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**Non-state based non-judicial grievance mechanisms (NSBGM):
An exploratory analysis**

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DISCLAIMER: This study was commissioned by OHCHR to enhance the understanding of issues related to non-state based non-judicial grievance mechanisms (NSBGM). The content of this paper does not necessarily reflect the views of OHCHR.

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Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis

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1 Introduction

1.1 Setting the Scene: The UNGPs and NSBGM

The UN Guiding Principles for Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, represent a milestone in the public policy debate on business and human rights. Although not having the status of an international treaty and being legally binding, the UNGPs create a form of multilevel and polycentric governance system in the field of business and human rights by establishing a set of global standards which cover all business enterprises and all human rights in all UN member states (Ruggie, 2013). The UNGPs are considered as the nucleus in terms of values and ideas as well as an emerging set of institutions which may evolve towards an effective international business and human rights governance regime.

The UNGPs include three interrelated pillars, which lay out the roles, responsibilities and rights of different actors in the business and human rights field, namely the states, companies, and the victims of human rights abuses (Office of the UN High Commissioner for Human Rights, 2011). The first pillar, ‘state duty to protect human rights’, confirms the role of the state as primary duty bearer to protect human rights and its responsibility to prevent, investigate, punish and redress human rights abuses by companies. The second pillar, ‘corporate responsibility to respect’, includes the expectation that companies explicitly express their commitment to human rights by declaring their policy commitment to respect human rights, by conducting human rights due diligence, and by establishing policies to remedy adverse human rights impacts of their business activities.

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The third pillar, 'access to remedy', requires the state and companies to establish governance structures which provide victims of human rights abuses with access to effective remedy, through state-based judicial grievance mechanisms, state-based non-judicial grievance mechanisms and non-state based non-judicial grievance mechanisms.

This scoping paper continues previous research on the UNGP's third pillar 'access to remedy' and extends previous work on state-based judicial grievance mechanisms, ARP I (Office of the UN High Commissioner for Human Rights, 2015; Zerk, 2014), and state-based non-judicial grievance mechanisms, ARP II (Office of the UN High Commissioner for Human Rights, 2017, 2018), focusing on non-state-based non-judicial grievance mechanisms (NSBGM).

In the UNGP framework, the NSBGM play a very specific and distinct role, especially compared to the state-based grievance mechanisms. This can only be understood against the background of the experience of the unsuccessful attempt to pass the "norms on the responsibilities of transnational companies and other business enterprises with regard to human rights" in 2003 to impose a legal mandate of businesses, and the subsequent policy stalemate with respect to the mandatory versus voluntary approaches of regulating business and human rights (Ruggie, 2013, p. 78). The project of designing the UNGP intended to progress the business and human rights agenda by bridging the gap between the mandatory approach, supported by most human rights advocates, and the voluntary approach preferred by business. The principled pragmatism approach (Ruggie, 2013, p. viii) behind the UNGPs establishes a governance system which includes a combination of public and private governance.

While state-based and/or traditional grievance mechanisms represent elements of public governance and are relatively well-established in legal research, NSBGM are related to the sphere of private governance and represent largely uncharted territory in the field of business and human rights. Ruggie (2013, p. 104) explicitly states that the "most underdeveloped component of remedial systems in the business and human rights domain is grievance mechanisms at company's operational level". This statement does not refer to the growing literature on NSBGM by business organisations and civil society organisations (for example, CSR Europe, 2013; Earthrights International & SOMO, 2015; FIDH International Federation for Human Rights, 2016; Freeman & Haan; ICMM International Council on Mining & Metals, 2009; Mining Watch Canada & RAID Rights and Accountability in Development, 2014; OXFAM, 2012; Rees & Vermijs, 2008; SHIFT, 2014; Skinner, McCorquodale, & De Schutter, 2013; Wilson & Blackmore, 2013), but rather to the degree to which this topic has been addressed and covered by existing academic research (for example, Corporate Social Responsibility Initiative, 2008; Earthrights International & SOMO, 2015; Nolan & Taylor, 2009; Rees, 2008; Rees & Vermijs, 2008; Scheltema, 2013; Thabane, 2014; Thompson, 2017).

In the management and social science fields, NSBGM have been covered - at best - at the margins of the corporate social responsibility (CSR) debate, but mostly without explicit focus on grievance mechanisms and remedy. In political science, a reference point may be the debate on

private governance, which has become quite popular in line with the neoliberal economic and social policy discourse and agenda of the 1980s and 1990s (Ruggie, 2013). This agenda was largely driven by the general assumption that decentralised, deregulated and private governance mechanisms are superior in terms of efficiency and problem-solving capacity to other, especially state-based, governance mechanisms. This debate is mirrored by the mandatory regulation (i.e. public governance, emphasising state regulation) versus voluntary regulation (private governance, emphasising unilateral regulation through business) debate in the business and human rights field (Ruggie, 2013). Only very rarely has this debate considered (i) other, consensus-based mechanisms and/or a (ii) combinations of governance mechanisms within a multilevel governance system.

Although the NSBGM have received specific emphasis in the UNGPs, their role descriptions vary. Ruggie (2013, p. 116) argues that in “the ideal world, state-based judicial and non-judicial mechanisms would form the foundations of the wider system of remedy for corporate related human rights abuse. Within such a system, company level grievance mechanisms will provide early-stage recourse and possible resolution in at least some instances. Collaborative initiatives, whether industry based on multi-stakeholder in character, would contribute in a similar manner”, highlighting the function of NSBGM as early warning system with respect to grievances, and providing a feedback loop for management with respect to a future escalation of human rights issues. (Ruggie, 2013). This complementary role of NSBGM with respect to other state-based grievance mechanisms is in stark contrast to another, substitutive, role which is implicitly ascribed to NSBGM, i.e. their potential of providing effective remedy in situations, where the state/government may not be able or willing to provide remedy through state-based and/or judicial grievance mechanisms, awarding NSBGM a central role in business and human rights in a polycentric governance system where other mechanisms do not exist or fail (Ruggie, 2013). These very different expectations as to the role specification of NSBGM in the international business and human rights governance system needs to be taken into account when designing and evaluating these mechanisms.

These issues are marking the potentially heavy burden associated with the hope placed in NSBGM to be able to provide effective remedy in situations where the state is not able or willing to do so), the thin ice in terms of theoretical and empirical analysis, and the minefield of political controversies, assumptions, positions and ideologies on which we are walking. And these parameters very much define the starting point for our analysis and discussion.

1.2 Aims, scope, methodology and key concepts

Aims: The aim of the OHCHR’s ARP III scoping exercise was a preliminary assessment of current practices and challenges with respect to the use of non-state-based non-judicial grievance mechanisms (NSBGM) as a way of enhancing access to remedy in cases of adverse human rights impacts that are business-related, and to identify areas for further research, especially with a view of (i) identifying and understanding the links between NSBGM and other types of grievance

mechanisms, and (ii) ultimately integrating the different mechanisms in what acts as part of a global governance regime for business and human rights.

Meaning of non-state-based mechanisms (NSBGM): for the purpose of the scoping paper, non-state-based mechanisms (NSBGM) have been identified as mechanisms by which individuals, groups or communities, whose human rights have been adversely impacted by business activities, or their legitimate representatives, can seek remedy with respect to those adverse impacts. The distinguishing characteristic of the NSBGM with respect to other mechanisms is, that the state is neither involved in establishing or setting the framework for nor is actively intervening into the operations of the grievance mechanisms (as in the example of statutory arbitration and conciliation services), nor is the grievance mechanism in any way directly linked to the legal and judicial system of a particular country (as for example general domestic courts). The analysis of NSBGM involves mechanisms which have neither been covered by ARP I or APR II.

Content: This paper will provide an overview of the different groups of NSBGM in section 2. In section 3 we will briefly reflect on the findings of the previous section and we will then propose six work streams:

- Work stream 1: Building a conceptual common ground for NSBGM;
- Work stream 2: Effective practices of NSBGM;
- Work stream 3: Incidence and coverage of NSBGM (companies);
- Work stream 4: Effectiveness of NSBGM;
- Work stream 5: linkages between different types of grievance mechanisms;
- Work stream 6: Cross-border aspects of NSBGM.

The scoping paper then concludes with recommendations for different directions of future research on the issue of accountability and remedy, as related to NSBGM. The recommended work streams for a 24-month programme of work is intended to enable the OHCHR to respond to a future mandate by the Human Rights Councils with evidence-based policy recommendations.

There are several important notes to be made with respect to NSBGM as part of the UNGP's third pillar on Access to Remedy, especially when compared to State-based grievance mechanisms. To start with, any grievance mechanisms related to public governance can be expected to be relatively well documented, not least due to the duty of transparency of information of governments vis-a-vis their constituencies. In contrast, NSBGM, as elements of private governance seem to be far less well documented, and civil society pressure for additional transparency from companies does not seem to have created an increase in disclosure related to NSBGM. However, as companies may benefit from NSBGM through flexibility with respect to grievance management, by avoiding the escalation of conflicts over human rights issues, and by avoiding public shaming, they should be interested in learning about good practices.

Procedural and substantive aspects of access to remedy: similar to the scoping study on ARP II (Office of the UN High Commissioner for Human Rights, 2017, 2018), the analysis of NSBGM took into consideration the UNGP's distinction of procedural, i.e. the steps of filing and processing agreements, and substantive aspects to remedy, i.e. the outcome of the remedy awarded.

Scope: After an initial literature review, it was decided to divide the description and analysis of NSBGM according to the following four categories:

- 1) company and corporate level grievance mechanisms (CCGMs) - this category includes, but is not limited to operational level grievance mechanisms (OLGMs);
- 2) grievance mechanisms of international development finance institutions (IDFIs);
- 3) grievance mechanisms related to international framework agreements (IFAs) concluded by multinational companies and trade unions;
- 4) multi-actor initiatives.

However, even as these four categories help us structure the field of observation, there is a myriad of grievance mechanisms and a high degree of institutional diversity within and across the suggested groups of NSBGM. All of the grievance mechanisms have in common that they affect the business and human rights sphere, but many of the mechanisms may not necessarily have been established specifically and exclusively to cover business and human rights related grievances. The intention is to set up specific types of mechanisms may vary, as may the role and function from the perspectives of the actors. This also includes the potential of role conflicts.

As far as the scope of this scoping paper is concerned, similar to the ARP II scoping paper (Office of the UN High Commissioner for Human Rights, 2017), it was our intention to focus on the following four areas of potential human rights related disputes between individuals (or communities) and companies:

- complaints with respect to labour rights;
- complaints with respect to consumer rights;
- complaints with respect to environmental standards;
- complaints with respect to social and community rights.

Methodology: the research for this paper was exploratory, seeking to identify and describe relevant issues related to the phenomenon of NSBGM. In terms of data collection, the scoping paper is largely based on desk research and several qualitative interviews of key stakeholder of two NSBGM to identify and explore analytical categories that are proposed below for future research. The first set of interviews relates to a multi-stakeholder initiative, the Ethical Trading Initiative, and a complaints mechanism which was used in one instance of labour-related abuses in the Kenyan horticulture sector. The second set of interviews relate to the Project Complaints Mechanism at the European Bank for Reconstruction and Development. The insights gained through the interviews have been integrated throughout this paper.

Drawing a comprehensive and systematic literature research, initially guided by academic publications and public policy related documents, yielded a large amount of documents, most of which are published by NGOs as claimants or external observers or by companies, international development finance institutions, multi-stakeholder initiatives, trade unions and NGOs as the ‘co-owners’ of grievance mechanisms. With respect to the latter, particularly noteworthy are the case study archives maintained by Access Facility, the Centre for Research on Multinational Corporations (SOMO), Corporate Accountability Research and the Business and Human Rights Resource Centre. Almost all of the information publicly available on grievance and remedy mechanisms comes from either NGOs or the websites of organizations owning a particular grievance mechanism. An exception to this are the international framework agreements, which are documented and analysed in the traditional academic outlets specialising in labour relations.

1.3 NSBGM and analytical categories

1.3.1 NSBGM and their documentation

NSBGM are an interesting but complex phenomenon to study. Although such grievance mechanisms may have existed at multinational companies for a long time, the increasing attention by public policy makers, NGOs and academia seems to have been triggered by the discussions around the UNGPs.

For the purpose of this scoping paper, we undertook a comprehensive and systematic review of the available literature, drawing on university libraries, academic journal archives, the internet and the grey literature of the ‘owners’ of grievance mechanisms, such as NGOs, trade unions, and companies. The vast majority of the relevant pre-2011 literature relates to research connected to or in the orbit of the activities of the UN special rapporteur John Ruggie, either originating from the special rapporteur’s research team or NGOs. Since 2011, the frequency of publications on grievance mechanisms and remedy has increased, and the topic has also increasingly attracted the attention of academic research.

Another feature of the literature is a broadening and shift of the analytical perspective on grievance mechanisms. We consider this as being related to the opening up of the field of human rights to new academic disciplines and communities, very much triggered by developments in the business and human rights discourse. The traditional focus on the legal perspective and legal analysis has not diminished in quantitative terms, but the steadily growing field has seen the emergence of additional approaches to the analysis of grievance mechanisms. Again, this may have to do specifically with the UNGPs. Triggered by the UNGPs recommendations for companies to engage in human rights due diligence, human rights reporting and the design of accountability and remedy mechanisms, accounting and consulting firms have identified the topic for service innovation and marketization.

The literature search paints a colourful and diverse picture of the rhetoric and reality of NSBGM. There is a myriad of initiatives and formats at different levels, with different actors, processes, logics and other design features. The diversity in the landscape of grievance mechanisms, especially at operational level, is to a large extent driven by company-specific factors. Many organisations have mechanisms which appear to be used as complaints mechanisms as part of policies related to marketing and sales, quality management, risk management or compliance management. Likewise, NSBGM may have initially emerged as part of policies relation to human resource management or labour relations issues, or community relations and grown into something more along the lines envisioned by the UNGPs. In addition, external pressures, for example from NGOs, trade unions, the local authorities or other external stakeholders, may also affect design features of the grievance mechanism. Some companies appear to have several parallel, maybe even overlapping grievance mechanisms. Over time, these mechanisms may have morphed into what today is accounted for as grievance mechanism related to human rights issues.

Related to the initial purpose and history of the grievance mechanism, the function of the grievance mechanism from the perspective of the company, where involved, may vary. This may even be reflected in the key performance indicators used to measure the performance of the mechanism.

Although there is a substantial amount of case-based literature available on the different types of NSBGM, there is a dearth of information on processes, outcomes and the performance of grievance mechanisms. Especially companies appear to shield off requests for information by referring to the necessity to treat this information as confidential or to non-disclosure agreements. Some companies publish selective information online, while other organisations, for example the international development finance institutions, make their case registers available online.

1.3.2 Descriptive and analytical categories

The UNGPs at Principle 31 describe the ‘effectiveness criteria for non-judicial grievance mechanisms’. These criteria will be the foundation driving the longer study of NSBGM. However, an important task of this scoping paper was to propose a set of criteria and research questions to allow further research to fully evaluate the effectiveness of NSBGM. The ‘effectiveness criteria’ require some unpacking into specific characteristics that allow more in-depth understanding to be gained. For example, while future study will be interested in understanding if a NSBGM is seen to be “Legitimate”, it will be helpful to understand how the mechanism builds and maintains trust with internal and external stakeholders and how the mechanism is held accountable for its fair conduct. Additional criteria are also necessary for the longer study as it will be evaluating the NSBGM in the context of how they either complement or replace other avenues for access to remedy. In other words, criteria must be developed that place the mechanism in its ‘access to remedy context’ and do not simply evaluate the mechanism in and of itself. Lastly, as described above, these ‘effectiveness criteria’ are often being overlaid onto existing mechanisms developed prior to the UNGPs

endorsement. It is therefore useful to add criteria that help contextualise the mechanism in its historical and institutional setting so that steps to bridge gaps identified can take this context into account.

Table 1 below shows the criteria we developed as we analysed the NSBGM based on desk research and why we feel each criterion is useful (cross-referencing also the UNGPs Principle 31). Sometimes we were unable to find the research, which signals that further research would have to focus on primary sources and interviews to gather data. To test a set of criteria that allows the complexity of the grievance mechanisms to be studied, we devised 7 categories (Table 1), which involve:

1. *General information*, including the history of and the background to establishing the grievance mechanism;
2. *Design features of the grievance mechanism*, including information on the initiative to establish and ownership of the grievance mechanism and accessibility by design;
3. *Coverage*, with respect to the characteristics of the duty bearer and the rights holders as well as the covered human rights issues, temporal issues and whether cross-border cases could be covered potentially;
4. *Processes*, including filing a grievance, retrieving and processing information, and the respective decision-making processes;
5. *Outcomes*, which include the type and character of remedy, the transformative, learning related character for management, enforceability and transparency;
6. *Evaluation*, which includes the relevance and impact of the grievance mechanisms for victims; the usefulness as determined by internal performance indicators to the owners of the mechanism; and an evaluation of the usefulness of the mechanism as part of providing access to remedy more generally;
7. *Linkages to other grievance mechanisms*

Table 1. Proposed descriptive and analytical categories**1. General information**

	Rationale for collecting the respective information:	Further questions for inquiry	Relevant UNGP 31 Effectiveness Criteria
Name of the grievance mechanism (GM)	<ul style="list-style-type: none"> ○ to identify the character or underlying philosophy the grievance mechanism ○ knowledge of the broad range of different GM labels enables the project team to better identify GMs at other companies or organisations 		
Year of establishment of the GM	<ul style="list-style-type: none"> ○ indicator for the potential experience of the company/ organisation/ involved actors with the GM ○ indicator for the potential maturity of the BHR management system 		<ul style="list-style-type: none"> ⇒ Legitimacy ⇒ Source of continuous learning ⇒ Rights compatible
History and background to the GM	<ul style="list-style-type: none"> ○ contextual information on the process of establishing the GM, on the philosophy behind establishing the mechanism ○ to better understand the drivers and impediments to change ○ information on possible path dependencies 	<ul style="list-style-type: none"> ⇒ If the mechanism is internal to a company, where does the department that manages it sit within the organigram and what decision making power does it have? ⇒ What relationship does the department running the mechanism have relative to the departments involved in eventual grievances? 	<ul style="list-style-type: none"> ⇒ Legitimacy ⇒ Source of continuous learning ⇒ Based on engagement and dialogue

2. Design

	Rationale for collecting the respective information:	Further questions for inquiry	Relevant UNGP 31 Effectiveness Criteria
Initiative to establish GM	<ul style="list-style-type: none"> ⇒ information on which actor took the lead in initiating/establishing the GM ⇒ information on interests, goals and strategies of the actors 		<ul style="list-style-type: none"> ⇒ Legitimacy ⇒ Source of continuous learning ⇒ Rights compatible
Ownership of GM	<ul style="list-style-type: none"> ⇒ information on involvement, roles and the responsibilities of actors ⇒ important to assess accountability 		<ul style="list-style-type: none"> ⇒ Legitimacy ⇒ Source of continuous learning
Design of GM – involving stakeholder groups (OLGMs engagement and dialogue)	<ul style="list-style-type: none"> ⇒ information on the involvement of different actors (incl. interests, goals, strategies and relative power) helps understanding the emergence of particular institutional configurations ⇒ design features (such as physical location, the definition of filing and processing information, decision-making etc.) have an impact on the strategies actors can choose in order to achieve a particular outcome ⇒ information on location of the GM in the organizational chart/hierarchy helps assess centrality/relevance of the GM to the organisation 	<ul style="list-style-type: none"> ⇒ How effective is the engagement with stakeholders performed by IDFI's (who have perhaps the longest history of such engagement at design phase)? 	<ul style="list-style-type: none"> ⇒ Accessibility ⇒ Legitimacy ⇒ Source of continuous learning
Formal/informal character of GM	<ul style="list-style-type: none"> ⇒ implications for strategies of the involved actors ⇒ influences the factual outcomes ⇒ implications for implementation of outcomes ⇒ important for the assessment of accountability 	<ul style="list-style-type: none"> ⇒ What are the pros and cons of informality ⇒ Is there a relationship to the formality and the availability of rights-compatible outcomes or other areas of effectiveness? ⇒ If the GMs are designed for different issues, what are the root causes of the variations in design? (sexual harassment or other issues warranting their own process? Other reasons?) 	<ul style="list-style-type: none"> ⇒ Equitable ⇒ Source of continuous learning
Standardisation and scalability: Variations of the GM across the	<ul style="list-style-type: none"> ⇒ Useful to understand why and how GMs vary according to a range of criteria such as geography or structure of work or value chain issues. 		

company or within the value chain?	⇒ Useful to understand where standardised GMs are effective or not ⇒ Useful to see successful (effective) GMs and understand if they are scalable		
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3. Coverage

	Rationale for collecting the respective information:	Further questions for inquiry	Relevant UNGP 31 Effectiveness Criteria
Coverage of the corporation	<ul style="list-style-type: none"> ⇒ information on which part/s of an organisation is/are covered by the GM ⇒ information on the centrality/importance/reach of the GM ⇒ to identify issues with accessibility 		<ul style="list-style-type: none"> ⇒ Accessibility
Coverage of suppliers/contractors/service providers	<ul style="list-style-type: none"> ⇒ information on which part/s of a supply chain/business ecosystem are covered by the GM ⇒ information on the centrality/importance/reach of the GM ⇒ to identify issues with accessibility 	<ul style="list-style-type: none"> ⇒ How deep do company requirements reach go in terms of spreading through business relationships. Are independent contractors, production lines or entire factories covered. 	
Coverage of workers	<ul style="list-style-type: none"> ⇒ information on workforce coverage ⇒ does the grievance mechanism apply to the entire workforce, or different types of contracts, occupational groups? ⇒ to identify issues with accessibility 		
Coverage of communities	<ul style="list-style-type: none"> ⇒ information on which (parts of) communities are covered by the grievance mechanism ⇒ indicates potential relevance and importance of the mechanism ⇒ to identify issues with accessibility 		
Formal/de facto limitations of coverage	<ul style="list-style-type: none"> ⇒ temporal – based on potential or perceived leverage or other criteria? ⇒ Based on employment status? ⇒ Geographical? ⇒ Employment based? 		<ul style="list-style-type: none"> ⇒ Accessible ⇒ Equitable
Which issues/topics are covered by the GM?	<ul style="list-style-type: none"> ⇒ information about which human rights issues (all, specific) are covered by the GM ⇒ information on coverage of additional issues (i.e. customer satisfaction) ⇒ to identify issues related to role expectations and conflicts 		

4. Processes

	Rationale for collecting the respective information:	Further questions for inquiry	Relevant UNGP 31 Effectiveness Criteria
	<ul style="list-style-type: none"> ⇒ Is the GM dialogue-based? ⇒ if yes, what level of engagement and dialogue does exist ⇒ How facilitated and is it designed to be equitable and appropriate for the context and the issues addressed? 		<ul style="list-style-type: none"> ⇒ based on engagement and dialogue for OLGMs
Character of grievance mechanism: dialogue-based vs adjudicative	<ul style="list-style-type: none"> ⇒ this can affect the range of tactics and strategies of actors with respect to filing, processing, and deciding about the grievance ⇒ this has implications for the operation, performance and the evaluation of the GMs 		
Description of the grievance process	<ul style="list-style-type: none"> ⇒ information to assess the range of tactics and strategies actors can employ with respect to filing, processing, and deciding a grievance 		<ul style="list-style-type: none"> ⇒ Predictability ⇒ Legitimacy ⇒ Transparency
Who is eligible to file grievances?	<ul style="list-style-type: none"> ⇒ information to assess the range of tactics and strategies actors can employ with respect to filing a grievance 		<ul style="list-style-type: none"> ⇒ Accessibility
How potential claimants find out about the mechanism	<ul style="list-style-type: none"> ⇒ to assess interests and strategies of the actors 	<ul style="list-style-type: none"> ⇒ Is there active outreach that is appropriate and targeted for communication? ⇒ What budget is allocated for outreach? ⇒ If there is a correlation between the level of outreach and the use of the mechanism, is this factored into the strategy of the owner of the mechanism? ⇒ Is outreach designed to help claimants arrive at the mechanism with appropriate capacity to participate? 	<ul style="list-style-type: none"> ⇒ Transparency ⇒ Accessibility ⇒ Legitimacy ⇒ Equitable
Are there protections for the claimant to ensure no retaliation either internally or externally to the company?	<ul style="list-style-type: none"> ⇒ to what extent are the interests of vulnerable claimants, for example with respect to whistle blowing, retaliation, etc. protected ⇒ Are cultural norms factored in ⇒ this information helps to identify issues related to confidentiality and transparency 		

Through which channels can grievances be filed? accessibility	<ul style="list-style-type: none"> ⇒ the number and types of channels through which complaints can be filed has for accessibility of the GM ⇒ to identify strategies to ‘manage’ the number of filed complaints 		<ul style="list-style-type: none"> ⇒ Accessibility ⇒ Transparency ⇒ Legitimacy
With whom can the grievances be filed? accessibility	<ul style="list-style-type: none"> ⇒ to assess the independence of the GM ⇒ to assess the roles of the different actors 		
How decisions are arrived at Equitable, predictable	<ul style="list-style-type: none"> ⇒ the roles of the different actors in the decision-making process will affect the character, process and outcomes of the decision-making process ⇒ it will also affect the perception of procedural justice 		
Third party involvement in the grievance mechanism equitable	<ul style="list-style-type: none"> ⇒ see cell above 		
Existence of appeal procedures legitimacy	<ul style="list-style-type: none"> ⇒ appeal procedures can be used to hold lower level decision makers accountable, to verify decisions, to reduce the risk of arbitrary or interest based decision-making, and to ensure due process 		
Is the escalation to high levels possible?	<ul style="list-style-type: none"> ⇒ see cell above 		<ul style="list-style-type: none"> ⇒ Legitimacy ⇒ Rights-compatible ⇒ Equitable ⇒ Transparency
Decision-making processes with respect to remedy	<ul style="list-style-type: none"> ⇒ different processes allow for variation in opportunities for agenda setting, limiting the range of available outcomes, influence activities, and negotiation and bargaining tactics and strategies. 		<ul style="list-style-type: none"> ⇒ Transparency ⇒ Equitable ⇒ Rights-compatible ⇒ Predictable
Public documentation of cases and outcomes	<ul style="list-style-type: none"> ⇒ information to identify potential goal conflict/s with confidentiality ⇒ available documentation ensures transparency of the processes and procedural justice perceptions 	<ul style="list-style-type: none"> ⇒ Does transparency serve a wider purpose? Is it linked to effectiveness beyond informing stakeholders? For example, is it linked to better outcomes? Is it necessary for accountability? 	<ul style="list-style-type: none"> ⇒ Transparency ⇒ Predictability

5. Outcomes

	Rationale for collecting the respective information:	Further questions for inquiry	Relevant UNGP 31 Effectiveness Criteria
Outcomes regarding remedy for rights holders	⇒ to assess the outcomes with respect to rights compatibility (e.g. absolute rights, permissible limitations) as well as to compare potential outcomes across different grievance mechanisms		⇒ Rights-compatible
Management feedback and learning	⇒ to assess whether outcomes vary across different GMs, e.g. with respect to learning effects, as suggested by the literature		⇒ Source of continuous learning
Enforceability of remedy arrangement (soft vs. hard)	⇒ the degree of enforceability relates to the degree to which the implementation of GM outcomes is effective		⇒ Rights-compatible
Are there specific consequences for violations/causing harm?	⇒ to assess whether outcomes of NSBGM focus only on reparation, or also include punishment or incentives to avoid future human rights abuses		⇒ Rights-compatible

6. Evaluation

	Rationale for collecting the respective information:	Further questions for inquiry	Relevant UNGP 31 Effectiveness Criteria
Frequency of use of the grievance mechanism	<ul style="list-style-type: none"> ⇒ to provide us with an idea of the relevance of the GM ⇒ indicates the GM's relative importance compared to other GMs. 	<ul style="list-style-type: none"> ⇒ How is frequency of use evaluated? In other words, how do the mechanisms estimate how many grievances exist vs. those that are filed? ⇒ Can frequency of use offer evidence of effectiveness? Under which conditions? 	<ul style="list-style-type: none"> ⇒ Legitimacy
Availability of longitudinal information on impact assessment of outcomes	<ul style="list-style-type: none"> ⇒ to evaluate the wider implications of outcomes with respect to the successful claimant (external), but also with respect to sanctioning human rights abuses and avoiding them in the future (internal) 		<ul style="list-style-type: none"> ⇒ Rights-compatible ⇒ Source of continuous learning
Existence of monitoring and evaluation of GM	<ul style="list-style-type: none"> ⇒ GMs may be only 'one-off fix' with respect to a particular claim, or the operation and performance of GM's may be systematically monitored and evaluated with the goal of improving its performance and effectiveness. 		<ul style="list-style-type: none"> ⇒ Source of continuous learning

7. Linkages

	Rationale for collecting the respective information:	Further questions for inquiry	Relevant UNGP 31 Effectiveness Criteria
Contextual - Links to other grievance mechanisms – What role is it playing (substitute or complement?)	⇒ most of the case studies focus only on one GM, but some provide references to GMs being embedded in a particular institutional setting, which is relevant to assessing the GM	⇒ Direct linkages to other entities in the value chain? ⇒ Facilitates, prevents or is neutral regarding access to alternative mechanisms if instituted? ⇒ Learning shared among linked mechanisms?	

2. Existing NSBGM

2.1 Corporate and company-level grievance mechanisms

NSBGM at company and corporate levels, in the literature frequently labelled operational level grievance mechanisms (OLGMs), exist in various shapes and sizes. The diversity of the phenomenon is matched by a similar diversity of available information in terms of sources of information, research methods, presentation style, and purpose/function of the information.

In the course of our research, it emerged that understanding the effectiveness of operational level grievance mechanisms (OLGMs) requires also looking to company and corporate level grievance mechanisms. For example, an OLGM within a global value chain may be linked to a mechanism of the brand at the top of the chain that helps to ensure the effectiveness of the OLGM, for example, in terms of ensuring timely resolution and communication with affected individuals. This assurance role should be factored into judgements of effectiveness. Additionally, companies may use composite information collected from OLGMs to identify and rectify issues corporate-wide. Looking solely at the OLGM would miss this important second step that would help ensure non-repetition of the original abuse. Furthermore, especially in areas covered traditionally by human resources, grievance mechanisms tend to be designed at headquarters and carried out at operations level. And this can impact directly the effectiveness of mechanisms. Consider for example, the potential for stakeholders to feed into the design and execution of the mechanism. Therefore, with such mechanisms it is essential that not only the OLGM is considered in isolation, but it is considered as part of a corporate or company level grievance mechanism. We therefore suggest that the full NSBGM study include corporate and company-level grievance mechanisms (CCGMs) rather than using the OLGM label, even if the target of the ‘effectiveness’ criteria will remain the OLGM.

In terms of sources of information, there is a relative scarcity of academic research on such NSBGM, while the majority of the available literature is published by NGOs or authors linked to NGOs. In terms of research methods, most frequent are case studies based on interviews and publicly available documents from the respective organisation or stakeholders. Largely descriptive accounts of CCGMs are slowly replaced by comparative case study analyses. Even if included in one document, and maybe co-authored by the same authors, the descriptive accounts of case studies are only to a certain extent standardised, which limits the possibilities for comparative analysis of case studies.

In the following, instead of reviewing the patchy literature across the entire spectrum of available information, we focus on a selection of secondary sources of information on research on GMs. When selecting the cases for analysis, we were using a snowball sampling approach, starting with one good-quality source of information to then include further case studies until - given the project aims of mapping the terrain - an acceptable level of saturation was reached. Thus, the information included in this section is mainly based on a selection of company level case studies from the available literature (Lindner, Lukas, & Steinkellner, 2013; Lukas, Lindner, Kutrzeba, & Sprenger, 2016; Rees, 2011; Rees & Vermijs, 2008).

1. General Information

Name of the grievance mechanism (GM) CCGMs operate under different labels and vary in terms of the embeddedness in organizational policies and practices. Some of CCGM's are linked to the corporation's code of conduct, other GM's are established as separate policy, and again other OLGGM's are part of a set of policies.

Year of establishment of the GM The GMs covered by the case studies appear to be relatively new, mostly established after 2011. Some of the GMs have predecessor instruments or represent the latest revised version of an GM.

History and background to the GM The available information on GMs focus on the currently valid version. Information on the development of the instruments over time seems to be rare. Likewise, there appears to be an information gap with respect to the initiation and emergence of grievance mechanisms. Taking a historical perspective (10 years for example) would allow us to better understand the drivers of and impediments to change, but this might prove difficult given available resources.

2. Design

Initiative to establish GM The information available points to a large variety of ways in which the GMs was initiated and established, ranging from informal discussions at human rights steering committees which were seeking to transfer their experiences with labour-related grievance mechanisms with respect to the human rights field to complaints management procedures to the UNGPs acting as catalyst for change (Goldcorp).

Ownership of GM The concept of ownership of a CCGM includes several aspects. First, there may be organisational units provided with specific resources to run the GM. Second, there have been different actors involved in managing the GM, for example management staff with or without internal and/or external stakeholders. With respect to GMs, explicit reference to

ownership structures appears to be scarce. In the absence of information to the contrary, we assume that the GM is owned by the corporation, and further research would be important to understand which department(s) or divisions or business units own the GM and how the results of the mechanism are fed back into the company or industry for continuous learning.

Design process of GM The design stage is crucial for setting the key parameters, key characteristics and operating principles of the GM. Yet, again, information on this is scarce. In one case, the GM was co-designed with an NGO.

Formal/informal character of GM: While most of the GM's appear to be formalised and institutionalised, it appears that some GMs also have informal character, for example as informal communication channels on grievances.

The existence of different degrees of formality of the GMs raises additional issues: based on the available literature, it appears as if companies frequently have different complaints and grievance mechanisms related to different issues.

3. Coverage

Coverage issues: A very important aspect of the design of GM's is the extent to which internal and/or external stakeholders and which parts of the organisation and/or the supply chain are covered by the grievance mechanism.

Most of the case studies on a particular grievance mechanism identify one particular unit, usually a production site, where this grievance mechanism is operating. It would be desirable to know whether the reported grievance mechanism exists also at all or specific sites of the organisation, and whether ownership structure of a particular unit makes a difference, for example at joint ventures. Related to this is the degree to which the GM is centralised within the organization, and standardised across operations.

Coverage of suppliers/contractors/service providers: There is a whole range of alternative ways in which suppliers are treated by the existing grievance mechanisms. Some companies recommend that suppliers at the first level should implement grievance mechanisms while other companies require suppliers to provide employees and community members with access to grievance mechanisms. In other cases, organisations allow workers from unrelated production lines, but present in the same factory, to have access to the grievance mechanisms that those working on products can access

Reviewing the case studies, the questions emerge about how deep these recommendations or requirements reach through business relationships and about who specifically is covered by these. For example, do these recommendations or requirements also apply to independent

contractors, to entire factories, or to production lines within factories which produce for the buyer company.

Coverage of employees and workers: Depending on the type and design of the grievance mechanism, it is the workforce and/or members of the local community which are usually covered. With respect to the workforce, there is no information available whether all types of employees, for example including agency workers, are covered by the grievance mechanism.

Coverage of specific topics: The existing case studies show that different grievance mechanisms cover different issues, and that these covered issues may change over time. While some grievance mechanisms are reported to cover all kinds of complaints in a relatively unspecific way, other grievance mechanisms are predominantly focusing on human resource management/labour relations issues and/or environmental and community issues. At Goldcorp, one internally oriented grievance and complaint mechanism covers theft, fraud, discrimination, harassment, labour issues, health and safety, and human rights issues, while another externally oriented mechanism covers job opportunities, contractor management, environmental performance, physical disturbance and land access.

The wide range of issues covered by a particular mechanism raises the issues about whether the grievance mechanism itself is able to effectively and efficiently address different types of issues with the same institutional setting, or whether grievance mechanisms specifically designed to cover particular issues perform better. Another question relates to whether and which specific human rights are being covered by the grievance mechanism.

4. Processes

Description of the grievance process: Grievance mechanisms vary in terms of included processes with respect to filing a complaint, processing of the complaint, decision making and the implementation and evaluation. While the original documentation of the grievance processes mention four stages or eight stages (Anglo-American), this topic is not covered by other case study descriptions.

Who is eligible to file grievances: All case study descriptions include information on eligibility for filing grievances, which is - depending on the design and purpose of the mechanism - either employees, community members, employees at suppliers, or external stakeholders. A general distinction is whether representatives are allowed to act on behalf of the claimant. Not all cases provide information on whether and how claimants are protected from retaliation or ridicule or even danger for filing a complaint. In some cases, GMs use anonymity presumably to protect claimants. Some companies allow claimants to opt out, while other claimants require the

complainant to explicitly opt for anonymity. This raises a question of the effectiveness of anonymity, or anonymity alone, to protect claimants and additional measures that GMs might incorporate.

Through which channels can grievances be filed? With whom can the grievances be filed? The channels through which grievances can be filed include drop boxes, email, or informing the supervisor, complainant officer, the HR Department or internal works councillors, while other mechanisms include additional internal or external hotlines or webpages. Some grievance mechanisms allow for claimants to file complaints with NGOs. Several companies offer a portfolio of alternative channels, while other companies provide specific communication channels for specific groups of claimants.

How decisions are taken: Relatively little information is available about the actors and processes involved in decision-making about grievances and remedy. From the information available one can infer that the respective decisions fall into the category of management prerogative, with or without involvement of internal and external stakeholders. The involvement of the latter is usually not specified further, so we do not know whether the involvement includes information, consultation or co-decision elements.

Third party involvement in the grievance mechanism: Some grievance mechanisms provide a role for NGOs, although the extent of involvement may vary from informal NGO involvement to owning and managing a level of escalation (HP Mexico).

Existence of appeal procedures and possible escalation: In case of being dissatisfied with the outcome of the grievance mechanisms, the claimant can appeal against the decision in internal or external appeal processes at some organisations, while the majority of cases do not provide any information on this. Likewise, little information is available on options available for escalating the case. One GM allows escalating the issues to external NGOs or the Chamber of Commerce, although there is no specific information about how decisions are being made at that level. Another GMs that provide for escalating issues to the FLA complaint mechanism.

5. Outcomes

Management feedback and learning: Although crucial for the transformative elements of grievance mechanisms, none of the case studies is explicitly reporting on management feedback and learning processes. The longer study should prioritise this inquiry from original sources.

Decision-making with respect to remedy / Outcomes regarding remedy: None of the case studies is reporting on how decisions on remedy are being made, for example in terms of

decision-making principles, and neither is information available on outcomes. Likewise, there is no information available on the implementation and enforcement of outcome-related decisions.

The lack of information in this field is of great concern, because on the one hand outcomes matter most for the claimants, and, on the other hand, any comparative analysis of alternative institutional settings or governance mechanisms requires information on and discussion of procedural and substantive aspects related to the outcomes of grievance mechanisms.

Public documentation of cases and outcomes: Transparency involves the availability of information to interested and relevant parties. One of the case companies has agreed to publish annual reviews on the frequency with which the community related GM is being used.

Are there specific consequences for violations/causing harm: In terms of consequences of identified violations and harm, only one company reveals that the portfolio includes sanctions for the suppliers, ranging from reviewing orders, sending warning letters to the termination of contracts. This is an example of accountability within the value chain (or in this case supply chain) as opposed to self-imposed accountability in specific cases for the harm caused to an individual or company. Documentation of internal accountability was not found in the desk research for this scoping study.

6. Evaluation

Frequency of use of the grievance mechanism: two case reports include information on the frequency with which the grievance mechanism is being used. How is this used as a guide to effectiveness? Is it frequency of use vs. statistical expectations of events occurring?

Availability of impact assessment of remedy / Existence of monitoring and evaluation of GM: From the documentation reviewed, none of the available case study reports include information on the impact of the grievance mechanisms with respect to the claimants and outcomes. At best, what they include is traditional management policy evaluations. If it works for the company and not if it works for claimants and outcomes. With respect to the monitoring and general evaluation of grievance mechanisms, company strategies range from internal self-assessment, involvement of bodies of employee representation to external audits.

7. Linkages with other mechanisms

Links to other grievance mechanisms: Companies often have a portfolio of initiatives they draw upon. It would be interesting to understand the drivers behind the choices so that it can

be better understood how company or corporate level grievance mechanisms can be better embedded in a broader system of governance and grievance mechanisms.

2.2 International development finance institutions

In the international development finance sector, there are various forms of grievance mechanisms. In general terms, complaints can be filed by the individual, group, community or entity which believes it has suffered or will suffer from a human rights abuse related to a project financed by an International development finance institution (IDFI). In terms of coverage, complaints usually refer to community health, safety and security, land acquisition and involuntary resettlement, indigenous people and cultural heritage. It is important to note that this part of the report is based on a selection of published IDFI case studies available in the existing literature (Daniel, Genovese, van Huijstee, & Singh, 2016; Lindner et al., 2013; Lukas et al., 2016; Rees, 2011; Rees & Vermijs, 2008), and does not look at national-level development finance institutions.

1. General information

Name of the grievance mechanism (GM): Each IDFI has its own grievance mechanism with its own specific name, for example the Inspection Panel at the World Bank (WB), or the office of the compliance advisor ombudsman (CAO) at the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the Project Complaint Mechanism (PCM) at the European Bank for Reconstruction and Development (EBRD).

Year of establishment of the GM: Grievance mechanisms at IDFI's first came to live in 1993 at the World Bank, and the other IDFI's followed suit afterwards.

History and background to the GM: GMs at IDFI's mainly have the mandate to investigate whether finance projects comply with the development finance bank's policies and procedures (or code of conduct) with respect to social environmental issues, implicitly or explicitly referring to human rights. The main process elements involved in the GMs reviewed at IDFI's are (i) receipt of a complaint or grievance, (ii) analysis of the claim that he or she was harmed by the banks project and that this harm was caused by the IDFI violating its procedural standards or codes of conduct, and then (iii) resolution of the complaints concerning environmental or social issues.

GM's at IDFI's usually undergo formal reviews (engagement with stakeholders is part of this) at predetermined intervals, usually leading to a revision of the GM's policies and practices. One question for further study would be to understand the efficacy of the engagement with stakeholders in the design phase of IDFI mechanisms.

2. Design

Initiative to established GM: GMs are usually established upon the initiative of the IDFI. Particularly noteworthy in this respect is that the different IDFI seem to communicate with each other and exchange information in order to learn from each other's good practices, for example at annual inter-organisational meetings of GM representatives.

Ownership of GM: IDFI tend to own their GM. The GM is usually located within the IDFI. However, the degree of independence with respect to the IDFI's decision-making processes and governance structures vary across organisations.

Design process of GM: The GM is usually designed by the IDFI. NGOs, civil society organisations and other stakeholders may be involved in the establishment and revision in a consultative role.

Formal/informal character of GM: GMs at IDFI are highly formalised grievance mechanisms.

3. Coverage

Coverage of the mechanism: GMs usually cover projects which are financed by the IDFI, thus they are project-related and they may have important limitations temporally related to their own disbursements or involvement in the project in question. They do neither cover the operational aspects of the IDFI itself, nor do they cover client organisations, except for in relation to the IDFI finance project.

Coverage of suppliers/contractors/service providers: With respect to the clients and projects, IDFI may require their client organisations to establish and operate their own grievance mechanisms. This may happen in relation to the project or more comprehensively to cover for their organization, supply chains and organisational ecosystem. But the IDFI GMs themselves do not cover those GMs.

Coverage of employees and communities: The grievance mechanisms usually cover how any stakeholder is affected by an IDFI-financed project. Eligibility for filing a grievance usually involves a particular timeframe and deadline in relation to the completion of a finance project by which the grievances need to be filed.

Which issues/topics are covered by the GM? Complainants can file any topical issue which is covered by the IDFI's codes of conduct or environmental and social standards.

Explicit coverage of specific human rights issues: Depending on the IDFI's codes of conduct and/or environmental and social standards, specific human rights may be explicitly

mentioned or specifically excluded from the list of issues covered by the GM, as for example at the African Development Bank, which provides an exclusive list of rights that will be recognised as harm.

4. Process characteristics

Description of the grievance process: Documentation on the design characteristics of the GMs at IDFI is usually available from IDFI websites. As there is considerable variation in terms of design characteristics, especially with respect to the specific processes involved.

Who is eligible to file grievances: The eligibility to initiate the grievance procedure varies across organisations. In general terms, any claimant affected by a IDFI finance project can file a claim. However, the details vary across organisations, with some organisations requiring two individuals to initiate a grievance process (e.g., IP). CAO accepts complaints from individuals, groups of individuals or organisations affected by a project. At organisations where the GM is linked to compliance management, it may also be the case that the process may be initiated from within the organisation, for example an executive director or the board at the World Bank's IP. One of the key questions here is how the IDFI communicates the availability of the GM to potential claimants. Some IDFI do not have any formal communication plan, budget or staff tasked with making the GM known. Others are proactive about making the GM accessible.

How are claimants protected from retaliation or other: Protection for claimants seems to be limited to confidentiality and anonymity as essential elements of the grievance mechanisms in IDFI GMs, although the specific policies and practices need to be verified. Claimants may usually request confidentiality. While transparency on closed cases is supported by the availability of relatively detailed case registers, the information contained in those case descriptions may allow for the identification of a claimant. The assumption that confidentiality and/or anonymity are sufficient to provide appropriate security to claimants should be verified.

How decisions are made: The decision-making processes vary considerably across organisations, and usually involve several stages. The unit owning a grievance mechanism usually checks the eligibility of the claim, then collects and processes the necessary information, and then decides on a non-binding recommendation which is usually passed on to higher-level decision makers, for example the management board, where, ultimately, the case is decided.

A distinction needs to be made in relation to the objectives and different functions of GMs. For example, the CAO and the EBRD have different processes that cover cases in relation to compliance issues, and other cases which are processed through a process of dispute resolution.

Engagement: Third party involvement in the grievance mechanism exists potentially at all levels and stages of the grievance mechanism, ranging from any NGO involvement in the nomination of the role and position holders of the GM, to supporting the claimant in filing of a complaint, to representing complainants in the process, to involvement in the generation of information, and through involvement in review and auditing processes.

Existence of appeal procedures/Is the escalation to high levels possible: Policies and practices seem to vary with respect to the existence of appeal procedures. At the World Bank's IP GM, the panel procedure does not include any appeals. The CAO related grievance mechanism includes the monitoring of the process and the outcomes of the dispute resolution as well as of the compliance-related processes by whom.

5. Outcomes

Management feedback and learning: The available documents indicate that management feedback and learning is mainly associated with the GMs scheduled review processes. There is no information available in the case studies on whether and how cases are linked to learning.

Outcomes regarding remedy: The available descriptions of GM do not report on specific outcomes. This information may be included in specific complaint case descriptions. While eligible and closed cases are documented in the GM case registers, outcomes in relation to remedy do not seem to be publicly available, which is often justified by confidentiality reasons.

Enforceability of remedy arrangement (soft vs. hard): There is no information available on the legal status of the remedy agreements. Neither is information available on enforceability of outcomes.

Public documentation of cases and outcomes: The closed cases are usually documented in case registers which are available to the public, but there is variation in whether the outcomes are reported.

Are there specific consequences for violations/causing harm: In the case of the World Bank's IP, the panel does not have the authority to impose sanctions on projects, and give cannot stop projects or impose financial compensation. Also it does not have the mandate to monitor the outcomes and the implementation of outcomes.

6. Evaluation

Frequency of use of the grievance mechanism: Documentation on the use of grievance mechanisms is available in internal or external reports published by the respective GM. However, it is unclear how frequency of use of a mechanism relates to effectiveness. Again, not being able

to identify those cases not filed, this is an ambiguous piece of data that requires further investigation.

Availability of assessment of remedy/Existence of monitoring and evaluation of GM: There is little information available publicly on evaluation of the effectiveness of the mechanism and the impact of its outcomes apart from the notion of the general review processes, which are scheduled according to particular review cycles.

7. Linkages

Links to other grievance mechanisms: The only link to other GMs reported in the available documentation refers to GMs at client organisations or in relation to a financed project. There are recommendations by the IDFI GMs for the client to establish grievance mechanisms, which may be specifically designed for the IDFI finance project, or cover the entire client organisation. In addition, the regulations governing the eligibility of claims for being processed by the IDFI GM may also refer to grievance mechanisms for the specific project or the client organization.

2.3 International framework agreements

The literature on access to remedy frequently includes references to international framework agreements (IFAs), which are usually concluded between multinational companies and organisations representing employees and workers, for example global trade unions, international works councils and/or their counterparts at national level (Rees, 2008).

These agreements create norms in the fields of labour relations and social policy (Platzer & Rüb, 2014), which aim at ensuring the application of fundamental labour and employment standards. In terms of content, IFAs cover the ILO labour conventions, and some of the IFAs refer to the universal declaration of human rights. As party to the IFA, the company agrees to follow the agreed standards at its operations in the home country and – to varying degrees - at its foreign subsidiaries (depending on ownership structures). Usually, IFAs allow firms to register complaints of non-compliance with the agreement's terms.

The following section of the report is based on information available in published research on international framework agreements.

1. General information

While the business and human rights literature usually refers to the label of international framework agreement (IFA), the specialist industrial relations literature offers alternative labels such as global framework agreements and transnational framework agreements. A further label used for a specific subgroup is European framework agreements (EFA). The use of the latter varies in the literature. Some authors use the concept EFA for those IFAs which have been concluded at European MNEs. Others refer to the concept EFA as being related to public policy discussion at the European Union level about transnational agreements. For reasons of simplicity, we will continue to use the label international framework agreement (IFA).

At this point it is important to note that IFAs are a phenomenon which has emerged and developed in the field of international industrial relations, with – initially – little connection to the business and human rights discourse, except for the focus on labour rights.

Name of the grievance mechanism (GM): IFAs are formal agreements between actors representing management and workforces, aiming at regulating the terms and conditions of the employment relationship for the employees covered by the agreement. IFAs often include dispute resolution mechanisms.

Year of establishment of the GM: The first IFA was agreed in 1988 between the French MNC Danone and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the number of IFA have increased steadily since around the year 2000 (Platzter & Rüb, 2014)

History and background to the GM: in the academic literature, IFAs are a form of transnational private labour standards regulation, which represents an extension of the unilateral codes of conduct at multinational companies, which have been discussed since the 1970s. The drivers behind these phenomena are “transnational labour activism by NGOs and labour coalitions” (Thomas, 2011).

2. Design

Initiative to established GM: the existing literature almost unanimously agrees that the establishment of an IFA is demanded and initiated by trade unions or other bodies of employee representation, for example international works councils. Only very few exceptional cases, would the initiative come from the management side, and even then management would be doing so to respond to stakeholder pressures.

Ownership of GM: The IFAs are jointly ‘owned’ by the signatories of the agreement.

Design process of GM: The design of the IFAs is the result of a negotiation process between the parties to the agreement. The content and structure of the IFA's varies across MNCs. Although not being the focus of the existing literature, many IFAs explicitly include a dispute resolution process. And this is the element which justifies why IFAs are included in the analysis of NSBGM.

Formal/informal character of GM: IFAs are formal, written agreements between the parties to the agreement, but are not legally binding.

3. Coverage:

IFAs I usually concluded between central management of multinational companies and global union federations, operating in a specific sector. In terms of coverage and reach, research on IFAs shows that the vast majority of agreements are concluded for European multinational companies (for example, more than 80% of all IFAs in 2012)(Platzer & Rüb, 2014).

Coverage of the corporation: IFAs are an organisational level phenomenon, which usually covers the entire MNC, the specific arrangements varying across MNCs.

Coverage of suppliers/contractors/service providers: IFAs may, but do not always include statements that recommend that supplier companies should also adhere to the terms and conditions of employment stipulated in the international framework agreement.

There is a distinction between producer-dominant evaluated value-added chains, where IFAs are primarily targeting individual enterprises, and buyer dominated value chains, where IFAs target the regulation of the entire supply chain. In the latter case, the multinational companies have largely outsourced production. (Platzer & Rüb, 2014). With respect to suppliers, strategies range from informing suppliers to requiring them to comply with the IFA. (Platzer & Rüb, 2014).

Coverage of employees: In terms of workforce coverage, IFAs usually cover the workforce of the MNC. Existing research does not provide information on whether this applies to all workforce groups, including, for example agency workers, or independent subcontractors.

Coverage of communities: As IFAs represent an instrument to regulate employment relationships. Communities and other stakeholders are not covered by the arrangements.

Which issues/topics are covered by the GM? IFA's cover issues refer to ILO labour standards and other sets of international regulation, such as the UN global compact. With respect to substantive issues, they cover core labour standards, health and safety issues, corporate restructuring, decent wages, staffing, data protection, further training environmental issues and

working hours. With respect procedural issues, they cover communication to the workforce and suppliers, as well as dispute resolution procedures. (Platzer & Rüb, 2014)

Explicit coverage of specific human rights issues: the focus of IFAs is on social human rights, including Labourites such as freedom of association and the right to collective bargaining. In addition there is usually explicit reference to ILO conventions and other sources of international soft law related to labour and employment rights. Other areas of human rights are usually not covered by international framework agreements.

4. Process characteristics

Description of the grievance process: the current literature contains next to no detailed information on the structure and/or stages of the dispute resolution or grievance process. From the perspective of an external, it seems as if the authors of the existing literature would treat the issue of dispute resolution in an analogy to existing mechanisms available in traditional industrial relations.

Thomas (2011) lists a couple of IFA -related dispute resolution mechanisms, which include formal joint review committees of management and labour representatives, IFA clauses on joint examinations, negotiations between companies and trade unions, and the establishment of compliance and monitoring groups. However, unfortunately, no further information is given on specific characteristics of the dispute resolution procedures.

As IFAs are distinctively different from other types of grievance mechanisms, they operate according to different logics (Telljohann, da Costa, Müller, Rehfeldt, & Zimmer, 2009). In general, the intention of the parties is to settle a violation of IFA provisions in cooperation with management. When informed about an IFA violation, the involved international trade union will obtain more information. If the case is valid, it will seek a solution with local or national level management. In case of failure, the issue is passed on to the national union (and/or respective company level employee representation structure) in the company's home country, which brings the attention of the complaint to central management. Central management would then have to develop a catalogue of corrective measures and ensure the implementation. In case this fails, the international trade union may resolve the issue through binding arbitration or a public complaint. The ultimate means of final resort would be to leave the IFA (Papadakis, 2011).

Who is eligible to file grievances? Following this approach, it would usually be either the affected employee, or a body of employee representation who would be eligible to file a grievance.

Is anonymity of the claimant provided? There is no information available in the existing literature on whether anonymity of the claimant is an issue in the international framework agreements, or whether non-retaliation and safety of the claimant are considered an issue.

Through which channels can grievances be filed?: Channels vary across organisations, and include hotlines, emails, drop boxes, one-to-one communication with superiors or other managers, or approaching employee representatives or bodies of employee representation. (Telljohann et al., 2009)

With whom can the grievances be filed? Again, this does not seem to appear the focus of the existing literature. Very rudimentary information indicates that grievances can be filed either with the body managing and monitoring the IFA, all with management directly. (Schömann, Sebczak, Voss, & Wilke, 2008; Telljohann et al., 2009).

How decisions are arrived at: there is no information available on this issue in the existing literature.

Third party involvement in the grievance mechanism: in most of the IFAs, trade union bodies external to the organisation are parties to the agreement.

Existence of appeal procedures/ Is the escalation to higher levels possible? As IFAs are not linked to national collective labour law, there is no connection to judicial mechanisms and appeal procedures. However, there is anecdotal reporting that some IFA stipulate that decisions can be challenged and escalated to higher level institutions, which involve national or international trade union bodies.

Decision-making processes with respect to remedy: To the best of our knowledge, there is no information available in the existing literature on this issue.

5. Outcomes

Management feedback and learning: To the best of our knowledge, there is no information available in the existing literature on this issue.

Outcomes regarding remedy: To the best of our knowledge, there is no information available in the existing literature on this issue.

Enforceability of remedy arrangement (soft vs. hard): IFAs are not legally binding. As such agreements cannot be legally enforced. However, as most IFAs are agreed at MNCs with a high degree of institutionalisation of labour relations, one could argue that this institutional setting is supportive of the implementation and ‘soft’ enforcement of the IFA.

Public documentation of cases and outcomes: To the best of our knowledge, there is no information available in the existing literature on this issue.

Are there specific consequences for violations/causing harm? To the best of our knowledge, there is no information available in the existing literature on this issue.

6. Evaluation

Frequency of use of the grievance mechanism: To the best of our knowledge, there is no information available in the existing literature on this issue.

Availability of assessment of remedy/Existence of monitoring and evaluation of GM: IFAs usually include procedural rules to monitor the implementation of the agreement and for dispute resolution with respect to the application and implementation of the agreement (Platzer & Rüb, 2014).

Problems identified by existing research: There appear to be issues in relation to management commitment to IFAs. In addition, there have been reports that information on the IFAs is not trickling down to subsidiaries and lower levels of management. But also on the trade union side, issues have been reported about different levels of trade unions being involved in the process, and the work force not necessarily being fully informed on the agreement. Furthermore, the effectiveness of IFAs and the respective grievance mechanisms may depend very much on the institutional embeddedness of the agreement (Fichter et al., 2012).

Miscellaneous aspects: in general, the literature on IFAs focuses predominantly on the labour relations implications of IFAs, especially union recognition. Grievance mechanisms and dispute resolution as well as the related institutional configurations, processes and issues play only a very marginal role in current research.

7. Linkages

Most authors agree that IFAs contribute to strengthening trade union power and are supporting union recognition and influence in the workplace. There is some indication that trade unions can escalate the process and refer grievances to the national industrial relations institutions of the respective country.

2.4 Multi-actor mechanisms

UNGP 30 refers to “industry, multi-stakeholder and other collaborative initiatives” that should ensure availability of effective grievance mechanisms. When an adverse impact occurs - either because it was unexpected or because the business was unable to prevent it (Shift, 2014) - multi-actor mechanisms may enable victims of abuse and/or their representatives to seek redress. This

kind of initiatives covers a wide spectrum of mechanisms that involve more than just a company or corporate group. These mechanisms involve company-initiated commitments to adhere to schemes which are external to them, aimed at respecting a common code of conducts, set of principles or international certifications (Rees & Vermijs, 2008; Genovese, 2016; ETI, 2017). In particular, their focus lies in the accountability of complex supply chain, sectors and industries, or issues related to specific regional contexts (Ergon, 2017; Rees, 2008). The collaborative and multilateral nature of such initiatives plays an important role in knowledge sharing, peer-learning and peer-pressure among transnational business, and allows for a greater leverage in enforcing corporate accountability internationally.

Table 2 – Multi-actor mechanisms

Type of multi-actor mechanisms	Mechanisms
Industry and sectoral level	<ul style="list-style-type: none"> • Clear Voice Hotline • Fair Food Programme • Fair Wear Foundation • HP Centre for action labor issues • International Council of Toy Industries • Roundtable on Sustainable Palm Oil RSPO • Voluntary Principles on Security and Human Rights • Workers Rights Consortium
International certification bodies	<ul style="list-style-type: none"> • Fairtrade • FSC Certification Scheme (Forest Stewardship Council's Processing Formal Complaints) • Rainforest Alliance • Social Accountability International
Multi-stakeholder mechanisms with a business participants or members	<ul style="list-style-type: none"> • Ethical Trading Initiative ETI (tripartite structure) • Fair Labor Association • UN Global Compact
Multi-stakeholders regional initiatives	<ul style="list-style-type: none"> • Accord on fire and building safety in Bangladesh • Amader Kotha • Issara Institute • Negev Bar Kayma

1. General information

Name of the grievance mechanisms (GM) - Multi-actor mechanisms involve reviewing cases of corporate's practice against established codes of conduct, set of principles, or international certifications (ETI Base Code; Global Compact Ten Principles; FLA code of conduct; FWF code of labour practices; ICTI Care Process; WRC code of conduct; ...). These mechanisms vary from hotlines to more formal third-party complaint procedures.

Year of establishment of the GM - All the multi-actor initiatives were established during the first decade of the 2000s, except for the Accord on Fire and Building Safety in Bangladesh set up in 2013 in response to a specific incident (Connor, Delaney, & Rennie, 2016; bangladeshaccord.org); and the Amader Kotha project-based mechanism and the Issara Institute, both launched in 2014 (ETI, 2017).

History and background - Since the end of the 90s, a growing number of collective initiatives related to corporate social responsibility and a renewed role of business in society started to look at corporate accountability and grievance mechanisms. All multi-actor initiatives aim to mitigate the power relationship between a corporation and abused people/community, through the adherence to specific codes or set of principles (Rees & Vermijs, 2008; Miller-Dawkins, Macdonald & Marshall, 2016; Thompson, 2017).

2. Design

Design of GM - The main objective of multi-actor mechanisms is to ensure adherence to a determined code of conduct, set of principles or international certifications. The design of the mechanisms aims at protecting the workers and communities, at the same time making sure there are no infringements of agreed norms.

The democratic nature of some of multi-actor initiatives determines the way grievance mechanisms have been designed. More inclusive and participatory initiatives allow for greater consultation in the design of the mechanisms (e.g. Bangladesh Accord). Service-oriented initiatives, such as international certifications, present a pre-determined grievance mechanism for companies that elect to adhere.

Multi-actor mechanisms are often designed to function as a recourse mechanism or last resort, to be accessed when local approaches have failed to deliver agreements on grievances (Ergon, 2017). This is not the case for Clear Voice, which is precisely used to manage local grievances -usually at factory-level, nor for multi-stakeholders regional initiatives which are greatly shaped to address specific local issues (Rees & Vermijs, 2008).

Ownership of GM - Usually there is direct involvement of companies during the grievance process, but the ownership of the mechanisms lies within the organisation in charge for the respect of agreed codes, principles or certifications (Clear Voice is an exception, which runs the mechanism but does not own it).

Formal/informal character of GM - Some publications have opined that where a formal process, rules and structures for handling grievances have been implemented, multi-actor mechanisms are more effective (ETI, 2017). On the other hand, the involvement of vulnerable

people is in some cases facilitated by informal procedures led by NGOs (e.g. in the case of homeworkers who can't formally access some of the grievance mechanisms). Advocates have, however, warned that informal access should not be considered as a substitute for more formal and structured procedures.

3. Coverage

Coverage of the corporation - Multi-actor mechanisms cover adhering organisations, and typically their international supply chains.

Coverage of suppliers/contractors/service providers - Multi-actor initiatives usually allow for a comprehensive approach and coverage beyond the single corporation. Because of their international and collective character, their leadership and leverage within global value chains can be substantial. This means that these mechanisms may be adept to handle cross-border issues when they arise, at least in terms of availability of the mechanism.

Coverage of employees - The majority of codes and sets of principles at the basis of multi-actor initiatives directly refer to the protection of workers. Many of these initiatives are referred to suppliers, and include coverage for non-employees. However, direct accessibility of these mechanisms to non-employees is not always guaranteed (Freeman & de Haan, 2014).

Coverage of communities Some of the multi-actor mechanisms refer to impact on communities, typically relating to the employment of local (formal/informal) workers.

Which issues/topics are covered by GM? Issues covered refer to a specific code of conduct, set of principles or certifications from which the mechanism generates. The majority of multi-actor mechanisms privilege labour and workers' rights.

Explicit coverage of specific human rights issues All the multi-actor mechanisms reviewed refer to core labour rights and related ILO conventions, which are part of the sphere of human rights. The VP and FWF specifically refer to the Universal Declaration of Human Rights. UNGC, SA and ETI as well use a broader human rights framework beyond labour rights.

4. Process characteristics

Description of the grievance process - Multi-actor mechanisms vary in terms of the type of process: from communication channels and training programmes (Clear Voice), to structured investigation (FLA, FWF, ICTI, WRC, ETI, international certifications), mediation/conciliation (ETI), negotiation (FLA), and adjudication (VPSHR).

Different mechanisms foresee different procedural stages, and these are more or less formal depending on the initiative.

The way in which multi-actor mechanisms involve companies in the remediation processes varies depending on the nature of the organisation which promotes the mechanisms.

Who is eligible to file grievances? - There are three levels of accessibility towards multi-actor mechanisms: only workers from a specific production site can file grievances (e.g. Clear Voice); members or participants to a particular initiative can lodge grievance against another member/participant (e.g. ETI); any person or organisation, including third parties, can file grievance (e.g. FLA; SA). However, the grievance must refer to a specific breach of standards included in codes or principles of reference.

Are claimants protected from retaliation - Specific clauses of non-retaliation are typically in place. However, this would include retaliation from the company itself. Other protections against ridicule, pressure or violence based on cultural context is not typically provided. Confidentiality is widely guaranteed, and anonymity provided upon request, presumably to protect claimants. However, this should be verified.

Through which channels can grievances be filed? - Many mechanisms run ad-hoc training and information campaign about available channels, even if a common need to improve workers' awareness of these channels is required (Freeman & de Haan, 2014). Access points to these mechanisms are usually phone numbers, email addresses, or online forms. Some organisations claim to use native-speakers as a first contact point. Given the nature of these multi-actor initiatives and their specific remit to enforce codes of conduct or set of principles, further attention should be placed in guaranteeing easy access to grievance mechanisms for vulnerable workers and communities, e.g. without access to the internet.

How decisions are made - Multi-actor mechanisms are based on a comprehensive engagement of the parties involved. Generally, consultation and cooperation among the parties involved lead the mechanisms towards a common agreement, where the supra-corporate organisation acts as a facilitator and oversees the process.

Third party involvement in the grievance mechanism - Constructive engagement of all the parties involved is usually promoted within multi-actor mechanisms. However, third parties without a direct interest in the case are discretionally involved. In order to build trust and confidence, the mechanisms are not necessarily public mechanisms (e.g. ETI, 2014).

Existence of appeal procedures / Is the escalation to high level possible - Appeal procedures are usually not provided within multi-actor mechanisms (even if international certifications may represent an exception, cf. Rainforest Alliance). This does not preclude the alleged victim -or her representative- recourse to alternative grievance mechanisms.

It is also important to consider that it's unlikely the company involved in the grievance mechanism would appeal the decision since there is a direct engagement of the company itself in finding a viable solution. This is fostered by a common dialogue-based nature of these mechanisms.

A different scenario occurs in the case of international certifications, where formal appeals are allowed and followed by further investigations as appropriate. There is no escalation possible from these mechanisms.

5. Outcomes

Outcomes regarding remedy - The outcomes of the multi-actor mechanisms should be the remediation of the breach in the respect of codes, principles and certifications of reference. However, no public information is available on the exact outcomes of such mechanisms. There is no confirmation that the agreed remediation is proportionate to the significance and scale of the adverse impacts caused.

Management feedback and learning (outcomes on organisation)- Even if there is no formal guarantee of non-repetition, multi-actor mechanisms should facilitate a peer-learning process among adhering members.

Enforceability of remedy arrangement - The adherence to multi-actor initiatives is voluntary so that the outcome of a redress process is not legally binding. Usually, there are no enforcement mechanisms external to the initiative that promotes them.

In some cases -e.g. ETI- NGOs members can engage in public campaigns against the company member which didn't take appropriate action to redress abuse.

Decisions to expel the member from the initiative -e.g. VP, ICTI- can be another alternative for enforcement.

Public documentation of cases and outcomes (reporting and transparency)- Information is made available to the parties involved. Close cases are then usually available to fellow members of a specific initiative. Public reporting of cases is less common because the confidentiality of the dialogue and agreement is privileged over transparency.

International Certifications are usually more prone to share results of cases.

Are there specific consequences for violations/causing harm? Companies can be decertified in case of international certifications or ICTI, or participant to a specific initiative can be asked to leave.

6. Evaluation

Frequency of use of the grievance mechanism - Information related to the frequency of use of the grievance mechanism is usually available and vary. Hotlines have the higher number of cases registered (e.g. Amader Kotha), while for more complex and formalised processes cases are generally less than ten per year (e.g. FLA).

7. Linkages

Links to other grievance mechanisms - Multi-actor mechanisms don't preclude the access to alternative grievance mechanisms, especially at a corporate level. However, there is no direct and specific link to any other redress process.

Problems identified by the case study Multi-actor mechanisms are specifically designed towards the compliance of a code of conduct, set of principles or international certifications. Pre-assessment of people's awareness of these norms seems missing.

Grievances are frequently not framed in terms of abuse of human rights by companies.

Some of the multi-actor mechanisms analysed might have significant entry barriers, and individual workers rarely use them directly, not because they wouldn't be entitled but because processes are not easily accessible.

3. Discussion and Proposed Work Streams

Based on the previous, largely descriptive accounts on NSBGM, this section highlights relevant issues and especially gaps in terms of data and knowledge on issues which we consider important for NSBGM to become an integral part of an international human rights governance regime. In addition, we propose a number of work streams in order to address these issues.

It is important to note at this stage that the work streams should cover different human rights issues - a pragmatic and practical distinction has been made in ARP I and ARP II between labour, environmental, consumer and social/ community rights. This same distinction could be used in ARP III. In terms of regional coverage, a balanced mix of lead firms from different regions and countries of the world should be selected for study as well as a more balanced mix of firms in the supply chain.

In addition, the analysis should go beyond traditionally considered high-risk sectors. The ARP II Scoping paper states that “human rights impacts vary in nature and severity depending on the business sectors involved” (ARP II 2017: 14). Many of the current studies and initiatives related to corporate human rights impacts use “high-risk sectors” as a criterion of analysis and focus for their findings and recommendations. These sectors tend to include the extractive industries, apparel and footwear. However, the “high-risk” categorisation of a few choice sectors may in our view be high risk in and of itself. There are at least three important flaws to rigidly insisting that certain sectors fit into the “high-risk” category and not others. First, knowledge of business processes and modes of production bring new human rights risks to light over time. For example, we are just starting to understand the human rights implications of ICT and Artificial Intelligence. Whereas these industries were not traditionally “high-risk”, they may be understood as such in future. Additionally, modes of production and business models shift and evolve over time. This can have the effect of changing just what sectors fall into “high-risk”. Lastly, business sectors are often interconnected. Consider agriculture and the garment industry for instance. For these reasons, we are not convinced that the future study on NSBGM need necessarily focus on a few sectors that are traditionally seen as “high-risk”. We think instead there is much to learn from looking across sectors, may they be understood as specifically ‘high risk’ or not. In particular, with respect to NSBGM and their ability to address (or not) cross-border issues and issues that are traditionally reserved for the criminal justice system or state-based systems of grievance.

Exploring non-traditional industries as well as emerging market MNEs and operations in industrialised countries should yield interesting insights into innovative practices and instruments developed and implemented in the current blind spots of global business.

3.1 The nature and utility of NSBGM (workstreams 1 and 2)

In his reflection on the research around the UNGPs, Ruggie (2013, p. 104) explicitly states that the “most underdeveloped component of remedial systems in the business and human rights domain is grievance mechanisms at company’s operational level.” While the statement referred to the practical and factor phenomenon of NSBGM, it holds also true with respect to a relative lack of treatment in the theoretical, conceptual, analytical and empirical academic literature.

We think this issue can only be resolved by agreeing first on conceptual issues related to the subject matter, and a better analytical understanding of the nature of NSBGM in the specific business and human rights context. Apart from providing a common ground for public policy related debates, the clarification of conceptual issues as well as a deeper understanding of the different dimensions of the nature of these mechanisms is required for further meaningful research - especially for the evaluation of the effectiveness of grievance mechanisms.

Work stream 1: Building a conceptual common ground for NSBGM

Thus, we suggest that the first work stream expands from the available legal literature to include elements from available research on conflict and dispute resolution in the social sciences. This strategy has been successfully applied in other academic domains, for example with respect to labour law and labour relations. Work stream 1 would include a constructive discussion between representatives of legal analysis as well as the social and management sciences, laying the ground for future analysis with respect to access and remedy and ensuring that the work done is compatible with ARP I and II, and then with last stage, the integration of all three ARP projects. A small group of experts from a number of relevant fields can come together to provide a common ground around certain key concepts relative to NSBGM and to inform the further research as to what is already known about such mechanisms.²

Work stream 2: Effective practices of NSBGM

Assuming that companies have an interest in the provision of effective NSBGM, this work stream seeks to identify practice of innovative and successful configurations of NSBGM. It would first identify a number of key sectors of economic activities in which companies headquartered in different regions of the world are active, and then ask national governments or groups of national governments as well as civil society organisations and international industry associations to suggest effective practices to be explored involving. The entities owning the practices perceived

² Please see the Appendix for further ideas on what work stream 1 would address.

as effective would then take part in comprehensive case studies involving document analysis, and interviews with key people of the organisation as well as stakeholders or their representatives, covering the business ecosystem including supply chain issues. In terms of coverage, we would propose to cover private and publicly owned MNCs from different parts of the world in different sectors of economic activity. This allows the research to control for differences in ownership, institutional context, and type of economic activity. Ideally, the practice cases would include a system of grievance mechanisms covering labour, consumer, environmental as well as social/community rights.

Both work streams 1 and 2 should take place in parallel. Work stream 1 will deal more with conceptual and theoretical issues, while work stream 2 will deal with the practical nature and utility of NSBGM. Ideally, there would be a close exchange of information between the two work streams, as both the theoretical and conceptual discussion as well as the empirical exploration of practice may inform each other and thus be mutually beneficial.

3.2 The coverage of NSBGM (work stream 3)

The scoping paper for the ARP II project identified an explosion in both the numbers and use of state-based non-judicial mechanisms, particularly with respect to the areas of consumer and environmental law. Due to the lack of comparable longitudinal data, we are not able to confirm this development for NSBGM. Yet, we see a multiplicity of initiatives with respect to different types of grievance mechanisms, actors involved and the levels at which the mechanisms are located.

To the best of our knowledge, there is no representative or comprehensive data available as to the magnitude and proliferation of NSBGM. Yet, from the information publicly available we obtain the impression that NSBGM are mainly initiated and implemented with respect to multinational companies or at organisations located in or established by western industrialised countries, and are mainly covering their activities, including especially their supply chains, in countries which were previously labelled developing countries. This does not only apply to CCGMs, but also to multi-stakeholder initiatives, development finance institutions and international framework agreements. With respect to the latter, research has suggested that signing IFAs is more popular among Western European MNCs as compared to MNCs from other parts of the world.

Work stream 3: Incidence and coverage of NSBGM (companies)

This work stream will repeat and extend a survey of the special Representative John Ruggie with respect to the implementation and coverage of NSBGM at MNCs hosted in different countries. This survey should include the effective practice entities identified in work stream 2, but then select randomly other companies from the respective countries, taking ownership and sector of economic activity into consideration. The design of the questionnaire as well as the discussion of the results should involve the consultation of stakeholder groups.

3.3 The evaluation of NSBGM (work stream 4)

As far as the evaluation of NSBGM is concerned, we need to distinguish different types and levels of evaluation. First, at the level of the NSBGM, there is next to no information publicly available as to how the involved actors themselves evaluate the mechanisms. Company-owned grievance mechanisms seem to be evaluated similar to other management policies, but those evaluations are usually not publicly available. The same applies to IDFI, except for IDFI publishing documents on individual grievances. With respect to IFA's, research available focuses more on the phenomenon of the IFA itself, rather than the potential function of the IFA as grievance mechanism.

There is only very limited research available on the performance of different types of grievance mechanisms, and this research largely focuses on subjective assessments of the involved researchers with respect to the performance of the grievance mechanism in line with the evaluation criteria of the UNGPs.

In order to be better able to evaluate the performance of NSBGM as well as to provide the owners of grievance mechanisms with guidance on how to improve and evaluate the performance of the grievance mechanisms, we suggest two work streams, one providing for a theory based conceptual and analytical framework required for the analysis of NSBGM, and one work stream focusing on the development and practical application of effectiveness criteria for NSBGM.

Work stream 4: Effectiveness of NSBGM

The available research on evaluations of the effectiveness of grievance mechanisms is still in its infancy. Subjective and potentially biased interest led assessments should be replaced by systematic, and replicable analysis, and a consensus about the criteria of effectiveness should be reached by the involved stakeholders. Both, the identification and discussion of existing evaluation processes, as well as the development and application of an evaluation system should

be the focus of this work stream. Similar to work stream 1, for compatibility reasons, this work stream should heavily involve experts on state-based and/or judicial mechanisms.

We suggest that this work stream analyses the outcomes of grievance procedures as well as the drivers (of the perception) of those outcomes. This includes, first, an analysis and discussion of different outcomes with respect to the interests and perception of different internal and external stakeholders to the grievance process. This part would also look at the operationalisation and measurement of outcomes, as well as the interests and perceptions of internal and external stakeholders. In addition, it would then also involve the identification and analysis of internal and external/contextual drivers of successful outcomes.

3.4 The links between different NSBGM (work stream 5)

The limited evidence available on NSBGM suggests that companies have different grievance mechanisms at different levels and sometimes even for different human rights issues. For example, a corporation may at the same time have CCGMs, be covered by a multi-stakeholder initiative and be party to an international framework agreement. Little is known about the linkages and the articulation between different types of grievance mechanisms. Again, this raises issues about the relationship between the different mechanisms. Yet, most available qualitative research elaborates on one particular mechanism at one particular organisational unit.

There are various implications of this: first, very little is known about the entire picture of different grievance mechanisms operating at different levels for one particular type of organisation. This is especially true with respect to the choice between different mechanisms and the choice of different levels. For example different levels of grievance mechanisms may be used in relation to planned and agreed escalation of grievance processes, or - if not part of the predefined escalation process, they could be used by the parties in order to maximise bargaining power to maximise the probability of a favourable outcome.

Work stream 5: linkages between different types of grievance mechanisms.

In order to get a better overview of the links between different grievance mechanisms, horizontally between mechanisms covering different human rights issues, and vertically between different levels of grievance mechanisms in a multilevel governance system, we suggest a systemic view which looks at the linkages, articulation interaction between different grievance mechanisms covering one organisation. This should be done by comprehensive case studies which cover the human rights ecosystem of organisations, including supply chains, or the linkages between grievance mechanisms covering IDFI and their client organisations.

3.5 Cross-border issues of NSBGM (work stream 6)

Cross-border issues were identified as a major challenge for human rights governance in the ARP I and ARP II studies. In contrast to state-based grievance mechanisms, a distinguishing characteristic of NSBGM is that they appear to be independent from the boundaries of nation states or other legal jurisdictions. However, the characteristic of not having geographical boundaries is associated with particular challenges, but also opportunities. Ideally, effective NSBGM would provide for effective remedy irrespective of the boundaries of nation states, not being adversely affected by issues related to jurisdiction and extraterritoriality. However, based on the available evidence we are not able to form an opinion on the effectiveness of such grievance mechanisms across borders, and restrictions borders may impose on such mechanisms.

Work stream 6: Cross-border aspects of NSBGM.

We suggest this work stream analyses the effectiveness of NSBGM across borders, with a focus on multi-actor mechanisms. The stream needs to identify criteria for the effectiveness of grievance procedures, building on the work of work streams 4 and 1. One idea may be to look at a hypothetical grievance procedure and ideally characteristics of its effectiveness in the case of a complex cross-border issue. The outcome of this exercise could be particular types of NSBGM can be effective or useful in particular institutional settings, why they are not in other settings.

Appendix

Below we have unpacked some of what we believe would be covered in work stream 1 to build a consensus around the conceptual common ground around NSBGMs.

The UNGPs envision that NSBGMs, while providing companies with the feedback loop they need and early warning system, can also help fill the ‘access to remedy’ gaps that we find among state-based mechanisms. NSBGMs can be flexible with how they formulate remedy - more akin to what international human rights standards would recognise as remedy, and they can work across borders seamlessly. However, the question remains on the one hand whether NSBGMs are playing the roles envisioned by the UNGPs or whether they are instead letting this potential go unrealised. If their potential is not being realised, then what can happen to help NSBGMs fulfil their potential and what policy recommendations for states can help? On the other hand, are the hopes and aspirations of what NSBGMs can provide exaggerated? What are the limitations and contours of the roles NSBGMs should play in the realm of access to remedy? Some key questions may include:

- Are all grievances appropriate for NSBGMs? Or are all types of remedies appropriately administered by NSBGMs? For instance, in the case of criminal behaviour, could NSBGMs be part of a range of mechanisms that remediate victims? When could this be appropriate, if at all? Should the design of the mechanism be dependent, at least in part, on the type of grievance(s) it handles?
- Is it always appropriate to have a community-driven mechanism? When and when not?
- How do power relationships relate to the ability of companies to administer an effective OLG?M?

Issues where clarification appears to be needed:

Based on our desk research, interviews with stakeholders and our own work experience with both companies and civil society, the lack of clarity surrounding the following issues create challenges to the successful proliferation of NSBGMs.

- **Finality of GMs:** While the UNGPs are extremely clear that NSBGMs “[...] should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms” (UNGP 29, Commentary), more clarity would be useful as to whether, and in what contexts, NSBGMs can legitimately conclude with an agreement between or among the parties on the finality of the

remedy, which also in precludes future access to judicial or state-based mechanisms for claimants.

- **Must NSBGM be shaped around human rights impacts?** All GMs should be rights-compatible, but as they are many of them are not framed in terms of HRs (UNGP 31, Commentary). Many grievances lodged still do not raise human rights concerns, and do not refer to the UNGPs. Clarity would be useful as to whether NSBGM should be formally reframed in terms of HRs impacts and if not, what are the characteristics that ensure the GM is contributing as it should to access to remedy.
- **KPIs needed:** Related to this question of framing NSBGM, key performance indicators (KPIs) are still needed to assess whether NSBGM are fulfilling their intended role as described under the UNGPs, which incorporates also the perspective of those seeking access to remedy. Currently there are no authoritative or widely used KPIs that help determine the effectiveness of an offered NSBGM. Building understanding and then consensus around what these KPIs should be would facilitate 1) companies in understanding what is working and what is not; 2) public institutions and civil actors in monitoring and valuing the performance of companies. For example, could the number of cases as measured over a period of years be an indicator, in part, as to the GM's effectiveness? This inquiry also relates to proposed Work Stream 1.
- **Litigation risk and OLGMs:** In some cases, companies have resisted instituting OLGMs because of a perceived litigation risk. It would be useful to study this perceived risk to understand whether it is founded on evidence, and to understand how this challenge to OLGMs be overcome? Involving corporate counsel in such an exercise would be useful.
- **Scalability, context and priorities:** We have observed an issue of scalability, in particular for large multinational enterprises, is a key issue with OLGMs. A single NSBGM that works in a specific segment of a complex supply chain in a specific context (cultural, socio-economic, geographic, etc...) might not work in a different context. More clarity is needed regarding whether one single model can effectively be used all over a company's operations, or on the contrary, whether different contexts necessarily require different models to be effective.

Further research notes

Based on our desk research, we note a few issues that might be interesting for the longer study to address.

Technology and NSBGMs=> We think that further research on ICT and NSBGMs would be interesting for at least two reasons 1) impacts on rights from ICT companies has been largely overlooked. Internet shutdowns, social platforms content moderation, and artificial intelligence are some of the issues through which ICT companies have great power to impact users' rights. Currently, there seem to be a very limited access to remedy of abuses (A/HRC/38/35) such as right to be connected, right to privacy, right to be forgotten, freedom of expression, political and civil rights. 2) ICT companies can provide tools that can be used in the design of more effective and accessible grievance mechanisms (e.g. Worker Connect).

The potential role of labour unions=> The relationship between industrial relations and OLGs should be further explored. One question is whether trade unions could play a part in co-designing GMs and serving as a point of access claimants when appropriate. Could they improve legitimacy and trust to the mechanisms? Further exploration of whether and in what contexts trade unions may be able to play this role with respect to NSBGM that involve community issues (as opposed to labour rights issues) would be worthy.

Policy development on NSBGMs=> It would be useful if the longer study on NSBGMs also took into account the opportunity of National Action Plans as well as new regulatory frameworks (i.e. due diligence and modern-day slavery legislations) when designing recommendations for States and opportunities for policy development.

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