



Effective company-level grievance mechanisms: multi-stakeholder perspectives and examples from practice

2015 UN Forum on Business and Human Rights

Report on the panel session organized by ACCESS Facility in cooperation with UN Global Compact. Monday, 16 November 2015, 16.40 – 18.00 room XXII

The UN Guiding Principles on Business and Human Rights (UNGPs) address the need for rights and obligations to be matched to appropriate effective judicial and non-judicial remedies when breached. While judicial mechanisms should be at the core of ensuring access to remedy, non-judicial mechanisms have an essential role to play in complementing and supplementing these judicial mechanisms. The UNGPs support the notion that non-judicial mechanisms at the company-level can identify, address, and remediate individual and community grievances at an early stage. However, the UNGPs also stress that poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.



Co-organized by ACCESS Facility and the UN Global Compact, and moderated by Brian Ganson, Head of the Africa Centre for Dispute Settlement, this panel set out to address a number of questions, such as: how should companies and users design mechanisms that provide effective remedy for those whose human rights have been adversely affected? What are the most important success factors or challenges for an effective company-level grievance mechanism?

The panel supported a constructive discussion between operators and users of company-level grievance mechanisms, including business representative Anupama Mohan of Statoil ASA, civil society representative Katherine McDonnell of EarthRights International, trade union representative Dwight Justice of ITUC, CAO representative Gina Barbieri, and mediator Mia Corpus of the CoRe Group.

Katherine McDonnell, EarthRights International, underlined the importance of **giving impacted communities a central role throughout the designing phase of company-level grievance mechanisms**. She questioned the legitimacy and independence of company-level mechanisms when the company - the party that caused the negative impact - designs and administers the redress process. In her view, this creates a lack of trust from the community towards the company-designed mechanism, which stands in the way of a mechanism's effectiveness. With the aim of addressing these challenges, EarthRights International is piloting a community-designed and driven mechanism as a means for empowering communities affected by a company's operations.



On the other hand, Dwight Justice, ITUC, contends that an independently operated mechanism is not as significant of a building block for an effective company-level mechanism as the **intention of the company to provide effective remedy**. To illustrate this point, he drew a parallel between company-level grievance mechanisms and consumer complaint procedures in department stores. With consumer complaint procedures, it is in the store's interest to offer a direct and immediate means of communication with the department store manager when a product does not satisfy consumer expectations. Whether this procedure is independent from the department store or not, is not relevant to its effectiveness.

In order to identify elements for effective company-level grievance mechanisms, it is important to understand their role in the broader system of remedy. Advocacy groups sometimes misinterpret the content of the third pillar of the

UNGPs to mean that they aim to privatize the duty of a state to provide access to remedy, but according to Dwight this is not the case. **Company-level mechanisms should be seen as early warning systems**, not as redress systems for serious human rights violations. When a company-level mechanism fails, there should be **alternative redress avenues administered by public institutions** in place.



Anupama Mohan Staitoil ASA supported Dwight's notion that company-level mechanisms can be meaningful for early and immediate redress. She added that **transparency and trust in a mechanism that is culturally appropriate** are additional elements that are essential to enabling access to effective remedy. **Mechanisms need to be locally based, tailored to local circumstances, and designed specifically for the sites where they operate.** From a company perspective, this requires making the business case for the importance of access to remedy at a company's headquarter level, as well as building capacity and competency to address grievances at site level.

Asked to share her experience as a company-community dialogue facilitator, Mia Corpus provided examples of some of the challenges she has encountered in company-community dialogue. In one of the cases, a mining company had caused environmental damage to a rural area. The case attracted the attention of national media, and the local community sought remedy by turning to a national body that had policies in place for addressing environmental disasters. However, the national body had no resources in place to implement these policies, and in the absence of implementation, these policies remain just words on paper. A fundamental gap in managing conflicts arising from project development is that, often,



neither governments nor companies provide **resources for training professionals with the ability to make policies work in practice, and with the skills to facilitate dialogue between the parties to come up with rights-compatible and interest-based solutions.**



Gina Barbieri confirmed the gaps between the increased number of social and environmental policies and the lack of ability to implement them on the ground. She noted that there is a lack of **recognition of local communities as partners in designing and monitoring company-level grievance mechanisms.** She shared that, of the 150 complaints filed with the CAO since its inception, none of the communities had previously accessed company-level grievance mechanisms. Sometimes this is because they think the mechanisms are for internal employment issues only. Other times it is because of a lack of trust in these mechanisms. To overcome these issues, **it is important to include the intended users of the mechanisms in the process of designing the mechanisms.**

The panel discussions were enriched by the constructive contributions from the audience. A recurring theme was incentives for business to set up effective company-level grievance mechanisms. In the absence of incentives, it was suggested to explore whether it would be an option to require companies to set up effective company-level mechanisms. A concern was raised that the worst abuses occur when there is no ability to take your case to court, and that non-judicial remedy in the absence of a judicial avenue is at risk of being ineffective.

A key element that was met with consensus was the importance of involving the users of a mechanism in its design. Both the panellists and the audience shed light on the challenges presented when there is no alternative to a company-level grievance mechanism. Together with its multi-stakeholder partners, ACCESS will continue to crystallize those questions to which parties need answers, and facilitate discussions among diverse stakeholders towards solutions.

ACCESS and UN Global Compact express sincere thanks to the Secretariat of the UN Forum on Business and Human Rights for their excellent organization of the Forum.