GBI

GUIDANCE BRIEFING SERIES

WHAT "GOOD" LOOKS LIKE

Grievance mechanisms and remedy



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What "good" looks like

Grievance mechanisms and remedy

"Effective operational grievance mechanisms remain vital for companies to meet their responsibilities to respect human rights. In an era of human rights legislation covering company operations and value chains, in which regulators and courts may be vested with increased powers, effective operational grievance mechanisms take on added importance since they often enable companies to address matters before they are raised with enforcement agencies or judicial authorities."

Jon Drimmer, GBI Senior Advisor

Why this practice-based series?

In 2011, the States in the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs have enjoyed broad support by companies, industry groups, sustainability and human rights experts, civil society, and affected stakeholders because the UNGPs were based on years of rigorous research and broad global engagement.

The Global Business Initiative on Human Rights (GBI) is the only business-led initiative solely focussed on supporting companies through peer learning to improve the implementation of their responsibility to respect human rights under the UNGPs and carry out human rights due diligence. That work has resulted in a substantial and detailed repository of practice-based insights and knowledge about what human rights due diligence means when facing real-world challenges, and what can reasonably be expected of companies in their pursuit of respecting human rights and the environment.

As regulations such as the European Union's Corporate Sustainability Due Diligence Directive (CSDDD) and other national laws establish binding obligations that largely codify and operationalise the core principles of the UNGPs, GBI is now sharing its experience and practice-based insights in a guidance series about "what good looks like."

The aim of this series is to help further the development of mandatory due diligence legislation on sustainable business in the European Union and elsewhere in ways that are practical, realistic, and in line with the UNGPs. This guidance also aims to help companies to understand what "good" looks like when it comes to implementing mandatory human rights and environmental due diligence.

Why grievance mechanisms and remedy are essential

Grievance mechanisms have procedural and substantive components and are critical to ensuring the right to remedy. They serve three key essential functions:

1. Offering affected stakeholders a direct avenue to seek remedy with the company.
2. Fostering meaningful and ongoing engagement with rightsholders.
3. Serving as an early warning system by providing a structured, accessible channel through which stakeholders can raise concerns as soon as they arise.

Grievance mechanisms can help companies build trust and maintain the social licence to operate and conduct more effective human rights and environmental due diligence (HREDD). As early warning systems, grievance mechanisms not only protect the rights and interests of affected people but also help the company reduce risks, avoid costly disruptions and strengthen its overall HREDD.

In order for grievance mechanisms to be effective, companies should seek to foster a culture of openness, while recognising and counteracting the power asymmetries in who can raise concerns. The establishment of an effective mechanism often means that a rising numbers of issues will be flagged. Internally, colleagues, including senior leadership, should view this is as a sign of trust in the process and its effectiveness.

Companies generally have formal means of receiving concerns and questions from stakeholders. But while companies can put in place robust processes and procedures to identify and respond to human rights risks, things can still go wrong, and individuals and communities can still be impacted. When things do go wrong, or people feel they have gone or will go wrong, companies must be able to respond effectively. Companies must have processes for addressing and, in many cases, remedying impacts when they occur. This is an essential part of their HREDD.

Under the UNGPs, companies have a responsibility to remediate, or cooperate in remediating, adverse impacts that the company caused or contributed to. Remediation can take many forms as it is about restoring the person or community to where they would have been before the harm. Companies should always take into account that remedy includes financial compensation, but also other forms, such as apologies, rehabilitation, restitution or non-financial compensation and guarantees of non-repetition.

It is essential that rightsholders are effectively engaged in the remedy process from the beginning to the end. Effective remedy can help companies to restore trust in the community where they operate and builds further the resilience in their supply chains.

For many people, how a company deals with grievances goes to the heart of respect for human rights. Improving access to remedy makes human rights real, in a very tangible way.

What grievance mechanisms and remedy should look like

1. Maintain multiple channels for grievances

Most effective mechanisms use multi-channel approaches tailored to context, audience and operational footprints to improve accessibility, inclusivity and responsiveness. They are also user-focused, embedded in a culture of learning and transparency, and aim to resolve issues, help prevent recurrence and build trust.

Combining passive systems, such as hotlines, with active ones, such as community dialogues, can cover a wider range of grievances. For example, sometimes community dialogues can encourage disclosures by directly engaging stakeholders and lowering barriers to speaking up. Other examples can include whistleblower hotlines, worker voice tools (though these should be co-created with workers), complaint boxes, community or worker dialogues, and engagement in industry or multistakeholder initiatives.

In addition to operational-level grievance mechanisms, companies should also be willing to participate in other forms of grievance mechanisms such as Ombudsbody mediation processes or National Contact Point Specific Instance processes. Constructive participation in these processes demonstrates a company's willingness to engage and remediate harms to people.

2. Design grievance mechanisms that are fit for purpose

A grievance mechanism should do more than just log complaints against the company. It should be user-centric to support stakeholder engagement, inform due diligence, and drive continuous learning and improvement. The UNGPs outline criteria to gauge the effectiveness of a company's grievance mechanism. It should be:

- Legitimate
- Accessible
- Predictable
- Equitable
- Transparent
- Rights-compatible
- A source of continuous learning
- Based on engagement and dialogue

Each one of the eight UNGP effectiveness criteria serves a distinct purpose: *asking why each exists* helps when assessing a mechanism's effectiveness to determine whether a grievance mechanism is fit for purpose. For example, companies should consider cost-free mechanisms, literacy capabilities, disability access, gender, child and vulnerability considerations.

Strengthening a grievance mechanism can result in more grievances being raised, which is a good sign. When a mechanism is not being used, grievances can still exist. If there are no grievances being received, this often indicates that people do not know about or trust the mechanism. Even if people are using the mechanism, companies should not assume that all intended users know about it or trust it. Lower levels of complaints can also occur where multiple channels are available, and people are confused about which to use. An example: a supplier with multiple different customer grievance mechanisms.

Companies should seek to continuously socialise their grievance mechanisms with intended users. To manage expectations internally, it can be a good idea to prepare colleagues (and senior leaders) for the likelihood that grievances will increase if efforts to strengthen the mechanism are successful. Finding ways to improve trust and knowledge in a mechanism can be challenging. Distrust may result from fear

of retribution. To build trust with users, companies should engage meaningfully with stakeholders in the development of grievance mechanisms.

In developing a grievance mechanism in conflict or high-risk situations, companies should seek to understand the conflict context. Grievance mechanisms should cover anonymity, emergency referrals and rapid protection measures.

3. Support grievance channels with internal processes

Effective grievances channels incorporate clear governance, coordinated departmental input, stakeholder involvement in design and review, transparent communication with complainants, integration with broader HREDD, and monitoring trends for systemic improvements. Board oversight, clear appeal routes and time-bound indicators are essential for supporting grievance mechanisms. Benchmarking good practice, including response times, assessments and resolutions, can help companies to implement more effective systems.

Business partners at different points of the value chain can be involved in a grievance or human rights harm. Where this is the case, it can be helpful for companies across the value chain to coordinate in identifying and addressing human rights risks when they emerge. This approach may be useful where, for example, harms originate deep in a company's supply chain or emerge from customers' use of products. It can also be useful when different parts of a value chain take on responsibility for a site or operation at different points in time.

In practice, HREDD legislative requirements stipulating that companies maintain grievance mechanisms covering their operations and value chains might lead companies to develop different mechanisms. Companies may have different considerations, processes or approaches for their own operations or their value chains. For example, a company may place much greater importance on stakeholder engagement, licence to operate and early warning signs for its own operations. Grievance mechanisms in the value chain would primarily serve to identify a harm, such that the company should consider how it is remediated.

4. Consider the outcomes of remedy

When engaging with remedy, it is important to think first about the outcome the company will work to achieve. This includes thinking about how best to restore the affected people to the situation they were in before the impact occurred, as well as their immediate needs, any sensitivities or vulnerabilities they may have and whether the obvious outcomes are necessarily the best. Engaging rightsholders to understand what they need in terms of remediation is critical.

For many companies, remedying harm is often equated with financial compensation. However, companies should also consider options for non-financial remediation. For example, in a situation of modern slavery, workers may receive financial compensation, but that may not constitute sufficient, appropriate remedy. Workers may no longer wish to continue their employment but may face a precarious situation in terms of finding alternative work, so companies should also support workers to find alternative employment.

The role of the State is also an important consideration in efforts to resolve grievances and provide remedy. States have an international legal duty to provide access to remedy, but in some situations, engaging with government agencies may exacerbate the vulnerabilities of affected workers. For example, where workers have been trafficked, State engagement may expose them to immigration processes that compound the harm they have suffered.

Companies must also consider how they address grievances that could raise potential domestic crimes; while providing claimants with confidentiality helps protect trust in mechanisms, a failure to report may lead perpetrators to harm others, and state authorities may wish to pursue avenues to uphold the law and expect that companies will support that mission.

Considering mental health can aid a company in better understanding the impact of harms and how to remedy them effectively without causing further harm. In addition to remedying any mental harm caused by an impact, the company should consider how engaging with the remedial process itself may cause further harm. In line with the UNGPs and international standards, companies must prevent potential mental harm that can be caused in the process of seeking and obtaining remedy. For example, the affected party may be at risk of re-traumatisation, stigma, prolonged stress and anxiety, or being kept in an unnaturally extended victim role through elongated remedial processes in the course of seeking remedy.

5. Use leverage to facilitate remedy

When harms occur deeper in the value chain, or as part of a project involving multiple business partners, special considerations may arise. For instance, in facilitating the remediation of impacts at a supplier, companies may wish to alert and work with peers that source from that same supplier, instead of pursuing approaches alone. The company may not have as much leverage operating alone. It also may push for certain kinds of remediation that fail to fully address the concerns of other customers.

Industry collaboration can help companies to scale outreach and align expectations. For example, a company was involved in sponsoring a mega-sporting event, which involved many different companies and governments. In order to support access to remedy for migrant workers, the company's approach relied on engaging with the sport's governing body, the host State, and in multistakeholder fora. Active engagement in discussions and insight sharing were the key elements utilised in the company's leverage strategy, which, over the lifetime of preparing for the event sought to address the conditions of migrant workers and develop and strengthen worker welfare programmes and grievance mechanisms. In these circumstances, companies, particularly sponsors, can use their leverage with the governing body and host country. In some instances, this results in reforms to the labour legislation and the establishment of grievance mechanisms.

Often when harms occur deeper in the value chain, they can involve suppliers who offer goods or services to multiple companies. This raises questions about what mechanisms should exist so that all companies are notified. It also raises questions about which companies should participate in remediation. Industry initiatives can be helpful to companies with a shared supplier and to help determine which companies should participate in remediation.

Good practice for grievance mechanisms and remedy



The following good practices and accompanying examples of company action are based on insights from GBI's multi-year work with companies. The lessons drawn indicate how companies have been working towards good practice. Some of these lessons may be more relevant than others depending on the corporate context.

GOOD PRACTICE | Consider testing a variety of different mechanisms

Lessons drawn from practice:

- In some situations, new grievance processes will be needed. Some companies find it helpful to start with a "pilot mechanism" to learn about what works and what does not. Once an effective approach has been developed, this pilot can be rolled out more widely across the company. There can be tensions between a desire to harmonise grievance processes across the company and the need for mechanisms to be context-specific (i.e. tailored to particular risks, cultural dynamics and institutions in different regions). When designing grievance mechanisms, contextual understanding and adaptability are important for their effectiveness.
- Some companies use a combination of hotlines or community-level processes or are experimenting with worker voice programmes. Designing mechanisms with the intended users in mind helps to ensure that they are fit for purpose.
- Some companies use social media to interact with rightsholders directly and identify grievances and potential adverse human rights impacts.
- Other companies collaborate across their industry to develop and implement grievance mechanisms at the industry level.

GOOD PRACTICE | Assess effectiveness and be prepared to modify and adapt

Lessons drawn from practice:

- In complex value chains, ensuring rightsholders know about the grievance mechanism and can access it can be challenging. Companies are using various tools to communicate their grievance mechanism, including posters at project sites, sharing information about the mechanism with industry associations, and reminding workers during audits.
- Where it is unlikely or unreasonable to expect people to trust a hotline or process, engage with intermediaries, including civil society organisations (CSOs), human rights defenders (HRDs), and trade unions who can help close the gap.

GOOD PRACTICE

Implement clear accountability lines and processes to respond to grievances

Lessons drawn from practice:

- Companies should prepare to deal with crisis situations; if something goes seriously wrong, a fast response will be needed.
- In terms of process, one company has had a third-party receive and analyse complaints in order to categorise them objectively. Grievances are then triaged to relevant departments based on subject matter. Each grievance is logged in a centralised database and classified by urgency and risk level. Higher-risk cases are prioritised and escalated to interdisciplinary response teams. These teams collaborate on inspections, corrective actions and community follow up.
- Another company integrated its grievance mechanism into its broader HREDD using multiple channels. Its grievance system was accessible to hundreds of suppliers. Following migrant worker reports of recruitment fees, passport confiscation and physical intimidation, the company was able to relocate the workers within eight hours, ensure their safety, open a channel with a non-governmental organisation (NGO), transfer contracts from labour agents to suppliers, and reimburse fees within 30 days. This case highlights the importance of being prepared to respond immediately where workers or communities are at risk.

GOOD PRACTICE

Consider approaching remedy through multistakeholder engagement

Lessons drawn from practice:

- Multistakeholder initiatives on remedy can be effective in developing a shared understanding of problems, expectations of different actors, as well as a commitment from each stakeholder to address the problems. However, multistakeholder initiatives can contain imbalances of power and wealth between stakeholders. It is important that power imbalances are explicitly recognised and addressed early in the process.
- Multistakeholder remedial efforts should be designed to recognise changes to the challenges they are seeking to address by being adaptable and reviewed often. There should be clear mutual accountability for all parties to deliver their duties and responsibilities, particularly given unequal access to resources and the power to make decisions. Processes should be set up to deliver consultation and encourage reflection amongst stakeholders.

GOOD PRACTICE

Put measures in place to prevent repetition

Lessons drawn from practice:

- In order to prevent repetition of forced labour in its supply chain, one company recognised that it needed to address the root causes of this complex issue. The company chose to engage in multistakeholder engagement, which led to the production of a list of credible labour agents and a standard definition of recruitment fees. This helped the company to mitigate risks and redress them when they arose.
- Following adverse impacts in the community where a mining company operated, the company restructured its risk management processes with a view to ensuring non-repetition. Risk and control owners within the operations are the first line of defence, and a technical specialist is the second line of defence headed by a senior executive. Other specialist areas, including Environment, Corporate Integrity, Social and Human Rights, act as second lines of defence for potential risks in these areas.

GOOD PRACTICE

Responding to impacts on mental health

Lessons drawn from practice:

- Mental health impacts on communities are very important to consider, particularly if there is loss of life, harm to the environment, or where impacts to socio-economic life of the affected communities are significant. Adopting do-no-harm, trauma-informed investigation techniques can be crucial when dealing with potential mental health vulnerabilities following such incidents. One company, where this was the case, supported municipalities to strengthen mental health service provision. The company also offered culturally sensitive psychological, psychosocial, and psychiatric services to affected community members.
- In the event of significant human rights harm, companies should also be mindful of the mental health impacts on their own employees and offer mental health support.

CASE STUDY FROM PRACTICE



Remedying cases of sexual harassment

A company experienced multiple complaints of sexual harassment at its project sites, which it sought to remediate. Following the complaints, the company put in place four key elements to approach remediation in a rights-respecting way:

1. Offering several different remediation avenues so that those impacted could choose their own path forward;
2. Upskilling leaders and building internal capacity on appropriate responses;
3. Integrating the programme into the company's risk management framework; and
4. Ongoing senior leadership messaging that if something happens, they want people to feel comfortable coming forward.

Additionally, the company's programme has encompassed a wide range of preventative and non-repetition measures, including, but not limited to:

- A zero-tolerance policy to sexual harassment;
- A strategy around gender balance across the organisation;
- Capacity building and training;
- Rules of conduct at project sites.

The company also banned the use of non-disclosure agreements (NDAs) and expected its business partners to adopt a similar approach. The company further undertook not to enforce existing NDAs. Significantly, while the company had not made extensive use of NDAs in this context in the past, there was an incorrect perception across the workforce that complainants could not speak about their experiences due to confidentiality. Building trust to enable those who have experienced sexual harassment to come forward is an area of continued focus for the company.

The company recognised that its approach to remedy is informed by people-centred principles, including individual choice and autonomy. The company is still learning how to sensitise the workforce to understand what behaviour is not acceptable in the workplace and to have a more comprehensive response to complaints across the company.

Key considerations for policymakers

Grievance mechanisms and remedy are essential for companies to identify risks, but also to address them once they are identified. Policymakers should seek to include grievance mechanisms and remedy in mandatory HREDD legislation, but should consider the following:

Consider the role of States:

Under the UNGPs, States must ensure that rightsholders have access to effective remedy when a harm has occurred. States should take appropriate steps to ensure that when abuses occur, rightsholders can access judicial, administrative, legislative or other appropriate avenues. Policymakers should encourage domestic judicial mechanisms that are effective in addressing business-related human rights related abuses.

Develop guidance materials for companies and States:

Guidance materials can help companies navigate their compliance with legislation. These materials can include guidance for companies on grievance mechanisms and delivering remedy in light of legislation. Guidance materials for States can help regulators and courts understand how to respond to business-related human rights abuses and help to create pathways for rightsholders to access remedy.

Align with international standards:

The effectiveness criteria for grievance mechanisms outlined in the UNGPs creates a clear set of principles that can help companies determine whether their grievance mechanisms are fit for purpose. Legislation should align with this effectiveness criteria so that companies are incentivised to develop more effective channels. Additionally, legislation should encourage companies to engage meaningfully with stakeholders in the development of grievance mechanisms and in their approaches to remedy.

Beware of forcing multiple customer grievance mechanisms on suppliers:

Because customers will be encouraged by legislation to maintain grievance mechanisms across their value chain, they may put pressure on suppliers to adopt their own grievance mechanism. This can create burdens for suppliers and workers, who may be confused about which mechanisms to access. Encouraging suppliers to develop their own grievance mechanism, while also creating pathways for workers to contact a particular customer directly, can be a more effective approach.

Consider the practical implications of grievance mechanisms for a company's operations and value chain:

Legislation mandating grievance mechanisms should take into account the very different considerations associated with company and value chain mechanisms. Policies should actively encourage companies to seek notifications from stakeholders associated with their operations as an early warning sign, to maintain their social licence and as part of HREDD – along with understanding and enabling the remediation of negative human rights impacts. Policies should take into account that companies often lack the resources to receive and address all complaints related to entities in their value chains – such as operational management issues that do not raise human rights concerns. They also should consider that companies may need to work with peers and through collective action to address concerns associated with common customers or end-users.

Balance encouraging remedy, with pathways for liability:

Companies should be encouraged to engage with affected rightsholders to facilitate remedy. However, companies may be afraid to do so because of fears of legal liability. Legislation should strike a balance between encouraging and incentivising remedy, whilst also creating pathways for rightsholders to access legal avenues for liability. Legislation should also consider the tension between affording confidentiality and mandating that adverse human rights impacts are reported.

Further Resources



Dealing with grievances

GBI's business practice portal



Podcast:

Expectations regarding access to remedy are hardening – is your company prepared?

GBI Conversations



Access to remedy through multistakeholder engagement, co-written by GBI and the Business and Human Rights Resource Centre, 2018

Developed by business for business, these evolving resources draw on practical insights across various areas of company practice.

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