

ACCESS TO REMEDY

Learning module for civil society organizations in Sub-Saharan Africa on access to remedy for business-related human rights abuses: the broader system, and business-centered mechanisms.

September 2013



Learning Objectives

- What is the system of recourse mechanisms for business-related human rights abuses?
- What business-centered grievance and accountability mechanisms exist for business-related human rights abuses?

Outline

The presentation is divided into two parts:

1. An overview of the system of remedy
2. An introduction to business-centered mechanisms

Because the purpose of this presentation is a broad overview, and because each of these subjects and its many sub-topics is quite dense, we have provided you with lists of additional guidance and resources throughout the presentation.

PART ONE.

Overview of the system of remedy and recourse mechanisms

An Introduction

The system of recourse mechanisms for business-related human rights impacts, grievances, abuses and violations is complex with diverse avenues, including judicial, quasi-judicial and non-judicial mechanisms.

Part 1 will give you a bird's eye view of this broad system.

A picture of the system

Please view our Prezi presentation at prezi.com/rrv7qr6fyuip to see a visualization of the system of recourse mechanisms for business-related human rights violations.



Categorizing the mechanisms

As you could see in the Prezi, we chose to group these diverse mechanisms into three broad categories:

1. **Mechanisms administered by a State**, such as courts of home States (where the activity causes impacts) or host States (where a company's headquarters are), and national human rights institutions (NHRIs).
2. **Business-centered mechanisms**, meaning administrative procedures run by business, industry or other organizations, which are specifically designed and mandated to receive complaints of business-related harms, including those related to human rights.
3. **Regional and multilateral mechanisms**, such as the United Nations system, ILO mechanisms, and the regional human rights protection systems.

Why the bigger picture?

We think this bigger picture of the system of remedy is important. Why?

- To emphasize that the second category of business-centered mechanisms is **not the only avenue** for business-related abuses, it is an additional avenue.
- To highlight that business-centered mechanisms are **not a substitute** for these other avenues. If a business-centered mechanism doesn't provide effective remedy, the other avenues remain open (though some steps may affect and possibly jeopardize others).
- To **broaden your assessment** of all possible avenues when designing your strategies for seeking remedy. As you know, there is no single, effective route to remedy available today – not even for egregious human rights violations related to business activity. Given this reality, it is to your advantage to know all possible routes.
- To help you find a route **tailored to the actors, contexts and types of impacts and abuses** you are seeking effective remedy for.

PART TWO.

Introduction to business-centered mechanisms

Purpose

The purpose of Part 2 is to provide a basic understanding of **business-centered mechanisms**, which are administrative procedures run by business, industry or other organizations to receive and address complaints from individuals and communities of business-related harms, including those related to human rights.

In Part 2, we will:

- **identify** these business-centered mechanisms,
- briefly **describe** their scope and services,
- tell you where you can **find more information**, and
- address **improving the effectiveness** of the mechanisms.

Overview

Part 2 on business-centered mechanisms has 6 sections:

- ① Company's operational-level mechanism
- ② Mechanisms of funders
- ③ OECD National Contact Points
- ④ Ad hoc mediator
- ⑤ Industry & multi-industry mechanisms
- ⑥ Effectiveness of the mechanisms

1. Company's operational-level mechanism

The UN Guiding Principles on Business & Human Rights (the UN GPs) set an expectation for companies to establish or participate in **effective grievance mechanisms** for any individuals or communities adversely impacted by their operations.

Guiding Principle 29 states:

“To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”

Purpose of the operational-level mechanism

For users:

- To have a channel to raise concerns about **all** impacts, including, but not exclusively, on their human rights
- An early, faster and more affordable option for remedy

For companies:

- Early warning for community concerns
- A chance to address and resolve concerns and issues before they escalate

An example – What do you think?

The screenshot shows the ACCESS Facility website for Freeport-McMoRan Copper & Gold Inc. The page has a dark green background with white and light green text. At the top, there is a navigation bar with links for Home, Register/Login, and Contact. Below this, a green banner contains the links Case Stories, Mechanisms, and Facilitators. The main heading reads 'Freeport-McMoRan Copper & Gold Inc.' followed by 'Company grievance mechanism'. On the left side, there is a sidebar with a green arrow icon and the word 'ACCESS'. Below this, there is a section titled 'About this Mechanism' with two items: 'Company Grievance Mechanism' and 'Extractive'. At the bottom of the sidebar, there is a section titled 'Contact Details' with the company name 'Freeport-McMoRan Copper & Gold Inc.' and a small icon. The main content area on the right features the company logo and the word 'Overview'. The overview text describes the company as the world's largest publicly traded copper company and the world's largest producer of molybdenum. It mentions the company's headquarters in Phoenix, Arizona, and its operations in North and South America, the Democratic Republic of Congo, Europe, and Asia. It also states that Freeport-McMoRan is a founding member of the International Council on Mining and Metals and the Voluntary Principles on Security and Human Rights. The text highlights the company's human rights policy, which requires the company and all of its contractors to conduct operations in a manner consistent with the Universal Declaration on Human Rights, to educate employees about human rights and to protect any employee who reports suspected human rights violations. The policy prohibits

accessfacility.org/freeport-mcmoran-copper-gold-inc

Resources on operational-level grievance mechanisms

- ACCESS Facility, www.accessfacility.org/mechanisms/all
- World Bank Group, www.cao-ombudsman.org/howwework/advisor/documents/implementing.pdf
- IPIECA (industry association), guidance for companies www.ipieca.org/publication/operational-level-grievance-mechanisms-good-practice-survey

2. Mechanisms of funders

The businesses who support a company with **funding** can be looked to for their responsibility in causing or contributing to a human rights abuse.

Some of these funders have established channels to receive complaints from individuals and communities about the impacts of the business activity the funder supports.

Where does the company gets its funding from?

Some funders include:

- a. international financial institutions, including multilateral development banks,
- b. export credit agencies,
- c. private banks, especially members of the Equator Principles,
- d. a company's shareholders.

We will now look at the mechanisms by each of the funders listed above.

a. International financial institution (IFI) mechanisms

- At least 15 IFI accountability mechanisms exist to receive complaints from individuals negatively affected by a project an IFI finances. Complaints may address **human rights** violations as caused by an IFI's failure to adhere to its social and environmental policies.
- These mechanisms have different operational procedures, and apply different social and environmental policies. While they are not free from criticism, they represent powerful administrative mechanisms for providing some form of remedy, and civil society can both use them **and** lobby for their continued reform.

Which IFIs have mechanisms?

- Development banks with such mechanisms include:
 - the World Bank Group,
 - the African Development Bank,
 - the Asian Development Bank,
 - the European Bank for Reconstruction and Development,
 - the European Investment Bank.
- See a list of 15 mechanisms at www.opic.gov/sites/default/files/files/2012-snapshot-iams.pdf

Functions of IFI mechanisms

IFI accountability mechanisms generally provide one or several of the following functions:

- **Compliance review**, meaning an investigation, based on the complaint, of whether the IFI complied with its social and environmental policies,
- **Problem-solving/dispute resolution**, meaning the establishment, design and support of mediation to address the issues raised in the complaint with the necessary parties, and
- **Institutional advisor**, meaning advice to the President or management of the IFI on social and environmental issues, based on the complaints received.

Example: the CAO



CAO
COMPLIANCE ADVISOR OMBUDSMAN

العربية
বাংলা
中文
ENGLISH

FRANÇAIS
हिन्दी
BAHASA INDONESIA
தமிழ்

ភាសាខ្មែរ
සමෘතක
PORTUGUÊS
РУССКИЙ ЯЗЫК

ESPAÑOL
KISWAHILI
ភាសាខ្មែរ
ภาษาไทย

Make Your Voice Heard

The Office of the Compliance Advisor Ombudsman gives a voice to people who believe they are negatively impacted by IFC and MIGA projects. [Learn about our process of independent accountability »](#)

HOW TO FILE A COMPLAINT » **TRACK A CASE »**

Arne Hoel, The World Bank

www.cao-ombudsman.org

Guidance & resources on IFI mechanisms

The following NGOs have significant experience accompanying communities in addressing their grievances through accountability mechanisms. They can share valuable insights on both the **functioning** of these IFI accountability mechanisms, and **considerations** in filing a complaint:

- Accountability Counsel, www.accountabilitycounsel.org/resources/arg/
- Bank Information Center, www.bicusa.org/resources/capacity-building-and-tools/
- Bank on Human Rights, bankonhumanrights.org
- Center for International Environmental Law, www.ciel.org/Intl_Financial_Inst/index.html
- FIDH, www.fidh.org/IMG/pdf/guide_entreprises_uk-sectioniv.pdf
- International Accountability Project, accountabilityproject.org/article.php?list=type&type=14
- SOMO (Centre for Research on Multinational Corporations), www.grievancemechanisms.org/intro

b. Export Credit Agencies (ECAs)

- Export credit agencies are agencies (either within government or working on behalf of a state) that offer private companies financial support for high-risk projects supporting national industries abroad.
- Research for the UN GPs showed that only a few ECAs consider the human rights impacts of the projects they support. ECAs have been slow to incorporate even social or environmental policies.

ECA complaints mechanisms

- Examples of ECA complaints mechanisms:
 - Canada, Export Development Canada, Compliance Officer
 - United States, Overseas Private Investment Corporation, Office of Accountability
- Guidance and resources on ECA complaints mechanisms:
 - ECA Watch, www.eca-watch.org/
 - FIDH, www.fidh.org/IMG/pdf/guide_entreprises_uk-sectioniv.pdf

c. Private Banks & the Equator Principles

- Private banks provide companies with a complex set of loans and other financial products that give companies the money needed for its projects and business activities.
- In 2003, a number of these private banks wanted to level the playing field among private banks, and created a voluntary framework for private banks to manage environmental and social risks. The framework only covered one financial product, called project finance.
- Since then, the voluntary framework has been improved, both in terms of its scope (not only project finance, but also certain loans) and its substance (greater scope for human rights).

Equator Principles banks

- Today, 78 private banks (referred to as 'Equator Principles Financial Institutions' or EPFIs) in 35 countries have made a voluntary commitment by 'adopting' the Equator Principles.
- A full list of EPFIs is available at: www.equator-principles.com/index.php/members-reporting

Enforcing the Equator Principles

- **No administrative grievance mechanism** exists with the Equator Principles Association for individuals or communities negatively affected by a project financed by an EPFI.
- It is still possible to submit a complaint to the Equator Principles Board, and **seek delisting** of the bank.
- Recent revisions to the Equator Principles have increased the number of entry points for human rights advocacy (with both EPFIs and the Equator Principles Association), such as some requirements for transparency with online publication of summaries of social & environmental impact assessments, and project details and management.

Resources on the Equator Principles

- Equator Principles, www.equator-principles.com
- Accountability Counsel, www.accountabilitycounsel.org/resources/arg/the-equator-principles/
- Bank Track, www.banktrack.org
- FIDH, www.fidh.org/IMG/pdf/guide_entreprises_uk-sectioniv.pdf

d. Shareholders

- **Public companies** offer their securities (such as stocks or shares in the company) for sale to the general public, usually on a stock exchange. Each shareholder is a joint owner of the company. As a result, shareholders can influence the company's policies and practices, and can divest their interest in the company (reducing the company's assets).
- Some stock markets have a particular industry focus. For example, 70% of the world's equity capital for mining was raised on the Toronto stock exchange in 2012.

Options

- **Socially responsible investment funds** (made up of shares & bonds) may divest from companies that do not meet established criteria for environmental, social and corporate governance (ESG) policies.
- **Shareholders** can make proposals requiring compliance with rights-compatible social and environmental policies at a company's Annual General Meeting.
- Similar pressure can be applied to a company's significant business partners.
- Resource on shareholders:
 - FIDH, www.fidh.org/IMG/pdf/guide_entreprises_uk-sectioniv.pdf

3. OECD National Contact Points

- The Organisation for Economic Development and Co-operation (OECD) is an international economic organisation of 34 countries founded in 1961 to stimulate economic progress and world trade. The list of 34 OECD members is [here](#).
- The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are recommendations for companies, including on general policies, disclosure, human rights, employment and industrial relations, environment, and combating bribery. The text of the OECD Guidelines is available at mneguidelines.oecd.org.

States adhering to the OECD Guidelines

- States adhering to the OECD Guidelines include:
 - the 34 OECD member states, plus
 - Argentina, Brazil, Egypt, Israel, Latvia, Lithuania, Peru and Romania, and
 - the European Commission.
- Companies present in all adhering States, operating in **or from** their territories, are covered by the OECD Guidelines.

NCPs & their duties

- The OECD Guidelines require each adhering government to formally establish a National Contact Point (NCP). NCPs are agencies (in varying forms) of the adhering government. A list of all NCPs is available at mneguidelines.oecd.org/ncps/.
- NCPs have a duty:
 - to ensure promotion of the OECD Guidelines at the national level, and
 - to provide a **mechanism for resolution of “specific instances”** for any interested party that considers a company has failed to respect the OECD Guidelines within the context of its activities.

NCP “Specific instance” procedure

- Any interested party can file a complaint with the NCP of the investor’s home or host State (or both, and asking the NCPs to collaborate) where a particular company has failed to respect the OECD Guidelines.
- The NCP will then examine whether the complaint is admissible, and if so, take steps for fact-finding, and possibly, with the agreement of the concerned parties, provide support for a consensus-based process, such as mediation. If no solution is found by the parties, the NCP may make a statement or a recommendation to the parties.

Guidance & resources on OECD NCPs

- OECD Guidelines & NCP site, mneguidelines.oecd.org
- OECD Watch, civil society guidance on using the NCP specific instance procedure, oecdwatch.org/publications-en/Publication_3962/.
- OECD Watch, with cases, oecdwatch.org
- FIDH, www.fidh.org/IMG/pdf/guide_entreprises_uk-sectioniii.pdf

4. Ad hoc mediation

- The effectiveness of non-judicial mechanisms using mediation (such as OECD NCPs, accountability mechanisms of IFIs, ombudsmen, national human rights institutions, and more) depends on both
 - the administrative mechanism itself and
 - the particular type of consensus-based dialogue that the mechanism uses.
- While there are administrative mechanisms to engage a mediator (also called a dialogue facilitator), it is also possible to engage mediators on an ad hoc basis to help communities address the converging issues of weak governance, rights violations and conflict.

What is mediation or dialogue facilitation?

A consensus-based process to help communities, companies and governments resolve disputes through dialogue by engaging constructively to find their way to rights-compatible, interest-based solutions.

The screenshot shows the ACCESS Facility website. At the top, there is a navigation bar with links for Home, Register/Login, and Contact. Below this, a purple banner contains the text 'Case Stories', 'Mechanisms', and 'Facilitators'. The main heading is 'About Dialogue Facilitators'. The page describes the ACCESS Facility as a community of practice for dialogue facilitators. It includes a grid of eight portraits of senior professionals. Below the portraits, it states: 'Senior professionals who use consensus-based processes to help communities, companies and governments engage constructively.' There is a link 'View all Dialogue Facilitators →'. On the right, there is a video player titled 'Roles for Neutrals - full panel discussion' showing a panel of four people.

Home Register/Login Contact

Case Stories Mechanisms Facilitators

About Dialogue Facilitators

ACCESS Facility hosts a community of practice of dialogue facilitators: senior professionals from around the world who use consensus-based processes to help communities, companies, and governments resolve disputes through dialogue by engaging constructively to find their way to rights-compatible, interest-based solutions to common challenges.

At the launching conference of ACCESS, five dialogue facilitators experienced in company-community conflict resolution shared their first-hand experience with the audience. You can view the video of the full panel discussion here:

Roles for Neutrals - full panel discussion

View all Dialogue Facilitators →

accessfacility.org/about-dialogue-facilitators

Videos from those who participated

A series of videos shares reflections from communities, companies and other necessary parties about participating in such dialogue-based processes.



www.youtube.com/playlist?list=PL2SOU6wwwxB0sh5pY2SXjToCdJd0gXNsvf

Resources on mediation

- ACCESS Facility, *About Dialogue Facilitators*, accessfacility.org/about-dialogue-facilitators
- ACCESS Facility, *Case Story Library*, accessfacility.org/case-stories

5. Industry & Multi-Industry Mechanisms

A number of industry associations and other interest groups have established voluntary mechanisms to receive complaints from affected individuals & communities.

For example, the UN Global Compact (www.unglobalcompact.org), the world's largest voluntary corporate social responsibility (CSR) initiative focusing on learning, dialogue and partnership, has a channel to receive information on serious allegations of human rights violations, and raise these with the company.

More examples

- Business & Human Rights Resource Center
 - A website where individuals, communities and civil society organizations can submit information for publication of a human rights violation, and the BHRRC will publicly invite the company to respond. See www.business-humanrights.org.
- Fair Labor Association complaints mechanism, www.fairlabor.org/transparency/complaints-investigations
- And many more ...
 - see ACCESS Facility, www.accessfacility.org/mechanisms/all and sort by mechanism type “Industry and multi-industry”, and
 - FIDH, www.fidh.org/IMG/pdf/guide_entreprises_uk-sectionv.pdf

5. Effectiveness of the mechanisms

- The mechanisms described in this section are ones that we have grouped into the category of ‘business-centered mechanisms.’
- But they are not ALL possible mechanisms in the system of remedy that we showed in the Prezi at prezi.com/rrv7qr6fyuip.
 - There are **more non-judicial mechanisms**. Another important non-judicial mechanism is **national human rights institutions**, a mechanism of the State.
 - Judicial remedy is a possible avenue, as are quasi-judicial remedies with the UN, regional human rights protection systems, and the ILO.

Effectiveness of non-judicial mechanisms

UN Guiding Principle 31 sets out 7 effectiveness criteria for non-judicial grievance mechanisms. The mechanism should be:

Legitimate, enabling trust and being accountable for fair conduct

Accessible, being known and providing adequate assistance

Predictable, providing a clear and known procedure

Equitable, seeking to ensure access to information and advice

Transparent, keeping parties informed of progress

Rights-compatible, ensuring outcomes and remedies accord with internationally recognized human rights

Source of continuous learning, drawing on measures to improve the mechanism and prevent future harm

With an eighth criterion for operational-level mechanisms

UN Guiding Principle 31 states that, in addition, operational-level mechanisms should be:

Based on engagement and dialogue, consulting the groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances

Making the mechanisms more effective

When looking at the mechanisms, and considering whether to file a complaint, these principles of effectiveness – and any additional principles you may have – are important to keep in mind, so that when you use a mechanism, you can also be vigilant in improving its effectiveness.

Thanks for your attention

- This presentation is quite dense with a lot of information. You might want to read it a few times, and spend time browsing the many websites to get a better sense of each one and learn more about cases.
- We welcome your questions and feedback on this introduction and overview.