

Grievance Mechanism Primer

Part of the Responsible Investment in Property and Land (RIPL) Guidebook Series

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Introduction

This Primer¹ provides practical guidance for business on how to design, implement, manage, and monitor a company-based grievance mechanism. It is divided into three main sections and associated steps:

- Section One: How to design and implement a company-based grievance mechanism.
- Section Two: How to create procedures for receiving, investigating, and responding to complaints.
- Section Three: How to create procedures for monitoring and evaluating the grievance mechanism. Each phase is then divided into general steps.

The guidance is limited to effective company-based grievance mechanisms for land-related disputes. It is possible, however, for a company to expand the scope of the grievance mechanism to address disputes unrelated to land, but that nonetheless relate to a company's relations with communities affected by their operations (e.g., noise complaints, pollution complaints). Whether a company decides to expand the scope of the grievance mechanism or not will depend on its respective operations, policies, and capacity.

It is important to note that designing, implementing, managing, and monitoring a company-based grievance mechanism may look different depending on where a company is situated in a supply chain. The guidance will need to be adapted to the specific context of each business operation. A business may need to interpret and adapt the guidance differently for each area in which it operates.

This guidance is geared more towards companies that own, lease, or otherwise use large areas of land for commodity production or processing (e.g., suppliers). That being said, companies that do not own large areas of land for commodity production or processing (e.g., buyers)

should still adopt the guidance and commit to developing and adopting policies that incentivize suppliers to implement company-based grievance mechanisms for land-related disputes.

Considering that the agricultural sector does not have significant guidance on company-based grievance mechanisms, particularly for dealing with land-related disputes, this guidance will draw from guidance developed for and case studies from the extractive industry.

Overview

A factor central to ensuring businesses invest in land in a responsible manner is whether a company ensures access to remedy by establishing a functioning, effective, and accessible grievance mechanism for handling land-related disputes.² Guidance relating to responsible land-based investment emphasizes the need for company-based, non-judicial grievance mechanisms to complement any existing state-based, judicial grievance mechanisms. The extent to which there is a need for a company-based grievance mechanism will thus depend on the governance gaps of the country where the company is operating. The need for company-based grievance mechanisms is particularly acute in most low-income and middle-income countries, where governance gaps can be significant.

In high-income countries, the key elements of responsible land-based investment are typically enshrined in national land governance frameworks, which include laws, policies, regulations, administrative structures, and judicial systems. Consequently, land-based investments are typically mutually beneficial, resulting from transactions between, for example, willing sellers and willing buyers. Rarely does a landowner sell, lease, or otherwise change the use of his or her land without receiving notice, consulting or negotiating with the other party, and giving consent.

By contrast, in most low-income and middle-income countries, land governance frameworks lack the key legal and institutional elements to protect land rights and interests. Even if the key legal and institutional elements are in place, governments and land rights holders and users often lack the capacity necessary to enforce and monitor compliance with the elements. For example, countries may lack the necessary personnel (e.g., land planners, surveyors, jurists, clerks, and administrators) and equipment (e.g., computers, vehicles, and offices). Furthermore, many rights and interests in land are frequently held informally, and women's rights and interests to land are often overlooked or not honored.

Land governance gaps of low-income and middle-income countries thus create major barriers to ensuring that land transactions comport with the key elements of responsible land-based investment. Acknowledging this deficiency, business must take concrete steps to help fill these gaps. Gap filling will require business to bring knowledge and resources to the investment table to supplement deficient state land governance frameworks, including any deficiencies relating to handling complaints that business are not in compliance with the key elements of responsible land-based investment.

While it is important for business to help fill gaps, the ultimate goal is for governments to play the leading role in ensuring responsible land-based investment occurs. Consequently, the onus on business should decline as governments improve land governance frameworks and build greater capacity to implement and enforce those frameworks. Even after government frameworks are established, business due diligence will always be required.

A well-functioning mechanism should have the following components:

- Internal policies and procedures that provide managers and employees with explicit steps on how to process and resolve complaints;

- Internal procedures to ensure cooperation between the chief grievance manager and the employees or contractors with close knowledge of the subject of the grievance;
- Guidance on the types of performance data to be recorded and reviewed for monitoring and evaluation purposes;
- Periodic internal review to ensure the mechanism's functionality; and
- Set time frames for responding to complaints to ensure consistency within the company and predictability for complainants.

The mechanism should also comply with the UNGP criteria for non-state dispute resolution processes:

- **Legitimate:** Enable trust from the mechanism's users and ensure accountability for the fairness of the grievance resolution process.
- **Accessible:** Be known to all potential users and providing assistance for those who may face particular barriers to access, such as women.
- **Predictable:** Be clear on the types of processes and outcomes available and means of monitoring implementation.
- **Equitable:** Provide users reasonable access to the information, advice and expertise necessary to engage on fair, informed and respectful terms.
- **Transparent:** Keep parties to a grievance informed about its progress and provide sufficient information about the mechanism's performance to build confidence in its effectiveness.
- **Rights-compatible:** Ensure outcomes and remedies comply with internationally-recognized human rights standards.
- **Source of continuous learning:** Identify lessons for improving the mechanism and preventing further grievances and harms.
- **Based on dialogue and engagement:** Consult users on the mechanism's design and performance and focus on dialogue as the means to address and resolve grievances.³

These criteria for non-state dispute resolution processes are comprised of high-level, anchoring principles that overlap with the land-related policies of many business, as well as the key elements of responsible land-based investment.

Section 1: Designing and Implementing a Grievance Mechanism

Business dedicates sufficient personnel and resources to designing, implementing, and managing its grievance mechanism.

A business should assign a dedicated team of internal employees to design, implement, manage, and monitor the grievance mechanism. The business should ensure the following:

- Internal employees assigned to designing, implementing, managing, and monitoring the grievance mechanism have the time and resources necessary to fulfill these responsibilities.

- Internal employees assigned to designing, implementing, managing, and monitoring the grievance mechanism are sourced from or able to represent the viewpoints of the relevant departments of the business (e.g., legal, supply chain, community relations, human resources, etc.).⁴ This is necessary to ensure there is buy-in throughout the business and that the grievance mechanism is in line with the functions of each department.

Case Example #1:

The International Petroleum Industry Environmental and Conservation Association (IPIECA) recommends developing a “cross functional” design team because grievances often arise that “transcend [a business enterprise’s] internal boundaries.” As such, it is important for a cross functional team to decide the “scope of work, roles and responsibilities, an implementation timeline, [and] resource requirements (skill, time, budget).”

IPIECA indicates that relevant staff tasked with designing the grievance mechanism could come from one or more of the following departments: Community Relations, Human Resources, Health Safety & Environment, Security, Procurement, Operations, and Legal.

Business employees assigned to designing, implementing, managing, and monitoring the grievance mechanism should consult with external stakeholders.

To ensure community members and other stakeholders support and trust the grievance mechanism, the business should:

- Consult all categories of relevant external stakeholders regarding the grievance mechanism, including local women, indigenous peoples, and other vulnerable groups; civil society organizations; local government officials; and community leaders.
- Incorporate feedback obtained during consultations with external stakeholders into the design, implementation, management, and monitoring of the grievance mechanism. The grievance mechanism should reflect and is compatible with customary dispute resolution mechanisms; is accessible to all relevant stakeholders, including women, indigenous peoples, and other vulnerable groups; and is trusted by such stakeholders.

Case Example #2:

Source: IFC, Addressing Grievances from Project-Affected Communities: Guidance for Projects and Companies on Designing Grievance Mechanisms 31 (2009).

An extractive company ensured the participation of external stakeholders in the design, implementation, and management of one of its grievance mechanisms in West Africa by first identifying the main external stakeholder groups and then developing external stakeholder committees based on these groups. The company organized a Women’s Committee and an Indigenous Peoples Committee.

The company consults these committees throughout the design, implementation, management, and monitoring of its grievance mechanism to ensure that the perspectives of stakeholder groups are incorporated and addressed, as well as that the grievance mechanism is in line with customary dispute resolution mechanisms. If a grievance appears to affect a specific stakeholder group (e.g., women or indigenous peoples), the company consults with the respective committee to help reach a resolution satisfactory to all parties.

Business sensitizes staff regarding the importance of identifying and respecting both formal and customary land rights.

Business staff should be sensitized regarding the goals of the grievance mechanism and the importance of implementing the mechanism in a way that ensures that the business is respecting formal and customary land rights. The more staff is aware of the business reasons for committing to conduct socially responsible investments, the better able the staff will be to manage and enforce the grievance mechanism for dealing with land-related disputes seriously and effectively.⁵

Business could stress the following reasons for respecting land rights:

- Secure land rights help to break the cycle of poverty by improving agricultural productivity, nutrition, and food security, all of which are likely to be highly valued and appreciated by individuals and communities.
- Respecting formal and customary land rights will strengthen the business relationship with local communities – improving the business social license – and thus help reduce the likelihood of protests and violence towards the business, all of which may entail operational delays, brand reputational risk, and loss of financing.
- Consumers have an increasing desire to purchase products that were responsibly and sustainably created and sourced.
- Identifying and respecting formal and customary land rights, which includes implementing a grievance mechanism for remedying land-related disputes, is an established international standard enshrined in instruments like the VGGT and the Analytical Framework.

Case Example #3:

To ensure staff buy-in into the grievance mechanism, IPIECA recommends making the "business case" for the grievance mechanism by stressing how grievance mechanisms help to achieve the following:

- *Improves relations with communities because it demonstrates the business enterprise takes their concerns seriously.*
- *Identifies concerns early on, which helps the enterprise better manage and avoid operational impacts and harm.*
- *Increases efficiency, as grievances will no longer need to be addressed in an ad hoc, unclear manner.*
- *Prevents conflicts between the business enterprise and communities from escalating to a point where the enterprise must suspend operations because of security concerns, civil unrest, protest, litigation, divestment, etc.*
- *Supports a "learning culture" because the enterprise can learn and improve from the prevalence and types of complaints filed.*

Business determines scope of the grievance mechanism.

The business should determine the scope of the grievance mechanism by determining what types of land-related grievances it is likely to receive. The business is likely to receive complaints that relate to the enforcement of its land-related policies, as well as complaints that relate to the key elements of responsible land-based investment and the UNGPs criteria for non-state dispute resolution processes.⁶

The results from impact assessments should help to inform the business of what complaints are most likely to arise. For example, if an environmental impact assessment indicates that the proposed land acquisition and project (e.g., a new sugarcane plantation) will use significant

amounts of water, then it is likely that individuals or communities will have complaints alleging that the business is using too much water and contributing to water shortages. Additional information on each of the key elements of responsible land-based investment, as well as potential grievances that can be expected if a business is in violation of one of the key elements, is provided in the preceding section.

Business informs communities of the grievance mechanism.

The business should inform communities of the grievance mechanism, communicating in a manner in line with the communities' preferred modes of communication (e.g., radio, local newspaper, flyers, bulletins, consultations, etc.).⁷ The business should be able to document that it shared the following information:

- Information on how individuals and communities (including both women and men) can file complaints with the grievance mechanism (e.g., in person at the company's office, via mail or drop box, with a community representative, with a community leader, during the company's routine visits to communities, etc.)
- Information on what types of complaints the grievance mechanism will receive. For example, valid complaints include those that allege that the business is violating its own land-related policies, the key elements of responsible land-based investment, or the UNGPs criteria for non-state dispute resolution processes.
- A description of the procedures for receiving, processing, and responding to complaints (e.g., the time period for responding to complaints, the manner in which the company will respond to complaints, the time period for investigating complaints, the time period for filing an appeal, etc.)
- A description of the procedures for monitoring and evaluating the effectiveness of the grievance mechanism to ensure it is serving communities as intended.

Case Example #4:

To ensure staff buy-in into the grievance mechanism, IPIECA recommends making the "business case" for the grievance mechanism by stressing how grievance mechanisms help to achieve the following:

- *Improves relations with communities because it demonstrates the business enterprise takes their concerns seriously.*
- *Identifies concerns early on, which helps the enterprise better manage and avoid operational impacts and harm.*
- *Increases efficiency, as grievances will no longer need to be addressed in an ad hoc, unclear manner.*
- *Prevents conflicts between the business enterprise and communities from escalating to a point where the enterprise must suspend operations because of security concerns, civil unrest, protest, litigation, divestment, etc.*
- *Supports a "learning culture" because the enterprise can learn and improve from the prevalence and types of complaints filed.*

Section 2: Receiving, Processing, and Responding to Complaints

Business has clear procedures in place for how it will receive complaints.

The business should have clear procedures in place for how it will receive complaints. The procedures should be developed in a manner that ensures all community members (including both women and men) are able to file complaints easily and in confidence. To help build trust between communities and the business, the business should also provide prompt confirmation (e.g., provide a receipt within 48 hours) documenting that it has received the complaint and will determine whether it is a violation of the company's land-related policies, the key elements of responsible land-based investment, or the UNGPs criteria for non-state dispute resolution processes. The confirmation will provide the complainant with acknowledgement that the business is taking the complaint seriously and will be reviewing it.

Case Example #5:

Source: Center for Responsible Mining, Community Complaints and Grievance Mechanisms 34-35 (University of Queensland 2009).

Clear procedures for how complaints can be filed and how they will be processed are critical for establishing trust and reasonable expectations between neighboring communities and business enterprises. Several extractive companies have stressed the importance of having multiple access points for filing grievances to ensure that all potential complainants are able to access the grievance mechanism. Companies also stressed the importance of providing some form of acknowledgement that the complaint was received and the company will respond to the complainant promptly.

Examples of access points include, but are not limited to the following:

- *A dedicated phone line and/or physical address for receiving complaints.*
- *A physical office and/or dedicate staff member(s) at each business enterprise site where complainants can file grievances either in writing or orally, which is necessary where literacy rates are low.*
- *Regular meetings between the business enterprise and neighboring communities.*
- *Informal meetings between company staff and neighboring communities, with all staff members having the duty to report grievances to the appropriate department.*

Case Example #6:

Source: Center for Responsible Mining, Community Complaints and Grievance Mechanisms 34-35 (University of Queensland 2009).

To ensure that both women and men are able to file complaints easily and in confidence, one extractive company employs both female and male grievance officers. Employing both female and male grievance officers helps to ensure all community members feel comfortable filing complaints, as many women often do not feel comfortable disclosing their grievances to male company employees. Community members are able to file any complaint with a grievance officer at the company's facilities. Grievance officers also routinely visit local communities to inquire whether community members have any complaints against the company.

Business has clear procedures in place for how it will process complaints.

The business should have clear procedures in place for how it will process complaints. The procedures should detail how the business will determine whether the complaint alleges a covered violation that will cause them to investigate the allegation (e.g., the complaint alleges a violation of the land-related policies, the key elements of responsible land-based investment, or the UNGPs criteria for non-state dispute resolution processes). The procedures should indicate how long it will take the business to determine whether it will investigate the complaint (e.g., the will determine whether to investigate within 10 days). It is important for complainants to understand how long it will take the to determine whether it will investigate the complaint. They should move expeditiously to make this determination, and should respond within the time set in the company process guidelines.

Case Example #7:

To ensure the legitimacy and predictability of the grievance mechanism, several extractive companies have emphasized the importance of having strict timelines in place for processing complaints.

One company, for example, sets a goal of resolving all complaints within a 30-day time period, defining resolution of a complaint as either coming to an agreement or settlement with the community, as well as referring the grievance to actors better able to resolve the dispute (e.g. special committees, external experts, formal state-based legal entities, etc.).

This quick turnaround timeline thus requires the company to promptly classify whether it is possible to directly reach an agreement or settlement with the community, or whether it needs to solicit assistance from a third party or refer the case to formal state-based legal entities.

Business has clear procedures in place for making final decisions regarding complaints.

The business should have clear procedures in place for how it will make final decisions regarding complaints. Procedures could be the same for all complaints, or could vary depending on the nature of the allegation. The business's procedures could authorize the business to make the final decision by itself, authorize the community to make the final decision, or authorize the business and the community to jointly make the final decision.

There is no one-size-fits-all process for resolving complaints; what is important is that the process is transparent and accepted by the community. The appropriate grievance resolution method may depend on the nature of the specific complaint, so the mechanism should offer a variety of resolution approaches rather than a single procedure. That being said, it is important to note that some form of community involvement in reaching final decisions could help to build community trust in the business's grievance mechanism, as well as make implementation of and stakeholder satisfaction with the final decision more likely.

Case Example #8:

A majority of companies do not seem to have clear procedures in place for what the specific remedies are for different types of grievances; however, they do have procedures in place for how they will determine what the appropriate remedies are.

Such procedures tend to emphasize the need for direct engagement with neighboring communities and complainants to determine what the most appropriate solution is. Engagement and collaboration between the business enterprise and communities in reaching a resolution or settlement is necessary to ensure that all parties are satisfied, and thus, that the grievance will not resurface.

Section 3: Monitoring and Evaluating the Grievance Mechanism

Business has clear procedures in place for monitoring and evaluating the grievance mechanism.

The business should have clear procedures in place for monitoring and evaluating the effectiveness of the grievance mechanism. The business should monitor and evaluate the following:

- The number of land-related complaints it receives.
- The average time the company takes to: respond to complaints; determine whether the complaint alleges a covered violation that causes the business to investigate; investigate the complaint; and reach a final decision regarding the complaint.
- If the business and complainant(s) reached a resolution, whether the parties are satisfied with the resolution.

Business shares monitoring and evaluation results with interested parties, and uses results to improve the grievance mechanisms.

The business should share monitoring and evaluation results with communities and stakeholders to demonstrate whether the grievance mechanism is functioning, accessible, and effective. It is important for the business to evaluate what the results may indicate regarding the mechanism's effectiveness.

For example, although a high rate of complaints could indicate poor relations between the business and local communities, it could also indicate that the grievance mechanism is functioning as intended and is helping to improve relations between the business and communities. Regardless, the business should use monitoring and evaluation results to adapt and improve the grievance mechanism.

Case Example #9:

Source: IPIECA, Community Grievance Mechanisms in the Oil and Gas Industry 37 (2015).

IPIECA emphasized the importance of monitoring and evaluating the effectiveness and performance of the grievance mechanism through regular and periodic reviews. In addition to the number of grievances received or the percentage resolved businesses should focus on process indicators such as response times and satisfaction rates in the process. Additional ideas on how to monitor and evaluate include:

- *Adding contract clauses to agreements that require monitoring and evaluation.*
- *Including grievance mechanism performance indicators in business objectives and company reporting.*
- *Incorporating grievance management responsibilities and functions into job descriptions and performance measures and assessments.*

Resources

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¹ The Primer is an adaptation of Landesa and Grow Africa's Guide for Company-Based Grievance Mechanisms for Land-Related Disputes.

² FAO, *Voluntary Guidelines on the Governance of Tenure, Fisheries, and Forests in the Context of Food Security* 7-9 (2012) [hereinafter "VGGT"], available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

³ See United States Agency for International Development (USAID), *Operational Guidelines for Responsible Land-Based Investment* 53 (2015) available at https://www.land-links.org/wp-content/uploads/2016/09/USAID_Operational_Guidelines_updated-1.pdf

⁴ See IFC Office of the Compliance Advisor/Ombudsman (CAO), *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* (2008), available at <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf>.

⁵ See *id.*

⁶ See also UN Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights* 5 at 33 (UN Human Rights Council 2011) [hereinafter "UNGP"], available at: <http://www.business-humanrights.org/Documents/UNGGuidingPrinciples>

⁷ See CAO, *supra* note 4, at 51-54.