel. To promote local awareness of the feedback system, the process is advertised in the local newspaper, site newsletters, community noticeboards and informally when CSP personnel visit local communities.’</p> <p>‘Once feedback has been received and logged, the CSP team undertakes an initial assessment to identify and contact the relevant function. The functional leader and CSP superintendent then establish an investigation team, classify the incident, investigate it to determine the root cause(s) and identify any actions that are required to address the incident. Where an incident is classified as “significant”, the CSP manager, relevant function manager and the general manager are notified. The feedback procedure includes provisions for engagement and dialogue with the affected persons.’</p>	<p>In a mining company context, grievance mechanisms will be implemented at a site level. As such, supplementing any general description of the company’s approach to handling grievances, complaints and incidents with a clear example of what this looks like in practice provides the reader with important insight.</p>
Source: Rio Tinto, <i>Why Human Rights Matter: A Resource Guide for Integrating Human Rights Into Communities and Social Performance Work at Rio Tinto</i> (2013) p. 79	

**Question: How does the company know if people feel able and empowered to raise complaints or concerns?**

**Objective:** To provide evidence that any individuals inside or outside the company are, from their own perspective, able to raise an issue directly with the company so that the company can address it.

**B2Gold company report:**

‘In 2017, we implemented a social information management system in Nicaragua, Mali and the Philippines that improves our ability to track and respond to grievances. Namibia maintains a simpler system due to the low volume of grievances. This has improved our data management, systematic follow-up, and ability to analyze grievances to identify issues and trends. Outstanding challenges in Nicaragua and the Philippines include coordination with other departments and contractors. Another challenge in the Philippines is that although a legitimate grievance process is in place, we need to improve the confidence in the mechanism: for example, changing the perception that lodging a grievance related to resettlement will impact the entitlements due to the complainant. In Nicaragua, Mali, and the Philippines there is regular involvement of local officials in grievance management, as well as regular feedback on the nature of grievances received and how they were addressed. However, seeking formal feedback from stakeholders on the grievance mechanism and its overall effectiveness remains an area for improvement in 2018.’

**Value:**

Grievance mechanisms can look good on paper but easily not work well in practice. A critical insight comes from evidence of whether the intended users of the mechanism trust it and feel able to use it. This disclosure recognises that, in the case described, the company acknowledged trust was limited and was taking concrete steps to address the situation. Importantly, good reporting is not just about showing where evidence is positive, but also where it indicates room for improvement and is resulting in action.

Source: B2Gold, *Responsible Mining Report 2017* (2017) p. 74

**Question: How does the company process complaints and assess the effectiveness of outcomes?**

**Objective:** To describe what actions the reporting company takes to address a complaint related to a salient issue, and through what processes it reaches a view on the extent to which the outcomes achieved provide effective remedy for any individuals whose human rights have been harmed.

**Barrick company report:**

‘A global internal procedure requires immediate reporting and escalation of information related to potential negative human rights impacts. All information on potential human rights violations must be reported, regardless of whether it seems credible to the employee or the amount of detail that the employee might know. The procedure also contains details on how information should be reported, and it includes an anti-retaliation provision. We also require that all allegations of negative human rights impacts must be investigated, though the nature and extent of the investigation may vary depending on the circumstances. Typically, for serious potential human rights breaches, we strive to create independence in our investigations. That may be through external investigators that we retain. It also may be through our corporate investigations unit, which is housed at our headquarters and is independent of the site or location where a breach may have occurred; the investigations unit is supervised by the Office of General Counsel and Operations Officer, and the results are reported to a committee of the Board of Directors.’

‘Our annual human rights assessments include a review of how effectively [our site-level] grievance mechanisms escalate potential human rights concerns. Our grievance mechanisms are also internally audited for implementation and effectiveness during regular audits of our Community Relations Management System (CRMS), and externally assessed against the UNGPs effectiveness criteria. Barrick has also commissioned independent reviews of site grievance mechanisms to test if they are meeting the needs of the company, its mines and its host communities.’

**Value:**

This reporting refers to two distinct mechanisms. The first description clarifies the investigative procedures and governance of the company’s global mechanism, while the second explains how the effectiveness of site-level mechanisms is reviewed. Evidence that a mechanism is itself scrutinised to test whether it is effective in practice is an important signal to the reader of a company report. It shows that the mechanisms are not there only for show or mere compliance, but to deliver on the aim of enabling remedy.

Source: Barrick, *2017 Human Rights Report* (2017) p.14 and p. 30



**Question: What were the trends and patterns in complaints or concerns and their outcomes and what lessons has the company learned?**

**Objective: To describe the insights the reporting company has gained from the complaints or concerns raised and the outcomes reached, as they relate to each salient issue, and to convey whether and how these insights have informed any changes to the company's own policies, processes or practices.**

**BHP company report:**

'BHP has a target of zero significant community events, recognising our responsibility to respect the health, safety and wellbeing of our host communities. The risk of a significant community event is identified, managed and assessed through our global risk management framework, which is overseen by the Risk and Audit Committee.

No significant community events were recorded in FY2018. Two grievances raised in FY2016, related to BHP Mitsubishi Alliance's (BMA) operational activities (referenced in the Sustainability Report 2017) were addressed during the FY2018 period.

In addition, no new social, environmental or human rights grievance cases were recorded by our asset teams during FY2018. We received 71 community complaints through our local complaints and grievance mechanisms and there were a number of community concerns raised that BHP has worked with stakeholders to address during the course of FY2018.

**Value:**

Good reporting conveys trends in numbers of complaints and their resolution rates, but also gives as much clarity as possible on the subject of complaints – or at least the major categories. This data provides an opportunity to identify areas for improved policies, processes and practices. Reporting that conveys that these lessons are being internalised is particularly compelling.

BHP, *Sustainability Report 2018* (2018) p. 38

**Question: Did the company provide or enable remedy for any actual impacts and, if so, what are typical or significant examples?**

**Objective: To describe the forms of remedy provided by the company in relation to the salient issues, whether in specific individual cases or in aggregate across similar types of case.**

**Newmont company report:**

'There were nine grievances or allegations related to human rights reported...'

'Discrimination in the workforce..... Seven formal grievances related to discrimination in the workforce were filed at our operations in Nevada, and one grievance was filed at the Cripple Creek & Victor operation in Colorado. Senior management and personnel in our human resources and legal departments investigated the grievances. Substantiated complaints involved discipline up to and including termination. Our Ethics Solutions Tool tracked 24 different allegations with human rights implications. Issues ranged from allegations of discrimination based on gender or race to allegations of sexual harassment.'

[...]

'In April, an individual was arrested for suspected illegal small-scale mining activities on the mine's property and was later remanded to the authorities for processing. When site security personnel reviewed previously recorded footage of the arrest from the video surveillance system, the footage revealed three members of the security team, including a Newmont security officer, and one Ghanaian army officer using excessive force against the individual. The event was reported immediately to senior management, and we consulted with the local traditional leader and requested a police investigation. Based on the investigation's findings, actions were taken against each of the personnel – including suspending the Newmont staff member and reassigning the army officer – and we stepped up our training with both security staff and the wider site personnel population on acceptable behaviour and protection of individual rights for all including those suspected of illegal activities. The findings were also discussed with local stakeholders.'

**Value:**

Beyond trends and patterns, the best reporting gives actual examples of grievances and their outcomes. This provides evidence that a grievance mechanism is not just churning cases but leading – where warranted – to both relevant and appropriate forms of remedy. It can also provide an important signal back to the intended users of a mechanism, and those that work with them, that there is value in using the mechanism.

Newmont Goldcorp, *Beyond the Mine: Sustainability Report 2017* (2017) p. 60–1

# Appendix C

## Adapting Grievance Mechanisms across the Mining Lifecycle

The UNGPs and good practice suggest that companies should establish grievance mechanisms as early as possible in the project lifecycle. Recognising that there may be different issues and dynamics between companies and communities throughout the project lifecycle, Table C.1 points to some potential considerations for adapting the grievance mechanism at different stages.

Table C.1

Mining lifecycle phases	Key issues	Action
<b>Mergers and acquisitions (M&amp;A)</b>	<ul style="list-style-type: none"> <li>— Pre-acquisition due diligence should include attention to potential human rights issues and unresolved grievances given the costs and challenges involved in trying to resolve ‘legacy’ issues.</li> <li>— Where companies acquire new assets, they may also unwittingly become involved in ‘legacy’ grievances that were not readily identifiable in pre-acquisition due diligence.</li> <li>— In a M&amp;A context, companies have an opportunity to evaluate and redesign an ineffective grievance mechanism.</li> <li>— Conversely, where there have been effective grievance mechanisms, this should be understood as an asset that project or operation should maintain.</li> </ul>	<ul style="list-style-type: none"> <li>— Where the company acquires a company with unresolved historical grievances, under the UNGPs it also acquires the responsibility for addressing the remaining concerns (which is distinct from any legal liability). This may necessitate the creation of a distinct grievance or dialogue process, and consideration by the company of how it can bring relevant parties to the table to seek some resolution.</li> <li>— These issues can be pre-empted by engaging the company’s M&amp;A lawyers (and wider team) on risk assessment processes and the extent to which they capture human rights-related risks.</li> <li>— • See <a href="#">Shift’s guidance on factoring human rights risk into M&amp;A processes</a>.</li> </ul>
<b>Exploration</b>	<ul style="list-style-type: none"> <li>— Typical grievances may relate to land access, environmental disturbances and potential impacts on cultural heritage or sacred sites.</li> <li>— Fewer staff and resources tend to be available to manage a formal grievance mechanism during the exploration stage, but companies can still have a simple process that fulfils the UNGPs effectiveness criteria.</li> <li>— Failure by the company to respond to community concerns at this early stage, or failure to keep track of commitments made in response to concerns, can rebound at later stages of the project in the form of reduced trust from communities and an escalation in the nature of grievances, making them harder to resolve.</li> </ul>	<ul style="list-style-type: none"> <li>— Grievance management can be closely linked to early stakeholder engagement efforts, as a means to identify community concerns about the project and bring them back into the company for appropriate handling, at the same time as providing information to communities about the company’s plans and activities.</li> <li>— While the concern/grievance gathering process may be more informal at this stage, it is important that internal processes to review and address community concerns and keep track of responses are nevertheless formalised.</li> <li>— Additional guidance for grievance mechanisms at the exploration phase is provided in the Prospectors &amp; Developers of Canada’s ‘e3 Plus’ resource.</li> </ul>

Mining lifecycle phases	Key issues	Action
<b>Land acquisition and resettlement</b>	<ul style="list-style-type: none"> <li>— At this stage, there is a risk of potentially severe impacts and serious grievances, not least if there is a government-led resettlement process.</li> <li>— There is a particular risk of:               <ul style="list-style-type: none"> <li>- Grievances related to the actions of public security forces if there is a forced eviction, where fears of retaliation may also be high.</li> <li>- Grievances about compensation.</li> <li>- Longer-term grievances about impoverishment due to impacts on community livelihoods.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>— It can be helpful to design a distinct and tailored grievance-handling process for a resettlement process.</li> <li>— It can be valuable to involve an independent evaluator for compensation claims as part of such a process.</li> <li>— Consideration should be given to what recourse is available if compensation offerings remain disputed. An NHRI or other respected local or national body – sometimes an NGO – may be able to play a valuable role as a point of agreed recourse where court systems are not available, functioning or otherwise appropriate for such cases.</li> <li>— Additional guidance for grievance mechanisms for land acquisition and resettlement is provided in IFC Performance Standard 5.</li> </ul>
<b>Construction</b>	<ul style="list-style-type: none"> <li>— This can be a critical phase for potential human rights impacts and risks to the company from a loss of social licence to operate.</li> <li>— Grievances often involve:               <ul style="list-style-type: none"> <li>- Noise, dust and other nuisances caused by construction activities.</li> <li>- An influx of construction workers from outside the local communities and/or ethnic groups and antisocial behaviour.</li> <li>- Impacts on the environment and landscape.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>— While many of the issues arising may seem low-level and not individually significant, it is important for construction and other staff to understand the cumulative effects they can have on local trust and the company's licence to operate; and that they can lead to a rapid escalation towards conflict.</li> <li>— Good practice from the construction sector shows the value of developing a common and coordinated approach for grievance management with all the contractors and subcontractors who will be active during this project phase.</li> <li>— The ability of a senior community relations officer to suspend operations partially or entirely in the face of a serious community complaint can have a powerful effect on making those responsible for impacts from construction (employees and contractors) take seriously their role in avoiding such impacts.</li> </ul>



Mining lifecycle phases	Key issues	Action
Operations	<ul style="list-style-type: none"> <li>— A wide range of grievances may be related to different aspects of operations, including grievances related to human resources (eg job and training opportunities), behaviour of contractors and suppliers, as well as environmental and social impacts.</li> <li>— Grievances may increase when there are changes to the business (eg expansion, changes in transportation routes, care and maintenance) or the country/operational context (eg political upheaval or controversy, or an economic downturn).</li> </ul>	<ul style="list-style-type: none"> <li>— Companies shouldn't assume that a grievance mechanism that is appropriate and well-functioning at the start of operations will remain so over time. The grievance mechanism should be reviewed regularly with a view to adapting it to the evolving composition, needs and concerns of communities, paying particular attention to vulnerable groups.</li> <li>— Grievance mechanisms should be reviewed periodically in collaboration with communities to test and improve their effectiveness.</li> </ul>
Closure and post-closure	<ul style="list-style-type: none"> <li>— Grievances will typically be about: <ul style="list-style-type: none"> <li>- The impacts that result from the loss of jobs, business opportunities and social investments.</li> <li>- Concerns regarding rehabilitation plans for the area, and long-term environmental monitoring.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>— Companies should engage proactively with stakeholders to provide timely information. This will allow affected stakeholders to adapt to the realities of closure and have a say in closure and reclamation planning.</li> <li>— In anticipation of the company's diminishing presence in this period, it is important to consult with communities and other relevant actors (eg government monitoring bodies) about the channels and responsibilities for long-term grievance management.</li> </ul>

# Appendix D

## Interpretation and Application of KPIs for Grievance Mechanisms

Key Performance Indicators (KPIs) are important for focusing management and staff attention on specific areas for continuous improvement. It is important to make sure that KPIs for grievance mechanisms establish the right types of incentives to encourage a more open and proactive approach to grievance management. Table D.1 presents a list of KPIs that are commonly used for grievance mechanisms, along with suggested approaches for interpreting and applying them to support continuous improvement.

Table D.1

KPI	Possible interpretation	Application
<b>Number of grievances received</b>	A low number is a negative sign if grievances exist but are not being aired, or are being directed through other channels (media, campaign, courts).	Check against feedback from communities on their perception of the mechanism.  Check against complaints being raised through other channels.
	A high number may be a positive sign if the mechanism has been newly developed, revised or promoted; or following a recognised incident or new phase of business activity (eg mine expansion).	Check against recent developments in the mechanism and in site activity.
	A high number may be a negative sign if it persists over time and/or includes a series of grievances on the same issue (ie concerns are not being addressed).	Check for repeat or continuing patterns of grievance.  Consider an indicator on the number of repeat or similar complaints that are registered in parallel or over time.
<b>Time taken to resolve grievances</b>	Resolution by a set target time could be a good sign if: <ul style="list-style-type: none"> <li>— Complainants are happy with the results.</li> <li>— It reflects that staff are highly responsive to the mechanism's process and therefore to complaints.</li> </ul>	Consider focusing on indicators of meeting deadlines for: (a) acknowledging complaints; (b) either proposing a resolution or providing an update; (c) the regularity of further updates until resolution.
	Resolution in a consistently short time could be a bad sign if complainants are not happy with the results.  Resolution times that go beyond targets could be a bad sign if: <ul style="list-style-type: none"> <li>— Staff are being unresponsive to complaints.</li> <li>— Complainants are unhappy with the results.</li> </ul>	Check against feedback from complainants on their satisfaction with (a) the process; (b) the outcome of the process.
<b>Percentage of grievances resolved through agreed outcomes</b>	A high percentage of cases with agreed outcomes is generally a positive sign, provided that key affected groups (women, indigenous communities etc) are not excluded from the process.	Check whether groups affected by the issue might be differently affected to those bringing the grievance, have different views on what would constitute a solution, and have a voice in the process.  Check against any complaints or allegations being raised through other channels (eg media, campaigns, courts).

KPI	Possible interpretation	Application
Number of instances where substantiated grievances lead to changes in policy or procedure	A high correlation between substantiated grievances and changes in policy or procedure is generally a good sign, if those changes are reflected in practice.	Check against community perceptions of whether changes made to policies or procedures are seen by communities to have led to changes in practice.
	A low correlation between substantiated grievances and changes in policy or procedure is a bad sign if it reflects that the offending practices have not been addressed.	Check against repeat complaints on the same or similar issues over time.
Level of satisfaction among users of the mechanism	A high percentage of satisfaction with the grievance process offered through the mechanism is a good sign, provided it is not concentrated only in certain groups within communities (eg leaders, men, dominant ethnic groups). It can be a particularly positive indicator where this is true even when the outcome is not agreed or not viewed as satisfactory.	<p>Consider indicators that look at users' experience of whether the process was both fair and respectful.</p> <p>Consider using legitimate and independent third parties to gather this information and, at a minimum, ensure that those providing feedback do not feel pressured.</p> <p>Consider an indicator based on feedback from users on whether they would be inclined to use the mechanism again in the future, or whether they would recommend it to others.</p>
	A high percentage of satisfaction with the outcome of a grievance process is generally a good sign, provided that individuals were provided with the information and any expert support they needed to reach an informed view.	<p>Consider using legitimate and independent third parties to gather this information and, at a minimum, ensure that those providing feedback do not feel pressured.</p> <p>In complex or contentious cases, check against whether individuals were able to access independent advice and were provided with adequate information and time to consult with others, if they wished.</p> <p>Check against the compatibility of the outcome with human rights standards.</p> <p>Consider an indicator based on feedback from users on whether they would be inclined to use the mechanism again in the future, or whether they would recommend it to others.</p>

# Appendix E

## Checklist for Aligning a Grievance Mechanism with the UNGPs Effectiveness Criteria



### Legitimacy

- Involve communities in the co-design of the grievance mechanism
- Establish an independent process for complex issues that cannot be resolved unilaterally
- Ensure formal accountability for the grievance mechanism



### Accessibility

- Promote the grievance mechanism
- Provide multiple channels for accessing the grievance mechanism
- Adapt channels to local culture and language
- Make the grievance mechanism easy to use
- Ensure there is no retaliation for using the mechanism
- Consider whether additional steps need to be taken to ensure vulnerable groups can access the mechanism



### Predictability

- Define a clear process
- Communicate clearly the outcomes that are available
- Maintain flexibility to adapt the process where necessary to respect rights



### Equitability

- Provide access to information
- Facilitate independent representation where necessary
- Consider establishing an independent process if there is a perceived imbalance of power





### **Transparency**

- Update complainants regularly
- Be transparent with communities about outcomes
- Apply international standards for public reporting on the grievance mechanism
- Balance the need for transparency with respect for complainants' confidentiality



### **Rights-compatibility**

- Ensure the process and outcomes respect human rights
- Enlist human rights expertise as necessary
- Respect the rights of affected stakeholders not to use the grievance mechanism and/or to use other available channels



### **A source of continuous learning**

- Solicit feedback from users of the grievance mechanism
- Act upon lessons for improving the mechanism and preventing future harm
- Regularly assess trends about grievances
- Establish and continually refine grievance mechanism KPIs



### **Based on engagement and dialogue**

- Resolve grievances through dialogue and joint problem-solving
- Deepen community involvement in the grievance process
- Engage meaningfully with vulnerable groups about the grievance process and outcomes
- Conduct a participatory evaluation of the grievance mechanism

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December 2019

