

# Shift

*Putting Principles into Practice*



## Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights

Shift Workshop Report No. 5, May 2014

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## **Shift**

Shift is an independent, non-profit center for business and human rights practice. It is staffed by a team that was centrally involved in shaping and writing the UN Guiding Principles on Business and Human Rights, and is chaired by the author of the Guiding Principles, Professor John Ruggie.

Shift provides the expert knowledge and guidance for businesses and governments to put the UN Guiding Principles into practice. Based on lessons from this work, Shift develops public guidance materials to support improved practices for the respect and protection of human rights globally.

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# Introduction

On May 1-2, 2014, Shift held the fifth in its series of workshops with companies participating in its Business Learning Program, co-hosted with the Corporate Social Responsibility Initiative at the Harvard Kennedy School of Government. The workshop focused on the concept of remedy in the context of the UN Guiding Principles on Business and Human Rights, which plays a key role in meeting the expectations of the corporate responsibility to respect human rights.

The fundamental expectations of businesses in respecting human rights are set forth in Guiding Principle 11: “Businesses should avoid infringing on the rights of others and should address adverse human rights impacts with which they are involved.” In essence, the Guiding Principles recognize that, even with the best policies and processes to prevent potential human rights impacts from occurring, impacts can still occur – whether because the impact was unexpected or because the business was unable to prevent it.

The Guiding Principles therefore articulate two distinctive types of responsibilities for businesses in respecting human rights:

- A *forward-looking* responsibility of businesses to prevent human rights impacts from occurring (which are captured in processes for human rights due diligence, prevention and mitigation); and,
- A *backward-looking* responsibility of businesses to address human rights impacts when they do occur (which are captured by the concepts of remediation and leverage).

The concept of remediation becomes critical in understanding this backward-looking responsibility to address human rights impacts when they occur.

Drawing on both the experience of participating companies and challenges they have faced in practice, together with Shift’s experience working on issues related to remediation, the workshop sought to generate both practical and creative ideas for companies on how to approach their responsibilities in relation to remediation of human rights impacts. The workshop operated under the Chatham House rule, and accordingly this report aggregates some key

ideas that contributed to or resulted from the discussions.

## 1. Definitions

In the Guiding Principles, the term ‘remediation’ is used to refer to the process or act of providing remedy. It should not be confused with ‘remediation’ in the context of social audits, where the concept includes (and typically focuses on) forward-looking actions to prevent a non-compliance from recurring.

At its core, the concept of remedy aims to restore individuals or groups that have been harmed – in this case by a business’s activities – to the situation they would have been in had the impact not occurred. Where this is not possible, it can involve compensation or other forms of remedy.

As the Guiding Principles set out, ‘remedy’ in the judicial context is understood to include: “*apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well the prevention of harm through, for example, injunctions or guarantees of non-repetition.*” These forms of remedy are relevant – or have equivalents in the case of punitive actions – also in the context of non-judicial mechanisms, with the exception of criminal sanctions.

## 2. Understanding the business ‘responsibility for remedy’

The Guiding Principles make clear that a company’s responsibility to provide for remedy depends upon its connection to the human rights impact that has occurred: “*Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes,*” (Guiding Principle 22).

Where the company has neither caused nor contributed to an impact, but the impact is nevertheless linked directly to its operations, products or services, there is no responsibility under the Guiding Principles to provide for or contribute to a remedy. A company may choose to contribute to remedy in these situations for other reasons – humanitarian, commercial,

reputational or other – but this is not grounded in their responsibility to respect human rights.

Understanding and assessing the nature of a company's responsibility with respect to a specific impact can therefore be an important step in determining a company's responsibility to provide remedy. Participants noted that very few companies have systematic approaches for analyzing the nature of their responsibility. One participant observed that, *“Our incident management systems are primarily designed to see if an impact occurred, but we have no systematic way of analyzing what our role with the impact may have been.”*

<b>Understanding Impact and Responsibility for Remedy</b>		
<b><i>If we have...</i></b>	<b><i>Then under the Guiding Principles we should...</i></b>	
<b>... caused (or may cause) the harm...</b>	... cease or prevent the action causing the harm...	...and remediate the harm.
<b>... contributed to (or may contribute to) the harm...</b>	... cease or prevent the action contributing the harm; use leverage to mitigate the risk that any remaining impact continues or recurs...	...and contribute to the remediation of the harm.
<b>... identified a linkage between the harm and our operations, products or services, but no cause or contribution...</b>	...use leverage to mitigate the risk of the impact continuing or recurring to the greatest extent possible.	

### 3. Mapping the place of a grievance mechanism

Where companies have caused or contributed to an impact, they have a responsibility to provide or contribute to remedy for those who have been harmed. Primarily, the way companies have understood this responsibility is the need to establish grievance

mechanisms, through which affected stakeholders can raise and seek redress for impacts that have occurred.

However, in practice, such grievance mechanisms do not exist and are not created in a vacuum. Internally, they will typically sit within an existing ‘eco-system’ of other processes that are intended to provide channels for identifying and/or addressing the concerns of certain groups of individuals (e.g. employees, customers etc) or breaches of standards (eg a Code of Ethics) in one way or another. Externally, a grievance mechanism will typically exist in a ‘landscape’ of state-based and other grievance mechanisms that may provide alternative or complementary channels, or be a potential point of recourse for issues that cannot or should not be addressed through the grievance mechanism.

#### 3.1. The internal ‘eco-system’ for remediation

Internal policies and processes that may already exist and provide a channel for receiving complaints and/or for addressing them include:

- Whistle-blower / ethics hotlines
- Employee ombudsman / human resources complaints processes
- Open Door / Speak up policies
- Trade Unions / Industrial Relations processes
- Consumer complaints mechanisms
- Community facing grievance mechanisms
- Business-to-Business contract clauses with dispute resolution provisions
- Code of Conduct requirements for supplier mechanisms
- Audit processes (and worker interviews)
- Supply chain hotlines
- Stakeholder engagement (at the site level and the policy level)

Before designing a new grievance mechanism, mapping this internal eco-system can help companies to understand what already exists.

According to one company participant, *“We now realize that we have many aspects of a remediation eco-system in place, and looking at it through the remediation lens will help us to identify what we have and where there are gaps.”*

Another company shared the experience of having recently expanded the scope of their ethics hotline, to allow a broader range of issues (including human

rights impacts), to be reported, and to enable third-parties (non-employees, including supply chain workers) to raise concerns. *“What we came to realize is that we now have a system that is capable of much greater identification of issues, but we have not yet built the ‘back-end’ of the system to be capable of dealing with some types of complaints.”*

**Mapping the internal ‘eco-system’ for remediation serves a number of purposes:**

**Increasing internal comfort with the concept:** Recognizing that there are internal processes already in place for addressing certain types of impacts and certain categories of stakeholders. This can reassure managers internally that the concept of remediation is not entirely new, and support ‘buy-in’ for the general notion of creating systems to identify and address impacts.

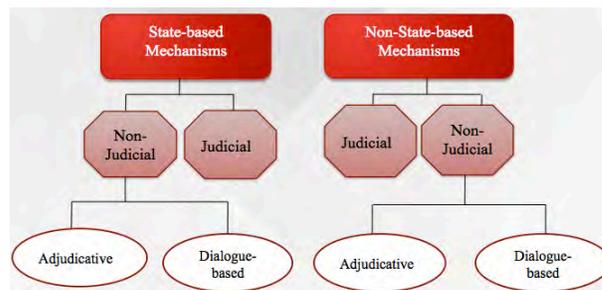
**Identifying Gaps:** Identifying whether there are types of impacts, or categories of stakeholders, for which existing systems do not yet provide effective processes for identification and resolution of concerns and complaints, and what additions to the internal ‘eco-system’ would be needed to address the gap.

**Learning from Existing Processes:** Understanding what processes are working well for certain types of impacts and certain categories of stakeholders and how the company can build on and/or improve upon these as it looks to fill gaps?

**Ensuring ‘Connectivity’:** Ensuring that impacts identified through one part of the eco-system get channeled to the most appropriate place to be addressed, and that the business has full visibility of its human rights impacts.

**3.2. The external ‘landscape’ for remediation**

Just as companies can look at the ‘internal eco-system’ as they consider strengthening or augmenting existing remediation processes, they can likewise look at the ‘external landscape’ for remediation in different operational contexts.



States have critical roles to play in ensuring that effective judicial and non-judicial processes are present. They do so through national court systems and statutory and regulatory bodies, such as national human rights institutions, labor dispute bodies, as well as through administrative mechanisms such as the National Contact Points (NCPs) of the OECD Guidelines for Multinational Enterprises. Public financial institutions and multi-stakeholder initiatives may also provide accountability mechanisms and grievance processes to enable those affected by their clients’ or members’ business activities to raise concerns and seek redress for impacts.

Operational-level grievance mechanisms administered or co-administered by companies sit within this landscape - as non-state-based, non-judicial mechanisms, which should be primarily dialogue-based in nature.

Although this landscape is imperfect at best, understanding the different institutions within it, and the roles that they are capable of playing in the provision of remedy, can help companies to identify an appropriate role for company processes and ways to link those to external institutions. Several examples were shared during the workshop of how companies have in some instances leveraged credible institutions in the external landscape in specific contexts to provide alternatives to, complement, or enhance the legitimacy of company processes – for instance, by providing recourse when company processes are unable to achieve satisfactory resolution.

*In some contexts, businesses can link internal company remediation processes to respected institutions in the 'external landscape' to provide recourse or escalation pathways, when company processes are not able to lead to satisfactory resolution. For example:*

- *Farm-level labor grievance mechanisms in Tesco's fruit supply chain in South Africa included recourse to the Commission for Conciliation, Mediation and Arbitration (CCMA), a government labor relations body, when the farm-level mechanism was unable to produce resolution.*
- *Newmont's community grievance mechanisms in Ghana include recognition of and recourse to the role of the Commission on Human Rights and Administrative Justice (CHRAJ), the national human rights institute of Ghana, as well as community-level committees for dealing with certain sub-sets of issues.*

## 4. Getting internal 'buy-in'

The UN Guiding Principles have helped to create a global expectation that responsible businesses should establish remediation processes, including grievance mechanisms. This is indeed one reason why many companies establish remediation processes: Because they are 'supposed to'. However, where these processes have been most effective in practice, it has been because business leaders have been able to recognize and articulate the value to the business of having an effective system in place for identifying and remediating impacts when they occur. This requires 'making the case' for remediation processes and grievance mechanisms internally, before taking forward efforts to design new approaches or strengthen existing systems.

Table 1 on the following page sets out some of the rationales discussed in the workshop. Different rationales might resonate most in different company cultures or for different functions or business units within the broader business enterprise.

*"My hook can't be, 'Grievance mechanisms are great.' But I can say, 'Feedback is at the core of our business values. We value feedback for consumer reactions; we value feedback for product quality; we value feedback in our business relationships; and this is no different.'"*

Workshop Participant

## 5. Operational-Level Grievance Mechanisms

Operational-level grievance mechanisms are a systematic means of providing remediation processes. According to Guiding Principle 29: "To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted."

Global experience with the implementation of company grievance mechanisms varies greatly. In various industries, specific guidance has been developed by companies, industry associations and other actors.

The workshop did not seek to provide full treatment of how to make operational-level mechanisms effective. Rather, it focused on some of the key concepts and lessons from global experience that could help to equip business leaders responsible for human rights within their companies with the necessary tools to help shape and steer their company's efforts.

### 5.1. Procedures and Systems:

Companies often recognize the need for procedures for handling grievances, but may not recognize the need for an effective management system.

<b>Table 1: Making the Case Internally: Rationales for Introducing/Strengthening Remediation Processes</b>	
<b>Threat of Regulation</b>	“We have to, or we will soon. Regulations are coming that will require us to do so.”
<b>Values Alignment</b>	“We should, because it reflects and reinforces our corporate culture.”
<b>Prevention</b>	“We can make sure small issues do not escalate into bigger issues.” “We can prevent issues from recurring, by identifying them now and addressing their root causes.”
<b>Data-Gathering</b>	“It can provide more visibility into issues in our operations / value chain.” “It helps us track our performance by seeing whether people feel we are getting it right.”
<b>Risk Management</b>	“It provides us with a tool for identifying actual or potential impacts - data we can use to manage risks more effectively.” “It enables us to be more proactive in managing our risks, rather than reactive, because we can identify and address potential risks before they create problems for the business.”
<b>Cost / Bottom Line</b>	“Grievance processes can improve workplace morale, which can improve worker retention, reduce accidents, and improve productivity.” “Disputes are costly when they escalate.” “We might be able to reduce audit costs by reducing audit necessity where there are strong grievance processes (and worker-management dialogue) in place.” (For Suppliers)
<b>Strategy</b>	“It helps us gain our social license to operate.”
<b>Tactics</b>	“A grievance mechanism can help us solve and/or monitor an actual, ongoing problem within our operations.”
<b>Control</b>	“Not knowing is not safer – it’s just a risk that goes un-managed.” “Why put our fate in the hands of a third party? Wouldn’t we prefer to identify and address these issues in-house?”
<b>Efficiency</b>	“Solve problems closer to the source.” (particularly for Suppliers) “Address issues more quickly.” “Reduce the number of issues that get pushed up the chain.”
<b>Sustainability</b>	“Build local ownership of the problem.”
<b>Familiarity</b>	“We do this in many other parts of our business: we have customer feedback lines / environmental clean-up processes / dispute resolution with business partners / employee channels for internal human resources issues.”

The grievance procedure is a clear, step-by-step process for how grievances are handled, including: how they are filed, assessed, acknowledged, investigated, and responded to; the opportunities for engagement and communication with the individual that brought the grievance; and the recourse mechanisms available if the process does not result in satisfactory resolution.

Quite apart from this procedure, a grievance mechanism also requires an effective management system. This may include the internal governance of the process, the roles and responsibilities for different business functions, the resources and competencies required, key performance indicators (KPIs) for the mechanism and the staff with overall responsibility

for it, the tracking and recording of grievances, assurance that the grievance process is working effectively, and the means to gain organizational learning from grievances raised and solutions found.

## 5.2. Questions of Scope:

Many grievance mechanisms face challenges because they do not thoughtfully address questions of scope: Who is eligible to bring complaints, about what types of issues? Grievance mechanisms work best when they are able to address the types of impacts for which they were designed, and when there are other pathways or processes available for impacts that fall outside of this scope.

Externally, there may be one or more 'intake' points, through which many different types of grievances are raised. Internally, those grievances need to be 'channeled' to an appropriate process for addressing that particular type of grievance. When grievance mechanisms try to be all things to all people, they may end up being ill-equipped to handle specific types of complaints, or may become overburdened with complaints that might more effectively be dealt with elsewhere. (See Annex B for an example of questions that can help to define the scope of a grievance mechanism).

### 5.3. Issues of Language:

Several workshop participants relayed examples of situations in which the language of 'grievance' and 'grievance mechanisms' hindered, rather than enhanced, the purpose and effectiveness of such mechanisms. For affected stakeholders, the word 'grievance' may carry certain connotations that prevent certain issues and concerns from being raised, because they do not seem to rise to the level of a 'grievance'. Internally, the language of 'grievance

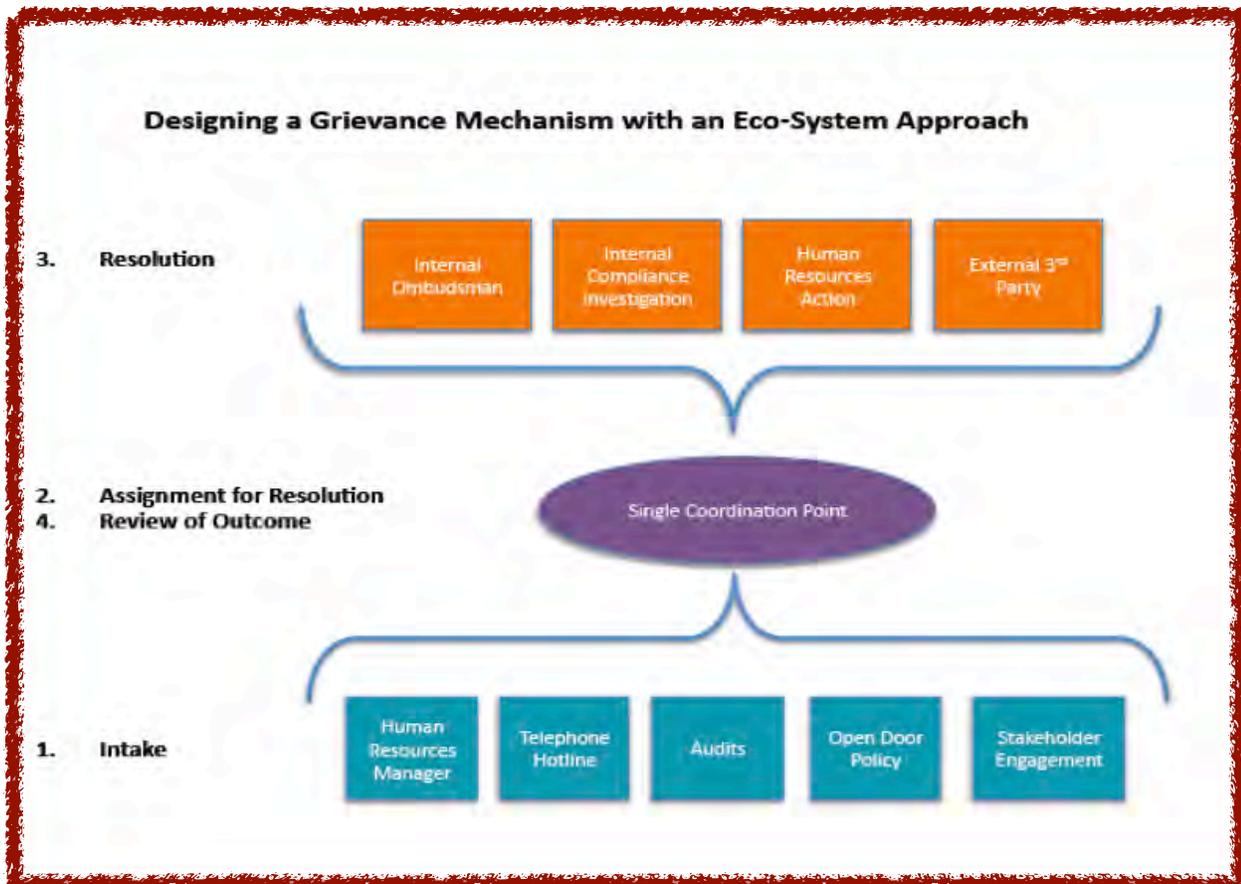
mechanisms' may put staff on the defensive, making it more difficult to create the necessary buy-in. As one participant noted, 'What company gets excited to hear about all the 'grievances' stakeholders have?'

In practice, it is far less important what the 'grievance mechanism' is called, than that it can effectively play the role for which it is intended. For it to do so, it can be labeled in any number of ways according to what works best in a given context, so long as two things hold true: its purpose and function is understood by those for whose use it is intended; and those responsible for it within the company understand it for what it is, and its relationship to the broader remediation 'eco-system'.

### 5.4. Designing with an 'Eco-System' Approach in Mind:

In many instances, companies design grievance mechanisms as 'stand-alone' entities, with a single point of entry and a single pathway for resolution. This requires confidence that all intended users of the mechanism will feel confident using that single

#### Box 1: Designing with an Eco-System Approach



entry point. It also detaches the mechanism from broader risk management processes that can benefit from insights gained through the mechanism.

An alternative approach, leveraging the idea of the ‘eco-system’ for remediation, is to design grievance mechanisms with:

- **multiple points of entry** (i.e., various ways for stakeholders to raise issues or concerns);
- **a single coordination point** (where complaints are initially assessed and steered to an appropriate channel for resolution);
- **multiple pathways for resolution** (depending on the type of process that would be most appropriate for that particular issue); and
- **a tracking link back to the single coordination point**, to enable the company to learn from the impacts that are occurring, feed into the company’s human rights due diligence processes, and to assess the effectiveness of the remediation eco-system as a whole.

### 5.5. Internal Processes for Escalation:

Similarly, grievance mechanisms need to have internal processes that provide clear ‘escalation pathways’ for more serious issues. This may require the involvement of more senior leadership from the business, either to provide for effective resolution of the complaint or to recognize where an internal company process is inappropriate for handling more serious human rights impacts.

One expert in the workshop shared his experience that, in practice, an effective operational-level grievance mechanism can usually deal with 90% of the typical operational impacts that occur, while 10% of the impacts may require a different kind of process, because of the scale, scope or severity of the impacts. Clear escalation procedures can help grievance mechanisms to resolve more typical issues quickly, efficiently, and close to the source, and to recognize those issues for which alternative processes may be necessary.

### 5.6. The Effectiveness Criteria in Practice:

The Guiding Principles recognize that there is no single model of a grievance mechanism that would work across all contexts – be those business contexts, geographic contexts, or cultural contexts. Instead, Guiding Principle 31 identifies eight ‘effectiveness criteria’, which describe the characteristics of an effective grievance mechanism in process.

This approach also allows for scalability of a grievance mechanism, depending on what is required by the context.

Applying the effectiveness criteria to the design, review or improvement of a grievance mechanism is therefore not a tick-box process, but one that requires discussion of the most appropriate ways to meet these criteria.

That dialogue needs to include those who are the intended users of the mechanism, or their legitimate representatives.

This said, a grievance mechanism does not need to be complex, where the context and needs it is addressing are not themselves complex. It can be as simple or sophisticated as the situation requires.

### 5.7. The Link Between Stakeholder Engagement and Grievance Mechanisms:

Stakeholder engagement in the context of business and human rights refers predominantly to a process of dialogue between a company and those groups that may be impacted by its operations, in order to understand those groups’ perspectives and incorporate them into business decisions and action. Where necessary and appropriate, a company may engage with the legitimate representatives of directly affected groups for the same purpose. Where even that is not possible – for example in the case of millions of dispersed end-users of internet services – then carefully-identified ‘proxy’ experts, civil society groups or associations may be able to reflect the typical concerns of such groups.

Participants recognized three important links between robust stakeholder engagement processes and effective grievance mechanisms.

First, the intended ‘users’ of a grievance mechanism – whether they are workers or community members – need to have a basic level of trust in the company if they are to have the confidence to use the mechanism. Strong stakeholder engagement can be particularly important in building such trust.

Second, many issues that might be raised through a grievance mechanism may be more appropriately dealt with through effective stakeholder engagement. Company experience has shown that if only a grievance process is provided, then all issues between the company and its stakeholders will be

framed as grievances, because of the absence of other platforms to address those issues.

Third, stakeholder engagement is an essential strategy in developing an effective grievance mechanism. Through dialogue with stakeholders – the intended ‘users’ of the grievance process – the design of the mechanism can take account of perceived barriers to accessibility, what kinds of processes would be perceived as legitimate and fair, and what kinds of impacts the grievance process should be designed to address.

### 5.8. Diagnosing Where You Are:

For human rights leaders within companies, a helpful place to start may be diagnosing where the company currently is in terms of its approach to grievance mechanisms.

During the workshop, a practical diagnostic tool was shared, which can both help companies identify where they are along the spectrum of grievance management, and help to start conversations with relevant internal stakeholders. (See Annex C for a version of this diagnostic tool).

## 6. Roles and responsibilities for remedy in the value chain

When impacts occur within a company’s value chain, businesses often find themselves in a ‘linkage’ situation: that is, the company has not caused or contributed to the impact, but the impact is directly linked to the company’s operations products or services. In such circumstances, businesses should first confirm that it is indeed a situation of linkage, and not contribution. For instance, in the supply chain context, companies can in some instances contribute to impacts that occur at the supplier level, for example, through their purchasing practices or payment terms.

If it is indeed a situation of linkage, companies have a forward-looking responsibility to use their leverage in an effort to prevent the impact from continuing or recurring. However, they do not have a responsibility to provide for or participate in the provision of remedy. Instead, this is the responsibility of those who caused or contributed to the harm.

In practice, even in the ‘linkage’ situation, companies

can find their reputations exposed. Some may even

**Guiding Principle 31:  
The Effectiveness Criteria\***  
In order to ensure their effectiveness, non-judicial grievance mechanisms should be:

1. Legitimate
2. Accessible
3. Predicable
4. Equitable
5. Transparent
6. Rights-compatible
7. Based on dialogue and engagement
8. Source of continuous learning

\* See the commentary to the [Guiding Principle 31](#) and the [Interpretive Guide](#) for more on the meaning of each criterion.

choose to contribute to remedy in particularly grave cases as a humanitarian measure (for example through a compensation fund).

Whatever the choice made, companies can play an important role in incentivizing those in their value chain to provide effective grievance mechanisms. This is likely to be easier in relation to suppliers than in downstream relationships.

In practice, global companies are playing a variety of different roles to encourage their suppliers in developing effective grievance mechanisms.

- Many businesses include the presence of factory-level grievance mechanisms as part of their Supplier Codes of Conduct, and or include this in their social compliance audits.
- Others are raising awareness with their suppliers about the role that grievance mechanisms can play and offer capacity-building support to suppliers in these efforts.
- Some businesses provide a recourse channel (for example through a hotline) to affected

stakeholders within their supply chains, if local grievance mechanisms are deemed inadequate. In some instances, this may lead to further engagement with their suppliers on ways to strengthen supplier-level complaints processes.

Including grievance mechanisms in social compliance audits is a first step towards raising awareness. However, asking the audit question, ‘Do you have a grievance mechanism?’, simply encourages factories to establish ‘a grievance mechanism’, without any attention to whether that mechanism is effective in practice.

Company participants tested a number of alternatives to the current typical audit questions on grievance mechanisms. The first approach was thought to be more helpful in assessing the effectiveness of grievance mechanisms, while keeping questions and language simple. The second approach was useful for triggering conversations with suppliers that could lead to more useful insights about the value of improving grievance mechanisms. Illustrative examples of these approaches are included in Box 2 on page 12.

## 7. Next Steps

Participants proposed two areas for additional research arising from the workshop discussions:

- Further exploration of the external ‘landscape’ for remediation, and the types of state-based and non-state-based institutions that often constitute that landscape, so that companies can better understand how they might connect their own remediation approaches with credible institutions within that landscape. Annex A to this report summarizes some of the institutions that may be relevant in different jurisdictions, subject to a review of local perceptions and effectiveness.
- Further research into the implications of confidentiality requirements and data privacy regulations for the design of grievance mechanisms, together with an exploration of the creative and effective ways in which grievance mechanisms have accounted for and accommodated such constraints.

*One company’s experience in supporting the development of farm-level grievance mechanisms within their supply chain demonstrated the importance of pre-existing stakeholder engagement: when a grievance mechanism was ‘dropped’ onto the farm, without any pre-existing dialogue between farm workers and farm management, workers did not understand or trust the process, and they were unwilling to use the grievance mechanism. Once grievance process was supported with worker/management dialogue modules, the workers began to use the mechanism.*

## Box 2: 'Smart Questions' about Supplier-Level Grievance Mechanisms?

### 'Smart Questions' about Supplier-Level Grievance Mechanisms?\*

#### A. Possible alternatives to current audit questions:

##### For Management:

- What are [employees'/workers'/communities'] main concerns?
- How do you know?
- How do you resolve them when they arise?
- What have you learned through these processes and changed as a result?

##### For Employees/workers/communities:

- What are your main concerns?
- How do you raise them with management / the company?
- How are your concerns handled?
- Are you happy with how they are handled? If so, why? If not, why not?

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#### B. One way to start a discussion:

1. How important is it for us to know if employees / customers / communities are upset with us?

Not at all	Not very	Fairly	Very
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2. Do we have a process for systematically identifying and dealing with stakeholder complaints?

Yes	No
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3. If we have a process in place, is it used?

Never	Rarely	Regularly	Consistently	Don't know
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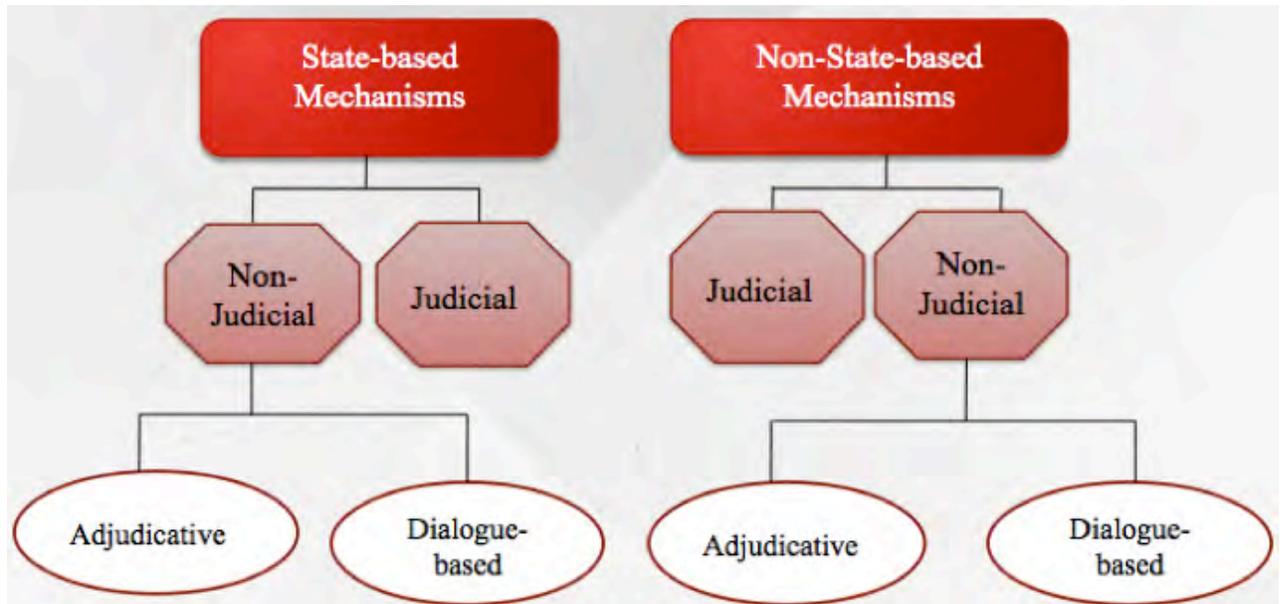
4. If the process is in place and is used, how certain are we about its effectiveness?

Not at all	Not sure	Fairly sure	Confident
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5. If importance does not match effectiveness, what needs to happen?

\* An additional set of 'diagnostic questions' for auditing grievance is suggested in Annex D

## Annex A: The External Landscape for Remedy



The following table indicates some examples of the different kinds of grievance mechanism that can address grievances regarding human rights. These mechanisms may provide a primary point of recourse for grievances related to a company's operations. Alternatively, they may provide a secondary point of recourse if an operational-level grievance mechanism is unable to achieve resolution. In some instances, companies have agreed with stakeholders that an external mechanism will be formally recognized as a point of recourse for unresolved complaints.

Just as the quality of courts varies widely across different jurisdictions, so does the quality of any other form of mechanism. In all cases, it will be important for a company to understand how credible a particular mechanism is seen to be in the local context, and how effective it is in practice (drawing on the 'effectiveness criteria' of the UN Guiding Principles in the case of non-judicial mechanisms), before considering any formal links.

**State-based Judicial Mechanisms**

<b>Type of mechanism</b>	<b>Description/example</b>	<b>Type of process</b>	<b>Source/more information</b>
<b>Courts</b>	Criminal and civil cases filed in national courts, including with regard to alleged violations abroad	Adjudication	Business and Human Rights Resource Center’s legal accountability page (listed by company, country, industry, etc.): <a href="http://www.business-humanrights.org/LegalPortal/Home">www.business-humanrights.org/LegalPortal/Home</a>
<b>Labor Courts</b>	Courts specifically targeted with adjudicating disputes related to employment matters	Adjudication	ILO meetings of European Labor Court Judges: <a href="http://www.ilo.org/ifpdial/events/meetings/lang--en/index.htm">http://www.ilo.org/ifpdial/events/meetings/lang--en/index.htm</a>
	Examples:		
	German Federal Labor Court		<a href="http://www.bundesarbeitsgericht.de/englisch/general.html">http://www.bundesarbeitsgericht.de/englisch/general.html</a>
	Indian Labor Courts		<a href="http://labour.gov.in/content/division/central-govt-industrial-tribunal.php">http://labour.gov.in/content/division/central-govt-industrial-tribunal.php</a>
	South African Labor Courts		<a href="http://www.justice.gov.za/labourcourt/">http://www.justice.gov.za/labourcourt/</a>
	List of other labor courts		<a href="http://en.wikipedia.org/wiki/Labor_court">http://en.wikipedia.org/wiki/Labor_court</a>

**Non-state Judicial Mechanisms**

<b>Type of mechanism</b>	<b>Description/name</b>	<b>Type of process</b>	<b>Source/more information</b>
<b>Regional Courts</b>	European Court of Human Rights	Binding adjudication	<a href="http://www.echr.coe.int/Pages/home.aspx?p=home">http://www.echr.coe.int/Pages/home.aspx?p=home</a>
	Inter-American Court on Human Rights	Binding adjudication	<a href="http://www.corteidh.or.cr/index.php/en">http://www.corteidh.or.cr/index.php/en</a>
	African Court of Human and Peoples’ Rights	Binding adjudication	<a href="http://www.african-court.org/en/">http://www.african-court.org/en/</a>

<i>State-based Non-judicial Mechanisms</i>			
<i>Type of mechanism</i>	<i>Description/name</i>	<i>Type of process</i>	<i>Source/more information</i>
<b>National Human Rights Institutions</b>	NHRIs typically monitor compliance by governments with national human rights laws and advise on the development of laws with human rights implications. Many (though not a majority of) NHRIs can hear complaints against companies		NHRI Forum: <a href="http://www.nhri.net">http://www.nhri.net</a> OHCHR's NHRI page: <a href="http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx">http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx</a>
	Examples of NHRIs (that can hear complaints against companies):		
	India's National Human Rights Commission	Adjudication (incl. investigation)	<a href="http://nhrc.nic.in">http://nhrc.nic.in</a>
	Kenya National Commission on Human Rights	Mediation, Arbitration, Adjudication	<a href="http://www.knchr.org">http://www.knchr.org</a>
	New Zealand Human Rights Commission	Mediation	<a href="http://www.hrc.co.nz">http://www.hrc.co.nz</a>
<b>Labor Dispute Systems</b>	Some countries have non-judicial labor dispute resolution bodies, which typically have a statutory basis or other link to the state		
	Examples of labor dispute resolution bodies:		
	Cambodia: Arbitration Council	Mediation, Arbitration	<a href="http://www.arbitrationcouncil.org">http://www.arbitrationcouncil.org</a>
	South Africa: Commission for Conciliation, Mediation and Arbitration	Mediation, Arbitration	<a href="http://www.ccma.org.za">http://www.ccma.org.za</a>
	UK: Advisory, Conciliation and Arbitration Service	Mediation, Arbitration	<a href="http://www.acas.org.uk">http://www.acas.org.uk</a>
<b>National Contact Points (OECD Guidelines)</b>	NCPs can offer mediation between companies and complainants (typically trade unions or NGOs), and where mediation does not achieve a resolution, they may make forward-looking statements about the company's compliance with the Guidelines	Mediation, compliance assessment	OECD webpage (with list of all NCPs): <a href="http://www.oecd.org/daf/inv/mne/ncps.htm">http://www.oecd.org/daf/inv/mne/ncps.htm</a> Overview of pending and closed cases: <a href="http://oecdwatch.org/cases">http://oecdwatch.org/cases</a>
	NCPs that receive the most cases, include:		
	Norwegian NCP		<a href="http://www.responsiblebusiness.no/en/">http://www.responsiblebusiness.no/en/</a>

	The Netherlands NCP		<a href="http://www.oesorichtlijnen.nl/en">http://www.oesorichtlijnen.nl/en</a>
	UK NCP		<a href="https://www.gov.uk/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-oecd-guidelines-for-multinational-enterprises">https://www.gov.uk/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-oecd-guidelines-for-multinational-enterprises</a>

<b>Non-state Non-judicial Mechanisms</b>			
<b>Type of mechanism</b>	<b>Description/ name</b>	<b>Type of process</b>	<b>Source/more information</b>
<b>International Finance Institutions</b>	Typically IFI's have 'accountability mechanisms' that can both provide problem-solving processes (often through local mediation) to resolve disputes between corporate clients and communities, and assess compliance with the IFI's own standards.		
	Examples of IFI accountability mechanisms include:		
	World Bank Inspection Panel	<i>Adjudication (incl. fact-finding)</i>	<a href="http://ewebapps.worldbank.org/apps/ip/Pages/Home.aspx">http://ewebapps.worldbank.org/apps/ip/Pages/Home.aspx</a>
	Compliance and Advisory Ombudsman of the International Finance Corporation	<i>Mediation (ADR), Compliance review, Advisory</i>	<a href="http://www.cao-ombudsmann.org">http://www.cao-ombudsmann.org</a>
	European Bank for Reconstruction and Development's Project Complaint Mechanism	<i>Mediation, Compliance Review</i>	<a href="http://www.ebrd.com/pages/project/pcm.shtml">http://www.ebrd.com/pages/project/pcm.shtml</a>
	Asian Development Bank's Accountability Mechanism	<i>Mediation, Compliance Review</i>	<a href="http://www.adb.org/site/accountability-mechanism/main">http://www.adb.org/site/accountability-mechanism/main</a>
	African Development Bank's Independent Review Mechanism	<i>Mediation, Compliance Review</i>	<a href="http://www.afdb.org/en/about-us/structure/independent-review-mechanism-irm">http://www.afdb.org/en/about-us/structure/independent-review-mechanism-irm</a>
	Inter-American Development Bank's Independent Consultation and Investigation Mechanism	<i>Mediation, Compliance Review</i>	<a href="http://www.iadb.org/en/mic/i/independent-consultation-and-investigation-mechanism-icim,1752.html">http://www.iadb.org/en/mic/i/independent-consultation-and-investigation-mechanism-icim,1752.html</a>
<b>Industry/ multi-stakeholder initiatives</b>	Mechanisms typically involve reviewing complaints about company practice against an initiative's established code of conduct, a set of principles, or a certification standard. Processes range from information facilitation and investigation, to mediation and adjudication.		
	Examples of MSI complaints mechanisms include:		

	Fair Labor Association's Third Party Complaint Process	Information facilitation, and investigation, possibility of mediation at the local level.	<a href="http://www.fairlabor.org/third-party-complaint-process">http://www.fairlabor.org/third-party-complaint-process</a>
	Fair Wear Foundation's Complaint Procedure	Mediation (including information facilitation, and investigation)	<a href="http://www.fairwear.org/ul/cms/fck-uploaded/documents/complaints/fwfcomplaintsprocedurejune2009.pdf">http://www.fairwear.org/ul/cms/fck-uploaded/documents/complaints/fwfcomplaintsprocedurejune2009.pdf</a>
	Forest Stewardship Council's Processing Formal Complaints in the FSC Certification Scheme	Adjudication	<a href="https://ic.fsc.org/overview.151.htm">https://ic.fsc.org/overview.151.htm</a>
<b>Company-level</b>	Examples of company-level grievance mechanisms can be found in the following publications:		
	Harvard's Corporate Social Responsibility Initiative's "Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms"	Report of pilots of the Effectiveness Principles with 5 companies: Cerrejon, Esquel, Sakhalin, Tesco and Delta & Chicony (HP)	<a href="http://www.shiftproject.org/publication/piloting-principles-effective-company-stakeholder-grievance-mechanisms-report-lessons-learned">http://www.shiftproject.org/publication/piloting-principles-effective-company-stakeholder-grievance-mechanisms-report-lessons-learned</a>
	International Institute for Environment and Development's "Dispute or Dialogue"	3 in-depth case studies from the extractive industry + an overview chapter and useful appendices	<a href="http://www.shiftproject.org/publication/dispute-or-dialogue-community-perspectives-company-led-grievance-mechanisms">http://www.shiftproject.org/publication/dispute-or-dialogue-community-perspectives-company-led-grievance-mechanisms</a>
	International Council on Mining and Metals' Guidance Note	Includes short case descriptions of ICMM's member companies	<a href="http://www.icmm.com/document/691">http://www.icmm.com/document/691</a>
	International Finance Corporation's Good Practice Note	Includes short case examples	<a href="http://www.scribd.com/fullscreen/21356198?access_key=key-d387qdvel3wbc9nnmxk">http://www.scribd.com/fullscreen/21356198?access_key=key-d387qdvel3wbc9nnmxk</a>
	Compliance and Advisory Ombudsman's Advisory Note	Includes company and stakeholder perspectives	<a href="http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf">http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf</a>

## Useful resources:

- Access Facility is a frequently updated descriptive database of non-judicial mechanisms (state and non-state based) and case stories: <http://accessfacility.org> (also features a number of helpful videos on company-community dispute resolution)
- IIED publication “Dispute or dialogue” (see above) contains in the appendix an overview of all publications relevant for company-community grievance mechanisms in the extractive industry.
- <http://www.grievancemechanisms.org> provides information on non-judicial grievance mechanisms to help those who believe their rights have been violated to identify and access mechanisms that may be able to provide remedy.
- Other tools and resources through the Business and Human Rights Resource Center: <http://www.business-humanrights.org/ToolsGuidancePortal/Issues/Grievanceprocedures>

## Annex B: Defining the Scope of a Grievance Mechanism

### Defining the Scope of a Grievance Mechanism: 10 Helpful Questions

#### A. What is the Relationship to the 'Eco-System':

1. *Do you plan to have one or more grievance mechanisms accessible to the various stakeholders (community members, employees, workers within the supply chain, etc.)?*
2. *If you have an ethics hotline or other parts of an internal 'eco-system', what types of grievances are handled via which channel?*

#### B. What Issues are Covered?

3. *Will the planned mechanism only handle complaints / grievances, or also other issues, questions and concerns?*
4. *What types of grievances will be accepted, and which ones not?*
  - a. *How will you handle commercial complaints?*
  - b. *How will you handle labor-related complaints?*
  - c. *How will you handle complaints related to human rights?*
5. *Are complaints related to contractors or suppliers accepted (in terms of their own behavior and/or their own labor issues, such as late payment or discrimination), or are these handled through another means?*

#### C. Who Can File Grievances?

6. *Who can lodge a grievance? Only the company's employees? Temporary or contract workers? Supply chain workers? Local communities?*
7. *Is the grievance mechanism only available to directly affected stakeholders, or is it also available to other groups, such as NGOs or trade unions?*
8. *Is the mechanism only open to grievances affecting individuals, or would it also accept grievances of a collective nature?*
9. *Is there a geographic limitation on the area from which you would accept a grievance?*
10. *Are anonymous grievances accepted?*

## Annex C: Diagnostic Tool

### Diagnostic Tool: Where are We in Our Approach to Remediation?

The following tool suggests a maturation in a company's approach to grievance mechanisms across three stages. It can help a company reflect on where its systems could be further enhanced and how.

Stage A	Stage B	Stage C
"No need for a CGM we already know their grievances"	SOP developed by company	Company and impacted people develop GM together
Grievances are addressed on an ad hoc basis	Grievances are addressed in a systematic manner	Grievances are proactively solicited (e.g. legacy issues)
Company is aware of grievances mostly "by chance"	Designated place for logging grievances	Multiple systems for logging grievances
Grievance handling is an add-on activity	Grievance handling is an integral part of stakeholder engagement	Grievance handling is integral to all parts of the business
Dispute Management	Dispute Resolution	Dispute Prevention
No grievance owner	Grievance Officer	Grievance Officer + Grievance Committee
Departments responsible for grievances are not held accountable	Departments responsible for grievances are being held accountable	All departments/staff are held accountable
Social performance function as firefighter	Social performance function as grievance manager	Social performance function as grievance prevention manager
Same issues keep coming up	Systematic response to avoid repeat grievances	Independent oversight committee
No recourse mechanism	Recourse mechanism available	Funds available for acquiring independent expertise/mediation
No systematic database or other tracking mechanism	Grievance database tracks, reports and allows for analysis	Database is automated (incl. escalation, reminders etc.)

CGM = Company Grievance Mechanism

'Social Performance' function may have different names, or equivalents, in different sectors, eg social compliance, corporate responsibility etc.

# Annex D: Diagnostic Questions for Auditing Supplier Level Grievance Mechanisms

## Potential Diagnostic Questions for Auditing Supplier Level Grievance Mechanisms:

*These questions are drawn from a manual to support the design and implementation of effective factory-level grievance mechanisms in the apparel sector, as part of a [joint project between Shift and ILO Better Work](#)*

- 1. Do workers, trade union representatives, and managers understand what grievance mechanisms are and what value they can bring?**
  - Can workers, trade union representatives, and management identify reasons why an effective grievance mechanism might be important or what useful roles it could play for them?
- 2. Are workers and managers aware of the existence of formal channels for raising complaints or concerns?**
  - Do a majority of workers know that a grievance mechanism exists?
  - Do workers and managers know how to file a complaint or concern?
- 3. Do workers feel safe raising complaints or concerns?**
  - Are workers concerned about retaliation of some form if they file a complaint or concern?
  - Is there a non-retaliation policy in place, and is that policy followed?
  - Can workers raise complaints or concerns anonymously?
  - Do workers trust that sensitive information about a complaint, including their identity, will be kept confidential?
- 4. Is there management accountability for the grievance mechanism?**
  - Has a credible senior manager been designated as responsible for responding to complaints and concerns that are filed?
  - Is there a record of complaints that are filed?
  - Do all complaints receive a response from management, either indicating what action was taken or the reasons no further action was taken?
- 5. Are workers and management committed to improving the effectiveness of the grievance mechanism?**
  - Is management interested in understanding whether the mechanism is performing effectively?
  - Is management willing to dedicate time and staff resources to improving the grievance mechanism?
  - Are workers willing to share perceptions and perspectives on how the grievance mechanism is performing?
- 6. In what ways are workers and trade unions involved in the design and oversight of the grievance mechanism?**

- Does management solicit and incorporate worker feedback and input into how the mechanism is performing?
- Is there a joint worker/management committee or body that oversees the grievance mechanism and monitors its performance?

**7. Are there clear and predictable processes for how grievances or complaints get addressed?**

- Are workers aware of what steps are taken when a complaint is received?
- Are there written procedures and indicative timeframes for the steps taken on a complaint and how decisions are made?

**8. Are there management systems for tracking grievances?**

- Is there a monthly summary report of the types of complaint or concern that have been filed?
- Are outcomes of grievances tracked to ensure implementation of agreed-upon steps?
- Is there a management body that periodically reviews data about complaints from the grievance process?

**9. Is the grievance mechanism perceived as 'fair' by workers?**

- Are there steps taken to ensure that workers have adequate access to information relevant to the issues they might be complaining about (such as factory policies, legal rights, provisions of a collective bargaining agreement, etc.)?
- Are workers able to be accompanied in the grievance process by a worker representative, an advocate, or other forms of support?
- Are there opportunities for workers to engage directly with management on the issues raised in the complaint?
- Are there opportunities for workers to be involved in the decision-making and remedial action related to their complaint?
- Is there a way for workers and their trade union representatives to appeal a decision with which they do not agree, or some other form of 'neutral' decision-making, if necessary?

**10. Is the grievance mechanism sufficiently transparent?**

- Is information about the number and types of complaints that are filed and the outcomes that are reached shared in a public way, while also protecting the confidentiality of individual complainants?

**11. Is the grievance mechanism used to support continuous learning?**

- Is there an oversight body that reviews trends in the types of complaints that are filed, in order to identify and address root causes?
- Are the same types of complaints continually recurring, or do changes to factory policies and procedures, based on complaints that are filed, lead to a reduction in repeat complaints?