



Getting to remedy: Negotiating Grievance Mechanisms

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Objectives of the session

This session will seek to share learnings on:

- How affected parties can drive the design of effective grievance mechanisms.
- The role of brands versus workers and manufacturers in dispute resolution
- Achieving remedy aligned with international standards.

Background

What does OECD due diligence guidance say about access to remedy?

The primary objective of due diligence is to prevent harm from occurring to people and the environment through the course of business activity¹. However, prevention is not always feasible and when harm does occur affected parties have the right to remedy. Remedy refers to the substantive outcomes that can counteract, or “make good”, an adverse impact.²

Governments have a duty to protect and to provide avenues for affected parties to access remedy, such as through court systems or tribunals.³ But companies also have a responsibility. Companies

¹ OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, Introduction p. 16.

² OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, Section A.6, Q49, p. 88.

³ Other state-based remedy mechanisms include the [National Contact Points for RBC](#) (NCPs). NCPs are the implementation bodies of the OECD Guidelines for Multinational Enterprises and can be found in all adherent countries to the Guidelines. NCPs receive cases on alleged non-observance of the Guidelines by companies, and seek to facilitate solutions through ‘good offices’ (ranging from informal dialogue to professional mediation) and/or through recommendations.

should “provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed”⁴. What this means in practice is that as part of their due diligence, companies should either have processes in place themselves – such as grievance mechanisms – or cooperate with others⁵ to provide avenues for affected parties to raise complaints and access remedy. Both the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights provide a set of fundamental guidelines for ensuring that processes to enable remedy are effective. Processes should be legitimate, accessible, predictable, equitable, transparent and dialogue-based. In meeting these criteria, the OECD due diligence guidance states that stakeholders should be involved in the “design of operational-level grievance mechanisms” and that remedy “should seek to restore the affected person or persons to the situation they would be in had the harm not occurred (where possible) and be proportionate to the significance and scale of the adverse impact.”⁶ Affected parties should also be included in determining remedy.

Case study: Pilot Dispute Resolution Mechanism for the Myanmar Freedom of Association Guideline

In 2020, ACT facilitated the negotiation and agreement of a framework dispute resolution mechanism (DRM) for the Myanmar Freedom of Association (FOA) Guideline between key stakeholders; an Employer Working Group of ACT brand suppliers and IndustriALL Global Trade Union affiliate Industrial Workers Federation of Myanmar (IWFMM), with technical support from the ILO. The purpose of the DRM is to ensure that disputes over the FOA Guideline’s implementation can be heard and resolved in a fair and predictable manner.

The development of the DRM was guided by the principle that long-term solutions will not be found in a top-down model. The parties on the ground using the mechanism – manufacturers and trade unions – should be driving its design to ensure a legitimate, accessible, predictable and trustworthy process that is embedded in the national context and acknowledged by the government. The ILO’s technical facilitation helped to ensure that the mechanism is aligned with international standards. The role of ACT members is to guarantee the effective implementation of the mechanism and its outcomes by using joint leverage, upholding any agreements reached through the mechanisms with their suppliers and monitoring outcomes.

ACT’s support of dispute resolution in Myanmar recognises the role of national institutions and does nothing to undermine existing national avenues for dispute resolution. The DRM was piloted from September to December 2020. The parties agreed to criteria of the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises hear a limited number of cases during this period in order to adequately test the mechanism. A review process will kick off in January 2021 to assess the DRM against the effectiveness for grievance mechanisms.

⁴ OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, Section 6.2, p. 35.

⁵ This can include cooperating with State-based mechanisms.

⁶ OECD (2017) OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, Section 6.3.

Reference: ACT (2020), *From Covid-19 to Living Wages*, ACT, Berlin. <https://actonlivingwages.com/wp-content/uploads/2020/12/From-COVID-19-to-Living-Wages-ACT-Report-1.pdf>

Case Study: National Monitoring Committees established by H&M and IndustriALL

H&M Group and IndustriALL Global Union have established National Monitoring Committees (NMCs) in Bangladesh, Cambodia, India, Indonesia, Myanmar and Turkey under their global framework agreement (GFA). Together, these six NMCs cover 764,000 workers. NMCs oversee implementation of the GFA and local collaboration to support Well-Functioned Industrial Relations. They also provide a process for dispute resolution. In 2019, 27 issues were raised through the NMC and 22 cases were resolved. Of the cases raised in 2019, 16 concerned discrimination and harassment, 3 covered minimum wage revision; 2 freedom of association and 1 working hours. One of the strengths of the NMCs is that they were designed with trade unions and affected parties are involved in the determination of remedy.

Reference: H&M (2019), Sustainability Performance Report 2019, Stockholm, (30 March 2020).

<https://hmgroupp.com/wp-content/uploads/2020/10/HM-Group-Sustainability-Performance-Report-2019.pdf>

Progress & challenges to date

As with many other aspects of due diligence, the context around Covid-19 has spotlighted the need for effective processes for remedy. During the early periods of the Covid-19 pandemic, information flows were disrupted, decisions were taken quickly and the context changed rapidly. Avenues for workers to raise complaints were essential to enabling business to operate while ensuring that worker's rights are respected.

As the industry rebuilds, legitimate, accessible, predictable, equitable, transparent and dialogue-based avenues for remedy should be amongst the top priorities. However, there are roadblocks to doing this. While the key principles of effective grievance mechanisms are fairly well known, achieving them in practice remains largely unknown. Mechanisms that do exist are often top down and do not draw from existing national platforms or engage affected stakeholders – including manufacturers and workers. For example, in 2020 the Office of the High Commission on Business and Human Rights found that there is a need for “much greater emphasis to the needs, expectations and perspectives of the people for whose use these mechanisms are intended.” When remedy is achieved, affected parties are not always at the negotiating table and remedy does not always build on existing guidance on what constitutes remedy that “makes good” an adverse impact for specific cases.

Discussion questions

Working through two case studies, this session will explore:

- How can affected parties (i.e., employers and workers) drive the design of effective dispute resolution or grievance mechanisms?

- What is the role of brands and retailers in supporting access to remedy in global value chains versus, and how does this play out in practice?
- What are key lessons learned in determining remedy that meet international standards?

For more information

- ACT (2020), From Covid-19 to Living Wages, ACT, Berlin.
<https://actonlivingwages.com/wp-content/uploads/2020/12/From-COVID-19-to-Living-Wages-ACT-Report-1.pdf>
- H&M (2019), Sustainability Performance Report 2019, Stockholm, (30 March 2020).
<https://hmgroup.com/wp-content/uploads/2020/10/HM-Group-Sustainability-Performance-Report-2019.pdf>
- Just Style, Three ways to build back better for garment workers, (7 October 2020),
https://www.just-style.com/comment/three-ways-to-build-back-better-for-garment-workers_id139763.aspx
- OHCHR (2020) Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms,
<https://undocs.org/A/HRC/44/32>

About the partner

About ACT on living wages

ACT is an agreement between 21 global brands and IndustriALL Global Union in pursuit of living wages for workers in textile and garment supply chains. ACT members believe that collective bargaining at industry level, enabled by freedom of association and responsible purchasing practices, is the most realistic pathway to making an impact on wages.