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UN FORUM SERIES – Is dialogue working? We need more dialogue to find out

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Well-functioning operational-level grievance mechanisms are likely to bring significant benefits to companies and communities. As noted in the [commentary](#) to the United Nations Guiding Principles on Business and Human Rights (UNGPs), they “support the identification of adverse human rights impacts,” and make it possible for grievances “to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.” Conversely, “Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.”

Yet measurement of whether an operational-level grievance mechanism delivers sound results in individual cases and prevents future harm – is “effective” under the UNGPs – can be [challenging](#). The UNGPs emphasize that mechanisms must be at the same time “Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights,” and “Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.”

To assess a grievance mechanism, we must apply both an objective standard – do processes and outcomes meet human rights standards? – and a subjective one – do processes and outcomes meet the interests and priorities of the parties as these are defined through the dialogue process?

Measurement of the effectiveness of dialogue-based mechanisms in developed countries often [use](#) judicial mechanisms as the point of departure. Are non-judicial mechanisms faster or more efficient? Do they result in higher party satisfaction or greater commitment to follow through on agreements? Do they allow for more transformative solutions? Are they equally good at following the law and good practice?

Conceptually, the evaluation of non-judicial mechanisms and their outcomes can therefore seem quite straight forward: do parties prefer consent-based mechanisms and their outcomes to the judicial alternative, and why or why not? Such comparative approaches can account for the subjective intents, interests and perceptions of parties in pursuing remedies in the first place, which are otherwise very difficult to control for in evaluation.

The evaluation of non-judicial grievance mechanisms becomes much more difficult – and contentious – in the many places in which there is no meaningful access to judicial remedy. Professor Ruggie [emphasized](#) that, “The worst cases of corporate related human rights harm” occurred “disproportionately in low-income countries; in countries that often had just emerged from or still were in conflict; and in countries where the rule of law was weak and levels of corruption high.”

In such contexts, some may see non-judicial grievance mechanisms that require the consent of the company for their establishment, for agreements on remedies to be reached, and for those agreements to be implemented as another process by which companies avoid full responsibility for rights violations. Parties who think about access to remedy in terms of good practice, lessons learned and progressive improvement may speak at cross purposes with those who think about them in terms of compliance, accountability, verification and enforcement.

A possible meeting point for those suspicious of non-judicial grievance mechanisms and those tasked with their implementation is the reminder that “remedy” and “respect” are inherently intertwined. A well-functioning grievance mechanism is meant to be forwards- as well as backwards-looking.

Agreements of any complexity will almost invariably need to address how commitments made will be verified, and how human rights will be respected in the future. Furthermore, a mechanism should be able to prevent imminent harm, prevent harms from becoming more grave and keep conflict from escalating. Meeting these goals is likely impossible without a robust system to proactively identify and manage potential human rights issues.

Additionally, a large body of [empirical work](#) underlines that “respect” has high importance and independent value for community members. People want to be heard and to influence the decisions that affect their lives. Failure to engage people

on issues of vital importance to them – including the functioning of the mechanism itself – is itself a source of grievance requiring remedy.

An effective grievance system will therefore require monitoring and evaluation on an ongoing basis for:

- its perceived fairness and trustworthiness,
- its attentiveness to the parties' informed consent (including knowledge of their rights),
- its ability to deliver on agreements reached and promises made,
- alignment of the actual impact of remedies with the intentions behind them,
- the fit of the system within broader social, political and conflict dynamics around it, and
- its adaptation to strengths and gaps in extant judicial and non-judicial dispute resolution mechanisms and capabilities.

In brief, is it getting to the right place (substance), and is it getting there in a way appropriate to the context (process)?

Since these cannot be measured without reference to community perspectives, priorities and preferences, we can only measure the effectiveness of a non-judicial grievance mechanism in dialogue with the people for whose benefit the mechanism purports to be established.

Robust, transparent, and inclusive monitoring and evaluation of non-judicial grievance mechanisms – together by companies, communities and other stakeholders, and facilitated by independent third parties – may therefore be the key to the measurement of their effectiveness. To effect respect for human rights consistent with the Guiding Principles, parties should, in dialogue together, broadly consider substance and process, individual and systems-level outcomes, objective data as well as the perceptions of those concerned.

Where such dialogue-based monitoring and evaluation – as well as responsiveness to its findings – is not taking place, we can probably assume that the mechanism is meeting neither the letter nor the spirit of the UNGPs.

Happily, rather than being another onerous requirement, such a dialogue-based monitoring and evaluation process can advance the interests of all the parties. For a company, it means that the mechanism more reliably “meets different parties’ needs, that they will use it in practice, and that there is a shared interest in ensuring its success,” as the [commentary](#) to the UNGPs reminds us. The company helps ensure its license to operate and a stable operating environment. For communities and other stakeholders, robust monitoring and evaluation of a consent-based remedial system and its outcomes in dialogue with the company supports more rigorous thinking, planning and action on the part of all stakeholders; more dependable and rights-compatible outcomes to individual grievances; as well as greater transparency, accountability and legitimacy of the remedy system as a whole.

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