



Ludwig Boltzmann Institute
Human Rights



Do's and Don'ts for non-judicial Grievance Mechanisms

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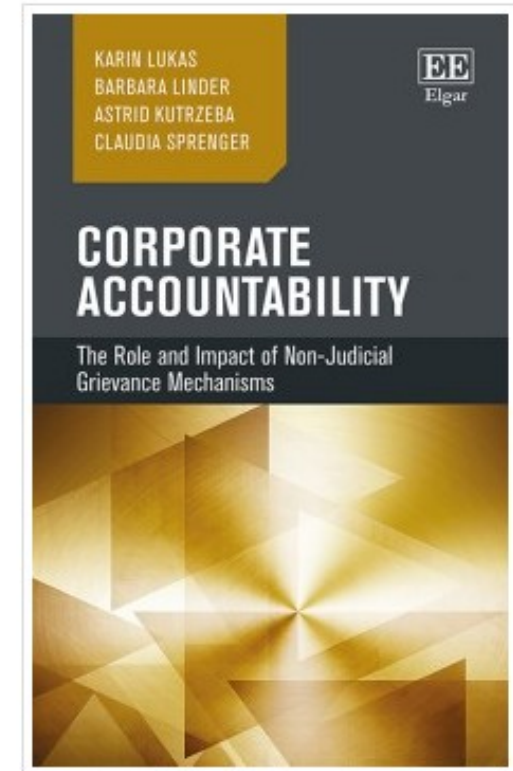
Boltzmann Institute of Human Rights, Vienna, Austria

Round Table on Business & Human Rights

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Our Research

- World Bank Inspection Panel, OECD National Contact Points, Compliance Advisor Ombudsman
- Ethical Trading Initiative, Fair Wear Foundation, Fair Labour Association
- Corporate Grievance mechanisms



Why a grievance mechanism?

Corporate interests vs. human rights interests



National judicial systems and international human rights systems provide unsatisfying ways of to gain redress in case of corporate human rights violations

➤ **Can non-judicial grievance mechanisms provide an alternative?**

Which grievance approaches exist?

- Grievance Mechanisms run by **international organisations** (e.g. World Bank Inspection Panel, Compliance Advisor Ombudsman, OECD National Contact Points)

For companies:

- Grievance Mechanisms run by **third parties** e.g. NGO (face-to-face, managed by NGO as intermediary, e.g. Fair Labour Association <https://www.fairlabor.org/third-party-complaint-process>)
- **Hotlines** (often also „whistle blowing“, „ethics“ or „workers“ hotlines, managed by third parties)
- **Community grievance mechanisms** (face to face, usually managed by company, e.g. Barrick Gold, Papua New Guinea)



What is a non-judicial grievance mechanism?

It is NOT...

- a replacement for a binding and enforceable judicial decision
- designed to handle criminal cases
- a replacement for the role of legitimate trade unions
- a replacement for concerted action towards larger legal and political reform

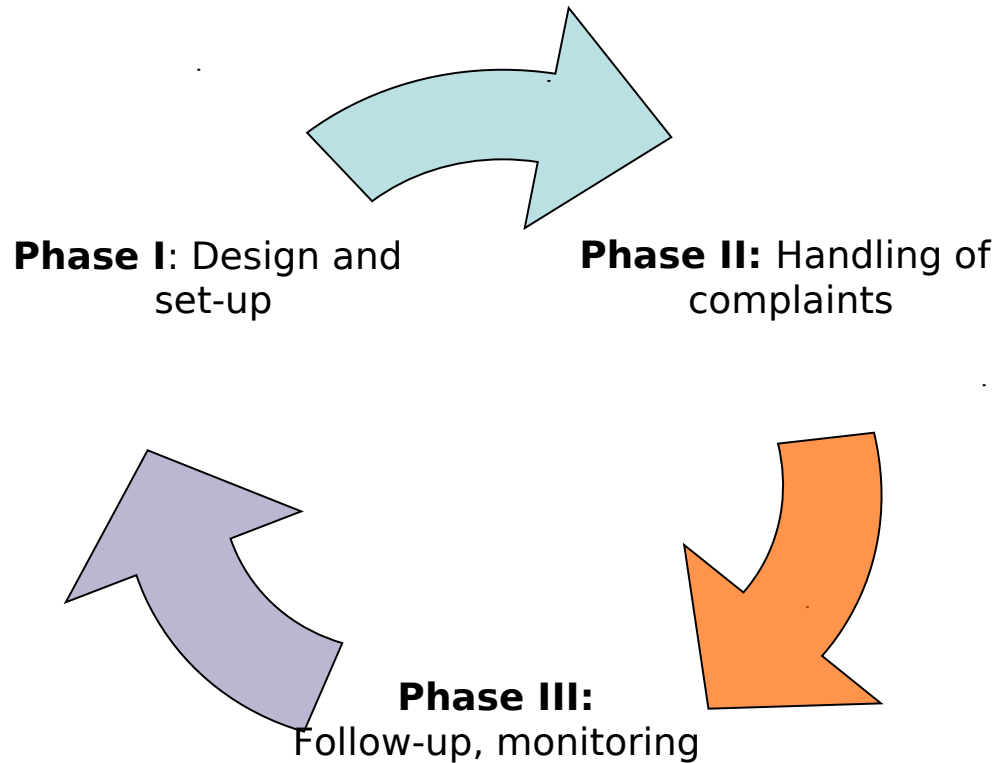


BUT it can...

- **Offer efficient, timely, and low-cost forms of conflict resolution**
- **Have a positive impact** on operational plans, schedules and costs
 - **Show that the company is committed** to continuous improvement and internal learning
 - **Improve compliance** with local and international standards/ lender requirements
- **Offer a valuable alternative** where there is little confidence in the state-run systems
- **Enhance dialogue and local relationships**



Critical stages in the process



Don'ts...



- ❑ Lack of **TRUST and CREDIBILITY!**
- ❑ Lack of predictability
- ❑ Lack of independence
- ❑ Intransparency
- ❑ Parties lack common interest
- ❑ Procedural barriers
- ❑ Lack of consequences in case of violations
- ❑ Lack of monitoring of resolutions
- ❑ Addressing only the symptoms instead of the root causes
- ❑ Only financial compensation (extortion cycle)



I. Design and Set-up

1. Design for the local operating context

- conduct a risk assessment to determine what is needed (don't overdesign!)
- consider and build on already existing channels

2. Take your time and ensure transparency

- determine the scope of the mechanism
- Involve and train local stakeholders (NGOs, trade unions, communities) - take account of local cultures and traditions, translate „Western thinking“
- Involve all relevant departments, train people handling complaints, integrate the mechanism into contracts and management systems

3. Ensure a clear and predictable process

- Time frames, responsibilities, resources
- Establish a procedure for dealing with retaliations

4. Ensure unbureaucratic access for all affected persons

- Make the mechanism known by workshops, announcements, peer to peer events, posters, stickers, etc.

II. Handling Complaints

1. Take a victim focused approach

- Act on things immediately: take measures to improve the situation of the complainants e.g. restitution (criminal punishment of the company may not benefit the victims, court remedies are also often weak)

2. Ensure transparency

- Ideally elaborate a remedial plan
- Meet with the stakeholders/communities and work through the remedial plan
- Involve third parties (e.g. trusted NGOs)
- Provide information of what happens during the process
- Manage data resulting from complaints

3. Anchor mechanism in corporate culture

- Local leadership is key
- Periodically evaluate the mechanism



III: Follow-up and Monitoring

1. Ensure the implementation of the agreement

- Ideally close the case only after the resolution has been implemented
- Establish a tracking system

2. Tackle strategic issues not the symptoms

3. Evaluate and improve the mechanism

4. Establish and cultivate a learning culture

5. Share your experiences and challenges



Example: HP Mexico & CEREAL



➤ **Company mechanism with third party involvement**

➤ **NGO takes role of trade union**



➤ **Strengths: Transparent process in with time lines and clear responsibilities, four stages, most of the issues can be solved on 2nd level**

➤ **Problem Patterns:** NGO cannot represent all workers, risk of retaliation for workers, cannot not address strategic root causes

➤ **Accountability increased** through third party involvement, increased international attention and model for other companies



Remaining Challenges

- ❖ Making the mechanism known
- ❖ Mutual trust
- ❖ Independence
- ❖ Balance between transparency and confidentiality
- ❖ Implementation and monitoring of the results
- ❖ Institutional learning



Trends

- ❖ Growing number of non-judicial mechanisms (e.g. UNDP, OMV, adidas)
- ❖ More experience from good/bad practice (adidas/Anglo American)
- ❖ Community-based mechanisms
- ❖ Websites:
 - <https://www.businessrespecthumanrights.org/>
 - <http://accessfacility.org>
 - <https://www.somo.nl/hrgm/types-grievance-mechanisms/international-grievance-mechanisms/>
 - <http://www.ipieca.org/resources/good-practice/community-grievance-mechanisms-in-the-oil-and-gas-industry/>
 - <https://ilas.sas.ac.uk/resources/legal-cultures-subsoil-database>

Thank you for your attention!

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