

# UNWG's questionnaire for survey for report on access to effective remedy for business-related human rights abuses

# Questions and responses

1. **What are the key elements of the right to an “effective” remedy under international human rights law that are relevant to Pillar III of the UNGPs?**

IPIECA’s industry experience indicates that grievance mechanisms should be risk-based and responsive to local needs and circumstances rather than following detailed prescriptive or one-size-fits-all solutions. Critical to designing a fit for purpose mechanism is engaging with a broad range of internal and external stakeholders during the design phase.

1. **What needs to be done to ensure that remedies for business-related human rights abuses are responsive to the experiences and expectations of the rights-holders, especially of vulnerable groups such as children, women, people with disabilities, migrant workers, and indigenous peoples?**

The below list is taken from IPIECA and the Danish Institute of Human Rights 2013 publication, Integrating Human Rights into Environmental, Health and Social Impact Assessments:

* Determine the vulnerability and resilience of affected communities and individuals by using human rights criteria
* Understand the significance of the impact from the perspective of affected communities and individuals
* When assessing the significance of an impact, include consideration of indirect, long-term and cumulative consequence
* Facilitate meaningful engagement by capacity building of affected communities and individuals, and/or their representatives
* Communications need to take into account gender, vulnerable groups, physical accessibility of the information, and technology or language and literacy barriers
* Engage directly with affected communities and individuals to the maximum extent practicable in the least formal setting within, or as close as practical to, their community setting. If it is not possible, engage credible, independent expert resources and legitimate representatives
* When engaging with formal representative institutions, realize that these might not always fully represent the interest of those in the community, especially those who may be excluded from the decision-making process, such as women and youth. It may therefore be necessary to obtain input from these groups by alternative means (for example through informal discussion with small groups). However, traditional decision makers may not be supportive of this approach and companies need to take this into consideration when making decisions to seek input in alternative ways.
* Take steps to ensure that representatives legitimately represent the rights, views and interests of affective communities and individuals, for example through consulting with relevant local and international stakeholders.
1. **How should states combine preventive, redressive and deterrent elements to enhance the overall effectiveness of remedies?**

IPIECA encourages states that have developed effective National Action Plans (e.g. UK, the Netherlands) to look at ways they can partners with other governments to strengthen their capabilities to enhance the overall effectiveness of remedies.

1. **What should be the role of home as well as host states of business enterprises in providing access to effective remedy for victims of business-related human rights abuses?**

As one moves along the spectrum from use of operational level grievance mechanisms to state-based non-judicial and state-based judicial remedies, several key points become apparent: the cost to complainants and companies increases; the nature of the conflict becomes more adversarial and possibly more high profile; the solutions shift from the consensual to the imposed; and the number of beneficiaries shrinks from the many to the few.

For these reasons, there are benefits to all parties in an approach to Access to Remedy that puts the priority on prevention of conflict and early interventionthrough locally appropriate grievance mechanisms. This approach follows internationally-recognised principles of good risk management that emphasize the importance of preventing concerns in the first place and responding quickly if they occur in order to minimise the potential for escalation. It holds the potential to benefit large numbers of stakeholders in a highly efficient manner.

1. **Business enterprises have a responsibility to respect all “internationally recognised human rights”. What does this responsibility entail in relation to the right to an effective remedy under the International Bill of Human Rights?**

IPIECA’s industry experience indicates that grievance mechanisms should be risk-based and responsive to local needs and circumstances rather than following detailed prescriptive or one-size-fits-all solutions.

1. **What does “cooperate” in remediation of adverse human rights impacts “through legitimate processes” entail for business enterprise under Principle 22 of the UNGPs?**

In the oil and gas industry, experience indicates that the vast majority of complaints received relate to issues where the appropriate response may involve a wide range of operational or mitigating measures (for example complaints about traffic or dust, where the appropriate response is a revision to the traffic management plan or the use of dust suppressant). In many jurisdictions, companies may also be subject to local laws or regulations that mandate a particular response. As a result, imposing an outside requirement for a CGM to apply a specific compensation or remedy would undermine the ability to tailor the most appropriate and effective response for the circumstances, and could put companies in the untenable position of having to choose whether to violate local law or implement the outside requirement.

There may be instances where it is necessary or desirable to use state-based mechanisms. However, giving disproportionate attention to the use of these mechanisms in the risks missing an important opportunity to advance work on the non-state remedies that in reality can more effectively improve outcomes for complainants and companies alike. It also increases the risks of unintended consequences like increased escalations, selection of forums based on anticipation of favourable outcome and increased legal risk that would likely reduce companies’ ability to focus on prevention and early intervention.

1. **What role should non-state-based societal organs such as intergovernmental organisations, international financial institutions, civil society organisations, trade unions, human rights defenders, lawyers’ associations and business associations play in facilitating access to effective remedy in cases related to business-related human rights abuses?**

Non-state-based societal organs, such as business associations, should assist businesses and governments in cases related to business-related human rights abuses through the development and communication of good practice, technical support, and facilitation of peer learning opportunities.

1. **How can the concept of reparations under international law be used to develop a remedy typology for business-related human rights abuses?**

IPIECA does not encourage efforts to require companies to guarantee specific forms of compensation or remediation through operational level grievance mechanisms.

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1. **Please share good practice examples, landmark judicial decisions or other regulatory innovations contributing to strengthening access to effective remedy for business-related human rights abuses.**

In 2015 IPIECA published the manual: [Community grievance mechanisms in the oil and gas industry. A manual for implementing operational-level grievance mechanisms and designing corporate frameworks.](http://www.ipieca.org/resources/good-practice/community-grievance-mechanisms-in-the-oil-and-gas-industry-a-manual-for-implementing-operational-level-grievance-mechanisms-and-designing-corporate-frameworks/) This comprehensive document provides practical step-by-step guidance on how to plan and implement operational-level grievance mechanisms and how to design and to manage corporate frameworks. It draws on the practical experiences of seven pilot projects conducted by IPIECA member companies as well as the shared learning from other members and stakeholders. Overall, the Manual reflects the industry’s positive response to the UNGPs, which promote the use, value and power of effective OLGMs in facilitating access to remedy.

1. **Please provide any additional comments, suggestions or information which you think may be relevant for the Working Group’s forthcoming report on access to effective remedy for business-related human rights abuses, or for strengthening access to remedy generally.**