



Chapter 1.4 Complaints and Grievance Mechanism and Access to Remedy

BACKGROUND

Mining and other large development projects inevitably raise concerns and complaints from community members and stakeholders affected by these projects. It is now expected practice for mining companies to have in place site-level processes (often referred to as “operational-level grievance mechanisms”) for systematically receiving, tracking, resolving and communicating with local communities and stakeholders, including workers, about their complaints or grievances. Grievance mechanisms should not be considered a substitute for community and stakeholder engagement processes that allow for airing of concerns. The two are complementary and should be mutually reinforcing.²⁵

Having accessible and trusted procedures in place to receive complaints can lead to the quick resolution of many stakeholder concerns before they escalate into serious grievances or conflicts. Stakeholders are more likely to trust complaints and grievance procedures if they have some say in their design.

Operational-level complaint and grievance processes are just one option for individuals to seek justice or remediation for damages that they believe have occurred as a result of company activities. For example, traditional authorities may have conflict or dispute resolution systems in place; countries may have legal frameworks, such as court systems, to provide recourse to aggrieved parties; workers may have access to corporate-level whistle-blower procedures; and remedies may be sought through national or international human rights bodies, labor tribunals or other non-judicial mechanisms. Operational-level grievance mechanisms should neither be used to undermine the role of legitimate trade unions in addressing labor-related disputes, nor preclude any stakeholder from accessing judicial or other non-judicial grievance mechanisms.²⁶

TERMS USED IN THIS CHAPTER

Accessible ■ Affected Community ■ Competent Authority ■ Contractor ■ Consultation ■ Equitable ■ Grievance ■ Grievance Mechanism ■ Inform ■ Indigenous Peoples ■ Human Rights Defenders ■ Legitimate ■ Mining Project ■ Mining-Related Activities ■ Operating Company ■ Predictable ■ Remediation/Remedy ■ Rights Holder ■ Rights-Compatible ■ Stakeholder ■ Source of Continuous Learning ■ Transparent ■

These terms appear in the text with a dashed underline. For definitions see the Glossary of Terms at the end of the document.

OBJECTIVES/INTENT OF THIS CHAPTER

To provide accessible and effective means for affected communities and individuals to raise and resolve mine-related complaints and grievances at the mine operational level, while not limiting their ability to seek remedy through other mechanisms.

²⁵ IFC. 2009. Good Practice Note: Addressing Grievances from Project-Affected Communities. p. 6. www.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC+Grievance+Mechanisms.pdf?MOD=AJPERES&CACHEID=cbe7b18048855348ae6cfe6a6515bb18

²⁶ Ruggie, J. 2011. Guiding Principles on Business and Human Rights. A/HRC/17/31. Commentary for Principle 29. Available at: www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf

SCOPE OF APPLICATION

RELEVANCE: This chapter is relevant for all mines, as all have workers and most have external stakeholders who must be provided with an effective means of raising complaints and grievances with the company, and if the grievances are not adequately addressed through the operational-level grievance mechanism, who have the right to access remedy through other channels.

Complaints, Grievances and Access to Remedy Requirements

1.4.1. Access to Operational-Level Complaints and Grievance Mechanism

1.4.1.1. The operating company shall ensure that stakeholders, including affected community members and rights holders (hereafter referred to collectively as “stakeholders”) have access to an operational-level mechanism that allows them to raise and seek resolution or remedy for the range of complaints and grievances that may occur in relation to the company and its mining-related activities.²⁷

1.4.2. Development of Complaints and Grievance Procedures

1.4.2.1. The operating company shall consult with stakeholders on the design of culturally appropriate complaints and grievance procedures that address, at minimum:

- a. The effectiveness criteria outlined in Principle 31 of the United Nations *Guiding Principles on Business and Human Rights*,²⁸ which include the need for the mechanism to be: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights-compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue;
- b. How complaints and grievances will be filed, acknowledged, investigated, and resolved, including general timeframes for each phase;
- c. How confidentiality of a complainant’s identity will be respected, if requested;
- d. The ability to file anonymous complaints, if deemed necessary by stakeholders;
- e. The provision of assistance for those who may face barriers to using the operational-level grievance mechanism, including women, children, and marginalized or vulnerable groups;
- f. Options for recourse if an initial process does not result in satisfactory resolution or if the mechanism is inadequate or inappropriate for handling serious human rights grievances; and
- g. How complaints and grievances and their resolutions will be tracked and recorded.

²⁷ Grievance mechanisms are explicitly stated as requirements with regard to workers (Chapter 3.1), human rights (Chapter 1.3), mine security (Chapter 3.5), stakeholder engagement (Chapter 1.2) and resettlement (Chapter 2.4). However, even when not explicitly stated in a chapter, it is expected that access to the operational-level grievance mechanism and other remedies will be provided throughout the project’s life to grievances related to any issues of stakeholder concern with the mining project.

It is possible that one grievance mechanism may be suitable to address all types of grievances raised in relation to the mining project, including workers, although typically labor grievances are dealt with through a separate mechanism established through collective bargaining agreements or human resources policies. The development of workers’ grievance mechanism is addressed in Chapter 3.1.

It is also possible that more than one mechanism or approach to addressing complaints and grievances may be deemed necessary to meet the needs of affected communities and stakeholders. If a company decides to create multiple grievance mechanisms, all of them shall meet the requirements of this chapter.

²⁸ The *Guiding Principles on Business and Human Rights* have identified that access to remedy for grievances is fundamental to ensuring respect and protection of human rights. (Ruggie, J. 2011. *Guiding Principles on Business and Human Rights*. A/HRC/17/31. Available at: www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)

1.4.2.2. The operating company shall ensure that all complaints and grievance procedures are documented and made publicly available.

1.4.3. Access to Other Remedy Mechanisms

1.4.3.1. No remedy provided by an operational-level grievance mechanism shall require aggrieved parties to waive their right to seek recourse from the company for the same complaint through other available mechanisms, including administrative, non-judicial or judicial remedies.

1.4.4. Monitoring and Evaluation

1.4.4.1. Complaints and grievances and their outcomes and remedies shall be documented.

1.4.4.2. The operating company shall monitor and evaluate the performance of the operational-level complaints and grievance mechanism over time to determine:

- a. If changes need to be made to improve its effectiveness as per 1.4.2.1.a;
- b. If changes in company activities can be implemented to prevent or mitigate similar grievances in the future; and
- c. If outcomes and remedies provided through the mechanism accord with internationally recognized human rights.

1.4.4.3. Stakeholders shall be provided with clearly communicated opportunities to submit feedback on the performance of the complaints and grievance mechanism.

1.4.5. Communications

1.4.5.1. The operating company shall take reasonable steps to inform all stakeholders of the existence of the operational-level complaints and grievance mechanism, its scope, and its procedures.

1.4.5.2. The operating company shall neither state nor imply that participation in an operational level grievance mechanism precludes the stakeholder from seeking redress through administrative, judicial or other non-judicial remedies.

1.4.5.3. The operating company shall inform relevant personnel who interact with stakeholders of the proper procedures for handling stakeholder complaints and grievances, and ensure that personnel directly involved in the operational-level mechanism receive instruction on the respectful handling of all complaints and grievances, including those that may appear frivolous.

1.4.6. Reporting

1.4.6.1. Periodically, the operating company shall report to stakeholders on grievances received and responses provided. This shall be done in a manner that protects the confidentiality and safety of those filing grievances.

NOTES

This chapter uses as its basis the effectiveness criteria UN Guiding Principles on Business and Human Rights, i.e., that a grievance mechanism be: (a) Legitimate, (b) Accessible, (c) Predictable, (d) Equitable, (e) Transparent, (f) Rights-compatible, (g) A source of continuous learning, and (h) Based on engagement and dialogue.²⁹

This chapter does not pertain to grievances related to IRMA certification. IRMA is in the process of developing its own grievance mechanism, which will enable IRMA stakeholders to raise concerns about issues pertaining to IRMA certification of a particular mining project, as well as the IRMA certification system more generally.

CROSS REFERENCES TO OTHER CHAPTERS	
CHAPTER	ISSUES
1.2—Community and Stakeholder Engagement	<p>Engagement with <u>stakeholders</u> in the design and monitoring of the <u>grievance mechanism</u>, and in communications related to the grievance mechanism, shall conform to the requirements in Chapter 1.2 Community and Stakeholder Engagement.</p> <p>In particular, during the design of the mechanism (requirement 1.4.2.1) attention should be paid to conforming with Chapter 1.2, Criterion 1.2.3. Strengthening Capacity (i.e., ensuring those participating have the capacity to do so in a meaningful way); and during any communications with <u>stakeholders</u>, including reporting, the company shall adhere to the communications requirements in 1.2.4.</p>
Multiple chapters that mention grievance mechanisms	<p><u>Grievance mechanisms</u> are explicitly stated as requirements with regard to <u>workers</u> (Chapter 3.1), human rights (Chapter 1.3), mine security (Chapter 3.5), <u>stakeholder engagement</u> (Chapter 1.2) and <u>resettlement</u> (Chapter 2.4). However, even when not explicitly stated in a chapter, it is expected that access to the operational-level <u>grievance mechanism</u> and other <u>remedies</u> will be provided throughout the project’s life to <u>grievances</u> related to any issues of <u>stakeholder concern</u> with the <u>mining project</u>.</p> <p>It is possible that one <u>grievance mechanism</u> may be suitable to address all types of <u>grievances</u> raised in relation to the <u>mining project</u>, including <u>workers</u>, although typically labor <u>grievances</u> are dealt with through a separate mechanism established through collective bargaining agreements or human resources policies. Or more than one mechanism or approach to addressing complaints and <u>grievances</u> may be deemed necessary to meet the needs of <u>affected communities</u> and <u>stakeholders</u>. If a company decides to create multiple <u>grievance mechanisms</u>, all of them shall meet the requirements in Chapter 1.4.</p>

²⁹ Ruggie, J. 2011. Guiding Principles on Business and Human Rights. A/HRC/17/31. See Principle 31. Available at: www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf