



A Guide for Company-Based Grievance Mechanisms for Land-Related Disputes

Prepared by

GROWAFRICA

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Grow Africa works to increase private sector investment in agriculture, and accelerate the execution and impact of investment commitments. The aim is to enable countries to realise the potential of the agriculture sector for economic growth and job creation, particularly among farmers, women and youth. Grow Africa brokers collaboration between governments, international and domestic agriculture companies, and smallholder farmers in order to lower the risk and cost of investing in agriculture, and improve the speed of return to all stakeholders.



Landesa is a global nonprofit organization working on issues of land tenure, access, investments and market development, dispute resolution, acquisition and resettlement, and formalization systems. Partnering with governments, civil society, and progressive corporations, Landesa works to develop sustainable, pro-poor, and gender sensitive-laws, policies, and programs that protect and strengthen land rights for millions of the world's poorest women and men.

I. Introduction

In recent years, the international community – including governments, international organizations and donors, civil society, and the private sector – have identified the critical need to ensure that land-based investment are conducted responsibly. A responsible investment in land is achieved when an actor leases, purchases, or otherwise obtains or uses land in a manner that accurately identifies, honors, and respects the legitimate land rights and interests of the women and men who own, occupy, cultivate, or otherwise use the land. Legitimate land rights and interests include not only legally legitimate land rights and interests, but also socially legitimate land rights and interests.

This awareness spawned the development of international and regional guidance that details the key elements for achieving responsible land-based investment. The key elements include:

1. Identify and map land rights and interests prior to obtaining land.
2. Assess the potential direct and indirect impacts of obtaining land before taking the legal steps to obtain it.
3. Consult with all women and men who assert land rights or interests, or their representatives.
4. Negotiate and contract with all women and men who assert land rights or interests, or their representatives in an informed, just, and transparent manner.
5. Obtain the Free, Prior, and Informed Consent of communities affected by the obtainment of land.
6. Provide those who asset land rights or interests with compensation based on appropriate valuation.
7. Ensure access to remedy for land-related disputes.
8. Monitor and evaluate compliance with contract terms.

A requirement interwoven in each element is also to ensure the identification and respect for women's rights and interests in land, which requires additional efforts because women's rights and interests are often secondary or otherwise less visible.

The most widely adopted guidance includes:

- *Analytical Framework for Responsible Land-based Investment in African Agriculture* (Analytical Framework);
- *Guiding Principles on Large Scale Land Based Investments in Africa* (Guiding Principles);
- *Responsible Governance of Tenure: A Technical Guide for Investors* (Technical Guide); and
- *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security* (VGGT).

The Analytical Framework is arguably the most relevant guidance for the private sector because it reframes the substance of the Technical Guide, Guiding Principles, and VGGT in a user-friendly manner and tailored to the needs of business enterprises. The Analytical Framework also underpins processes recognized by Grow Africa.

Numerous business enterprises, including multinational, transnational, and domestic corporations have followed suit by developing corporate land rights policies and principles that commit to recognizing and respecting rights and interests in land. Such commitments typically mirror the key elements of responsible land-based investment or explicitly state that the company adheres to specific guidance such as the VGGT. Business en-

terprises have also committed to making responsible investments in land through membership in responsible investment initiatives such as Grow Africa.

As a requirement of membership, each Grow Africa partner company voluntarily signs a Letter of Intent that commits it to socially responsible investment as described in the processes of the New Alliance for Food Security and Nutrition and Grow Africa. Those processes include the Analytical Framework mentioned above. Consequently, each Grow Africa partner company, regardless of whether it has developed its own land rights policies and principles, has committed to complying with the key elements of responsible land-based investment.

A factor central to ensuring that Grow Africa partner companies are investing in land in a socially responsible manner is whether each company has a functioning, effective, and accessible grievance mechanism for handling land-related disputes. Although access to remedy is stressed as a key element in all guidance relating to responsible land-based investment, the Analytical Framework emphasizes the need for company-based, non-judicial grievance mechanisms to complement any existing state-based, judicial grievance mechanisms. The need for company-based grievance mechanisms is particularly acute in most low-income and middle-income countries, where governance gaps can be significant.

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

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

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

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

The need for business enterprises to ensure access to remedy through company-based grievance mechanisms in order to help fill governance gaps is well substantiated. There is, however, still the question of how companies should go about designing, implementing, managing, and monitoring such grievance mechanisms in a practical and effective manner. The aim of this guide is to provide practical guidance to business enterprises on how to establish effective company-based grievance mechanisms for land-related disputes. The guidance is divided into the following two parts:

1. The first part details the key elements of responsible land-based investment. The key elements will serve as the primary grounds for determining whether an individual or community grievance rises to the level of a valid complaint that requires action by the business enterprise (e.g., investigation, remedy, etc.).
2. The second part explains the major phases and steps for:
 - Designing and implementing company-based grievance mechanisms;
 - Developing clear procedures for receiving, processing, and responding to complaints; and
 - Developing clear procedures for monitoring and evaluating the effectiveness of grievance mechanisms.

The scope of the guidance is solely limited to effective company-based grievance mechanisms for land-related disputes. The guidance is not intended to advise a business enterprise on the other range of topics concerning how to responsibly invest in land. If a company is interested in acquiring land, it should consult guidance specifically related to how to responsibly acquire land, as well as seek guidance from appropriate and qualified third parties.

II. Key Elements of Responsible Land-Based Investments

This section details the key elements of responsible land-based investment. The key elements are central to the functioning of a company-based mechanism for handling land-related grievances because the key elements provide the grounds for determining whether the complainant has alleged conduct that violates the enterprise's investment policy. In other words, business enterprises should use the key elements as a means for defining and narrowing the scope of what are relevant land-related grievances. A company violation of a key element could involve a failure to follow a required process (e.g., consultation), claims for damages (e.g., lack of compensation), or breach of contract (e.g., failure to comply with a term of the land acquisition).

If the allegation involves a covered violation, remedies for the violation will depend on the resolution or settlement reached by both the business enterprise and communities as described in the next section. To better conceptualize how the key elements will serve as a tool for defining, focusing, and narrowing the scope of the grievance mechanism, several examples of potential grievances are provided for each key element.

The description of the key elements should be used solely as a means for helping a business enterprise define and narrow the scope of land-related grievances it will receive. The guidance is not intended to advise a business enterprise on how to comply with the key elements to ensure it responsibly invests in land. For instruction on how to comply with the key elements, business enterprises should consult guidance specifically related to how to responsibly acquire land, as well as seek guidance from appropriate and qualified third parties.

1. The business enterprise must identify and map land rights and interests prior to obtaining land.

Prior to purchasing, leasing, or otherwise obtaining land, the business enterprise must identify and map all formal and customary land rights and interests of women, men, and groups, including rights that are secondary, seasonal, or overlapping rights and interests. Identification and mapping of land rights and interests is a critical first step because it will inform the business enterprise of who must be involved in future consultations, negotiations, contracting activities, valuation and compensation, and monitoring and evaluation. It will also determine whether the business enterprise must comply with the principles of FPIC.

Local community participation is critically necessary for identifying and mapping land rights and interests. Without close and inclusive local community participation, business enterprises are extremely unlikely to get a clear picture for one or more of the following reasons:

- Land is governed by both formal and customary systems;
- Land rights and interests are not formalized or registered;
- Land rights and interests overlap one another; and
- Land users are not regarded as land “owners” and may have interests that are not formally recognized as rights.

Business enterprises need to take special efforts to ensure women's land rights and interests are captured, as they are even more likely to be unregistered, informal, unrecognized, seen as secondary to men's, and contested.

Examples of Potential Grievances:

- A company failed to identify and map land rights and uses before purchasing or leasing land.
- A company failed to accurately identify and map land rights and uses before purchasing and leasing land for one or more of the following reasons:
 - The company did not seek the participation of the community.
 - The company did not seek the participation of key sectors of the community (e.g. women and other vulnerable groups).

2. The business enterprise must assess the potential direct and indirect impacts of obtaining land before taking the legal steps to obtain it.

The business enterprise must assess the potential direct and indirect impacts of obtaining land before taking the legal steps to obtain it. To understand the full scope of impacts, the business enterprise must conduct the following types of assessments: (1) environmental, (2) social, (3) human rights, and (4) gender. The results of these assessments must be shared with all women and men who assert land rights or interests, and this must be done prior to consultations and negotiations taking place. This is because those claiming interests or rights must understand the potential positive and negative impacts of an effort to obtain land in order to know what questions to ask, what additional information to request, how to determine fair and just compensation, and whether to consent to those efforts.

Examples of Potential Grievances:

- A company failed to carry out one or more of the required types of impact assessments.
- A company failed to carry out impact assessments in an appropriate manner in one or more of the following ways:
 - The scope of impact assessments was inadequate or did not include women and men who assert land rights or interests.
 - The results of the impact assessments were not shared with women and men who assert land rights or interests
 - Impact assessment results were shared after negotiations and contracting took place, instead of before.

3. The business enterprise must consult with all women and men who assert land rights or interests, or their representatives.

The business enterprise must hold consultations with all women and men who assert land rights or interests, or their representatives, prior to holding negotiations or contracting for the lease, purchase, or otherwise obtainment or use of their land. Consultations should only be held after the business enterprise has shared all material information with those claiming land rights or interests, including information in the form of assessment results. Consultations should be participatory, with those claiming land rights or interests given the fullest opportunity to ask questions, request additional information, and express their concerns and expectations.

To ensure the full participation and representation of all claiming land rights or interests, the business enterprise must make special efforts to hold consultations in a manner in line with local customs, traditions, and

languages. Special efforts should also be made to ensure that women are included in consultations since many cultures view men as the leaders and heads of household, and there is therefore a high risk that the views of women may be ignored. This is problematic because although women's land use rights and interests are often secondary or unnoticed, they are central to household livelihoods and are almost certain to be significantly impacted by any effort to obtain land. To ensure that women are included, special sensitization of men may be required in order to socially legitimize women's participation.

Examples of Potential Grievances:

- A company failed to carry out consultations with identified land rights holders and users, or their representatives.
- A company failed to carry out consultations in an appropriate manner in one or more of the following ways:
 - o The company did not hold consultations.
 - o The consultations did not include all claiming land rights or interests, or their representatives (e.g. women or other vulnerable groups).
 - o The consultations were not carried out in a participatory manner; they were instead “one way” lines of communication, with the company simply informing land rights holders and users of the land acquisition. The company did not allow participants to ask questions or share their input, concerns, and expectations.
 - o The company did not disclose material information, including assessment results, to those claiming land rights or interests prior to consultations.

4. The business enterprise must conduct negotiations and contracting in an informed, just, and transparent manner.

The business enterprise must include all women and men who claim land rights or interests, or their representatives, in negotiations for obtaining land. Negotiations should only take place after consultations. To ensure broad inclusion, the business enterprise must make special efforts to include women in negotiations, as well as conduct negotiations in a manner in line with local customs, traditions, and languages.

The business enterprise should ensure that all parties to the contract are provided sufficient time to review and understand the contract terms; have the option and resources to consult a third party to confirm the contract terms are equitable, are just, and reflect consensus reached during negotiations; and have the freedom to withhold consent to unfavorable contract terms. The business enterprise should only draft contract terms that reflect consensus reached during negotiations.

Examples of Potential Grievances:

- A company failed to carry out negotiations before asking those with land rights or interest to consent to the transfer of land.
- A company failed to carry out negotiations or contracting in an appropriate manner in one or more of the following ways:
 - Negotiations and contracting did not include all women and men who claim land rights or interests, or their representatives (e.g. women or other vulnerable groups).
 - Negotiations were not carried out in a manner in line with local customs, traditions, and languages.
 - Contract terms do not reflect consensus reached during negotiations.
 - Parties to the contract were not given the time and resources needed to review the contract terms and consult third parties.

5. The business enterprise must obtain the Free, Prior, and Informed Consent of communities affected by the obtainment of land.

Although FPIC is technically a right of indigenous peoples per the United Nations Declaration on the Rights of Indigenous Peoples, many development professionals contend that it is a best practice to obtain the FPIC of all communities that assert customary rights to or otherwise use land and natural resources. The principles of FPIC require the business enterprise to obtain land in a manner free of coercion, intimidation, and pressure, and further specify that to obtain land otherwise is considered unfair and unjust. This thus requires all communities to be informed of all material information regarding the proposed obtainment of land, including assessment results and other information. Communities should also have the power to say “yes,” that they consent to a proposed land acquisition and project, or “no,” that they do not consent to a proposed land acquisition and project.

Examples of Potential Grievances:

- A company failed to attempt to adhere to the principles of FPIC, despite the fact that they identified land rights holders and users.
- A company failed to obtain the FPIC of communities for the following reasons:
 - Communities were coerced, intimidated, or pressured to agree to the land acquisition.
 - Communities were not informed of material information regarding the proposed land acquisition and project before agreeing to transfer their land.

6. The business enterprise must provide those who assert land rights or interests with compensation based on appropriate valuation.

The business enterprise must provide all women and men claiming land rights or interests with fair and prompt compensation for the leasing, purchasing, or otherwise obtainment or use of their land, and the agreed upon compensation should be enshrined in the contract. Compensation should be determined by taking into consideration the following market and non-market values, such as: (1) livelihoods value; (2) social value; (3) environmental value; and (4) cultural, religious, and spiritual value. Compensation can be paid in many forms (e.g., money, skills training, alternative land holdings, benefit sharing schemes, etc.), so long as it accurately and justly reflects foregone rights or interests. In many settings where land is taken from people who rely on land-based livelihoods, it is considered best practice to provide land-for-land compensation.

The business enterprise must pay special attention to understanding the different values that women and men may assign to land rights and interests, as each gender typically uses the land differently to derive distinct livelihood benefits and other benefits.

Examples of Potential Grievances:

- A company failed to provide compensation to those with land rights or interests.
- A company failed to provide compensation based on accurate valuation for one or more of the following reasons:
 - Valuation did not capture livelihoods, environmental, social, cultural, religious, or spiritual values.
 - Valuation did not take into consideration the distinctly different uses of land by women and men.
- Individuals or communities experienced adverse impacts beyond those anticipated when the final compensation amount and terms were agreed upon.

7. The business enterprise must ensure access to appropriate remedies.

The business enterprise must ensure that all women and men who claim land rights or interests have access to fair grievance mechanisms, whether judicial and state-based or non-judicial and non-state-based. All grievance mechanisms must follow relevant guidance and standards on how to ensure land-related disputes are remedied in a fair, effective, and accessible manner. When a country's formal land governance frameworks are weak or unenforced, the business enterprise must fill such governance gaps by implementing a company-based grievance mechanism. The Analytical Framework requires company-based grievance mechanisms to comport with the UNGPs criteria for non-state dispute resolution processes, which are:

(1) legitimacy, (2) accessibility, (3) predictability, (4) equity, (5) transparency, (6) rights-compatibility, (7) source of continuous learning, and (8) based on dialogue and engagement.

Examples of Potential Grievances:

- A company failed to ensure access to any form of remedy, including judicial and state-based or non-judicial and non-state-based.
- A company-based grievance mechanism was implemented, but it is ineffective, inaccessible, or unfair.

8. The business enterprise must monitor and enforce compliance with contract terms.

The business enterprise must monitor and enforce whether parties are in compliance with the terms of obtaining the land. The enterprise must ensure that procedures for monitoring and enforcement are well-known to all parties, and the enterprise must communicate the results of all monitoring and enforcement efforts to all parties. Similar to ensuring access to remedy, the business enterprise's responsibility to ensure effective monitoring and enforcement is heightened when a country's land governance frameworks are weak or unenforced. If monitoring and enforcement reveals that the enterprise is not in compliance with the contract terms, it must take prompt action to come into compliance.

Examples of Potential Grievances:

- A company failed to develop and implement procedures for monitoring and enforcing compliance with contract terms.
- The company developed and implemented procedures for monitoring and enforcing compliance with contract terms, but failed to do the following:
 - o Ensure that monitoring and enforcement procedures are well-known.
 - o Share monitoring and enforcement results.

III. Main Phases for Designing, Implementing, Managing, and Monitoring a Company-Based Grievance Mechanism

This guidance for how to develop a company-based grievance mechanism is divided into the three main phases and associated steps. Phase one focuses on how to design and implement a company-based grievance mechanism; phase two focuses on how to create grievance mechanism procedures for receiving, investigating, and responding to complaints; and phase three focuses on how to create procedures for monitoring and evaluating the grievance mechanism. Each phase is then divided into general steps.

Such guidance will need to be adapted to the specific context of each business operation. A business enterprise may need to interpret and adapt the guidance differently for each area in which it operates.

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

Several steps also include illustrative examples on how business enterprises have achieved each phase and step in light of their specific operations.

Phase One: Steps to Ensure Successful Design and Implementation of Company-Based Grievance Mechanism

1.1 The business enterprise dedicates sufficient personnel and resources to designing, implementing, and managing its grievance mechanism.

A business enterprise should assign a dedicated team of internal employees to design, implement, manage, and monitor the grievance mechanism. Thus, the business enterprise should be able to prove compliance with the following:

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

Case Example 1:

The International Petroleum Industry Environmental and Conservation Association (IPIECA) recommends developing a “cross functional” design team because grievances often arise that “transcend [a business enterprise’s] internal boundaries.” As such, it is important for a cross functional team to decide the “scope of work, roles and responsibilities, an implementation timeline, [and] resource requirements (skill, time, budget).” IPIECA indicates that relevant staff tasked with designing the grievance mechanism could come from one or more of the following departments: Community Relations, Human Resources, Health Safety & Environment, Security, Procurement, Operations, and Legal.

Business enterprise employees assigned to designing, implementing, managing, and monitoring the grievance mechanism should consult with external stakeholders to ensure that such stakeholders support and trust the grievance mechanism. To achieve this, the business enterprise should be able to prove compliance with the following:

- ✓ All categories of relevant external stakeholders were consulted regarding the grievance mechanism, including local women, indigenous peoples, and other vulnerable groups; civil society organizations; local government officials; and community leaders.
- ✓ Feedback obtained during consultations with external stakeholders is incorporated into the design, implementation, management, and monitoring of the grievance mechanism. For example, the grievance mechanism reflects and is compatible with customary dispute resolution mechanisms; is accessible to all relevant stakeholders, including women, indigenous peoples, and other vulnerable groups; and is trusted by such stakeholders.

Case Example 2:

An extractive company ensured the participation of external stakeholders in the design, implementation, and management of one of its grievance mechanisms in West Africa by first identifying the main external stakeholder groups and then developing external stakeholder committees based on these groups. The company organized a Women's Committee and an Indigenous Peoples Committee. The company consults these committees throughout the design, implementation, management, and monitoring of its grievance mechanism to ensure that the perspectives of stakeholder groups are incorporated and addressed, as well as that the grievance mechanism is in line with customary dispute resolution mechanisms. If a grievance appears to affect a specific stakeholder group (e.g., women or indigenous peoples), the company consults with the respective committee to help reach a resolution satisfactory to all parties.

1.2 The business enterprise sensitizes staff regarding the importance of identifying and respecting formal and customary land rights.

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

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

Case Example 3:

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

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

1.3 The business enterprise determines the scope of the grievance mechanism.

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

1. Identify and map land rights and interests prior to obtaining land.
2. Assess the potential direct and indirect impacts of obtaining land before taking the legal steps to obtain it.
3. Consult with all women and men who assert land rights or interests, or their representatives.
4. Negotiate and contract with all women and men who assert land rights or interests, or their representatives, in an informed, just, and transparent manner.
5. Obtain the Free, Prior, and Informed Consent of communities affected by the obtainment of land.
6. Provide those who assert land rights or interests with compensation based on appropriate valuation.
7. Ensure access to remedy for land-related disputes.
8. Monitor and evaluate compliance with contract terms.

The results from impact assessments should help to inform the business enterprise of what complaints are most likely to arise. For example, if an environmental impact assessment indicates that the proposed land acquisition and project (e.g., a new sugarcane plantation) will use significant amounts of water, then it is likely that individuals or communities will have complaints alleging that the business enterprise is using too much water and contributing to water shortages. Additional information on each of the key elements of responsible land-based investment, as well as potential grievances that can be expected if a business enterprise is in violation of one of the key elements, is provided in the preceding section.

The Analytical Framework specifically states that a company-based grievance mechanism should comply with the UNGPs following criteria for non-state dispute resolution processes:

1. Legitimacy
2. Accessibility
3. Predictability
4. Equity
5. Transparency
6. Rights-compatibility
7. Source of continuous learning
8. Based on dialogue and engagement

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

1.4 The business enterprise informs communities of the grievance mechanism.

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

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

Case Example 4:

To ensure neighboring communities are informed of the grievance mechanism's existence, and informed regarding how to file a complaint and what types of complaints the grievance mechanism will receive, an extractive company chose to disseminate this information through the following means: by advertising in local newspapers, through regular site newsletters, through community noticeboards, and by having internal staff directly visit and inform communities. Having a broad, practical, and effective dissemination plan in place that reflects how neighboring communities prefer to receive information ensures that the grievance mechanism is actually accessed, that the right types of complaints are filed, and that expectations are reasonable in terms of how complaints will be processed and resolved.

Phase Two: Steps to Ensure There are Clear Procedures for Receiving, Processing, and Responding to Complaints

2.1 The business enterprise has clear procedures in place for how it will receive complaints.

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

Case Example 5:

Clear procedures for how complaints can be filed and how they will be processed are critical for establishing trust and reasonable expectations between neighboring communities and business enterprises. Several extractive companies have stressed the importance of having multiple access points for filing grievances to ensure that all potential complainants are able to access the grievance mechanism. Companies also stressed the importance of providing some form of acknowledgement that the complaint was received and the company will respond to the complainant promptly. Examples of access points include, but are not limited to the following:

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

Case Example 6:

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

2.2 The business enterprise has clear procedures in place for how it will process complaints.

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

Case Example 7:

To ensure the legitimacy and predictability of the grievance mechanism, several extractive companies have emphasized the importance of having strict timelines in place for processing complaints. One company, for example, sets a goal of resolving all complaints within a 30-day time period, defining resolution of a complaint as either coming to an agreement or settlement with the community, as well as referring the grievance to actors better able to resolve the dispute (e.g. special committees, external experts, formal state-based legal entities, etc.). This quick turnaround timeline thus requires the company to promptly classify whether it is possible to directly reach an agreement or settlement with the community, or whether it needs to solicit assistance from a third party or refer the case to formal state-based legal entities.

2.3 The business enterprise has clear procedures in place for how it will make final decisions regarding complaints.

The business enterprise should have clear procedures in place for how it will make final decisions regarding complaints. Procedures could be the same for all complaints, or could vary depending on the nature of the allegation. The enterprise's procedures could authorize the enterprise to make the final decision by itself, authorize the community to make the final decision, or authorize the enterprise and the community to jointly make the final decision. It is important to note that some form of community involvement in reaching final decisions could help to build community trust in the enterprise's grievance mechanism, as well as make implementation of and stakeholder satisfaction with the final decision more likely.

Case Example 8:

A majority of companies do not seem to have clear procedures in place for what the specific remedies are for different types of grievances; however, they do have procedures in place for how they will determine what the appropriate remedies are. Such procedures tend to emphasize the need for direct engagement with neighboring communities and complainants to determine what the most appropriate solution is. Engagement and collaboration between the business enterprise and communities in reaching a resolution or settlement is necessary to ensure that all parties are satisfied, and thus, that the grievance will not resurface.

Phase Three: Steps to Ensure there are Clear Procedures for Monitoring and Evaluating the Grievance Mechanism

3.1 The business enterprise has clear procedures in place for monitoring and evaluating the grievance mechanism.

The business enterprise should have clear procedures in place for monitoring and evaluating the effectiveness of the grievance mechanism. The enterprise should be able to prove that it monitors and evaluates the following:

- ✓ The number of land-related complaints it receives.
- ✓ The average time the company takes to: respond to complaints; determine whether the complaint alleges a covered violation that causes the enterprise to investigate; investigate the complaint; and reach a final decision regarding the complaint.
- ✓ If the business enterprise and complainant(s) reached a resolution, whether the parties are satisfied with the resolution.
- ✓ If the business enterprise and complainant(s) failed to reach a resolution, why the parties did not reach a resolution.

3.2 The business enterprise shares monitoring and evaluation results with interested parties, and uses such results to improve the grievance mechanism.

The business enterprise should share monitoring and evaluation results with local communities to demonstrate that the grievance mechanism is either: functioning or nonfunctioning, accessible or inaccessible, and effective or ineffective. It is important for the enterprise to evaluate what the results may indicate regarding the mechanism's effectiveness. For example, although a high rate of complaints could indicate poor relations between the business enterprise and local communities, it could also indicate that the grievance mechanism is functioning as intended and is helping to improve relations between the business enterprise and communities. Regardless, business enterprises should use monitoring and evaluation results to adapt and improve the grievance mechanism.

Case Example 9:

The IPIECA emphasized the importance of monitoring and evaluating the effectiveness and performance of the grievance mechanism through regular and periodic reviews. One extractive company, for example, reports annually on the number of grievances received, the percentage resolved, and the average time period for resolution. Additional ideas on how to monitor and evaluate include:

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

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