

Proposed Performance Standards for Operational-level Grievance Mechanisms



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Proposed Performance Standards for Operational-level Grievance Mechanisms

The general performance standards presented below are applicable to all Operational-level Grievance Mechanisms (OGM) based upon the research and analysis presented in the preceding report. Although they maintain a distinct objective and are organized in a different framework, the performance standards take into account and are compatible with the effectiveness criteria set out in the UN Guiding Principles on Business and Human Rights, ILO Recommendation 130 and other guidance for non-judicial grievance mechanisms.

The application of these standards needs to be adapted to the industry and context within which the company in question operates or its size. Some standards may be more relevant for certain industry sectors than for others. More exacting standards or sub-standards may be required for specific industries but not relevant to others, or some standards may require more adaptation to the kind and size of industry. But, generally, compliance with the standards proposed below will no doubt enhance the effectiveness of all kinds of OGM.

These performance standards are directed at a range of stakeholders. First, they seek to provide companies with compliance guidance to ensure an effective creation, design and implementation of OGM. Second, they give civil society organizations, lawyers, investors and other external organizations and affected rights holders, workers and members of the community in which a company is based, a tool to measure and assess key components of a company's OGM.

The performance standards propose a model of OGM that is created and administered jointly by companies and their employees, external stakeholders, or at least it has a strong participation by the latter groups, on the basis of internationally recognized principles including participation, independence and transparency.

1.0 Pre-design

The pre-design stage strives to identify key issues, gather information and develop and assess options for the design of the OGM.

1.1 **Identify key actors.** Identify those within the company and/or external partners that will be responsible for the development of the grievance mechanism.

- Identify and begin coordination among different departments or units within a company that are likely to be involved in the OGM processes. (These are likely to include community relations, legal, operations/production, human resources, and policy makers.)
- Ensure commitment to the development of a grievance mechanism from high-level management at the company and from external partners.
- Identify key external actors, including civil society members and technical experts, who might be called on to participate in the assessment, design and implementation phases.
- Identify potential users and beneficiaries, including those that may have been or potentially will be directly adversely affected by the operations of the company as well as those who may be indirectly affected.

1.2 **Identifying & Assessing Human Rights Issues.** As part of its human rights due diligence responsibility, conduct a human rights impact assessment of actual or potential human rights impacts.

- Identify adverse human rights impacts that the business enterprise may be at risk of causing or contributing to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.
- Assess the contemporaneous impact of company operations on rights-holders as well as, where appropriate, on relationships with communities
- Conduct the impact assessment in consultation with all relevant stakeholders, and ensure meaningful engagement with rights holders and the legitimate representatives of those who may be potentially affected.
- Ensure the impact assessment includes a gender perspective and pays particular attention to the challenges faced by other individuals or groups that may be at heightened risk of vulnerability or marginalization..



1.3 Identify & Assess key grievance processes and mechanisms.

- Gather information about existing grievance resolution mechanisms and practices, including culturally specific practices.
- Evaluate the option of using existing grievance processes such as those within the surrounding communities/ labour unions and/or company associations.
- Establish dialogue with those responsible for relevant external (state-based and non state-based) grievance mechanisms. Ensure OGM does not serve to generally undermine the role of legitimate and effective trade unions nor preclude access to other existing grievance mechanisms.

2.0 Development

Using information from the pre-design phase, the development phase includes planning for design and making decisions about the OGM's scope and mandate as well as putting in place efforts to ensure its independence and accessibility.

2.1 Develop a planning document reflecting the strategy for the development and design of an OGM

- Integrate the results with a view to addressing the particular challenges identified by the human rights impact assessment and grievance-related assessment that includes an analysis of contextual factors such as local legal systems, government involvement and relevant industry and government standards. The planning document should also consider opportunities that the OGM may provide (e.g., preventing escalation of conflicts, improving relationships with communities).

2.2 Define a broad scope of types of grievances that can be filed to the OGM, taking into account perspectives expressed in the initial assessment stage.

2.3 Define what constitutes a grievance for human rights abuse in a way that is compatible with international human rights law and standards.

2.4 Identify those whose actions can be subject of the grievance, including all those whose actions or omissions can be attributed to the business enterprise through causation and/or contribution.

2.5 Define how those affected by activities of its business relationships, such as subsidiaries or suppliers' activities, may access its own grievance mechanism.

- Adopt a policy that requires contractors and suppliers to ensure anyone who may be adversely impacted by their operations has access to an effective OGM and define audit and reporting protocols. The policy should include measures to ensure that suppliers in turn apply this requirement to their own suppliers.
- Ensure its OGM is open to grievances from those adversely impacted by activities of business relationships directly linked to its operations and when these do not have effective grievance mechanisms in place. Clearly state or require business partnerships to communicate the existence of the OGM to stakeholder groups.





- 2.6** Ensure real participation. If a new mechanism is established, it should be based on dialogue and negotiation between the company and potential users and rights holders and/or their selected representatives.
- Where appropriate, consult and engage with local individuals familiar with relevant customs and traditions.
- 2.7** Ensure functional independence. Ensure the mechanism is functionally independent from company operations but has the authority to affect change within these operations.
- Wherever practicable the grievance mechanism should be operated by a third party or shared with other industries to improve impartiality.
 - Where company workers raise grievances ensure these will be reviewed by an impartial entity who is not in any way situated in the line of supervision of the individuals concerned.

- Ensure, where interested, NGOs, unions or other trusted groups have a role in advising, supporting and assisting potential users of the OGM in pursuing a complaint.

2.8 Ensure Accessibility & Address power Imbalances. Resource the mechanism adequately including provisions for necessary support for grievants to ensure equal access.

- Ensure that the existence of, procedures for, and possible remedial outcomes of the mechanism are known and accessible to all those who may be adversely impacted, taking into account particular challenges that may be faced by individuals or groups that may be at heightened risk of vulnerability, marginalization or have particular requirements such as children and people with disabilities, and with due regard to the different risks faced by men and women.
- Define a plan for wide dissemination of information about the mechanism and how this can be used and accessed among potential users. Provide measures to address potential barriers to accessing the mechanism and provide assistance to that effect.

2.9 Define and make known the relationship with other avenues of potential redress, including State-based criminal, civil and administrative actions.

- Recognize that once impacts have escalated and dialogue and negotiation failed, adjudication should be provided by a legitimate, independent third-party mechanism.
- Define options for the grievant to submit the matter to a third party and/or an oversight mechanism in the event of excessive delay or dissatisfaction with the initial position of the company.
- Define options for the OGM to provide referrals to other relevant mechanisms that may already exist.
- Treat the impacts revealing serious criminal conduct and gross human rights violations or abuses as legal compliance issues in need independent adjudication.
- Adopt a protocol to deal with grievances that reveal underlying potential criminal conduct. The protocol should contain safeguards to avoid prejudice any criminal investigations, and to protect the privacy, physical and moral integrity of concerned individuals.
- Clarify under which conditions the mechanism may run in parallel with legal proceedings without undermining these.



- Define what actions the OGM should take to cooperate with other judicial and non-judicial means of redress.
- Define what company officials must do to cooperate with law enforcement in investigating an offence, and to follow up on investigations instigated by the company and report on the outcome
- Establish clear policies, and ensure staff are fully trained, requiring referral of potential criminal activity to State authorities.
- Define internal processes and procedures to determine whether there is a civil wrong underlying any criminal offence that the company must take action to remediate.

3.0 Development: procedure of the mechanism

- 3.1** Establish and set out in clear, comprehensible and accessible terms the procedures for bringing grievances can be brought.
- 3.2** Ensure all reported grievances and any evidence received are properly documented.
- 3.3** Define the internal processes that will be used to reach an outcome and their time frames.
 - Define the separation of and differences between the inquiry and decision-making processes.
- 3.4** Define criteria for determining whether an investigation might interfere or overlap with existing or prospective law enforcement action in cases of potential criminal conduct, and what measures company staff must take to avoid compromising evidence or the identity and rights of those involved.
- 3.5** In adopting any time limitations on the bringing of grievances ensure that these are reasonable and that they do not create unnecessary barriers to accessing the mechanism.
- 3.6** Transparency. Ensure transparency by keeping parties to a grievance informed about its progress at each stage and ensuring reasons are given for any delays.
 - Ensure labour union or other representatives that have acted as conduit or adviser to the grievant, are kept informed throughout the process unless the grievant objects.

3.7 Procedural Equity & Equitable Resourcing. Ensure procedural equity by 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.

- Establish equitable options for support for the grievant that include access to independent advice of their choosing.
- Ensure right to effective, independent and trusted support during proceedings where the OGM leads to a process of adjudication.
- Enable access and full disclosure of relevant information and facts gathered by a company enquiry to ensure equitability, taking into account right to privacy consideration of third parties.
- Provide adequate resources that ensure accessibility to enable grievant to pursue their grievance at every stage of the process.
- Provide the right to appeal to an independent authority if agreement cannot be reached or the outcome is unsatisfactory.

3.8 To improve predictability.

- Provide a clearly communicated, well disseminated and accessible procedure in the resolution of the grievance.
- Provide a clear and known and expeditious and reasonable time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.
- Define clearly what kind of remedial outcomes may be available.
- Identify, in accordance with human rights law and standards, the kind of evidence that may demonstrate an infringement of a human right, taking into consideration a complainant's ability to recognize such a violation and to be able to gather and present such evidence.
- Ensure predictability by establishing reasonable criteria to achieve a conclusion that a grievance has taken place, avoiding strict legal terminology (i.e. use "more likely than not", "but for company action")
- Inform right holders, concerned civil society organizations unions and other stakeholders about the existence, procedures, acceptable grievances and possible outcomes of the mechanism, using formats that are accessible to the intended user.



3.9 Continuous learning. Ensure the mechanism has direct access and reports to the highest level possible within the company, so that it may serve as a source of continuous learning to improve the mechanisms and prevent future harms that may give rise to grievances.

4.0 Implementation: safeguards within the mechanism

4.1 Ensure protection of any complainants, potential complainants, their representatives, advisers and supporters to avoid possible retaliation or reprisal

- Ensure that a formal anti-retaliation policy exists and is incorporated into company policy that clearly states that any individuals using the mechanism can do so without fear of penalty, dismissal or reprisal of any other kind.

4.2 Develop a confidential procedure for the processing of grievances with clear indications of what information may be shared with others and when this will take place and provide appropriate mechanisms for anonymous complaints where necessary, with a view to protecting the right to privacy, including of third parties.

4.3 Ensure company staff or third-party entities involved in the OGM are fully trained on their roles and responsibilities including an awareness of when grievances should be referred to other mechanisms, such as in relation to criminal conduct.

5.0 Determination and implementation of reparations

- 5.1** Those involved in the OGM process must ensure that any reparation agreed is commensurate with the nature and gravity of the harm established.
- 5.2** Engage and undertake dialogue with affected persons or groups to agree upon the kind and means of delivery of any remedy to be provided.
- 5.3** In agreement with those affected, establish a timeline for determination and implementation of remediation agreements.
Ensure agreed outcomes are delivered on time and in accordance with the agreement, and that there are consequences for the failure to deliver.
- Define additional remedies and corrective action to be provided in cases of undue delay.
 - Adopt a follow-up protocol to enable continued dialogue and ensure implementation of agreed outcomes.
- 5.4** When grievance impacts a wider group or community, work with them to define how an available remedy or remedies contemplate the restoration and/or enhancement of relationships with the group or community, and how this will be communicated to others.
- 5.5** Consider any potential contractual remedies necessary to resolve a grievance.
- Avoid the use of legal waivers in the OGM context that would preclude the complainants from pursuing judicial remedies. If allowed, define strict conditions under which the final agreement may contain mutual releases of responsibility but ensure that any such releases of responsibility do not bar access to pursuit of further proceedings if these are required by internationally recognized human rights standards.

6.0 Public reporting and external monitoring

- 6.1** Provide full information about the mechanism's performance to wider stakeholders, through statistics and a detailed accounting about the handling of cases to build confidence in its effectiveness and meet any public interest at stake.
- 6.2** Report all grievances and their outcomes to high level management within the company to enable continuous learning that allows the mechanism to be improved and future grievances and harms prevented.
- 6.3** Report, unless the grievant objects, outcomes of individual grievance to all affected stakeholders including, where appropriate and with adequate safeguards in place, to any other stakeholders that may not have been directly



involved in the grievance proceedings. In case the grievant objects, provide a summary that protects the identity of the grievant.

6.4 Arrange for the public disclosure of sufficiently precise, timely and disaggregated data to ensure public scrutiny and trust in the mechanism.

- Include information regarding the number of grievances received and their status.
- Explain the criteria used for admitting and deciding on the matter.

6.5 Define that reporting includes clear reasoning for the outcome of the grievance and disclosure of the timetable on delivery of agreed remedy.

7.0 Monitoring and evaluation of grievance mechanism outcomes and compliance

7.1 Where possible, create an independent oversight mechanism for the OGM to assess ongoing effectiveness and facilitate lessons learned, designed with stakeholder engagement and dialogue.

7.2 Systematically review and enable continuous learning from the grievance mechanisms to identify how processes can be improved and future grievances and harms prevented.

- When appropriate for the user, conduct meaningful engagement via consultation and dialogue with users and potential users of the grievance mechanism during the review process.
- Ensure any relevant company policies are updated in accordance with lessons learned from evaluation and regular analysis of frequency, patterns and causes of grievances, in order to avoid the recurrence of human rights abuses and the break of relationships with local communities.
- Information sharing. Publicly share the results of the reviews and analysis, as well as lessons learned and implementation efforts.

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