

Remediation and Operational-Level Grievance Mechanisms

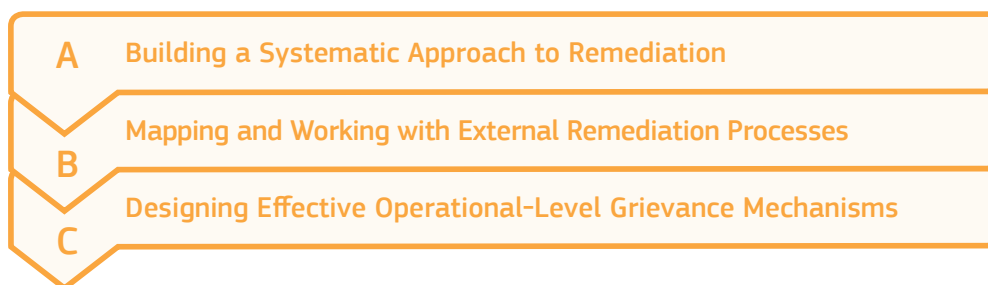
What do the UN Guiding Principles Expect?

- ▶ Where a company identifies that it has caused or contributed to negative human rights impacts, it should provide for or cooperate in their remediation through legitimate processes.
- ▶ Companies should establish or participate in effective operational-level grievance mechanisms for stakeholders who may be negatively impacted by their activities, in order that grievances may be addressed early and remediated directly.

Why is this Important?

- Unless a company actively engages in the remediation of impacts it has caused or contributed to, it cannot fully meet its responsibility to respect human rights.
- Negative impacts may occur despite a company's best efforts, given the complexity of operations and business relationships involved.
- Companies need to be prepared for this situation so they can respond quickly and effectively. Strong remediation processes can help prevent impacts from increasing or conflicts from resulting.

What are the Steps Involved?



Example: Using Grievance Mechanisms to Embed Shared Responsibility for Respecting Human Rights

Some O&G companies have tailored their existing databases to track how grievances are advanced through the system and build in a certain “automaticity”.

At one company, once a grievance is registered, the department responsible for the subject of the complaint is identified and an individual is listed as responsible for investigating the issues. If they have not responded by a set deadline, the system automatically sends a notification to their senior management. This creates incentives for all departments not only to keep to the timelines, but also to understand that the management takes the handling of grievances seriously. It avoids grievances being pigeon-holed as something that the external relations department has to resolve, and makes them the responsibility of the department whose activities allegedly lie at the source of the grievance. As with leading O&G companies’ approach to health and safety issues, this helps make respect for human rights part of everyone’s responsibility.

VI A

Building a Systematic Approach to Remediation

Key Points for Implementation

- ▶ Having systems in place to enable remedy shows that the company is able to restore respect for human rights quickly and effectively, should impacts occur.
- ▶ One of the most systematic ways for a company to provide for the remediation of impacts is through an operational-level grievance mechanism.

Possible Approaches

- **Defining “remediation” and “remedy”:** Remediation is the process of providing a remedy for a harm. Remedy can take a variety of different forms, including apologies, restitution, rehabilitation, financial and non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. While some forms of remedy are more likely in a judicial mechanism, many are possible through non-judicial processes as well.

Companies should try to understand how those who have been impacted view different remedial options and which they consider to be most effective in their own circumstances. An O&G company will generally find it helpful to discuss this directly with complainants and explore available options whenever this is possible. It can be important to ensure a complainant has her own sources of advice, to ensure she feels informed in reaching a view on remedy.

Where no agreement can be found on an acceptable remedy, it will usually be most appropriate for a legitimate, independent mechanism to reach a final decision. This may be through the courts or an administrative proceeding or some other, mutually-agreed process.

- **The extent and limits of a company’s responsibility to remediate:** When a company has caused or contributed to a harm, it has a responsibility to cease its contribution and provide or contribute to a remedy. This can be through judicial processes or through non-judicial processes that are generally considered to be “legitimate”: including, for example, providing a fair and independent process, being accountable, and producing outcomes that are consistent with human rights. Remedy may also be provided through an “operational-level grievance mechanism” provided by the company (see [Section VI-C](#) below).

O&G companies do not have to remediate:

- (a) Impacts they have neither caused nor contributed to: it is the responsibility of those who have contributed to the impacts to provide for or cooperate in their remediation. However, where the impacts are nevertheless linked to the O&G company’s operations, it has a responsibility to use its leverage to prevent or mitigate the risk of the impacts continuing or recurring (see [Section III-D](#) above).

- (b) Impacts they are alleged to have caused or contributed to, where the company does not agree with that allegation. However, the company may need to investigate the issue to be sure of its position and should avoid obstructing legitimate processes to investigate and adjudicate the issue, through the courts or administrative proceedings.

This said, companies will want to pay careful attention to whether they might in some way have contributed to impacts by others in their value chain. This could include:

- Hiring security providers without due diligence that would have revealed they were likely to use inappropriate force;
 - Pressuring a supplier to deliver a product under terms that incentivised excessive working hours or unpaid overtime;
 - Engaging a contractor without requiring adequate environmental protections, creating risk to human health.
- **The rationale for a systematic approach to remediation:** Much of an O&G company's efforts regarding human rights will focus on preventing negative impacts from happening. But even with the best policies and processes in place, things can go wrong, for instance because:
 - An individual makes a mistake;
 - Unforeseen issues arise for which the company is not prepared;
 - A business partner, supplier, contractor or a government abuses human rights in connection with some aspect of the company's operations;
 - Stakeholder expectations change and previously agreed approaches are challenged.

Past or current impacts may come to a company's attention through its ongoing assessment processes as part of its human rights due diligence (see [Section II](#)). They may also become apparent through other channels, such as:

- Stakeholder engagement processes;
- Observations of staff on the ground;
- Feedback from other groups or organisations working with affected stakeholders (eg NGOs, trade unions);
- Academic researchers;
- Media reports.

O&G companies need to have clear processes in place to respond, often rapidly, to situations where human rights impacts occur or are alleged to have occurred. Otherwise, they may find themselves taking unconsidered, untested approaches to often delicate situations. This may result in affected stakeholders receiving inadequate remedy; impacts being created or increased; and relationships with those impacted being severely damaged.

Remedies may be provided through various processes, including through agreed procedures for land compensation and community resettlement; through negotiations with unions or other legitimate worker representatives; or through action plans to address problems found through audits or review processes. Remedies may also be provided through operational-level grievance mechanisms.

- **The role of operational-level grievance mechanisms:** An operational-level grievance mechanism is a formalised means for affected stakeholders to raise concerns about any impact they believe a company has had on them, in order to seek remedy. The mechanism should help to identify problems early, before they escalate, and provide solutions that include remedy to anyone impacted.

In the case of employees and other workers represented by trade unions, industrial relations processes involving management and those unions are themselves a form of operational-level grievance mechanism.

An effective grievance mechanism can support the company's due diligence process and help embed respect for human rights across the company, particularly by:

- Promoting internal discussions about impacts and how to address them – the process of designing the mechanism may already contribute to these discussions;
- Helping identify impacts and understand them from the perspective of affected stakeholders – this can directly contribute to the company's impact assessment process;
- Providing feedback on the perceived effectiveness of company responses to impacts – this can help the company track its performance;
- Demonstrating that the company takes the concerns of affected stakeholders seriously – this can help build trust and reinforce relationships with affected stakeholders;
- Providing accountability for human rights impacts – this is critical to embedding the company's commitment to respect human rights;
- Improving the quality of information available to management about impacts, grievances and community relationships – this can help secure management support for the mechanism;
- Illustrating where there may be weaknesses in company policies, procedures or practices – this can contribute to continuous improvement.

- **Site and corporate roles:** For O&G companies, the focus will be first and foremost on the development of mechanisms at the site level that can provide local solutions to local impacts. However, for larger companies with multiple sites, staff at the corporate/head office level may have an initial role in developing a policy, guidance or general templates or criteria to help sites design effective mechanisms. This should leave room for them to design mechanisms that are appropriate to their own context.

Whatever the exact form of mechanisms at site, it can be helpful to feed data about complaints and their outcomes back to the corporate/head office level in order to support tracking and learning not only at site level, but also across the company as a whole. As always, companies should respect confidentiality and take steps to prevent retaliation against complainants.

VI B Mapping and Working with External Remediation Processes

Key Points for Implementation

- ▶ Remediation processes provided by the state or third-party institutions can provide alternative channels for affected stakeholders to raise complaints. Complainants should be free to choose which available channels they wish to use.
- ▶ Existing remediation processes may also help shape an operational-level grievance mechanism. They may:
 - Illustrate local communities' preferred approaches to resolving grievances and defining remedy, which can inform the design of the operational-level mechanism;
 - Offer a formal point of recourse if an operational-level mechanism cannot achieve an agreed outcome.

Possible Approaches

- **Mapping the landscape of grievance mechanisms:** Operational-level grievance mechanisms are just one channel for addressing complaints that a company has caused or contributed to negative impacts on people. In most societies there are a range of other mechanisms available. These most typically include administrative and judicial mechanisms provided by the state. Additional mechanisms may be available where:

- The project is financed by an international financial institution with its own complaints system;
- The host state, or the home state of one of the JV partners, has a [National Contact Point](#) that deals with alleged breaches of the [OECD Guidelines for Multinational Enterprises](#);
- There is a [National Human Rights Institution](#) that can handle complaints regarding alleged company impacts on human rights.

Where trade unions are not legitimate or do not or cannot represent the whole workforce, other channels may be available, for example through local labour offices or nationally-recognised labour dispute resolution organisations.

Local communities, including indigenous communities, may have their own traditional ways of resolving grievances. An understanding of these can be particularly important to understanding how “remedy” is viewed in the local culture.

An O&G company will find it helpful to understand this landscape of grievance mechanisms at each of the sites where it operates. This includes understanding not only what exists, but how effective it is seen to be in practice. For example, if courts are generally viewed as corrupt or heavily overloaded, or if administrative mechanisms are physically remote from the site or take a narrow view of the complaints they will accept, this will affect the range of options for addressing complaints that arise.

Mapping the landscape of grievance mechanisms, and understanding cultural views of “remedy” also helps a company understand how an operational-level grievance mechanism might be positioned to add value and avoid undermining existing state-based processes.

- **Interacting with state-based and other external grievance mechanisms:** Complainants may choose to seek remedy for an alleged impact through the court system or an administrative proceeding, rather than approaching the company directly. A company has the right to contest allegations it believes are unfounded or inaccurate. In contexts where the courts are seen as weak or even corrupt, it may be helpful for the company to try to demonstrate it is not trying to influence the due legal process while defending its position.

In some situations, O&G companies may find it useful to build recourse to state-based grievance mechanisms into their own processes for handling grievances. For example a company might agree with local communities that if no remedy to a complaint can be agreed, both parties will ask a mechanism such as a [National Human Rights Institution](#) or a state agency for environmental protection to reach a decision on it.

In some cases, an O&G company may need to refer a complaint to the state authorities, in particular where it raises criminal issues or involves state authorities or agents, for example when protests have resulted in excessive use of force by public security. However, care should be taken in how these complaints are reported, particularly where the rule of law is weak or corruption is strong, to ensure that complainants are not exposed to retaliation.

The [Voluntary Principles on Security and Human Rights](#) in particular propose that:

- Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host state government authorities;

Example: Linking an Operational-level Grievance Mechanism with a State-based Mechanism

One extractive company has set up a system that provides recourse first at the operational level and then to the National Human Rights Institution, which is empowered to adjudicate complaints. The operational-level processes include:

- ▶ Open, transparent and representative company-community bodies, to discuss and resolve issues, including individual cases of compensation;
- ▶ A dynamic and culturally appropriate grievance mechanism (for example, having female personnel deal with women’s complaints), with feedback and verification of outcomes;
- ▶ Wherever possible, personal involvement of senior managers with the community member(s) concerned.

If an unresolved issue remains, company personnel assist the complainant(s) to engage the National Human Rights Institution (NHRI) if they so wish. The company also keeps the NHRI informed of issues surrounding the company’s operations, independent of any complaint or specific media allegations. In practice, the NHRI has only had to handle a few of cases over several years.

- Where appropriate, companies should urge investigation and that action be taken to prevent any recurrence;
- Companies should actively monitor the status of investigations and press for their proper resolution;
- Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence;
- The security and safety of sources should be protected;
- Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

These factors may be a helpful guide in other situations where an O&G company judges it necessary and appropriate to refer complaints to state authorities or another third party mechanism.

- **Supplier/contractor-level grievance mechanisms:** It can be productive for O&G companies to encourage and even assist their contractors, as well as local and remote suppliers, to develop their own grievance mechanisms for workers. This can help reduce the risks of human rights impacts in connection with the company's operations. Wherever possible, these mechanisms should involve legitimate trade unions or worker representatives. O&G companies may still want to consider providing a "fall-back channel" for workers of suppliers or contractors, in case issues are not adequately addressed (see [Section VI-C](#) below).

Supplier/contractor-level grievance mechanisms can be an important source of information about human rights impacts linked to an O&G company's operations. Where an O&G company requires its suppliers and contractors to establish their own mechanisms, it might also request periodic reporting on the substance and outcomes of complaints. This can be most useful with those suppliers or contractors whose human rights risks are particularly high.

VI C Designing Effective Operational-Level Grievance Mechanisms

Key Points for Implementation

- ▶ The Guiding Principles state that operational-level grievance mechanisms should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on dialogue and engagement, and a source of continuous learning.
- ▶ While these criteria mostly relate to the quality of the processes they offer, they include an important requirement that outcomes should be consistent with internationally-recognised human rights.
- ▶ Operational-level grievance mechanisms should not preclude access to judicial or other state-based processes, or undermine the role of legitimate trade unions. They should always take steps to prevent retaliation against complainants.

Possible Approaches

- **One or multiple mechanisms:** At both the site and – for larger companies – the corporate/head office level, an O&G company may have separate grievance mechanisms for workers and for external stakeholders. Alternatively, they may have a combined mechanism or access point that can receive complaints from employees, contracted workers, community members, as well as suppliers/contractors and their staff. Complaints may then be allocated for handling through different processes.

Whatever approach is adopted, grievance mechanisms need to fit an O&G company's local operating context. It is therefore best to design them close to the level where they will operate and with input from the groups for whom they are intended. This will help ensure that their design takes account of:

- Local cultures and traditions for settling grievances;
 - Accessibility to stakeholders, including those who are physically remote, illiterate, have disabilities, or are otherwise vulnerable or marginalised, such as contract workers with more limited legal rights than employees, rural or indigenous communities, children or youth workers;
 - Local views and preferences regarding transparency and confidentiality in grievance processes;
 - Other local mechanisms that offer alternative or complementary channels for remedy.
- **Building internal support for an operational-level grievance mechanism:** It can be challenging to build internal understanding that complaints raised through an operational-level grievance mechanism are not a threat to staff nor necessarily a sign that the company is failing at community relations or in its relationships with other affected stakeholders. It may be helpful to underline to staff the opportunities mechanisms present for:
 - Receiving useful feedback on how the company is perceived;
 - Continuous improvement where complaints show there are weaknesses in company policies, processes or practices;
 - Demonstrating that the company cares about the concerns of affected stakeholders and is committed to addressing them.

Where an O&G company is designing a new site-level mechanism, it can be useful to make this a collaborative exercise. Involving people from key functions and departments across the company – including those whose actions may lead to complaints – can build support for the mechanism. Building in time for this internal engagement, as well as for engagement with affected stakeholders, can be important to the longer-term success of the mechanism.

Where an actual complaint arises, it is often appropriate to involve the department whose actions are the subject of the complaint in its investigation, while ensuring that the overall process remains independent. Where it is possible to involve them also in identifying solutions, and “owning” their implementation, this may help contribute to future prevention. At other times, it may not be appropriate for those departments to be involved, for example where serious personal allegations are involved, or where it may otherwise compromise a credible investigation of the complaint. They should nevertheless benefit from lessons learned, in order to prevent repetition.

- **Defining the scope of a mechanism:** It can be counterproductive to limit a grievance mechanism to complaints that name human rights issues or claim particular laws or standards have been breached. This risks missing impacts that may not raise human rights issues immediately, but could escalate over time into severe impacts. There are frequent examples of communities that find their concerns about noise and dust or employment opportunities, are continually ignored and finally feel compelled to engage in a protest to get the company to pay attention. In situations of latent conflict or poorly-trained public security this could lead to incidents of

Example: Making a Mechanism Accessible

There is a distinction between a mechanism being publicised and being known. For example, one company took extensive steps to publicise how to access its grievance mechanism in a particular project, for example via community liaison officers, flyers, billboard advertisements and community librarians trained to receive complaints. Despite these efforts, interviews in communities showed a lack of awareness of the mechanism. The company then focused on ensuring that publicity was targeted in part at those moments when grievances were most likely to arise and that the information got to individuals when they were most likely to be looking for it. The company realised the importance of hearing from a mechanism's intended user groups about what kind of access points they are most likely to use, and recognising that these may vary between indigenous and non-indigenous communities, men and women, children, permanent and migrant workers and so on.

Resources: Designing Operational-Level Grievance Mechanisms

For more about the UN Guiding Principles' effectiveness criteria, see:

- ▶ UN SRSG, Addendum to the UN Guiding Principles, *Piloting Principles for Effective Company/Stakeholder Grievance Mechanisms: A report of lessons learned* (undertaken by the CSR Initiative, Harvard Kennedy School)
- ▶ CSR Initiative, Harvard Kennedy School, *Rights-Compatible Grievance Mechanisms*
- ▶ CSR Europe, *Company Mechanisms for Addressing Human Rights Complaints (draft version for consultation)*

For O&G-specific information, see:

- ▶ IFC, *Good Practice Note: Addressing Grievances from Project-Affected Communities*
- ▶ IIED, *Dispute or Dialogue? Community Perspectives on Company-led Grievance Mechanisms*
- ▶ IPIECA, *Operational level grievance mechanisms: Good practice survey*

For general information about non-judicial dispute resolution, see [ACCESS Facility](#)

violence and harm to health or life. A grievance mechanism should therefore be able to pick up a full range of concerns early enough to avoid their escalation and address underlying issues.

A mechanism should be able to exclude clearly vexatious complaints. However, it is risky to assume a complaint is vexatious without close attention and investigation. In some cases complaints that appear vexatious may in fact reflect legitimate issues that the complainant was afraid or unable to raise directly.

Vulnerable or marginalised individuals may be particularly disempowered from raising complaints. It may be possible to identify specific ways in which they can raise concerns without increasing their vulnerability, including through third parties speaking on their behalf. Wherever possible, it will be beneficial also to seek ways to gain their views directly.

- **Escalation of complaints:** An effective mechanism requires triggers for complaints to be escalated within the company, for example:

- Where deadlines for responding to a complainant have not been met;
- Where complaints raise potentially severe human rights impacts;
- Where a complaint indicates possible criminal conduct;
- Where a complaint implicates other companies or representatives of the state.

In the latter two instances, it can be important to report the matter to the relevant authorities, taking into account the issues highlighted in [Section VI-B](#) above.

- **Designing an effective grievance mechanism.** A poorly designed mechanism is often counterproductive – it can raise expectations among stakeholders without delivering on them, even increasing the sense of grievance. It may also distort the company's assessments of how well it is managing human rights risk. Relevant experience of O&G companies seeking to build effective grievance mechanisms includes:

- Where trust in the company or the mechanism is low, it can be particularly beneficial to involve affected stakeholder groups in the design, review and even joint oversight of the mechanism. This can help ensure that the stakeholders for whom the mechanism is intended are willing to use it;
- There is value in enabling a range of access points to the mechanism, for example, mail, email, secure phone line, secure website, or via community relations officers, and line managers, including for off-shore workers;
- Local community members, including workers, can be good sources of information to others in their communities about the mechanism;
- Verbal and other non-written forms of communication may be important in some rural and indigenous communities, for example using dance, theatre or cartoons to describe the steps in a grievance handling process;
- Some companies are working to build the capacity of potential users, for example through information sessions for contractor staff, or training in conflict resolution for – or even with – local communities;
- It is important to identify whether complainants come from vulnerable or marginalised groups and take this into account during the handling of their complaint and in identifying appropriate remedies;

- Standardised procedures can contribute to a more rigorous and more manageable process, including by ensuring complaints are acknowledged, providing indicative timeframes and updates, and reporting externally on the mechanism;
 - Capturing learning from the mechanism is particularly beneficial, for example through a log on the company's intranet of anonymised "difficult issues" with possible responses;
 - Where both parties agree to involve a neutral third party facilitator, this can help them arrive at sustainable solutions, particularly where issues are complex or multiple groups are involved;
 - Where mechanisms provide for follow-up and monitoring of implementation this can reinforce confidence among stakeholders and support a company's efforts to track its human rights performance;
 - Communicating about outcomes from a mechanism in an appropriate form (eg, anonymised, aggregated data or case studies) can demonstrate the value of using it. At the same time, the processes for arriving at agreed outcomes may sometimes require confidential discussions between the company and complainants, and/or protection of the identity of a complainant;
 - It is important to ensure the grievance mechanism does not substitute for stakeholder engagement, as this would signal that the company only wants to hear from stakeholders when they have a problem. Conversely, it is risky to assume that stakeholder engagement covers the role performed by a grievance mechanism, since it generally reaches groups but can miss the perspective of aggrieved individuals.
- **Grievances related to business relationships:** Communities around O&G operations and pipelines may assume that all those working on the site are working directly for the main operating company. Where this is the case, the operating company may wish to consider receiving complaints involving contractors through its own mechanism. It can then use its leverage with the contractor to seek solutions, for example, by:
 - Raising the issue with the contractor concerned, requesting them to address it directly and confirming the outcome;
 - Supporting the contractor in its efforts to address the issue, helping build its capacity to do so where this is weak;
 - Checking that there are protections in place to prevent complainants from retaliation in each of these cases;
 - Helping the contractor develop or improve its own grievance mechanism.

This approach may be useful not just for community complaints, but also for complaints from contractors' own workers.

Where to Start

For companies that are just starting to focus on processes to remediate human rights impacts or to develop operational-level grievance mechanisms, the following are some preliminary steps to consider:



Questions to Ask

The following questions correspond to sub-sections A, B and C above. They should help test the extent to which the company’s remediation processes, including operational-level grievance mechanisms, are consistent with the Guiding Principles:

VI-A	Building a Systematic Approach to Remediation <ul style="list-style-type: none"> ▶ How do we build support across the company for operational-level grievance mechanisms and the respective roles of the corporate and site levels in their development and review? ▶ What guidance do we provide to sites regarding the design of effective grievance mechanisms? ▶ How do we track complaints and their outcomes to identify ways we can improve our policies and processes to prevent human rights impacts? ▶ How do we identify whether outcomes from remediation processes provide real ‘remedy’, in the eyes of the affected individuals and in line with internationally recognised human rights?
VI-B	Mapping and Working with External Remediation Mechanisms <ul style="list-style-type: none"> ▶ What is our understanding of the landscape of grievance mechanisms, both judicial and non-udicial, at the site level? How do we ensure that our understanding is as complete as possible? ▶ How do we ensure we engage constructively and appropriately with state-based grievance mechanisms, within our own rights to defend ourselves against allegations we consider inaccurate? ▶ What procedures do we have to deal with complaints involving criminal issues or state authorities and agents (including public security)? ▶ Do we require that our suppliers or contractors have their own grievance mechanisms, and how do they relate to our own role in addressing complaints?
VI-C	Designing Effective Operational-Level Grievance Mechanisms <ul style="list-style-type: none"> ▶ How do sites involve internal and any external stakeholders in the design or review of their grievance mechanisms and ensure they are culturally appropriate and accessible to all affected stakeholder groups? ▶ How do sites test the effectiveness of their grievance mechanisms, including from the perspective of those for whom they are intended? ▶ If grievances are not resolved through an operational-level mechanism, is it clear to all what the alternative channels are?