

The Accountability Framework

Operational Guidance on Remediation and Access to Remedy

DRAFT FOR WORKSHOPPING
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The Accountability Framework initiative (AFi) is developing a common framework to guide the setting, implementation, and monitoring of supply chain commitments. As part of the Accountability Framework, this draft document represents a working consensus of the AFi partners as well as input from prior consultations involving stakeholders from the private sector, civil society, and government. The partners are sharing this draft publicly and inviting feedback from all interested parties to further build and refine the Framework in a way that reflects the needs and perspectives of those working to bring about responsible supply chains and positive outcomes for people and nature. Based on this consultative process, version 1.0 of the Accountability Framework will be published in early 2019.

For more information, or to provide input during the present workshoping process, please visit <https://accountability-framework.org> or send an email to contact@accountability-framework.org

DISCLAIMER: This work product is intended to be advisory only and is not intended to serve as a legal opinion or legal advice on the matters treated. The reader is encouraged to engage counsel to the extent required.

PURPOSE & SUMMARY

This Operational Guidance elaborates on the Accountability Framework's [Core Principle 6](#) to describe how companies can ensure proper remediation and access to remedy related to their supply chain commitments. This document focuses on remedy related to human rights issues and on overall processes for remediation. The companion *Operational Guidance on Environmental Restoration and Compensation* details appropriate remedy for deforestation, ecosystem conversion, and associated conservation values.

This document addresses the following topics:

- Meaning and overview of remediation and access to remedy
- Company responsibilities to provide access to an effective remedy
- Company responsibilities to provide for, cooperate in, and/or support fair and just remediation
- Elements of effective company grievance mechanisms (as Annex 1)
- Sample Terms of Reference for a company grievance mechanism (as Annex 2)

This document relates closely to the *Operational Guidance on Supply Chain Management*, which outlines how companies should identify and manage instances of non-compliance, some of which may require remediation. It also links closely to the *Operational Guidance on Respecting the Rights of Indigenous Peoples and Local Communities* (IP/LC), which addresses remediation and access to remedy in the context of adverse impacts to the human rights of IP/LC. Also relevant is the *Operational Guidance on Monitoring and Verification*, which clarifies relationships between monitoring and grievance mechanisms and specifies how remediation processes contained in improvement plans can be effectively monitored.

1. Overview of Remediation and Access to Remedy

International human rights law affirms the right to an effective remedy when adverse impacts to human rights occur. Right to an effective remedy for social harms is also recognized in national laws and included in myriad voluntary commitments, certification programs, and similar responsible supply chain initiatives and guidelines. The right to an effective remedy is characterized by both a *process* to which aggrieved person(s) should have access and an *outcome* produced by that process.

- **Process:** An effective remedial mechanism can be accessed by individuals and groups to present their grievances and complaints and secure a resolution (see Section 2). Such mechanisms should be responsive and tailored to the circumstances and to the legitimate expectations of the rights holders. Remedial mechanisms come in many forms. Examples of state and non-state remedial mechanisms can be found in Box 1 below.
- **Outcome:** The product of an effective remedial mechanism is a fair and just remedy that appropriately addresses the harms done. Fair and just remediation can come in many forms, including apologies, restitution, rehabilitation, restoration, financial or non-financial compensation, punitive sanctions, injunctions, and guarantees of non-repetition.¹ See Sections 3 and 4 below for further discussion of what constitutes a fair and just remedy.

The terms “remedy” and “remediation” are generally synonymous and both are used throughout this document without distinction in meaning.

Box 1: Types of Remedial Mechanisms*

State grievance mechanisms can be judicial and non-judicial, including:

- Administrative procedures before an executive agency or ministry
- Criminal and civil litigation before the nation's courts
- Dispute resolution before a national human rights ombudsman

Non-state grievance mechanisms come in many forms, including:

- Company grievance mechanisms
- Mediation forums or arbitration
- Grievance mechanism of certification systems (sometimes in the forum of complaint panels)
- internal dispute resolution mechanisms of indigenous peoples and local communities governed by customary laws
- Grievance mechanisms provided as part of jurisdictional approaches

* Remedial mechanisms are also referred to as grievance mechanisms or dispute resolution mechanisms.

2. Company responsibility to provide access to an effective remedy

As specified in [Core Principle 6.1](#), companies are expected to establish an effective company grievance mechanism as well as assess existing state and non-state grievance mechanisms and support efforts to strengthen and facilitate access to these as necessary to help identify and resolve grievances within their supply chains. This section further elaborates these expectations and what companies can do to fulfill them.

2.1 Establish an effective company grievance mechanism

To enable grievances to be addressed early and remediated directly, all companies should establish an effective grievance mechanism that is readily accessible to aggrieved individuals and communities that may be adversely impacted by its operations, including with respect to complaints around deforestation and conversion. When properly established and implemented, company grievance mechanisms serve as a valuable risk management tool by providing early warning signals to prevent and mitigate problems, and by enabling companies to analyze trends and identify systemic problems that can then be linked to improvement processes. For these reasons, company personnel responsible for monitoring commitments and implementing action plans and social mitigation measures should engage closely with the company grievance mechanism. Further details regarding the establishment of effective company grievance mechanisms are provided below.

- **Where to establish the grievance mechanism:** Taking into account that one of the most critical characteristics of a grievance mechanism is its accessibility, the company grievance mechanism will likely need to be established at the level of each production or processing unit (preferably prior to initiating new production or processing), or at least at the level of the upstream supplier that directly contracts with multiple producers in a given country or region within a country (as long as potentially aggrieved parties can access the supplier-level mechanism). In addition to having their own grievance mechanisms, downstream companies should also have policies and practices in place to require and verify that their suppliers have effective grievance mechanisms in place. This can be achieved through various means, including requirements in the company's procurement policies and contracting as well as monitoring and verification of suppliers' management systems; see Section 3.3 of the *Operational Guidance on Monitoring and Verification* for more information.
- **Stakeholder involvement:** Company grievance mechanisms should be designed in consultation with stakeholders to maximize the ability of the mechanism to help resolve disputes in an effective, timely, and appropriate manner. Design of grievance mechanisms should also provide for the confidentiality of complainants and whistleblowers when requested (as well as the anonymity of these persons when requested and lawful)² and should help ensure that these persons are not victimized as a result of seeking remedy.³ Consistent with other stakeholder engagements, these consultations should be

conducted in a culturally appropriate manner and with the aim of inclusiveness (e.g., gender equity and participation of vulnerable groups).

- **Without prejudice to other mechanisms:** Company grievance mechanisms should supplement and complement, rather than replace, other grievance mechanisms (see 2.2 and 2.3, below), stakeholder engagement activities, and collective bargaining processes. Such mechanisms also should not limit or undermine the role of legitimate trade unions in addressing labor matters, nor prejudice the right of aggrieved parties to access other judicial or other non-judicial grievance mechanisms available domestically or internationally.⁴

Company grievance mechanisms, should satisfy the Effectiveness Criteria of the UN Guiding Principles on Business and Human Rights (UNGP) outlined in Annex 1. A sample terms of reference for a company grievance mechanism is provided in Annex 2.

2.2 Assess existing grievance mechanisms

The company should assess the suitability of existing grievance mechanisms as part of its early due diligence process (or retroactively if not done previously). For instance, this can be done as part of the applicable law assessment when evaluating matters such as risks of adverse impacts related to equality before the law and access to justice (see *Operational Guidance on the Relationship between Voluntary Commitments and Applicable Law*). This analysis should consider the extent to which existing grievance mechanisms are accessible and capable of providing a just and effective remedy to potentially affected peoples and groups, including potentially disadvantaged groups such as remote communities, vulnerable populations, and women. For assessments of existing non-judicial grievance mechanisms, the UNGP Effectiveness Criteria referenced above should be applied. Gaps in the scope and effectiveness of existing grievance mechanisms should be particularly noted as priorities for the company grievance mechanism to fill.

2.3 Cooperate with and strengthen grievance mechanisms

Based on their assessment of existing grievance mechanisms, companies should also cooperate in efforts to strengthen and facilitate access to these mechanisms. Specifically:

- Whether the harm of the aggrieved party is directly or indirectly connected to their production and trade activities, the company should cooperate with other grievance mechanisms. Such cooperation includes but is not limited to: provision of access to relevant documents, field sites, and personnel; abiding by and taking no steps to undermine the decisions and operations of the other grievance mechanism; and protecting whistleblowers. The commitment to cooperate with existing mechanisms also means that companies should not take any measures or acquiesce to activities of others that may interfere with or otherwise undermine the effectiveness of a grievance mechanism.
- Consistent with [Core Principle 7](#), companies are encouraged to collaborate with industry bodies, commodity-specific processes, and multi-stakeholder initiatives in developing new grievance mechanisms and/or strengthening existing ones.
- Downstream companies are encouraged to work with states to embed grievance mechanisms in trade or investment agreements with states and as a requirement in supplier contracts.

3. Company responsibility to provide for or cooperate in fair and just remedy

As stated in [Core Principle 6.2](#), in the case of adverse impacts to human rights, companies are expected to provide for or cooperate in providing fair and just remedy. This principle is elaborated below. Section 3.1 provides an overview of what constitutes fair and just remedy. Depending on the circumstances, companies are

expected to provide for, cooperate in, and/or support the remediation of harms. These circumstances are outlined in Sections 3.2 through 3.4. Section 3.5 provides further guidance on remediation plans. Additional details on environmental remediation are provided in Section 4.

3.1 The requirement of a fair and just remedy

As noted above, a fair and just remedy can come in many forms, including apologies, restitution, rehabilitation, restoration, financial or non-financial compensation, punitive sanctions, injunctions, and guarantees of non-repetition.⁵ As private entities, companies may not be able to provide each of these remedies themselves. For instance, typically only states grant injunctions or award punitive sanctions. In such cases, companies should cooperate in legitimate processes to award and implement such remedies where they are determined to be part of a fair and just remedy.

Determination of what is fair and just remedy will depend on the circumstances of each case but in all cases the remedy that is offered or provided must be rights-compatible.⁶ This means that the remedy is in accordance with internationally recognized human rights and does not result in re-victimization or impingement on the rights of others. The remedy should also be “fair and proportional to the gravity of the harm suffered and never offered in lieu of potential criminal liability”, should be awarded “for both pecuniary and non-pecuniary harm”, and should not be “inadequate...owing to lack of information or power imbalance.”⁷ Further characteristics of fair and just remedy include the following:

1. Remedy should place the aggrieved party in the same position as they were prior to the adverse impact.
2. A combination of remedies – redressive, preventive, and deterrent – may be warranted.
3. Among those harmed, different redress may be needed. For example, female users of the forest may be harmed differently than their male counterparts and may therefore require different remediation.
4. Compensation will not be sufficient in all cases. For example, when property rights are in question, the default is often to look at the fair market value of the lands or resources being taken and to compensate on this basis. However, while this may be suitable compensation for a non-indigenous rights holder of property, it is often not suitable in the case of indigenous peoples and local communities who may value their ancestral land as more than a monetary asset or production unit. Similarly, building a school may not be considered a just compensation for the destruction of a burial site. In such cases, restitution of lands or other compensation in the form of lands and territories of the same quality, size, and legal status may be preferred.⁸

Companies should complete all necessary remediation and take no measures to evade responsibility or otherwise leave the victim without access to a remedy. As specified in [Core Principle 6.3](#), companies are expected not to abandon or divest their interests in land (e.g., through sale, corporate restructuring, or otherwise) before remediation is complete or such obligations are properly and transparently transferred to a competent party with the financial and technical capacity to address the remediation (e.g., a new owner). Companies participating in grievance mechanisms operated by states or other non-state entities should not withdraw from such processes before a final decision is issued, nor should the companies refuse compliance after agreeing to be subject to its decisions.

3.2 When companies should provide for or cooperate in remediation

As affirmed by the UN Guiding Principles on Business and Human Rights (UNGPs), companies are required to remediate when they have caused or contributed to an adverse impact to internationally recognized human rights. In the context of the Accountability Framework, remediation may also be required in the case of non-compliance with company commitments related to the Accountability Framework scope (e.g., [Core Principles A and B](#)).

There is no broad consensus on the meaning of “cause” and “contributed to” in practice. Companies are encouraged to consider the definitions of these terms proposed by the UNGPs and the OECD Guidelines for Multinational Enterprises.⁹ Companies should also consider the interpretations and application of these concepts under national laws, the courts, and other authoritative bodies operating in the different jurisdictions and contexts within which they have production and trade activities. Companies are advised to use their due diligence processes (including applicable law assessments, environmental and social impact assessments, and examinations of legacy harms (see below)) to determine whether they are responsible for remediation in a given case. Caution should be exercised over applying overly narrow interpretations to these terms.

When remediation is required, it may be provided by the company alone or in cooperation with other actors such as the government. Sometimes, government participation is needed to effectuate the remediation. Cooperation with other actors may also be necessary in circumstances where the company is not the only entity that caused or contributed to a harm. For instance, cooperative remediation may be warranted when a court finds more than one company responsible, or when multiple companies agree (e.g., as part of a regional sector approach) to remediate harms for which all assume some measure of responsibility.

3.3 When may companies choose to support remediation of others?

As affirmed by the UNGPs, in cases where the adverse impact is directly linked to a company’s operations or supply chains but the company itself did not cause or contribute to the harm in question, the company is not required to remediate. However, in such cases companies are strongly encouraged to take measures to facilitate remediation by the responsible entity within its supply chain. This may include providing technical or financial support, encouragement, incentives through continued capacity building, and engagement conditioned on plans and progress toward remediation.¹⁰ The level of involvement in facilitating the remediation of others can vary depending on distinct facts and circumstances such as the company’s leverage over the business partner from which the harm arose and the severity of the adverse harm.

Whatever the decision of the company is with respect to taking a role in the remediation, as long as the company maintains the business relationship, consistent with the guidance provided in the *Operational Guidance on Supply Chain Management*, the company should be ready to demonstrate through public reporting both its concern about the harms and any steps being taken to remediate, as well as avoid and mitigate such harms in the future.

3.4 Company responsibility for legacy harms

Companies purchasing or acquiring interests in commodity-producing properties should assume responsibility to remediate past harms unless this responsibility is explicitly and legally transferred to or retained by another party. This is particularly the case where the acquisition is of land and interests in land. Understanding that the requirement of remediation typically follows those harms that a company causes or contributes to, this commitment reflects an acknowledgment that (a) through contracting, companies are best positioned at acquisition to negotiate responsibilities around such liabilities that are not otherwise foreclosed by a statute of limitation (assuring that those affected continue to have access to a remedy with respect to a responsible party), and (b) future company operations will likely continue to benefit in some way from these past harms (e.g., prior clearing of forests enables ongoing commodity production that provides profits for the company).

Consequently, prior to new acquisitions, companies are expected to conduct due diligence exercises to identify legacy harms and historic grievances resulting from the operations, terms of acquisition, and development of assets of a prior owner or developer (whether a State or private entity). The potential harms that might still arise from those prior activities should also be examined. Companies are encouraged to work with potentially aggrieved parties, the Government, and where relevant, other sector actors, to address these legacy harms (including through remediation) and restore stakeholder confidences.¹¹

Invitation for input

The AFi partners seek input on the proposed allocation of responsibility to address legacy harms that is described above, especially regarding the default responsibility of companies acquiring interests in commodity-producing properties to remediate past harms associated with these properties. Are there internal or external constraints (e.g., national laws or contract terms) that would prevent your company or companies with which you are familiar from following this approach? If so, are these constraints temporary or permanent? What options or mechanisms might exist to overcome these constraints to help ensure that affected parties are able to secure effective remedy for past harms?

3.5 The role of remediation plans

As noted above, remediation can come in many forms, including: through a mutually agreed process with the aggrieved party; per a court order or government instruction; or in collaboration with other responsible parties and government regulators to achieve the remediation. In most cases, remediation plans are necessary to clarify the commonly agreed intent of the company, affected parties, and other relevant entities (e.g., government regulators) as to the context, objectives, scope, timeline, responsibilities, monitoring, and other relevant aspects of the remediation. Following are key considerations for developing remediation plans:

- **Agreements to remediate:** Where remediation plans are to be reached through a mutually agreed procedure between the company and an aggrieved party (such as indigenous peoples or local community), such procedures should have agreed terms of reference. These are particularly useful to create trust and avoid delay, especially where companies and IP/LC may have differing opinions on what fair and just remediation means, what law is applicable, or what constitutes credible evidence. These terms of references should cover, among others, who can present evidence, what kind of evidence can be presented, location of proceedings, language to be used, use of experts, assurances against undue coercion or retaliatory actions¹², format for written documentation of the outcome, the applicable law and relevant local customs, and the decision-making or consensus building process among the parties. If IP/LC were adversely impacted, then the process for seeking free, prior and informed consent (FPIC) should also be described (see the *Operational Guidance on Free Prior, and Informed Consent*).
- **Content of Remediation Agreements/Plans¹³:** The agreement on the final remediation to be provided should include details about the agreed remediation outcomes and associated timelines, who is responsible for specific actions, and, in the case that compensation is to be provided, who receives the compensation, when it is provided, how often, and for how long. The agreement should also specify the procedures and repercussions in the event that there are breaches of the remediation plan, withdrawal of community consent, suspension of a specific activity, or disengagement by a buyer of a non-compliant supplier.¹⁴ Such procedures and repercussions could include, for instance, a certain allotted time period to fix the breach or suspension of the agreement under certain specified conditions.
- **Publication of Remediation Agreements/Plans:** Remediation plans, measures, and related agreements should be publicly accessible. In the event that the parties to the agreement are inclined to keep information confidential,¹⁵ this decision should be weighed carefully against company commitments to transparency and accountability as well as the lost opportunity for deterrence.

ANNEX 1: Elements of effective company grievance mechanisms

The following table describes the “effectiveness criteria” for non-judicial grievance mechanisms as introduced in 2011 by Principle 31 of the UN Guiding Principles on Business and Human Rights (“UNGP”). These criteria are widely accepted as characteristics to measure the effectiveness of non-judicial grievance mechanisms (including company grievance mechanisms). The UNGP explanation of each criterion is provided as it appears in the *Comments* associated with Principle 31. The procedural components and indicators that follow each criterion are not exhaustive, but companies can use these as a point of departure for establishing and evaluating their own grievance mechanism, as well as assess grievance mechanisms that the State or others may provide.

Criteria ¹⁶	Procedural components/Indicators ¹⁷
<p>1. Legitimate: Enabling trust from stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes.</p>	<p>1.1 Establish a defined process to address grievances with clear lines of accountability</p> <p>1.2 Conduct consultations with key stakeholders for the design, revision and monitoring of the mechanism (ensure inclusive stakeholder participation, including gender equity and participation of vulnerable populations, where applicable)</p> <p>1.3 Operates independently of interested parties</p> <p>1.4 Grievance mechanism team(s) have the necessary technical, human and financial resources, means and powers to investigate grievances</p>
<p>2. Accessible: Being known to all stakeholder groups for whose use they are intended and providing adequate assistance for those who may face particular barriers to access.</p>	<p>2.1 Actively provide information on the existence and functioning of the mechanism in a way that is adapted to the context and audience for whose use it is intended</p> <p>2.2 Address the barriers stakeholders may have in accessing the mechanism by providing multiple access points that are well adapted to the operational context</p> <p>2.3 Provide assistance to access the mechanism for those that may face particular barriers to access (such as IP/LC)</p> <p>2.4 Have an explicit commitment to protect the user from reprisals</p> <p>2.5 The grievance mechanism is accessible to all stakeholders, irrespective of their remoteness, language, gender, culture, education or income level (appropriately advertised and communicated to project-affected people).</p> <p>2.6 Procedures to file grievances and seek actions are easily understood by project beneficiaries (translated as necessary, culturally appropriate)</p> <p>2.7 For affected parties that cannot read or write, there are other multiple methods for filing a grievance (i.e. phone hotline, through a local representative)</p> <p>2.8 Grievance mechanism has worked to establish a visibility and relationship with national, regional and local actors and stakeholders</p> <p>2.9 Grievances can be filed anonymously</p> <p>2.10 Protections for complainants/human rights defenders where necessary. (See Annex 3 of the Framework’s Operational Guidance on the Rights of Indigenous Peoples and Local Communities)</p>
<p>3. Predictable: Providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome</p>	<p>3.1 Establish both at headquarter and operational levels a defined process with clear roles, responsibilities, procedures, and process steps including for receiving and tracking complaints, and monitoring implementation</p> <p>3.2 Establish a clear timeframe for each step or stage of the process</p>

Criteria ¹⁶	Procedural components/Indicators ¹⁷
available and means of monitoring implementation.	3.3 Define the types of complaints that fall under the scope of the mechanism as well as the available outcomes
Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.	4.1 Be open to share relevant information in a way that can be easily understood 4.2 Facilitate the means through which the affected stakeholders can have access to advice or expertise 4.3 Grievances are treated confidentially, assessed impartially, and handled without discrimination 4.4 Mechanisms to ensure unequal power arrangements among stakeholders are minimized during processes to resolve grievances (whether adversarial in nature or aimed at consensus building) 4.5 Potential complainants have access to advice or expertise if needed
5. <u>Transparent</u> : Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness to meet any public interest at stake.	5.1 Keep users of the mechanism informed periodically throughout the process 5.2 Report internally and externally on the performance of the mechanism 5.3 GRM procedures and outcomes are transparent enough to meet the public interest concerns at stake 5.4 Complainants know who has oversight of the grievance process; who is responsible for handling their specific complaints and communicating outcomes, and who receives reports internally within the company? 5.5 There is a grievance tracker available to the public 5.6 There is a requirement of periodic reports are given to the public on progress
6. <u>Rights-Compatible</u> : Ensuring that outcomes and remedies accord with internationally recognized human rights.	6.1 Assess any complaint on its possible human rights impact 6.2 Ensure that outcomes do not infringe on the rights of the complainant 6.3 Adopt the higher standard in case of conflict between national legislation and international norms on human rights ¹⁸ 6.4 GRM staff has capacity and continuing education on applicable laws and policies on human rights 6.5 The mechanism does not prejudice access to other redress mechanisms
7. <u>Source of Continuous Learning</u> : Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.	7.1 Keep a centralised record of complaints 7.2 Monitor and assess the performance of the mechanism on a regular basis 7.3 Integrate key lessons learnt 7.4 Grievance mechanism has a process to regularly evaluate what has transpired to see patterns and ways to do things better in the future 7.5 Clarity on who is involved in the evaluation, learning, and implementing of responses to findings and recommendations (stakeholder involvement in these tasks are identified) 7.6 Evaluations are taken from Complainant & Stakeholders upon conclusion of matters 7.6 Evaluations and assessments of the mechanisms are an independent process without undue influence
8. <u>Based on Engagement and Dialogue</u> : Consulting the stakeholder groups for whose use they are intended on their	8.1 Establish a system for feedback collection from users [see 7.6 above] 8.2 Prioritize engagement and dialogue as the means to address and resolve grievances

Criteria¹⁶	Procedural components/Indicators¹⁷
design and performance and focusing on dialogue as the means to address and resolve grievances.	8.3 All engagement and dialogue will be conducted in a cultural appropriate manner, where applicable, and with the aim of inclusiveness (i.e. gender equity, participation of vulnerable populations).

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ANNEX 2: Sample Terms of Reference for a Company Grievance Mechanism

The following template covers the key elements to include in a company grievance mechanism. If implemented in good faith, a grievance mechanism with these elements should satisfy the effectiveness criteria of the UNGPs referenced in Annex 1. This generalized template can be adapted to fit different types of companies (e.g., downstream or upstream company) and different uses. This is one of many formats and offered to at least initiate company discussions about the establishment and content of their grievance mechanism. Companies should develop their grievance mechanism in consultation with stakeholders.

I. Purpose

The purpose of the grievance mechanism is to:

1. receive and address any concerns, complaints, notices of emerging conflicts, or grievances (collectively "*Grievance*")¹⁹ alleging actual or potential harm to affected person(s) (the "*claimant(s)*") arising from company operations;
2. assist in resolution of grievances between and among the company and stakeholders in the context of company Operations; and
3. operate at all times in a flexible, collaborative, and transparent manner aimed at problem solving and consensus building.

Grievances may relate to any potential or actual harms to persons, groups, or the environment. These include but are not necessarily limited to non-compliance with company commitments, applicable law, or other company obligations.

II. Functions

The function of the grievance mechanism is to:

1. Receive, log, and track all grievances received
2. Provide regular status updates on grievances to claimants
3. Engage and cooperate with all parties necessary to arrive at a grievance resolution
4. Process and propose solutions and ways forward related to specific grievances within a period not to exceed 60 days from receipt of the grievance
5. Receive and service requests for the use of independent mediation or facilitation
6. Identify growing trends in grievances and recommend to company management possible measures to avoid harms and grievances in future company operations
7. Solicit feedback from parties to grievances that have since been closed regarding their experience, level of satisfaction, and recommendations for grievance mechanism strengthening
8. Elaborate on regular reports (including findings and outcomes), make the reports available to the public, and maximize transparency of information
9. Ensure that the effectiveness criteria for grievance mechanisms are being met
10. Collaborate whenever possible with the host Government, business partners, NGOs, CSOs and other entities to conduct outreach initiatives to increase awareness as to the existence of the grievance mechanism and how its services can be accessed
11. Ensure continuing education of company staff, agents, and business partners (especially at the upstream level) about the importance of ensuring access to remedies for any potential claimant; and
12. Monitor follow up to grievance resolutions, as appropriate.

III. Composition

The grievance mechanism will consist of a Director, Secretariat, and Resolution Team. Individuals hired to these positions will have demonstrated capacity and established expertise and experience and be of the highest integrity. They will not have been employed or contracted by the company previously.²⁰ No grievance mechanism member will participate in the resolution of a grievance if s/he has or had an interest or role in the underlying facts or outcome of the grievance.

The Director will perform the following functions:

- Manage relationships with relevant government and stakeholder groups that may need to be engaged in resolving grievances in the future (including civil society organizations and others that might be able to advise and/or assist claimants in engaging the grievance mechanism)
- Ensure the independence of the grievance mechanism
- Provide for the continuous education and capacity building of grievance mechanism staff
- Ensure overall the satisfaction of the UNGP's "effectiveness criteria"
- Approve workplan and budget
- Hire members of the Secretariat and Resolution Teams
- Oversee the activities of the Secretariat and Resolution Teams
- Carry out any other functions subsequently defined by the grievance mechanism's establishing document

The grievance mechanism Secretariat will perform the following functions:

- Publicize the existence of the grievance mechanism and the procedure for using it
- Receive and log requests for dispute resolution
- Acknowledge receipt to the requestor
- Determine eligibility and, where the request is outside the scope and mandate of the grievance mechanism, suggest to claimant other available grievance mechanisms (i.e. courts, administrative processes)
- Forward eligible requests to the Resolution Team
- Track and document efforts at grievance resolution and their outcomes;
- Develop and execute a communication strategy that reaches potential stakeholders and users of the mechanism, taking into consideration appropriate medias, language, and cultural appropriateness
- Assist the Director in carrying out his/her duties
- Prepare an annual work plan and budget for Director approval
- Carry out other functions subsequently defined by the grievance mechanism's establishing document

The grievance mechanism Resolution Team will:

- Take direct action to resolve the grievances professionally, impartially, and without discrimination
- Request further information to clarify the issue, share that information with all relevant parties, and where information is held not by the claimant or company, but another, take reasonable measures to secure that information (i.e. from Government entities or third-parties)
- Facilitate claimant support (i.e. space for experts advising the claimant and the availability of translation and interpretation)
- Seek the advice of independent experts for the Resolution Team, if deemed appropriate

- Refer the grievance to independent mediation or facilitation if the parties request or if the Resolution Team believes it would be helpful and the parties agree (maintaining oversight)
- Carry out any other functions subsequently defined by the grievance mechanism's establishing document

IV. Communicating a Grievance

(i) Who can submit a grievance?

A grievance can be sent by any individual or group of individuals that believes it has been or will be harmed by the company operations. If a grievance is to be lodged by a different individual or organization on behalf of those said to be affected, the claimant must identify the individual and/or people on behalf of who the grievance is submitted and provide written confirmation by the individual and/or people represented that they are giving the claimant the authority to present the grievance on their behalf. The grievance mechanism will take reasonable steps to verify this authority.

(ii) How is the grievance communicated?

The grievance mechanism shall maintain a flexible approach with respect to receiving grievances in light of known local constraints with respect to communications and access to resources for some stakeholders. A grievance can be transmitted to the grievance mechanism by any means available (i.e. by email, letter, meeting, SMS, the grievance mechanism hotline [*insert number*], local liaisons, [*other*]). Contact information for the transmission of grievances will be as follows:

[Provide Secretariat's address, phone number, fax, hotline number, contact information for local liaisons if they exist, etc.]

To facilitate communications with and between the grievance mechanism and potential claimants, the grievance mechanism will seek the assistance of local actors. Where possible, designate trusted individuals or entities that may be most accessible to potential claimants to act as liaisons.

(iii) What information should be included in a grievance?

At a minimum, the grievance should include the following information:

1. The name of the individual or individuals making the complaint (the "claimant")
2. A means for contacting the claimant (email, phone, address, other)
3. If the submission is on behalf of those alleging a potential or actual harm, the identity of those on whose behalf the grievance is made, and written confirmation by those represented of the claimant's authority to lodge the grievance on their behalf
4. The description of the potential or actual harm
5. The claimant's statement of the risk of harm or actual harm (description of the risk/harm and those affected, names of the individual(s) or institutions responsible for the risk/harm, the location(s) and date(s) of harmful activity)
6. What has been done by claimant thus far to resolve the matter
7. Whether the claimant wishes that their identity is kept confidential
8. The specific help requested from the grievance mechanism.

V. Logging, Acknowledgment, and Tracking

All grievances will be received, assigned a tracking number, acknowledged to claimant, recorded electronically, and subject to periodic updates to the claimant as well as the office file. Within [one week] of the receipt of a

grievance, the grievance mechanism will send a *written* acknowledgement to claimant of the grievance received with the assigned tracking number.²¹

Each grievance file will contain, at a minimum:

1. The parties involved, including the engaged members of the resolution team
2. Date of the request as received
3. Date the written acknowledgment was sent (and oral acknowledgment if also done)
4. Dates and nature of all other communications or meetings with the claimant and other relevant stakeholders
5. Any requests, offers of, or engagements of a mediator or facilitator
6. Date and records related to the proposed solution/way forward (including any remediation required)
7. The acceptance or objections of the claimant to the proposed solution (where an Indigenous Peoples or community, Afroecuadorian, *montubio*, or commune (“Collective”) such acceptance shall be obtained through a documented Free, Prior and Informed Consent process)
8. The proposed next steps if objections arise
9. The alternative solution if renewed dialogues were pursued
10. Notes regarding implementation and the monitoring of implementation
11. Any conclusions and recommendations arising from monitoring and follow up

VI. Maintaining Communication and Status Updates

Files for each grievance will be available for review by the claimant and other stakeholders involved in the grievance, or their designated representative(s). Appropriate steps will be taken to maintain the confidentiality of the claimant if previously requested.

The grievance mechanism will provide periodic updates to the claimant regarding the status and current actions to resolve the grievance. Not including the acknowledgment of receipt of the grievance, such updates will occur within reasonable intervals (not greater than every [thirty] days).

VII. Investigation and Consensus Building

Within [seven] business days of receiving a grievance, the Secretariat will notify [company management] of the receipt of the grievance.

The Resolution Team will name a single member of the team or several members – as deemed appropriate considering the nature, scale and gravity of the grievance – to work with the parties to resolve the grievance. The names of these individuals will be made available to the claimant.

The designated team member(s) will promptly engage the claimant and any other relevant parties, to gather all necessary information regarding the grievance.

Through the Director, the Resolution Team will request information from government institutions relevant to resolving the grievance and avoiding future grievances of the same nature.

As necessary, the Resolution Team will convene one or more meetings with relevant individuals and institutions in [national capital], or elsewhere in [name of country] as needed.

The objective of all investigative activities is to develop a thorough understanding of the issues and concerns raised in the grievance and facilitate consensus around a proposed solution and way forward.

With the Secretariat's assistance, the Resolution Team will seek the cooperation of company management, personnel, agents and business partners which may facilitate the resolution of the grievance.

At any point during the investigation, the Resolution Team may determine that an onsite field investigation is necessary to properly understand the grievance and develop an effective proposed solution and way forward.

VIII. Seeking Advisory Opinion and/or Technical Assistance

At any point after receiving a grievance and through to implementation of the proposed solution and way forward, the Resolution Team may seek the technical assistance and/or advice of independent experts (domestic or international).

IX. Making Proposed Actions and Solutions Public and Overseeing Implementation

The Resolution Team will communicate to the claimant one or more proposed actions or resolutions and clearly articulate the reasons and basis for proposed way forward.

If the claimant does not accept the proposed resolution, the Resolution Team will engage with the claimant to provide alternative options, when available.

If the claimant accepts the proposed solution and way forward, the grievance mechanism will continue to monitor the implementation directly and through the receipt of regular required communications from the claimant and other relevant parties (detailed in the final resolution document). As necessary, the grievance mechanism may solicit information from the relevant parties and initiate renewed dialogue where appropriate.

X. Final Resolution

The documented final resolution as accepted by the parties will include, at a minimum:

1. A summary of the grievance
2. A summary of the steps taken to resolve the grievance (meetings, information gathered, engagement of facilitator/mediator if applicable etc.)
3. Details of the proposed solution including (remediation or mitigation measures to be engaged, responsibilities of key parties, and required timelines)
4. Mechanism for participatory monitoring of implementation of the agreement
5. If a collective is involved, evidence of FPIC
6. A description of the repercussions of non-compliance
7. Any other element requested of the parties

XI. Monitoring and Evaluation

Bi-annually, the Secretariat will make available to the public, a report describing the work of the grievance mechanism, listing the number and nature of the grievances received and processed in the past six months, a date and description of the grievances received, resolutions, referrals and ongoing efforts at resolution, and status of implementation of ongoing resolutions.

The level of detail provided with regard to any individual grievance will depend on the sensitivity of the issues and Stakeholder concerns about confidentiality, while providing appropriate transparency about the activities of the grievance mechanism. The report will also highlight key trends in emerging grievances, and make recommendations regarding:

1. measures that can be taken by the company to avoid future harms and grievances; and

2. improvements to the grievance mechanism that would enhance its effectiveness, accessibility, predictability, transparency, legitimacy, credibility, and capacity.

XII. Mediation

For the option of independent mediation and facilitators, experts on the roster/panel should have at least the following qualifications:

1. professional experience and expertise in impartial mediation and facilitation;
2. knowledge of the region, nature of company operations, the applicable law;
3. proficiency in national and local language, as appropriate;
4. availability in principle for assignments of up to [20] days; and
5. willingness to declare all relationships and interests that may affect their ability to act as an impartial mediator or facilitator in particular cases.

If independent mediation/facilitation succeeded in resolving the grievance, the outcome would be documented by the Resolution Team overseeing the process. If the independent mediation/facilitation was unsuccessful, the parties would have the option to return to the Resolution Team facilitation for another attempt at resolution.

XIII. Party Evaluations

The grievance mechanism has a learning function. It will solicit feedback from the parties after the grievance has been resolved or the matter otherwise closed. This feedback should to a grievance that has reached closure in the process

XIV. Without Prejudice

Use of this grievance mechanism is without prejudice to any existing rights under any other complaint mechanisms that an individual or group of individuals may otherwise have access to under national or international law or the rules and regulations of other relevant institutions, agencies or commissions (for instances those available through a certification scheme, or jurisdictional approach, etc.).

ENDNOTES

¹ For further description of these forms of remediation, see Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/72/162, section III.D “Bouquet of Remedies” (18 July 2017) (“WG Report on Remedies”).

² Roundtable on Sustainable Palm Oil (“RSPO”) Principles and Criteria, 6.3. (2013)

³ WG Report on Remedies, ¶. 86(e).

⁴ UN Guiding Principles on Business and Human Rights, Principle 31, Commentary (2011).

⁵ For further description of these forms of remediation, see Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/72/162, section III.D “Bouquet of Remedies” (18 July 2017) (“WG Report on Remedies”).

⁶ The requirement that remediation outcomes are rights-compatible is specified in Principle 31(f) of the UN Guiding Principles on Business and Human Rights.

⁷ Human rights and transnational corporations and other business enterprises, A/72/162 (18 July 2017).

⁸ The UN Committee on the Elimination of Racial Discrimination (interpreting the International Convention on the Elimination of all Forms of Racial Discrimination (“ICERD”)) recommends that compensation to indigenous peoples for infringements on property rights “should as far as possible take the form of lands and territories.” UN CERD, General Recommendation No. 23 on Indigenous Peoples, A/52/18, annex V, para. 5 (1997). UNDRIP prioritizes restitution where an infringement of property rights occurs and provides that compensation should preferably be in “the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation”. See also the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”), Art. 28.

⁹ “A business causes an adverse human rights impact when its activities (including omissions) materially increase the risk of the specific impact which occurred and would be sufficient, in and of themselves, to result in that impact.” “A business contributes to an adverse human rights impact when its activities (including omissions) materially increase the risk of the specific impact which occurred even if they would not be sufficient, in and of themselves, to result in that impact.” See “Practical Definitions of Cause, Contribute, and Directly Linked to Inform Business Respect for Human Rights”, Debevoise & Plimpton and Enodo Rights (February 2017) (“*Debevoise/Enodo paper (2017)*”) available at <http://www.enodorights.com/assets/pdf/debevoise-enodo-practical-meaning-of-involvement.pdf>

¹⁰ Additional guidance on how to address supplier non-compliance is provided in Section 4 of the *Operational Guidance on Supply Chain Management*.

¹¹ For additional guidance on how to conduct this due diligence on legacy harms and address what is found, see : a) *Land Legacy Issues: Guidance on Corporate Responsibility* (Interlaken Group, 2017) : https://www.interlakengroup.org/downloads/Interlaken_Group_Land_Legacy_Guidance-67109ad801cc7478fb8be798115b72d1.pdf?vsn=d; b) *A guidance note on managing legacy land issues in agribusiness investments* (CDC, KFW DEG,) available at: https://www.deginvest.de/DEG-Documents-in-English/Download-Center/DEG_CDC_Guidance-Note-on-Managing-Legacy-Land-Issues-in-Agribusiness-Investments-2016_en.pdf; and c) *Addressing 'legacy' land issues in agribusiness investments* (Lorenzo Cotula, Thierry Berger and Philippine Sutz, Legends, May 2016) available at: <https://landportal.org/library/resources/legend-analytical-paper-2/addressing-legacy-land-issues-agribusiness-investments>.

¹² See Annex 3 “Companies responsibilities toward Environmental and Human Rights Defenders (EHRD)” of the *Framework’s Operational Guidance on the Rights of Indigenous Peoples and Local Communities*

¹³ Sometimes there will be a remediation agreement with a remediation plan attached and sometimes the remediation agreement details the plan -hence they are one in the same.

¹⁴ Similarly required by the FPIC Guideline for RSPO Members (2015), p. 76 stating that the FPIC agreement should detail “compensation for what (e.g. forests, lands and crops) and to whom (community, family, individuals), compensation mechanism and monitoring, timelines (when and how much), conditions for compensation.”

¹⁵ Parties should also consider where only a narrow set of agreement elements may need to be confidential (rather than the whole agreement) –such as a list of private sacred sites, or legitimate concerns regarding commercial information.

¹⁶ The first column of this Annex 1 lists the eight criteria that are known as the “effectiveness criteria” introduced in 2011 in Principle 31 of the UN Guiding Principles on Business and Human Rights (“UNGP”) and described by the Comments to Principle 31. These criteria have become widely accepted as critical characteristics of an effective state non-judicial grievance mechanisms as well as non-state grievance mechanism.

¹⁷ The italicized procedural components and indicators are drawn from the publication “Assessing the Effectiveness of Company Grievance Mechanisms CSR Europe’s Management of Complaints Assessment” (MOC-A) Results, p. 10 Table 1 (December 2013). The readers should refer to this document for further explanation of each component and indicators. (Note: the non-italicized text in column 2 are further suggestions by AFI). *For additional related guidance, see also* Principle 10 of the Social Requirements for Conserving High Carbon Stock Forests in Oil Palm Development (January 2017); Criteria 6.3 of the RSPO Principles and Criteria and its associated corresponding indicators; and IIFC, Performance Standard #2 (Labour and Working Conditions), ¶ 20 (2012).

¹⁸ This principle is already incorporated within the Framework, see the definition of “Applicable Law”.

¹⁹ This term “grievance” as defined herein, applies only to this example of a terms of reference for a company grievance mechanism. It is not a defined term applying to the entire AFI Framework, including its Core Principles and Operational Guidance. Of course, companies may define the term, or others (i.e. “complaints” or “claims”) as they see fit for the purposes for their mechanism.

²⁰ Some believe that hiring from within infringes on the mechanism’s perceived or actual independence and impartiality. Others feel that with the right candidate, the operational and sector experience increases the effectiveness of the mechanism. Stakeholders and companies developing the grievance mechanism should discuss this.

²¹ Oral acknowledgments can be used for expediency (and also recorded), but must be followed by a written acknowledgment.