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Access to remedy Practical guidance for companies

A guide for companies to establish and participate in effective UNGP-informed remedy mechanisms for workers who may be adversely impacted by business operations, products, services or relationships in the entirety of their supply chains

Supported by



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1. Executive summary

Modern supply chains are complex, multi-tiered and span the globe. Production typically occurs in developing countries, where labour rights policy may not be sufficiently evolved or enforced, and workers may not be able to freely negotiate improved working conditions with their employers. Workers face numerous rights infringements, including severe human rights violations such as modern slavery, sexual and verbal assaults, workplace accidents, and gender or ethnicity-based discrimination. Establishing clear, effective and transparent systems to provide remedy will help to ensure that companies meet their responsibility to protect workers' rights.

This guidance is intended to help businesses better understand how to both prevent and respond to labour rights abuses. It may also be a helpful resource for trade unions and other labour rights entities, worker-led organisations, NGOs and civil society actors. In particular, the guidance provides practical advice, tools and examples to help businesses develop effective remediation strategies in line with the UNGPs, and establish systems to address labour rights abuses in a constructive manner. This includes developing and supporting mechanisms that enable workers to report concerns and rights abuses, known as Operational Grievance Mechanisms (OGM).

Under the **United Nations Guiding Principles on Business and Human Rights (UNGPs)**:

- I. The state has a duty to **protect** workers from human rights abuses by third parties, including business enterprises. They must also take the necessary steps to ensure that when abuses do occur, victims have access to effective judicial and non-judicial state-based grievance mechanisms.
- II. Businesses have a fundamental responsibility to ensure **respect** for human rights

throughout their supply chain. This includes the duty to avoid infringing on the rights of others, to address adverse impacts linked to business operations, products or services, and to provide effective remedy in cases where workers have suffered adverse impacts.

- III. States and businesses have a collective responsibility to ensure that workers have **access to effective remedy** in relation to rights infringements or abuses of a judicial and non-judicial nature. Non-state-based

grievance mechanisms, such as those within the workplace, should complement state-based mechanisms.

The UNGPs require companies to take steps to respect workers' human rights, particularly through policies, mitigation of risks and due diligence. While it is the state's responsibility to uphold human rights within its jurisdictions, both SMEs and multi-national companies operating in complex environments benefit from robust grievance and remediation strategies to promote employee wellbeing and productivity.



This guidance provides an overview of the background and context, and explains key components of the mechanisms that allow workers to submit complaints and enable businesses (both brands and retailers and suppliers) to provide remedy. It covers the following stages:

- **Taking responsibility:** Ensuring senior level buy-in within the company; committing to provide remedy within the supply chain and establishing a remediation policy and strategy.
- **Providing remedy** in supply chain settings where labour rights abuses have already occurred.
- **Conducting due diligence on labour rights risks and remedy:** Identifying and understanding the nature of human rights risks in the supply chain; determining strengths and weaknesses of the state and other mechanisms that workers can access that could be complemented, supported or developed.
- **Developing a corporate remedy strategy and supporting effective operational grievance mechanisms:** Detailing and implementing key components to ensure transparency, efficiency and fairness.
- **Evaluation and continuous improvement:** Establishing and committing to evaluating processes, impacts and outcomes with workers; implementing improvements as needed.

Advantages of enhancing access to remedy in supply chains:

- Demonstrating corporate responsibility for the welfare of workers in supply chains
- Early identification and monitoring of human rights risks
- Early resolution of disputes
- Meet growing expectations from diverse stakeholders
- Building trust and providing suppliers with certainty around how you will respond.

Understanding human rights risks in the supply chain

Human rights due diligence refers to the actions taken by a company to identify and act on actual and potential human rights risks and negative impacts for workers within its operations and supply chains.

When analysing the impact of a business with a human rights lens, we recommend understanding the level of risk posed by suppliers' practices and likelihood of risks occurring, and creating a **priority list of severe human rights impacts**. Assess risks to environmental, health and community rights.

For further information, see ETI's Guidance on Human Rights Due Diligence and the guide to "Doing Business with Respect for Human Rights".

Human rights due diligence requires worker grievances to be addressed early and remediated directly. Companies should establish explicit and progressive policies that address the following risks, and allow workers to make complaints relating to infringements of their rights, as identified in the two following codes:

ETI Base Code

- Employment is freely chosen
- Freedom of association and the right to collective bargaining are respected
- Working conditions are safe and hygienic
- Child labour shall not be used
- Living wages are paid
- Working hours are not excessive
- No discrimination is practised
- Regular employment is provided
- No harsh or inhumane treatment is allowed

ILO Indicators of Forced Labour

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

A. Definitions

Remedy: When a brand or retailer's operations have caused or contributed to human rights abuses, however unintentionally, the company is responsible for immediately providing or contributing to remedy. Remedy can cover a range of actions including: acknowledgement and apology; restitution and rehabilitation; management-level changes; financial compensation; and, the implementation of measures that prevent future occurrences. Remedy can take place either through judicial or non-judicial processes. Additionally, companies should respect state-based justice systems.

Operational grievance mechanism (OGM): An OGM is a complaint process that workers can

use to raise concerns about negative impacts they may have suffered as a result of certain business practices. Workers should be made aware of effective and accessible grievance mechanisms at their disposal. These mechanisms may be administered by businesses, trade unions or multiple stakeholders working collectively, through trusted, independent third parties or the state. According to the UNGPs, OGMs perform two key functions: they help companies to better identify potential human rights risks, and enable companies and their suppliers to address and remediate grievances, while ensuring that workers do not become subject to multiple rights abuses.

The role of the state in OGMs is primarily to address cases of labour

law violations and criminal and civil offences. The role of trade unions is first and foremost as advocates and representatives. When representing workers in their own workplace, unions will likely have the best understanding of what is involved in the grievance and how to resolve the issue at a local level.

UNGP 29: To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities that may be adversely impacted.



2. Overall guidance



In order to provide effective remedy for workers in your supply chain whose rights may be at risk, there are three key stages to consider. This document explains how to:

- a) Conduct research on what components are needed to establish an effective corporate remedy strategy.
- b) Establish a process to provide remedy where a rights infringement has occurred.
- c) Design, develop or contribute to effective corporate remedy strategies and operational level grievance mechanisms in supply chain settings.



3. Ensuring access to remedy in supply chains

The steps detailed in this section will help you to develop a corporate remedy strategy and ensure the provision of remedy where workers have suffered negative impacts.

STEP 1. Take responsibility: policy and internal leadership

Establishing a corporate remedy strategy takes time and requires resources, partnerships and a strong corporate-level commitment to taking responsibility and investing in the wellbeing of workers throughout the supply chain. It may also involve helping suppliers to build their capacity to operate in line with ethical standards.

Many of the issues faced by workers are day-to-day problems, particularly where they are not re-occurring problems (such as timely payment of wages, or quality of food in a staff canteen). These can be handled to the worker's satisfaction through effective human resources (HR) systems. Indeed, most labour issues should be resolved at the worksite level, promoting worker wellbeing, while maintaining productivity. More serious issues will test your remedial strategy and may require the involvement of multiple stakeholders, including local criminal and civil justice systems. It is therefore

ASOS child labour, remediation and young worker policy:

If child workers are found in the ASOS supply chain, ASOS will seek to work in partnership with the supplier and appropriately qualified organisations (such as local NGOs) to develop a responsible solution that is in the best long-term interests of the children. Such programmes will be based on available best practice and will seek to meet the educational, social and economic needs of the children concerned.

important to ensure that your suppliers are familiar with, committed to, and trained on your code of conduct and ethical policies or requirements. We also recommend helping to build suppliers' capacity to create effective HR systems capable of handling all levels of grievances — with clear escalation protocols, as appropriate. In particular, with women typically lacking

access to remedy mechanisms due to discriminatory policies and behaviours, it is vital that suppliers understand how to remedy women's rights violations. We recommend securing high-level executive commitments and resources to work with suppliers on these issues at the production level from the outset of your business relationship.

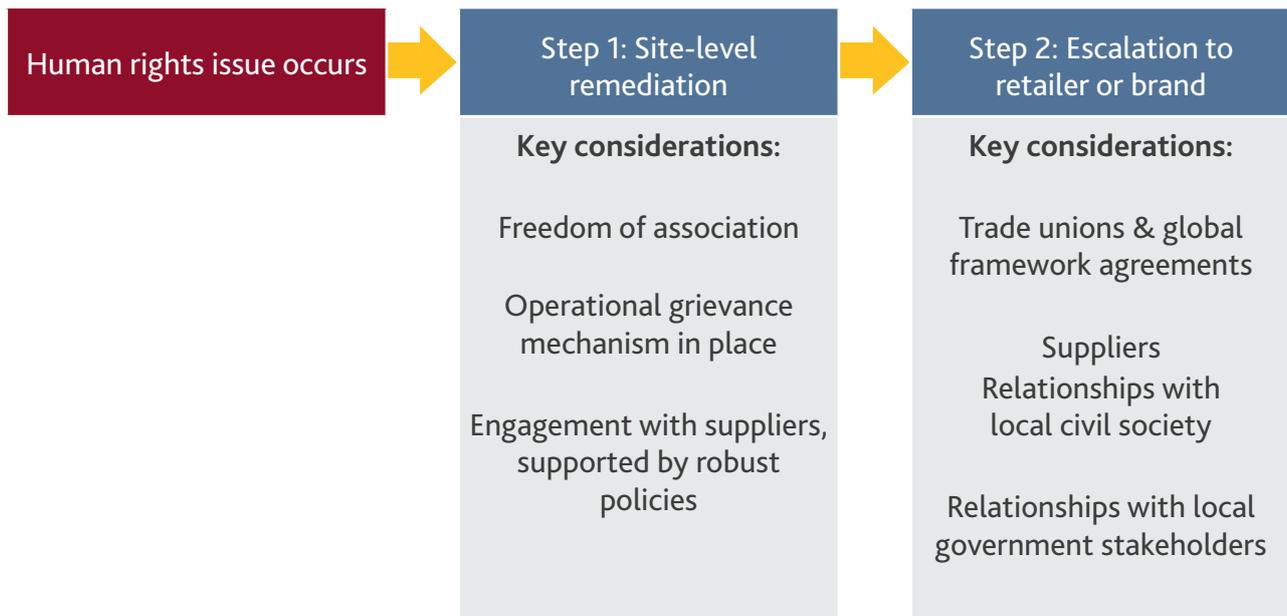
Patagonia supplier workplace code of conduct, Freedom of association and collective bargaining clause:

Patagonia seeks at all times to exercise the best possible practices for the respectful and ethical treatment of workers and promote sustainable conditions in which workers earn fair wages in safe and healthy workplaces.

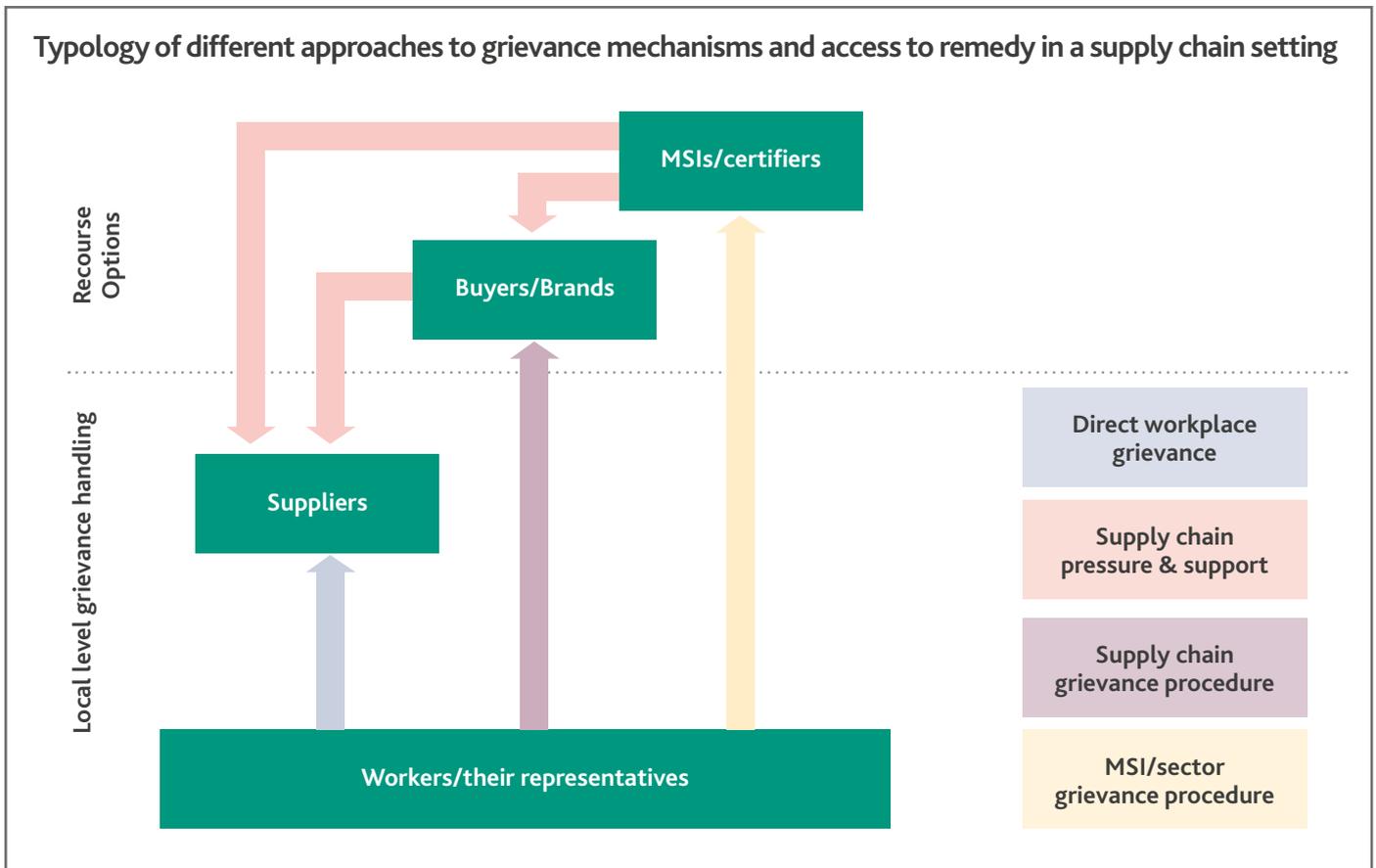
Workers must be free to join organisations of their own choice. Suppliers shall recognise and respect the right of employees to freedom of association and collective bargaining. All suppliers must develop and fully implement effective grievance mechanisms which resolve internal industrial disputes, employee complaints, and ensure effective, respectful and transparent communication between employees, their representatives and management (ILO Conventions 87, 98 and 135).

Establishing roles and responsibilities

Here, we detail the structure and scope of different approaches to effective site-level remedy, with escalation if required:



- **Human rights issue occurs:** Should a worker experience an infringement of their rights in the workplace, they should be able to access site-level mechanisms to raise their concern and obtain remedy rapidly, with a process in place to escalate the concern to a corporate level, as appropriate.
- **Site-level remediation:** An effective site-level remedy strategy requires an accessible grievance mechanism for workers as well as robust policies for suppliers. Importantly, freedom of association can result in fewer risks to workers, and agreed mechanisms through which they gain access to remedial processes.
- **Corporate escalation:** Brands should develop an escalation process that allows them to learn of both serious complaints and instances where the issue cannot be resolved at site level. Brands should also establish a process for investigating the complaint, or where independent mediators or arbitration is used, to resolve the issue. For example, corporations can enter into an agreement with a trade union that establishes universal standards for suppliers, as well as relationships with civil society and government stakeholders. Collective bargaining agreements may include a grievance mechanism.



Research commissioned by ETI detailed the structure and scope of different approaches to delivering effective remedy. The resolution of issues relating to workers’ rights should take place primarily at a local level. Where local mechanisms are absent or fail to resolve a grievance in an appropriate way, supply chain grievances should be raised directly through mechanisms operated by buyers, multi-stakeholder initiatives (MSIs) or other initiatives. These organisations may work with suppliers to help them handle and resolve staff complaints, or they may require suppliers to establish formal workplace grievance mechanisms.

Securing executive-level commitment is critical to promoting a proactive approach to addressing labour rights issues **throughout your supply chain**, providing meaningful remedy and ensuring access to an effective operational grievance mechanism.



STEP 2. Providing remedy

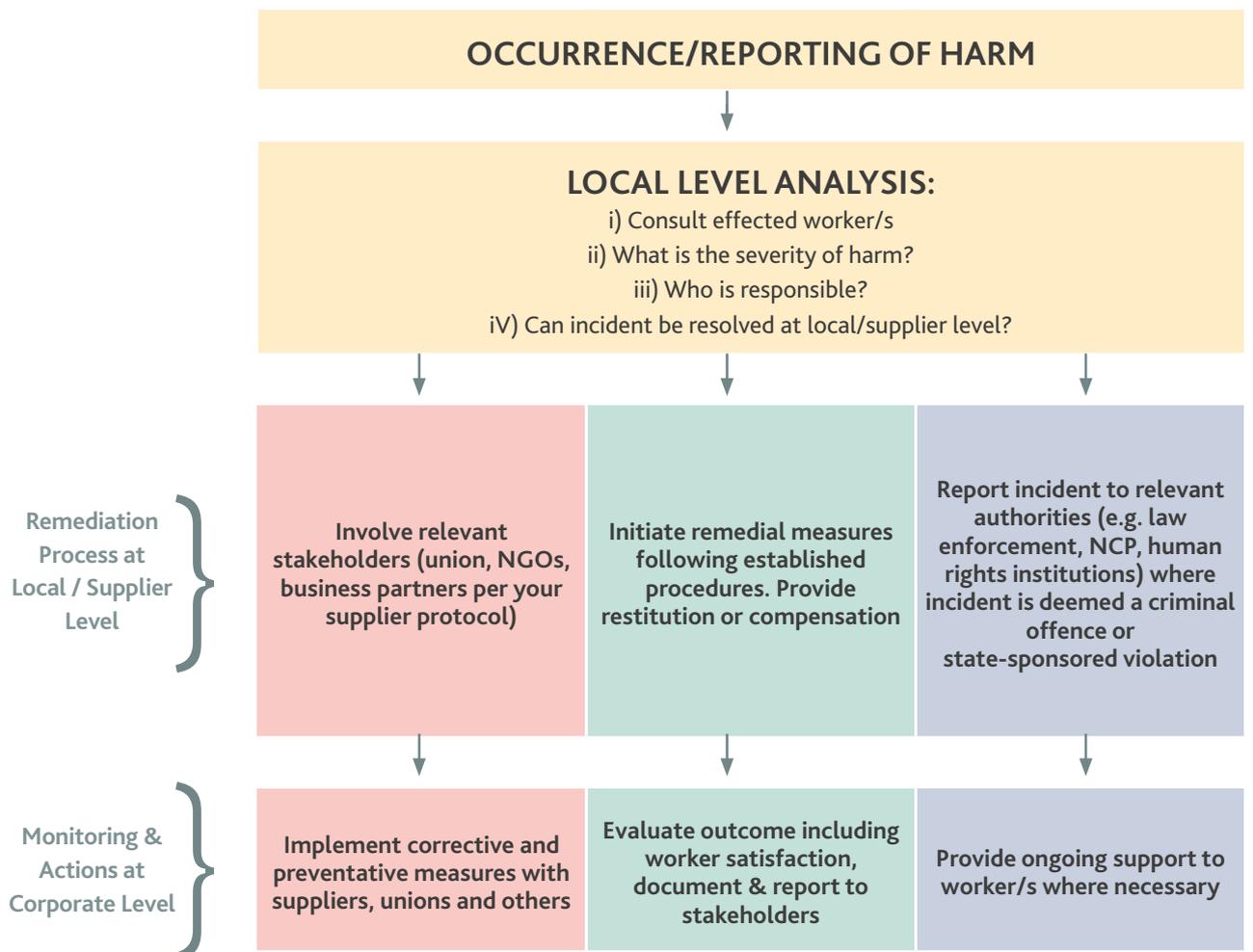
When you uncover instances of having unintentionally caused or contributed to an infringement of workers’ rights, we recommend taking action to ensure that timely and effective remedy is provided to all those affected. Addressing instances of human rights

violations in your supply chain is both a moral imperative and plays an important role in helping to boost productivity and quality, build supply chain resilience and ensure ongoing security of supply.

It is critical to understand the nature and severity of the incident and develop an appropriate response, including by engaging

with affected workers and others. The first steps should always include investigating the case, identifying what the affected worker/s needs and wants, and responding pro-actively with the relevant partners. The following process provides a step-by-step guide to responding appropriately:

Figure 1: Remedy process



Understanding the difference between “worker voice”, worker management communication and grievance mechanisms

Understanding workers’ needs and opinions is a central component of raising ethical performance in your supplies’ factories. The same applies in providing appropriate access to remedy. So how does a grievance mechanism differ from other means of communicating with workers?

- “Worker voice” is a term given to the concept of soliciting workers’ opinions on labour rights issues. Companies, suppliers or third parties (such as NGOs) may seek workers’ feedback through anonymous online surveys, dedicated telephone lines or mobile devices.
- Worker management communication refers to any type of routine notices and updates that a factory or supplier might provide to its workers on HR or productivity issues (e.g. workplace updates, HR policies etc).
- In contrast, a grievance mechanism is a standardised process (either state-based or non-state-based) through which workers can submit complaints or concerns and seek remediation.

Providing remedy in supply chain settings

These examples highlight instances of brands acting to provide financial compensation and other types of remedy to workers and their families following serious human rights abuses and incidents in global supply chains.

Collaborating to improve wage payments to farm workers in Zimbabwe

In 2017-18, a group of ETI member brands sourcing from Zimbabwe took action to provide compensation to 1,650 farm labourers for unpaid wages. Brands were alerted through an anonymous tip-off alleging modern slavery, and commissioned an on-site investigation through local NGO, Partner Africa, which sought to:

- Understand the root cause of the issue
- Determine the scale of the issue
- Determine whether all workers were currently being paid
- Quantify the exact number of workers impacted by unpaid wages (including seasonal and permanent workers, and managers)
- Quantify the exact amount owed to the workers
- Prepare a detailed repayment plan with corresponding priorities.

ETI and Partner Africa subsequently established a good will fund, to which brands contributed. As of July 2018, 96% of workers had received reimbursement of wages through financial compensation. Partner Africa also conducted on-site visits to verify payment of wages and to interview workers about the collection process. Together with retailers and importers, it also took action to help ensure that farm workers across Zimbabwe would be paid appropriately on an ongoing basis. In particular, the group designs and implements solutions to prevent and manage wage payment delays and non-payment of wages.



Compensating factory fire victims in Pakistan

In September 2012, 260 workers lost their lives and a further 32 were injured at the Baldia Factory in Karachi, Pakistan. The supplier's principle customer, German textile business KIK Textilien, provided US\$1 million in immediate relief for victims, and a further US \$5.15 million as long-term compensation.

- KIK established an oversight committee comprising representatives of the victims' families, Pakistan's Ministry of Labour, the provincial Employees Social Security Institution, and local labour rights organisations.
- The Pakistan Institute of Labour Education and Research (PILER), the National Trade Union Federation (NTUF) and the ILO played key roles in finalising arrangements for the distribution of long-term compensation.
- In 2017, KiK launched an initiative to improve fire and building safety among its Pakistani suppliers. KiKfunded inspections of its suppliers' factories, conducted by experts, in order to provide its suppliers with an accurate view on how their factories perform in relation to internationally recognised safety standards.

This is one of the first instances globally of a compensation system established under ILO Convention 121. Forensic evidence submitted to a German court in a claim brought against KIK by victims' relatives suggests that minor fire safety improvements, such as a few more exits, accessible stairways and clearly signposted escape routes, may have saved many of the lives lost.

Statements published in-line with the requirements of the Modern Slavery Act 2015 (UK) provide an opportunity to set out corporate commitments and actions taken by business to ensure remedy has been provided where harm has occurred. Documenting cases here improves transparency in corporate approaches to dealing with modern slavery and violations occurring in international supply chains.

Risk and steps taken

John Lewis Partnership Corporate Responsibility Report 2017/2018 - Tackling Modern Slavery

“Our due diligence processes help to uncover areas in our supply chains where the risks are greatest. However, modern slavery involves criminal activity and the signs can often be difficult to identify, so audits can only get us so far. Therefore, we’re going beyond a traditional auditing compliance approach by improving our understanding of where the risks are greatest and prioritising our activity accordingly.

A Waitrose supplier of fresh produce identified a case of vulnerable workers being exploited by a third party. The supplier’s processes were robust and allowed a worker to identify the situation. It is now being handled by the Gangmasters Labour Abuse Authority and local police. Where incidents like this occur, we work collaboratively with the supplier and external experts to address the situation and provide remedy.”

Excerpt from Tesco Modern Slavery Statement 2017/18

“One issue we monitor particularly closely in key sourcing countries is that salaries are paid on time and in full. Through our own checks, we occasionally find cases where this has not been the case. Where we identify a shortfall in payment, we require suppliers to pay back any avoided wages. In the rare occurrence that suppliers do not agree, we look to exit our relationship with them in a responsible manner. In 2017/18 we identified 142 cases of concern involving 116 sites. 7,506 workers received a total of US\$760,332 as a result of Tesco’s intervention.”

Steps to providing remedy for workers in cases of forced labour:

- Report the matter to the police, but ensure that this does not put workers' safety at risk and that workers will not be subjected to further punishment or ramifications if the police are known to be corrupt or in alliance with the perpetrators of the crime.
- Provide or facilitate workers' access to compensation (for lost earnings, unpaid wages as well as for pain and suffering).
- Support affected workers in finding alternative employment.
- Take necessary steps to prevent forced labour from reoccurring.

For further advice, see ETI Base Code on Modern Slavery.

➤ <https://ethicaltrade.org/resources/base-code-guidance-modern-slavery>

Steps to providing effective remedy to child labourers:

- Ensure affected children are safe, protected from victimisation or reprisal
- Consult with the child and his/her family to understand their wishes and needs
- Working with your supplier, agree a process and next steps to support the child/children involved
- Compensate for loss of income and secure supplier's commitment for remediation, including a stipend, accommodation and food while commissioning an investigation
- Offer the child's job to a qualified adult member of the family
- Enable the child to attend school and ensure payment of fees
- Conduct a detailed investigation with appropriate child labour and protection expertise
- Establish a monitoring mechanism and conduct regular reviews of progress.

For further advice, see ETI's Guidance on Child Labour.

➤ <https://ethicaltrade.org/resources/base-code-guidance-child-labour>



Challenges for migrant workers in accessing remedy

Most migrant workers who encounter exploitative recruitment or labour conditions are unable to access remedies. A number of the barriers could potentially be resolved through digitalising human resources and pay systems. For instance, many migrants are unable to meet evidentiary requirements to succeed in a wage claim or recover funds paid to a fraudulent recruiter because they lack records of their hours worked and wages received, or they possess fraudulent or forged documents. Private legal assistance is costly and they lack access to sufficient legal aid. Migrant workers also often lack information about their rights and how to access remedial processes and legal or paralegal services. For many, remedial forums are physically inaccessible because they are located in capital cities, far from workers' homes or worksites.

For more information on digital tools that facilitate workers' access to remedy, see:

➤ *Transformative Technology for Migrant Workers, Migrant Workers Justice Initiative (2018)*

STEP 3: Assess state-based remedy and other options

➤ Consider judicial vs. non-judicial mechanisms

Effective rule of law and a culture of enforcement of local labour laws can assist companies in upholding worker rights. A robust system of labour and consumer law can provide certain assurances to companies that their suppliers and contractors are respecting workers' human rights, particularly those who are most vulnerable to exploitation

State-based non-judicial mechanisms may include:

- Labour inspectorate
- Civil law-based protections
- Regulatory regimes
- Consumer protections

and rights abuses. The state and its institutions should act as a watchdog (although this does not always occur in reality).

The state is the paramount provider of remedy — that is, its national laws, its judicial system and its labour inspectorate should act to uphold human rights principles in its jurisdiction, as well as enforce laws to punish the perpetrators (or provide avenues for civil remedy). However, jurisdictions vary in creating and applying criminal laws and labour provisions. Furthermore, corruption and inefficient justice systems can be a further barrier for workers in seeking remedy. ***Regardless of the context, companies should ensure that their own remedial systems complement and do not undermine local judicial mechanisms. Nor should they undermine the role of legitimate***

trade unions in addressing labour-related disputes, or preclude access to judicial or other non-judicial grievance mechanisms.

➤ Conduct an analysis

The first step in developing a corporate remedy strategy is to assess the state's ability, capacity and inclination to prevent and redress human and labour rights violations of workers in its jurisdiction. This may take the form of: research on laws and policies; engagement with local stakeholders, experts and workers to determine how, if and to whom those laws apply; mapping of existing state-based processes; and a determination of gaps. We recommend considering the following questions when mapping state-based remedy and worker justice systems to determine where and how to create your approach to remedy.

Figure 2: Mapping State Based Remedy Systems:

Does the State protect?	Who does the State protect?	Are State protections accessible?	How do they protect?
What labor and human rights related protections does the State provide?	Do these protections extend to migrant workers, women, low-skill and low-wage workers, ethnic minorities, undocumented or otherwise marginalised groups?	With which government entities and at what levels, do worker rights laws apply (e.g. labor ministries, municipal corporations, parliamentary commissions, etc.)? Are these rights published and accessible?	Are remedy and justice system based on judicial or non-judicial systems? How effective are each?
Is there a high degree of corruption that inhibits workers from accessing justice?	What are the labor market dynamics in terms of employment rates, wage provision and unionisation?	Which institutions bear responsibility for enforcing labor laws and human rights? Are they empowered to do so? Are they accessible to workers? How do they enforce these laws?	Are there certain sectors that tend to hire migrant workers? What working, living and social conditions do migrant workers experience?
Which sectors are more prone to human rights risks than others?	Are there any groups of workers who lack protections (in practice), or industries that are less regulated?	What relationships do suppliers have with State law and labor enforcement entities?	What are the processes employed for workers to access State based remedy systems? Do these vary by worker demographic?

Dark blue boxes map core business related considerations



► Prioritise based on risk to workers

You may be sourcing from dozens if not hundreds of locations around the globe. Conducting an in-depth analysis for each location is resource-intensive, and in many cases the data may simply not be readily available.

ETI recommends that you prioritise high-risk countries, where state systems appear to be particularly weak. Research the questions posed in Figure 2 for those regions. You could also draw on the resources below.



Best practice: How does my company navigate areas with governance challenges and weak rule of law?

Rather than pulling away from an area with weak rule of law, ETI recommends that you use your influence with local government representatives to improve justice systems, highlighting the fact that improvements are likely to increase productivity and tax revenues.

- Partner with other businesses, NGOs and local institutions working to improve the criminal and civil justice system.
- Collect and share data on corruption and help develop whistle-blower protections for workers who help identify corrupt officials.
- Act as an advocate for any workers experiencing related issues through the local state-based system.
- If in your initial due diligence, you assess the area to be extremely weak in its upholding of labour laws, you (and your peer companies) may consider withholding your investment until the local government invests in more robust justice systems and demonstrates improvement.

- Responsible Sourcing Tool <https://www.responsiblesourcingttool.org/>
- Trafficking Risks in Sub Saharan African Supply Chains <https://www.verite.org/africa/>
- World Justice Project Rule of Law Index <http://data.worldjusticeproject.org/>
- Human Rights Measurement Initiative <https://humanrightsmmeasurement.org/>
- Transparency International Corruption Perception Index https://www.transparency.org/news/feature/corruption_perceptions_index_2017
- Freedom in the World, Freedom House <https://freedomhouse.org/report/freedom-world/freedom-world-2018>
- US DOL List of Goods Produced with Child Labour or Forced Labour <https://www.dol.gov/ilab/reports/child-labour/list-of-goods/>
- US State Department Country Reports on Human Rights Practices <https://www.state.gov/j/drl/rls/hrrpt/>
- TUC Global Rights Index <https://www.ituc-csi.org/ituc-global-rights-index-2018>
- Gender Inequality Index - UNDP <http://hdr.undp.org/en/composite/GII>

National Contact Points for the OECD Guidelines for Multinational Enterprises

Governments adhering to the OECD Guidelines for Multinational Enterprises are required to set up a National Contact Point (NCP) whose main role is to further the effectiveness of the Guidelines by handling enquiries, and contributing to the resolution of issues that may arise from the alleged non-observance in specific instances. NCPs provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines.

For more information, see:

➤ <http://www.oecd.org/investment/mne/ncps.htm>

STEP 4: Develop a corporate remedy strategy

An effective remedy strategy helps to prevent incidences that would require remedy, address issues rapidly and constructively, and ensure that the right stakeholders are involved.

Importantly, providing remedy in the event of human rights abuses and negative impacts for workers is a distinctive component of human rights due diligence. It is

Establishing an effective remedy strategy takes time, requires research, on-the-ground work and firm commitments from internal and external stakeholders.

a critical process that effective due diligence should support and enable.

The research you conduct into state capacities and the effectiveness of existing grievance mechanisms should feed directly into the development of your remedy strategy. However, it should go beyond risk assessment to focus on protecting workers' rights by promoting effective industrial relations and developing constructive supplier relationships.

Best practice indicates that OGMs are generally most effective when designed and administered by companies in partnership with multiple relevant stakeholders:

- Operating at the work-site level through multi-stakeholder initiatives that enable workers

ETI corporate member:

"We have invested significant time and thought into the planning of our remediation policies and activities. We are continuously canvassing the views and opinions of local and international stakeholders; this has been a central element in the design of a number of our policies and processes."

to raise a concern or complaint directly with their employer.

- Setting corporate standards that extend throughout a supply chain. Standards are set by companies, outlined through Global Framework Agreements with unions and applied locally.

Figure 3: Key Components of Remedy Strategy

Suggested components: The supplier is expected to have a defined grievance policy for their workers and for community members impacted by business operations that shall include: a defined process for receiving, assessing, investigating and resolving grievances; mechanisms that are objectively legitimate, accessible, predictable, equitable, transparent and rights-compatible; mechanisms that provide information for continuous learning by the company; and, be based on engagement and dialogue with the affected persons / groups.

The supplier shall also work with its own suppliers and co-operate in the provision of remedy for workers negatively impacted by operations within the supply chain.

Key components of remedy provision:	
Systemic:	Worker focused:
Mature system of industrial relations	Restitution, financial and nonfinancial for any harms done
Levels of responsibility and establishing contact points in the supply chain	Compensation, including unpaid or underpaid wages due
Codes of conduct that are enforceable and enforced	Rehabilitation
Valuing workers by involving them or their representatives in the design of the remedy system	Satisfaction, those wronged should feel that the wrong was made right
Non-repetition, to ensure systems that prevent further rights violations from occurring	

➤ **Stages of the multi-stakeholder approach**

The following steps and corresponding questions will help to guide your approach to developing your remedy strategy:





Figure 4: Recommended steps to create a corporate remedy strategy

STEPS TO DEVELOPING A REMEDIATION STRATEGY					
	STEP 1: Assess risks & existing remedy mechanisms	STEP 2: Identify leverage, responsibilities & gaps	STEP 3: Establish remediation strategy	STEP 4: Monitor, review, report & improve	STEP 5: Advocacy
THE TASKS	1. Conduct a Rule of Law landscape analysis and determine labor related access to justice issues	1. Survey workers on perceived & preferred access to justice system & grievance mechanisms	1. Secure executive level commitment for resolving rights violations in the supply chain & establish clear policies & a supplier code of conduct	1. Consult workers & their representatives to assess if grievance processes & outcomes are acceptable	1. Work jointly with other companies, donors, NGOs, trade unions & worker groups to improve State & non-state based victim support programmes
	2. Map existing justice system remediation systems	2. Map out process by which workers in your supply chain currently access State or other remediation processes	2. Publish a policy commitment to freedom of association & secure supplier buy-in for it	2. Continuously monitor worker views & satisfaction with remedy systems, including state-based systems	2. Partner with other companies & use collective leverage to engage with States to improve treatment of migrant workers & bolster labour rights
	3. Consult with trade unions & civil society orgs to inform review & to determine corruption levels that hinder labor rights	3. Determine current scope & effectiveness of supplier provided mechanisms	3. Define key components of remediation strategy including policies & principles (access, efficiency, transparency, reliability etc)	3. Survey internal & external stakeholders to determine efficacy	3. Join collaborative advocacy initiatives aimed at addressing rights violations - e.g. recruitment fees
	4. Identify & engage local & regional stakeholders from whom you need support	4. Determine desired scope required for company's mechanisms	4. Incorporate all components (due diligence, audits, remediation, verification, financial reserves, grievance mechanisms) into strategy	4. Keep centralised record of complaints & outcomes	4. Engage with local governments to improve processes, procedures & state based remedy mechanisms
	5. Dialog with existing industry stakeholders to assess how labor risks are handled	5. Ensure procurement & supplier contracts set out how workers can pursue remedy	5. Adopt or develop specific mechanisms that factor in additional vulnerabilities (e.g. migrant workers)	5. Assess if appropriate resources have been budgeted to provide remedy in case a serious breach of labour rights occurs in its supply chain	5. Use data collected from internal remedy systems to support advocacy efforts
	6. Compile research, through meta-analysis &/or primary source interviews with workers to determine issues faced by workers	6. Assess suppliers own grievance mechanisms & procedures for providing remedy	6. Develop protections for whistleblowers & develop methods (tech enabled or otherwise) to ensure workers can submit complaints anonymously through a trusted third party	6. Create feedback loops to integrate key lessons learned	
	7. Prioritise & focus on workers most at risk of harm		7. Identify limitations & develop plans to address them	7. Report findings of evaluations to internal & external stakeholders & company leadership	
		8. Establish Standard Operating Procedure or Service Level Agreement with suppliers on how to respond to different types of incidence /complaint			
		9. Establish schedule for internal & external follow-up & reporting			
		10. Determine methods to communicate process with workers			
WHAT QUESTIONS TO ASK:	Are unions functional & able to represent workers?	How will company mechanisms complement or support State based systems?	What type of remedy does the worker seek? What type of remedy is appropriate for particular situations?	Do all stakeholders engaged in the process have defined roles & responsibilities? Are they empowered to execute their part of the strategy?	Has advocacy worked in this particular context in the past? What were the key pressure points that enabled success?
	Do the justice systems adequately address labor & other related issues?	What processes will we employ to ensure that company mechanisms will not undermine State based systems?	Has gender been considered in program design? Do women have access to women arbitrators, advocates, etc.?	Is there an established channel where all complaints are being recorded & addressed?	Who are the key influencers to engage?
	Are existing State based remediation laws & judicial processes adequate?	What risks exists & how will they be addressed?	Were there consultations with workers, victims, unions, civil society & other worker representatives?	Have clear KPIs been established & are they being met?	Are they addressing root causes and & are they focused on long term change in the supply chain?
	How do your suppliers relate to local law enforcement & labor inspectorates?	If the State preference is for mediation of labor disputes, are mediators independent or susceptible to corruption?	Does the strategy incorporate preferred methods of workers to access remedial systems?	Quantitative: How many complainants accessed the mechanisms?	
	What is the overall political & economic context of the country as it pertains to upholding workers' rights?	Are labor inspectors & mediators perceived as neutral & impartial?	Can technology applications be incorporated to increase access & transparency? Can technology be used to support on the ground programming needed?	Quantitative: Were complainants rights upheld?	
	What are the needs, vulnerabilities, & barriers to justice that workers in your supply chains face & what remedy options are available?	Are State based or other third party remedial mechanisms accessible, transparent & efficient?	Is outreach to advertise the remediation program conducted in the native language of workers?	Was the plan established to address barriers implemented?	
		Are workers able to access remediation programs, & program officers in their native language?			

4. Developing Operational Grievance Mechanisms (OGM)

A large enterprise, or one with significant human rights risks, may choose to set up its own grievance mechanism. However, most businesses should consider participating in and supporting a grievance mechanism provided by an external, independent organisation, in order to promote the early identification and remedy of human rights abuses and negative impacts for workers. OGMs can be implemented by trade unions, multi-stakeholder initiatives or NGOs, in partnership with local communities, for example.

A. Considering gender equality in designing OGMs

Gender is a fundamental consideration when developing OGMs. Grievance mechanisms designed to address gender equality issues are central to ensuring that women workers are able to raise concerns safely and confidentially. Anonymity and/or confidentiality are particularly important in relation to sensitive issues such as violence and sexual harassment, and women's reproductive health. It is important to recognise that building trust, particularly among women workers, may take some time. Mechanisms should allow workers to submit complaints regarding the gender dimensions of their experiences in the workplace. Suppliers must disclose operational protocols such as the skills and gender composition of their workforce, and communicate the successful resolution of complaints to their employees/brands.

Helping women floriculture workers gain access to remedy in Kenya

Women represent an estimated 75% of the workforce in the Kenyan floriculture sector. Social audits were failing to detect human rights abuses among women workers, including sexual harassment perpetrated by male supervisors. Such abuses were identified thanks to the creation of gender committees, an effective forum for raising grievances. An innovative supervisors' training programme was also rolled out in collaboration with the ETI, specifically aimed at tackling gender discrimination in the workplace. Thanks to the grievance programmes, as well a decisive product upgrading, the industry underwent a crucial switch from temporary to permanent contracts, which meant that workers were able to join a trade union, giving them vital access to another channel to raise grievances.

Source: Exploring elements of effective remedy: focus on women's rights, presented at the 2017 UN Forum on Business and Human Rights.

Key issues to consider:

- Inadequate legal protections can lead to inequalities in the workplace. Issues that may be prevalent include: anti-discrimination principles that are not adequately reflected in national legislation; existence of discriminatory laws; entrenched cultural perceptions of gender roles reflected in workplace culture, access to employment, gender pay gaps, underrepresentation of women in decision-making bodies and harassment. Mechanisms must be designed to respond to these realities.
- Businesses should assess the specific barriers faced by women and girls in terms of access to effective remedy through judicial and non-judicial mechanisms. Consider what solutions and approaches have been employed to address these obstacles.

Tracking complaints according to gender is important and can help to evaluate the effectiveness of grievance mechanisms.

B. Guidance from the UN Guiding Principles on Business and Human Rights

The UNGPs define OGMs as being "accessible directly to individuals and communities that may be adversely impacted by a business enterprise".

The UNGPs list the following as key principles of any system designed to provide remedy: Legitimacy, accessibility, predictability, rights-compatibility, transparency, based on dialogue and engagement with stakeholders, and one that fosters continuous learning and evaluation. CSR Europe have set out potential process requirements that align with the UNGP principles for an effective OGM.

UNGP effectiveness criteria

Principle	UNGP Definition	Process Requirement
1. Legitimate	Enabling trust from stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes.	1.1 Establish a defined process to address grievances with clear lines of accountability.
		1.2 Conduct consultations with key stakeholders for the design, revision and monitoring of the mechanism.
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.	2.1 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; e.g. using the audience's native language.
		2.2 Address the barriers workers may have in accessing the mechanism by providing multiple access points that are well adapted to the operational context.
		2.3 Provide support for those who may face particular barriers in accessing the mechanism, such as women.
		2.4 Make an explicit commitment to protect the user from reprisals.
3. Predictable	Providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process, potential outcomes, and means of monitoring implementation.	3.1 Establish both at headquarter and operational levels a defined process with clear roles, responsibilities, procedures and process steps including monitoring implementation.
		3.2 Establish a clear timeframe for each step or stage of the process.
		3.3 Define the types of complaints that fall under the scope of the mechanism as well as the available outcomes.
4. Equitable	Seeking to ensure that aggrieved parties have access to the requisite sources of information, advice and expertise to engage in a grievance process on fair, informed and respectful terms.	Be open to share relevant information in a way that can be easily understood.
		Facilitate the means through which the affected stakeholders can access advice or expertise.
5. Transparent	Keeping parties involved in 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.	Keep users of the mechanism informed throughout the process.
		Report internally and externally on the performance of the mechanism.
6. Rights-compatible	Ensuring that outcomes and remedies respect internationally recognised human rights.	Assess any complaint on its possible human rights impact.
		Ensure that outcomes do not infringe on the rights of the complainant.
		Adopt the higher standard in case of conflict between national legislation and international norms on human rights.
7. Source of continuous learning	Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and rights abuses.	Keep a centralised record of complaints.
		Monitor and assess the performance of the mechanism on a regular basis.
		Integrate key lessons learnt.
8. 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.	Establish a system for feedback collection from users.
		Prioritise engagement and dialogue as the principle means to address and resolve.

Source: 'Assessing the effectiveness of company grievance mechanisms', CSR Europe, for more criteria and process requirements for effective company grievance mechanisms. (Dec 2013). <https://www.csreurope.org/sites/default/files/Report%20Summary-%20Management%20of%20Complaints%20assessment-%20final%20Dec%202013.pdf>

Key quality guarantees of an OGM:

- ✓ **Awareness:** Ensuring that workers know about and can access the remediation system, particularly women workers who are often unaware of or lack access to such systems. We recommend running dedicated awareness-raising sessions for women workers, preferably with female facilitators, and providing safe spaces for women to meet and discuss concerns.
- ✓ **Trust:** The administration of the system should be perceived as fair and impartial, and not biased towards protecting managers. Again, this is critical to empowering women workers to use these systems.
- ✓ **Transparency:** Workers should be made aware of the possible outcomes of going through the process, both positive and negative.
- ✓ **Efficiency:** Processes should be thorough and efficient, with remedies for serious rights violations implemented immediately.
- ✓ **Supportive:** Even in instances where the company's operations did not directly cause the negative impact, the worker should feel supported in addressing an issue that impacts on their wellbeing and ability to work. It is important to ensure that the response and support provided is proportionate to the incident in question and the level of pain and suffering caused.
- ✓ **Complementary:** Remedial actions should support state responsibilities and not undermine public processes.

If a company and those affected cannot reach agreement on the appropriate remedy, it may be necessary to involve a neutral third party as a mediator or turn to adjudication.

Transparency: The primary purpose of an operational grievance mechanism is to provide an early point of recourse to identify and address the concerns of directly affected stakeholders before they escalate or lead to otherwise preventable negative impacts.

However, in order to ensure that mechanisms are not used to cover up human rights violations, the complaint process should be transparent. For instance:

- Maintain a public record – post complaints online;
- Ensure users of the mechanism are kept informed throughout the process;
- Higher-level union and corporate management-level personnel should have access to complaints procedures;
- Local managers could be required to show how the grievance was remedied and what operational reforms have been made in order to prevent such violations in the future.



Protecting whistleblowers

Whistleblowing systems are different to OGMs. Employers can use a whistleblowing system to raise concerns about breaches of company codes and ethics that may or may not have harmed those individuals, but are of concern to the business or workforce as a whole.

Whistleblowing systems may be an important element of a grievance mechanism, or may form a separate process. Either way, whistleblowers can defend human rights, contributing to making companies more accountable.

Burberry - Transparency in the Supply Chain and Modern Slavery Statement 2018

“Worker Grievance Mechanism: In China, labour rights issues can include inadequate access to remedy. We have worked with three local Non-Governmental Organisations to establish a hotline providing over 10,000 workers with improved access to remedy. In 2017/18, the hotline was rolled out to all factories in China with regular production of Burberry products. The effectiveness of the hotline is continuously reviewed and, during 2017/18, 588 calls (42 complaints, 469 consulting and 77 psychological support) and their resolutions were monitored closely by our local Responsibility team.”

Companies should consider whether there is a written corporate policy regarding the protection of whistleblowers, whether the company provides workers with a way to

confidentially report suspected misconduct and protects them from retaliation, and whether it has an established process for workers to anonymously report suspected abuses.

Figure 5: Establishing an OGM

The following activities and tasks align with each of these 3 steps:

Design, Develop or Support an OGM

STEP 1: Design and define		STEP 2: Engage your teams		STEP 3: Test, launch & evaluate	
Activity	Tasks	Activity	Tasks	Activity	Tasks
Design closer to the level of operation	Create policies that reflect your company's labour standards & expectations on remedy. Communicate to contractors.	Build internal support and ownership	Develop a cross-functional team and executive sponsor(s) that meet regularly to review progress.	Test complaint mechanism	Test system by running fictitious complaints through, testing for various access points and issue types.
	Conduct consultations with workers and with key stakeholders re design, revision and monitoring of mechanism.		Engage leaders from key functions and departments across company including those whose actions can lead to complaints.		Monitor specific data points including: access, transparency, efficiency, complainant protections, perceptions of fairness, outcomes and others.
	Assess capacity of suppliers to implement. Determine resources required to help them build capacity to implement HR systems and practices that can handle grievances in line with your standards.		Establish a schedule for regular reporting and evaluation.	Launch & monitor	Roll out OGM in partnership with identified stakeholders.
	Ensure independence of process.		Establish baselines and indicators to facilitate ongoing monitoring.		
Define scope of mechanism	Identify marginalised and vulnerable groups that need access & protection.	Establish protocols related to business relationships	Help suppliers implement a policy and protocol that meet your requirements.	Evaluation & improvement	Conduct periodic surveys to assess and review: Use data to determine when and under what parameters to involve business units against which complaints could be made.
	Define the types of complaints that fall under scope and mechanisms.		Support suppliers in efforts to address issues through training and practical steps.		Qualitative & quantitative evaluation of performance and outcomes; access and reach.
	Include human rights issues and other labour standards.		Verify for retaliation and prescribe protections to complainants.		Report on lessons learned to internal and external stakeholders; implement improvement towards preventing abuses.
Ensure access and transparency	Enable multiple access points (technology enabled and otherwise).				
	Plan for awareness-raising through multiple channels (unions, NGOs, community groups, media etc).				
	Design avenues for specialised focus on under-represented and marginalised groups.				
Broaden protections	Create explicit commitments to protect users from reprisals.				
	Define escalation protocols				
Identify & Engage Stakeholders (Unions, NGOs, Industry Partners, Supply Chain Partners/ Contractors, Other Companies)	Conduct consultations with workers and with key stakeholders re design, revision and monitoring of mechanism.				
	Develop a tripartite model of stakeholders to oversee system, and establish ownership and commitment from all stakeholders.				



Early warning systems vs. processes to enable remediation – OECD Guidance:

It is important to differentiate between early warning systems and processes to enable remediation.

- The objective of an **early warning system** is to identify risks (or actual impacts) in a company's own operations or in its supply chain. For example, a company might establish a worker hotline to provide an opportunity for workers to raise concerns about building safety.
- The objective of a process to enable remediation is to **provide remedy to people** who have suffered negative impacts. For example, a worker may raise a complaint against managers for unfair dismissal. The worker and the company are brought together to determine an adequate remedy (e.g. reinstatement, compensation etc).

Addressing forced labour in the UK: the Gangmasters Labour Abuse Authority

The Gangmasters and Labour Abuse Authority (GLAA) in the UK operates a licensing scheme that regulates unscrupulous labour providers ("gangmasters") that place and exploit vulnerable workers in certain agriculture, horticulture and seafood sectors. The Authority assesses labour providers against prescribed licensing standards, and with the advent of the Gangmasters Licensing Act in 2004, it can also pursue these parties for criminal offences, such as providing labour without an adequate licence. The 2004 Act also specifies that the GLAA can request assistance from specific criminal justice authorities in the commission of their investigations. The GLAA therefore follows strict statutory guidelines and practices, ensuring that while it vigorously investigates areas under its mandate, its officers involve and cooperate effectively with other areas of criminal justice.

➤ *SOURCE: www.gla.gov.uk*

A single system – such as a grievance mechanism – can operate as both an early warning system and provide processes to enable remediation. When determining whether a system acts only as an early warning system or is also a process to

enable remediation, the enterprise should consider whether the aggrieved party should be brought together with the party that caused or contributed to the incident for the purposes of providing remedy.

For more information, see: OECD (2018), OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264290587-en>



Operating at a local level - Tea Plantations, India

A study conducted by researchers at the University of Melbourne and Deakin University of tea plantations in India found both benefits and challenges to locally administered grievance mechanisms. Workers who experienced human rights grievances in the tea plantations in Assam, Tamil Nadu and Darjeeling relied primarily on processes facilitated by supervisors and managers, and in limited cases through a local trade union and the local Labour Department. Advantages included: increased accessibility, facilitated responses to some day-to-day problems; and in areas of strong union cohesion, increased collective bargaining power. Disadvantages were found to include: discretionary and sometimes inadequate responses from employers; limited individual bargaining power; and limited access to legal and administrative complaint handling mechanisms. While locally handled complaint mechanisms can provide immediate access for minor complaints for some workers, administration is often discretionary and not an effective means to handle larger, systemic issues. Further, marginalised workers (e.g. migrants) may not have equal access to such local grievance mechanisms.

► **Source: Corporate Accountability Research, 2016**

Operating at a corporate level - Adidas Third Party Complaints Procedure

Adidas' procedure defines a complaint or report as: "(a) a violation by a supplier, licensee, agent or contractor of an element of the Workplace Standards relevant to that supplier, contractor or service provider, or (b) any breach of an international human rights norm, whether related to an external service provider, supplier, or to Adidas' Group's own business operations, where these affect an outside party." The scope of this procedure is specifically intended for human rights-related issues and includes "licensees and agents", with "no limitations in terms of geographies, products and services, or parts of the supply chain to which complaints can relate". It follows five steps: reception, assessment, investigation, remediation and monitoring and communication. Together with ongoing monitoring, these steps govern the company's global approach.

► **Source: Ergon, 2017. More information can be found in Access to remedy - operational grievance mechanisms, an issues paper for ETI**

Monitoring performance

The use of key performance indicators (KPIs) to monitor the use and effectiveness of OGMs is critical. At the corporate level, understanding what is working well and where there are opportunities for improvement can help to continuously improve grievance mechanisms. In particular, reviewing the effectiveness of

responses to complaints can help to identify systemic changes needed to either corporate practices or the practical workings of the OGM. Evidence of effectiveness is also important for building trust amongst external stakeholders and boosting confidence in the OGM.

Relying on statistics based on the total number of grievances

filed through the OGM may present a false picture of working conditions and issues if the OGM is not trusted or if workers do not know how to pursue a complaint. Assessment of effectiveness should focus not only on process, but also on outcomes, and ultimately, users must be able to confirm whether the system meets their needs.



KPIs	Interpretation
A significant number of complaints or grievances are brought to the mechanism in the period after its establishment.	There is both awareness of the mechanism's existence and confidence that it provides a credible first avenue of recourse.
A reduction, over time, in the number of grievances pursued through other non-judicial mechanisms, NGOs or the media.	There is both awareness of the mechanism's existence and confidence that it can provide a credible and effective first avenue of recourse.
Over time, the number of grievances of the same or similar nature decreases.	Staff are learning from past mistakes and adapting practices and/or operating procedures where appropriate.
Audits show a reduction in incidents of non-compliance with applicable standards.	Grievance processes are contributing to the identification and remediation of non-compliance incidents.
A reduction in absenteeism and staff turnover and/or an increase in productivity among workers.	A partial indicator of reduced worker grievances and improved worker satisfaction, most relevant in relation to supply chains and contractors.
Standard operating procedures (SOPs) have been reviewed and amended where investigations reveal significant and repeat grievances despite staff following existing SOPs.	Lessons regarding management systems are being learnt and acted upon to reduce the likelihood of the same kind of grievances recurring.
Regular stakeholder surveys by an independent third party indicate a high and increasing awareness of the mechanism's existence and a high and increasing perception that it is a credible, worthwhile process.	There is effective publicising of the mechanism and high potential that it will be used by stakeholders where they have a grievance.

Amader Kotha

Meaning “Our Voice” in Bangla, Amader Kotha is a grievance mechanism for garment factory workers in Bangladesh. The Amader Kotha Helpline was established in 2014 as a project of the Alliance for Bangladesh Worker Safety. By the end of June 2018, it was accessible to 1,491,582 workers in 1,004 factories.

In the second quarter of 2018, workers shared 1,696 substantive issues via the helpline, of which 435 related to safety. Workers continue to have access to a toll free, nationally available telephone number, and worker satisfaction with the helpline remains high, according to Interactive Voice Response (IVR) and live surveys.

Amader Kotha measures the success of the helpline in terms of: number of workers served; number of factories covered; proportion of factories where workers used the helpline; number of calls received; and, proportion of reported issues resolved. It also monitored how workers felt about the helpline, tracking the number of workers willing to share their name with the helpline and with the factory, and recording caller profiles including age, gender, factory tenure, and worker location at time of call.

The project is managed by Clear Voice, a project of The Cahn Group, Phulki, a local NGO in Bangladesh working to improve the lives of workers, and Laborlink, now owned by Elevate, a provider of technological solutions for business risk and sustainability.

► More information is available at [Bangladesh Worker Safety](#) or [Clear Voice Hotline](#).



C. Key factors for consideration for developing an OGM:

Key factor 1: Working with Trade Unions as a route to remedy

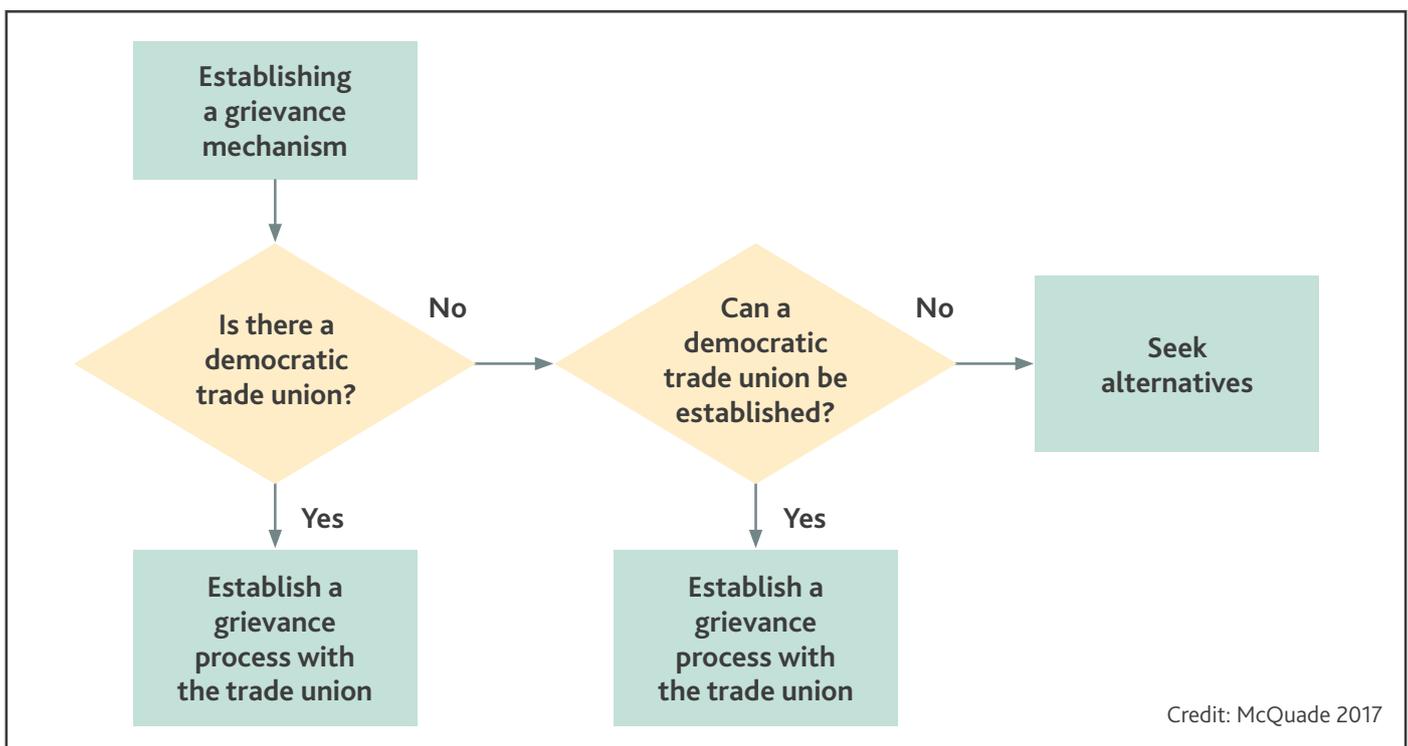
The most robust and sustainable model for any workplace grievance mechanism is a mature system of industrial relations with a single code of conduct that reflects all the fundamental ILO conventions. A trade union recognition agreement and management system should form part of an operational grievance mechanism capable of addressing individual grievances, disciplinary issues and collective disputes, and acknowledge the importance of the employment relationship.

- ✓ Consulting with regional and local unions, civil society and worker representatives.
- ✓ Global Framework Agreements.

Is there a Global Framework Agreement (GFA)? Your company should strive to develop and implement a GFA that firmly upholds high standards of worker health, safety and wellbeing. The extent to which workers are able to freely organise without fear of reprisal or persecution is a key indicator of the level of respect for their rights. While local unions may have their own agreements with employers, GFAs are negotiated on a global level between trade unions and multi-national companies. They set high standards for the health, safety and wellbeing of employees across a supply chain. Progressive companies should develop and implement GFAs as a matter of course. In this way, regardless of whether such standards exist in individual production countries, the company has already taken steps to protect workers' rights throughout its global operations

and supply chains. Additionally, such agreements can help to raise standards across industries, particularly if suppliers adhering to GFA requirements supply products to multiple companies.

Global Framework Agreements are negotiated on a global level between trade unions and a multi-national company. They put in place the highest standards of trade union rights, health, safety and environmental practices and quality of work principles across a company's global operations, regardless of whether those standards exist in an individual capacity.
--IndustriALL



Key characteristics needed for an effective GFA include (McQuade, 2017):

- ✓ Will of company
- ✓ Ability of workers to organise
- ✓ Supportive local government
- ✓ National monitoring committee
- ✓ Joint industrial relations development committee
- ✓ Education and training for local managers to understand how GFA applies to their context

“GFAs rely upon a mature system of industrial relations between a company and an international labour organisation with the support of local governments, where operations exist. Conversely, GFAs are challenged due to the lack of will from a company, weak labour laws or the lack of capacity among local trade unions.” (McQuade, 2017)

The ILO defines a GFA as “an instrument negotiated between a multinational enterprise and a Global Union Federation (GUF) in order to establish an ongoing relationship between the parties and ensure that the company respects the same standards in all the countries where it operates”.

IndustriALL Global Union and H&M sign global framework agreement



03.11.2015 The world's largest sectorial trade union organisation, IndustriALL Global Union, representing 50 million workers, and the world's leading garment retailer H&M have together with the Swedish trade union IF Metall signed a global framework agreement, protecting the interests of 1.6 million garment workers.

When implementing GFAs, there are a number of challenges to overcome, including the undermining of union activity through alternative grievance processes, and discrimination against women and marginalised groups. GFAs and their administrators should therefore be closely monitored. Grievance mechanisms must support and complement both local judicial processes and agreements with unions and their federations.

Case Study: Fair Food Program (FFP), USA

Growing out of worker organising led by the Coalition of Immokalee Workers in the State of Florida, USA, the Fair Food Program leverages the purchasing power of global brands by “harnessing the resources of participating food industry leaders to improve farm worker wages and harnessing their demand to reward growers who respect their workers’ rights.” Under the FFP, participating brands sign agreements to provide: a wage increase for workers in their supply chain; compliance with the Fair Food Code of Conduct, a human rights-based standard; worker education initiatives; audits and inspections; and a “worker-triggered complaint resolution mechanism leading to investigation, [and] corrective action plans...”

➤ **Source:** www.fairfoodstandards.org

Best practice: How should my company respect existing remedy solutions when designing OGMs?

Workers may already be aware of how to access local justice systems. This could be through worker councils, local union officials or informal HR processes, for example. In some cases, these practices may be valued by workers and particularly vulnerable workers, such as migrants.

- While conducting initial research, it is important to analyse these existing systems and determine their value and effectiveness, before introducing a new grievance procedure that may be not trusted or used by local workers. Informal, established systems may work for minor grievances, but may not be sufficient to address systemic issues.
- Worker councils may provide effective remedy in smaller worksites, however, if your supplier is significantly increasing their production capacity (in response to your requirements), alternative mechanisms will be required to support larger numbers of workers.
- Grievance mechanisms should not prevent workers from raising concerns or complaints through official government channels, particularly where criminal offences have been committed. We recommend that you take steps to communicate this clearly throughout your supply chain.

Bangladesh Accord Safety Complaints Mechanism

The health and safety complaints mechanism of the Bangladesh Accord on Fire and Building Safety (the Accord) provides individual workers, groups of workers and worker representatives in the Bangladeshi garment industry with access to remedy for safety concerns that are not effectively addressed at factory level.

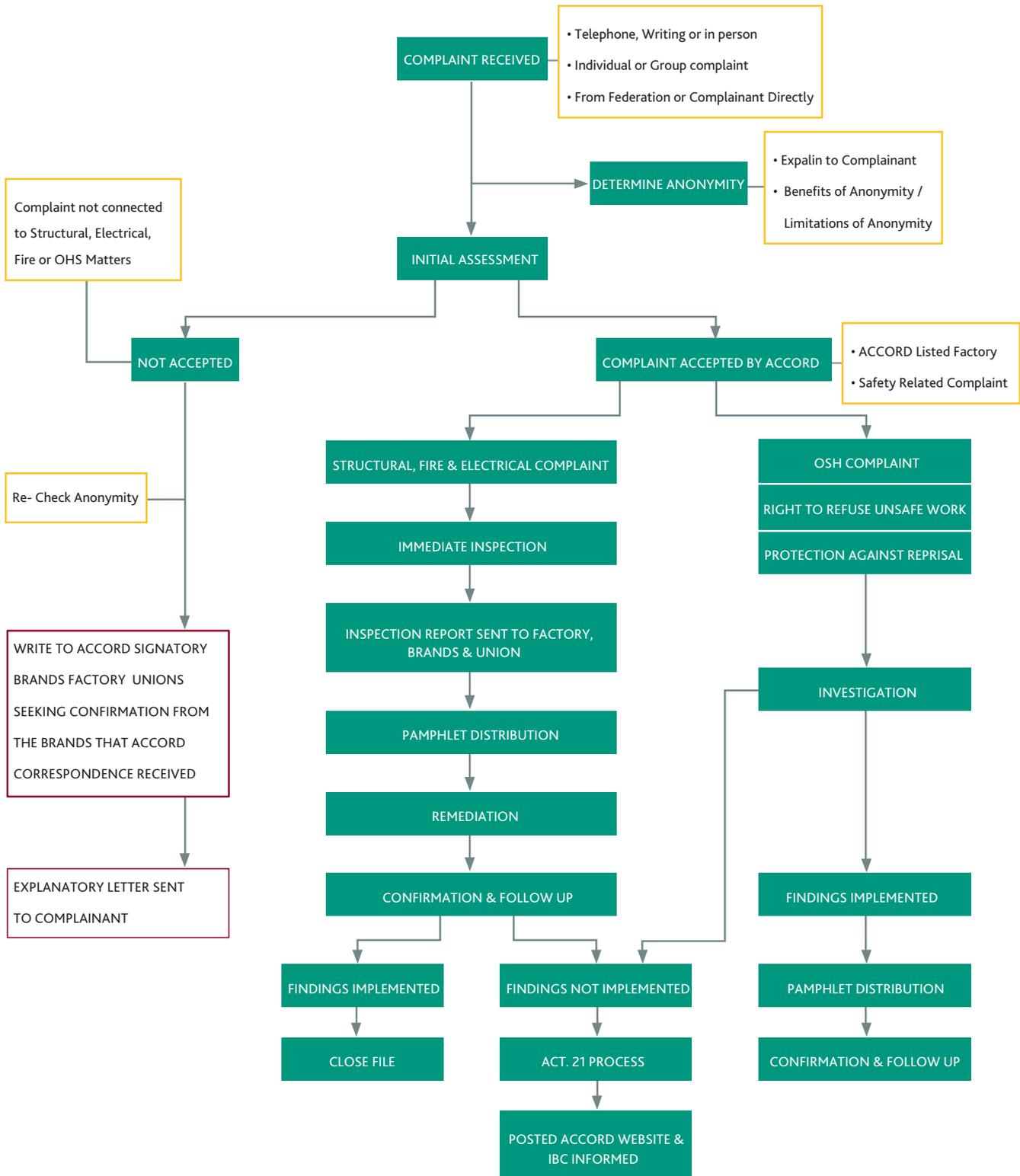
The complaints mechanism is explained to all workers face-to-face through “All Employee Meetings” at factories where the Accord’s Safety Committee Training Program has begun. A booklet is distributed to workers who attend. Additionally, Accord staff and Safety Committee members place posters throughout the factory to inform workers on how to raise safety concerns using the complaints mechanism.

The Accord investigates safety and health complaints at Accord-covered garment factories. Complainants can choose to remain anonymous and are protected from discrimination or reprisal for submitting a complaint to the Accord. The complaints

mechanism seeks to ensure that safety and health concerns at the factories are correctly addressed and remediated, and that the right to refuse unsafe work is upheld where necessary.



Bangladesh Accord Complaint Mechanism





Key factor 2: Multiple stakeholders and the special role of NGOs

It is also important to recognise the critical role that external stakeholders, including civil society organisations and NGOs can play in helping to create and implement an OGM. NGOs and civil society organisations may:

- Collaborate with businesses and governmental organisations in setting international standards and agreements and passing legislation for grievance mechanisms and remedy.
- Work with businesses to design, operate and oversee grievance mechanisms and the provision of remedy.
- Provide workers with access to and ensured distribution of remedy to workers, should grievances be filed.
- Manage relationships with stakeholders at every level of the grievance process.

See the ETI background research paper on NGO Leadership in Grievance Mechanisms and Access to Remedy in Global Supply Chains: <https://www.ethicaltrade.org/issues/grievance-mechanisms-remedy>

5. Country factors

A. Roles and responsibilities of states and companies

The UNGPs require companies to take steps to respect human rights, particularly through policies, mitigation of risks and due diligence (as outlined by ETI's guidance on due diligence). While it is the state's responsibility to uphold human rights within their jurisdictions, in line with international protocols and conventions to which they agree to abide, the UNGPs also state that there is a "shared responsibility" between governments and companies to "remediate actual harm".

B. Understanding the local context

It is important to recognise that the administration of justice will vary across jurisdictions. The mechanisms through which workers access justice also depend on the context. We recommend understanding the local judicial context alongside conducting human rights due diligence. In particular, seek to understand the extent to which the state enforces its own criminal and labour laws and the mechanisms and institutions through which it provides related worker protections. Figure 2 suggests research questions to pose when analysing the state's labour law

UNGP 15: In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

enforcement systems in theory and in application. In many cases, there may be a gap between the rights enshrined by local laws and how and to whom they may be applied.

For example, certain industries or worksites may be less susceptible to labour law enforcement. Migrant workers may be less able to access their rights, while labour inspectors may overlook the abuse perpetrated by factory managers on women workers. Reasons for these difficulties can range from severe corruption and limited resources to a state's ability to enforce its labour laws and entrenched discriminatory attitudes towards migrant workers and women. We therefore recommend developing an OGM and approach to remedy that account for the culture, politics and legislative environment of each production country and the individual state's ability to protect workers in its jurisdictions.

C. Supporting state justice systems

While the state should in every instance maintain the responsibility of enforcing its own criminal laws and civil provisions, companies should seek to influence state actors to enact and enforce robust labour laws. In production countries with a weak rule of law and limited worker protections, companies could also leverage their influence with government to contribute to the development of improved justice systems. Human Rights Due Diligence (as outlined in ETI's HRDD guide) can help to identify which other companies in your industry have existing or potential sourcing commitments in particular regions. It will also help to highlight which civil society organisations and worker-led or worker-representing groups are present. *Consider partnering with external stakeholders to assist in building a culture of justice that provides workers with access to legal or non-legal, state-based remedy systems.*

Good practice: How does a company work effectively with law enforcement, particularly in areas with high corruption?

Some labour rights abuses may violate criminal law. It is imperative that all on-the-ground employees engaged in remedy and grievance mechanisms have clear guidelines and are trained on when to engage local law enforcement.

- Your teams should always seek to cooperate with local authorities. It is vital not to supersede the state's ability to conduct an impartial investigation, collect evidence and prosecute, particularly in cases of child or forced labour, the exploitation of women or human trafficking. This can become complicated if the offending entity is part of your business operation (e.g. a supplier).
- Establish clear procedures to protect the worker from any potential reprisal, while law enforcement officers investigate. This requires developing an understanding of the actions that can be taken by your business, and matters that are strictly handled by law enforcement.

D. Committing to sourcing countries

Many regions and countries are of strategic business importance (e.g. they may represent a high value market or unique source of raw materials, or present opportunities to benefit from lower-cost production facilities, reliable suppliers or transportation routes etc). However, when determining the overall benefit of sourcing from a region or country, it is vital to take into account the social and human rights cost of doing business in that region. Exiting a market and ending relationships in a high-risk region should be a last resort. Consider the social and business benefits of investing in local and regional supply chain partners and supporting the state in implementing labour law reforms. Such reforms should address direct labour law violations and protections as well as other worker rights. Companies should go beyond minimum legal obligations to focus on effective practices that will help promote healthy worker communities.

Doing business in high-risk human rights environments

One of the most damaging things a business can do while working under poor human rights conditions is to legitimise or endorse the undermining of human rights by appearing complacent in the face of violations. A company should therefore mitigate any legitimacy it might lend to an oppressive government by being transparent throughout its operations. This entails two major actions:

- Acknowledge any direct connections to violations
- Disassociate operations from oppressive governments

The Danish Institute for Human Rights has published a guide on Doing Business in High-Risk Human Rights Environments. See Annex or: https://nhri.ohchr.org/EN/Themes/BusinessHR/DocumentsPage/Highrisk_Environments_ENG.pdf

Workers should have the right to access both judicial (state) and company remedy processes, and companies should help ensure that complainants have access to public systems. Again, the recommended approach will vary according to the context. For example, workers' rights may be less at risk in areas where the rule of law is respected, but monitoring is still recommended; whereas countries with high levels of corruption can present additional challenges. In the latter case, a company should

think carefully before making the decision to source from these areas. *When possible, companies should work with local partners and invest in justice systems that benefit worker communities, the state and business operations.*

"Companies have leverage with local governments and can partner with suppliers and State based institutions to create legal norms that protect workers."

ETI Corporate Member

Best practice: How should we act in countries where unions are prohibited and workers who organise are targeted?

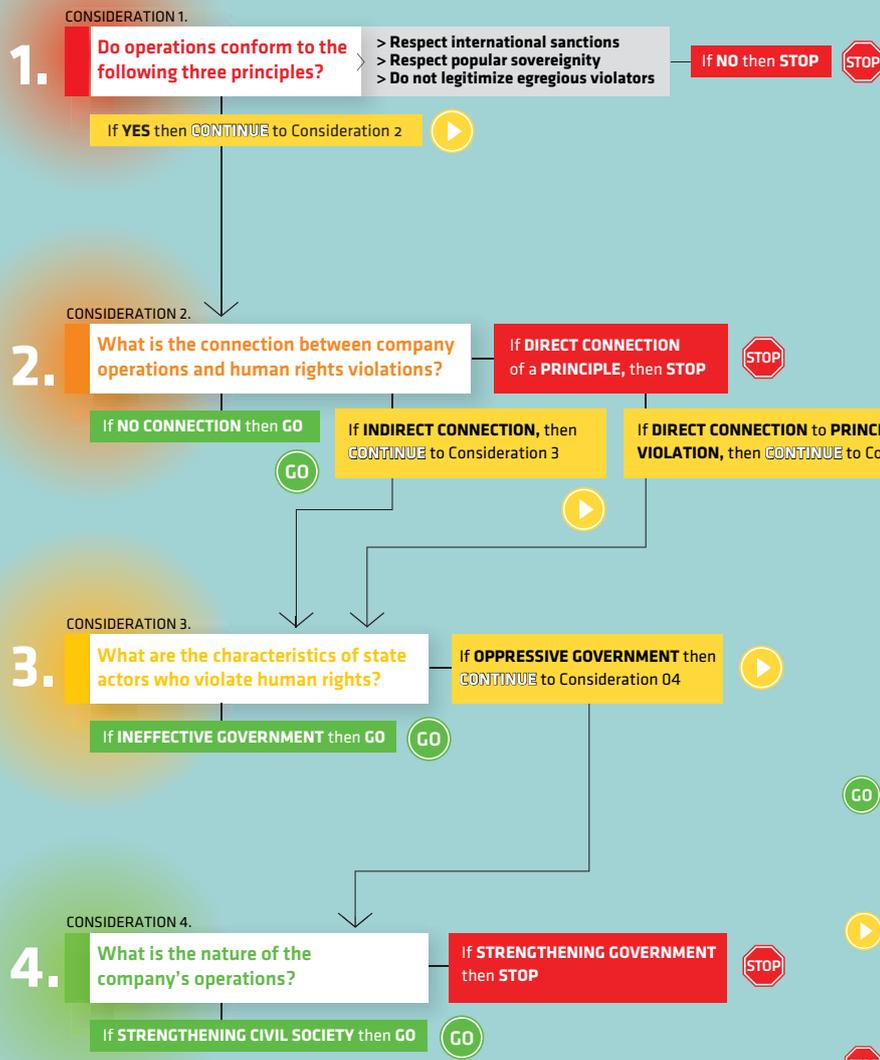
This presents a distinct dilemma for any company, and prompts the question of whether it should cease sourcing from the country in question. The Danish Institute for Human Rights advises that a company should firstly acknowledge its direct connections to human rights violations by publicly recognising the right. It should express regret that it cannot support workers in exercising the right under the present circumstances, and describe its procedures for protecting workers' rights.

For example, a company operating in Vietnam, where independent unions are outlawed, might make the following statement: We recognise the rights of our employees to form company unions, and regret that we cannot fully support this right in our operations in Vietnam. We have put in place special consultative procedures for our workers to represent their interests to management. We are also working with local human rights groups to ensure that these procedures work in practice, and that we meet our duties to the fullest extent possible in regard to the rights of our employees.

Where independent trade unions are banned, companies should also seek to engage with informal workers associations. Workers may still be covered by Global Framework Agreements, or transnational works councils. Access to OGMs should be considered on an individual basis, and the treatment of individual complaints should take into account the fact that the worker is not allowed to unionise.



A decision map for business on doing business in high-risk human rights environments:



GO:
The company can operate without substantial negative impact on human rights

CONTINUE:
The company should continue to the next consideration in the chart

STOP:
The company should refrain from operating in the area

REMEMBER!
 **Always be transparent in activities involving human rights**
 > Acknowledge any direct connections to violations
 > Disassociate your operations from oppressive governments

Source: The Danish Institute for Human Rights. For more information, see: https://nhri.ohchr.org/EN/Themes/BusinessHR/DocumentsPage/Highrisk_Environments_ENG.pdf

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The Ethical Trading Initiative (ETI) is a leading alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe. Our vision is a world where all workers are free from exploitation and discrimination, and enjoy conditions of freedom, security and equity.

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