

**Better Access to Remedy
in Company-Community Conflicts
in the field of CSR:**

**A Model for Company-Based
Grievance Mechanisms**

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Introduction

The Special Representative to the UN Secretary General on human rights and transnational corporations and other business enterprises, John Ruggie, establishes access to remedy as one of the three pillars of the UN 'Protect, Respect, Remedy' Framework. In this Framework, Ruggie prescribes that company-based grievance mechanisms can be one effective means of enabling remediation to those potentially being impacted by business enterprises' activities. This report aims at proposing a model for company-based grievance mechanisms that follow a combination of interest- and rights-based approaches to conflict resolution of all corporate social responsibility issues in company-stakeholder relationships.

In the last decades, the role of business in society has been in constant change. As Gølborg points out, business have been given increasingly greater freedom, while at the same time they have been held responsible for issues that were previously considered responsibility of the state (Gølborg 2009, 605). In the 1960's many of those companies based in industrialized countries began to expand by establishing manufacturing subsidiaries in less developed countries in an effort to overcome high trade barriers and take advantage of cost factors such as cheap labor, and in some cases, local resources (Scott 2009, 301). Later on with the effects of the oil crises in 1978-1979, and with the liberalization of trade and capital flows, in the 1980's most developing countries were persuaded to reduce control and regulation of multinational companies and start facilitating companies' operations in their territories (Scott 200, 303).

The concept of corporate social responsibility (CSR) can be traced back to the industrial revolution period (Carroll 2008). However, its rise is mostly attributed to globalization and its discontents, establishing the expectation that business should voluntarily promote effort to mitigate climate change, protect human rights and safeguard the environment (Gølborg 2009, 605-607). There is an immense number of definitions of CSR. However, there appears to be a consensus on the dimensions or elements that the concept comprises: environment, social, economic, and stakeholders (employees, suppliers, consumers, communities), (Dahlsrud 2006, 1-2). Thus, CSR is often defined as the set of activities of a company demonstrating the inclusion of social and environmental concerns in business operations and interactions with stakeholders (van Marrewijk & Werre 2003, 117). The Voluntariness element of the CSR concept has been the most debated one. The concept of CSR is experiencing an evolution shifting away from voluntariness and CSR activities are becoming a social norm that business are expected to observe.

The role business is expected to have in society has recently taken one step forward with the introduction of the United Nations' Protect, Respect and Remedy Framework created by the UN Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises, John Ruggie. In order to ensure that businesses respect the rights of their stakeholders (employees, suppliers, consumers, and communities), Ruggie envisioned the implementation of rights-compatible company-based grievance mechanisms. These mechanisms are aimed at being vehicles for "addressing grievances – whether or not they raise substantive human rights issues – in a manner that respects and supports human rights" (Corporate Social Responsibility Initiative 2008, 7).

Company-based grievance mechanisms are relevant because companies' activities have an impact on stakeholders, impacts from which grievances are likely to raise (Corporate Social Responsibility Initiative 2008, 1). Company-based grievance mechanisms employing dialogue-based or other culturally-appropriate and rights-compatible processes "may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach" (Ruggie 2010b, 24). These operational-level grievance mechanisms should be accessible to affected individuals and communities, and should give the opportunity to complainants of directly engaging the company in assessing the issues and seeking their remediation (Ruggie 2010, 24). Thus, the objective of a company-based grievance mechanism is providing an early-stage recourse and possible resolution, which can be supplemented with collaborative initiatives or being followed-up by judicial instances in case of dissatisfaction

Research conducted by the Corporate Social Responsibility (CSR) Initiative at Harvard's Kennedy School of Government reveals that "the recognition of the need for effective grievance mechanisms is nothing new in the context of corporate responsibility" (Corporate Social Responsibility Initiative 2008,1). Indeed, according to Rees and Vermijs (2008) there are several grievance mechanism models that have been implemented on a wide range of levels: company, industry, multi-industry, national, regional and international levels, either of private or public nature. However, Ruggie points out that companies are not learning from the costs of conflicts with communities where they operate, which are mainly concerned with environmental and human rights issues (Ruggie 2010a, 6). Also, he mentions that some of the existing accountability mechanisms have self-defined rather than internationally recognized human rights in their standards, and that mechanisms ensuring adherence to the standards are likely to remain weak and detached from firms' own oversight and control systems (Ruggie 2010b, 3).

However popular these mechanisms are becoming, they mostly cover non-discrimination issues or other labour-rights standards, or are channels for whistle-blowing on non-compliance with ethical standards or in-house codes of conducts (Corporate Social Responsibility Initiative 2008, 6). Many of these non-judicial mechanisms appear ineffective or even absent when it comes to impacts on more remote stakeholders, like in the case of workers in the supply chain, indigenous peoples or communities around corporate operations (Corporate Social Responsibility Initiative 2008, 6). These are in part consequences of the lack of appropriate guidance on company grievance mechanisms, on the multiplicity of business initiatives, the lack of understanding of the possible conflict scenarios that companies might encounter (depending on their industry or the socio-political conditions of the place of operations), and on the lack of understanding of the functions and structure of grievance mechanisms (Wilson 2009).

* * *

The present research will contribute to the current literature on CSR and will propose a model for company-based mechanisms that can aspire to solving disputes in non-judicial, anticipated and CSR-conscious way. Hence, the mechanism should be designed to solve disputes related to all kind of CSR issues - human rights, labour and environmental issues). The design of the CSR grievance mechanism will be based on the framework of John Ruggie's guiding principles. In 2010, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, drafted a report on "Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework" (Ruggie 2011).

This framework consists of three pillars: the State duty to protect against human rights abuses by third parties (including business) through appropriate regulation; the corporate responsibility to respect human rights, which means "to act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved" (Ruggie 2011, 4); and better access for victims to effective remedy of judicial and non-judicial nature. This research will focus on the last pillar on access to effective remedy of non-judicial mechanisms. However, given the fact that Ruggie's framework and guiding principles focus only on human rights, the mechanism developed in this research will deal with a broader scope of issues that also include the other elements of CSR - labour and environmental issues. This is based in the fact that the principles of protect, respect and remedy can also be applied to the broader set of issues that CSR comprises, and disputes related to labour or environmental issues could easily develop in human rights disputes.

This research paper will try to contribute to the topic by looking at the questions of: *What do current company-based grievance mechanisms look like? What should company-based mechanisms look like? And is it possible to create a general and basic model of company-based grievance mechanism, despite the no one-size-fits-all principle?*

In line with the research questions, the research objectives are the following:

1. Positioning the company-based grievance mechanisms within the broader framework of conflict resolution, which ranges from judicial and non-judicial mechanisms, on the various levels of implementation, such as industry-, multi industry-, national-, regional-, and international-levels.
2. Identifying the elements that a (basic) model for a company-based grievance mechanism should contain. These elements will be derived from John Ruggie's Guiding Principles.
3. Verifying the usefulness of the basic company-based model for other non-judicial grievance mechanisms on the project-, sector or industry-level.

These objectives will be achieved by performing desk research of literature on existing company-based grievance mechanisms and other non-judicial grievance mechanisms and best practices. Due to their relevance on the topic, the following texts and sources will be studied as the core documents of research to determine the elements of a grievance mechanism model: the reports of the Special Representative of the Secretary-General on the issue of human rights and business, John Ruggie; the underlying documents and his Guiding Principles for the implementation of the United Nations "Protect, Respect and Remedy" Framework.

Chapter 1. Non-judicial grievance mechanisms

Non-judicial grievance mechanisms are procedures consisting of receiving, evaluating, and addressing grievances from affected actors (Compliance Advisor/Ombudsman 2008, 4). These grievance mechanisms can be implemented at company-, industry-, region-, national-, or international-levels. There are an increasing number of multi-stakeholder initiatives on the industry, national and international levels to which companies can subscribe. International initiatives such as the World Bank Group's Ombudsman and Inspection Panel, have attempted to increase accountability of companies, or of the projects being financed like in the case of the World Bank's Inspection Panel. Some multi stakeholder initiatives provide independent mechanisms to monitor, investigate and help solve grievances of affected groups or, in some cases, individuals¹. Furthermore, many of those multinational enterprises subscribing to these initiatives have the purpose of increasing credibility by demonstrating compliance to meet requirements (Bridgeman & Hunter 2008, 218). The grievance mechanisms of these initiatives, or the guidelines they provide to companies to implement them, vary in scope and structure, and most of the time they are not situated in the operational level of companies (Rees 2008).

At the company-level, the grievance mechanism structures also vary from one another. There is a wide range of types of grievance mechanisms currently being put into place. Some companies make use of the services of a hotline provider, such as Clear Voice Hotline, to establish it as an information facilitator, and a first confidential contact point for aggrieved workers (Rees & Vermijs 2008, 24). Others like Hewlett Packard work in partnership with a local NGO to identify and address grievances of workers in their supply factories. This NGO often becomes the first contact point to access the grievance mechanism, and may act as a worker representative and a monitoring institution of the company's procedure (Corporate Social Responsibility Initiative 2008, 17). And some other companies prefer having direct dialogue with the assistance of a third party facilitator knowledgeable of international standards, to find the best possible solution. For example, in Cambodia, a Labour Inspectorate official may play the role of conciliator in dispute resolution between a company and its workers. It is the official's duty to assure that the resolution respects labour standards, while leaving the option of filing a claim at the Arbitration Council of the country if the aggrieved party is not satisfied with the outcome (Corporate Social Responsibility Initiative 2008, 37). Company-based grievance mechanisms will be further explored in the following chapter.

¹ For instance, the World Bank Inspection Panel is the first institution to create a mechanism that can be accessed by affected citizens, rather than just communities or other collective stakeholders. Citizens affected by projects being financed by the World Bank can request their compliance to policies and procedures established by the World Bank Group (Bridgeman & Hunter 2008, 208).

1.1 Dispute Resolution Procedures

Grievance mechanisms may employ various types of procedures. In their research on the range of existing grievance mechanism models, Rees and Vermijs (2008) find that they can make use of six different types of processes to address grievances. The first one is *information facilitation*, which consists of gathering and disseminating information on grievances, leaving any further action on that information to its end-users. The second one is *negotiation*, consisting on "direct dialogue between the parties to the grievance with the aim of resolving the grievance or dispute through mutual agreement" (Rees & Vermijs 2008, 3). A third one is *mediation/conciliation*, which is similar to negotiation, except that it requires the assistance of an external, neutral facilitator that helps solving the grievance through mutual agreement. This facilitator could take a more or less active and intrusive role in the process. The fourth one is *arbitration*, which is defined as the "process by which neutral arbitrators selected by the parties to a dispute hear the positions of the parties, conduct some form of questioning or wider investigation and arrive at a judgment on the course of action to be taken in settling the grievance or dispute, often [but not necessarily], with binding effect on the parties' (Rees & Vermijs 2008, 3). The fifth one is *investigation*, consisting of a process aimed at gathering information and views about the grievance in order to produce an assessment of the facts. And finally, one last procedure is *adjudication* which is the formation of a judgment on the rights and wrongs of the parties in a disputed situation, and on the solution needed. The decision drawn from this procedure may be binding to the parties or can lead to a sanction. According to Rees and Vermijs (2008), adjudication differs from arbitration in that the parties are not required to agree on who will adjudicate, and it does not have a formal process of hearings (Rees & Vermijs 2008, 3).

Given its informality and its potential to identify common interests and jointly find solutions with the assistance of a neutral third-party, mediation is the most likely used dispute resolution procedure in CSR grievance mechanisms. For its relevance, it is worth to further explore mediation.

1.1.1 Mediation

Mediation does not simply consist of having a third neutral party helping the conflicting parties find a solution. Mediation can have several objectives, each one of them requiring a different technique. However, there are three types of mediation: (1) evaluative, (2) facilitative, and (3) transformative. First, the evaluative mediation focuses on helping the parties understand the strengths and weaknesses of their case. In this kind of mediation, the mediator collects facts, identifies issues and analyzes the parties' arguments. With this information, the

mediator evaluates who is likely to win. This type of mediation is mostly used in litigated cases, where a mediator is likely to influence the parties to settle (Blomgren *et al.* 2009, 12).

Second, facilitative mediation consists on clarifying and enhancing communication between the parties to help them decide what to do. The focus here lays on the parties' underlying needs and how they can be met in an interest-based settlement. The main purpose of this type of mediation is helping the parties engage in brainstorming sessions to generate ideas for resolving the conflict (Blomgren *et al.* 2009, 12). Hansen refers to this type of mediation as "satisfactory story", because it has as main goal satisfying the needs of parties in conflict through problem solving techniques (Hansen 2008, 411).

And third, transformative mediation has as ultimate goal empowerment and recognition, and not settlement. Empowerment means that one of the parties will move away from weakness to strength, becoming more confident and decisive. And recognition is understood as becoming more responsive, trusting and understanding of the other party. The role of mediators here is asking participants how they would like to structure the process. The mediator does not evaluate or recommend particular settlements, leaving it all to the parties (Blomgren *et al.* 2009, 13).

To this generally-accepted categorization of mediation types Hansen (2008) adds a more debated type of mediation that seeks to achieve social justice. This type of mediation is a tool that helps overcoming societal oppression. In order to achieve this goal, advocates to this type of mediation suggest that the third party leading the mediation should not be neutral. Contrarily, the mediator should explicitly state power imbalances, take a position, which should usually be the one of the oppressed or less powerful party (Hansen 2008, 412). Also, Hansen points out that the mediator should not only be a professional, but must essentially have a commitment to social justice (Hansen 2008, 415).

1.2 The complexity of conflicts. What we are looking at

Conflict resolution processes, be it mediation or other procedures, can solve conflicts in various ways: according to the parties' interests, their rights, or their power (Smith & Martinez 2009, 126). Solving a conflict by looking at the parties' interests, means that whatever they care about – including economic, rational, political, and social values – is what should be negotiated by the parties, either directly or with the assistance of a third party (Smith & Martinez 2009, 126). In turn, solving disputes based on rights requires, with no exception, "a neutral third party to apply agreed-upon rules to a set of facts to determine who prevails" (Smith & Martinez 2009, 126). Consequently, right-based conflict resolution often takes place in binding arbitration and

the traditional judicial procedures. And finally, a way of solving disputes that might not be considered by many as a conflict resolution procedure *per se*, is solving conflicts according to power. Those with the most power, leverage, status and resources (e.g. strikes, lockouts, or violence) are more likely to get the most favorable outcome, however at the cost of breaking a relationship or failing to vindicate a right (Smith & Martinez 2009, 127).

On Figure 1 the progress of conflict, along with the conflict resolution mechanisms on every stage become evident. Avoidance and violence are the two opposite extremes ways of dealing with a conflict, having in the middle of the continuum the various conflict resolution procedures. These procedures also show different degrees of formality and third-party involvement, as well as a shift from interest- to rights-based conflict resolution.

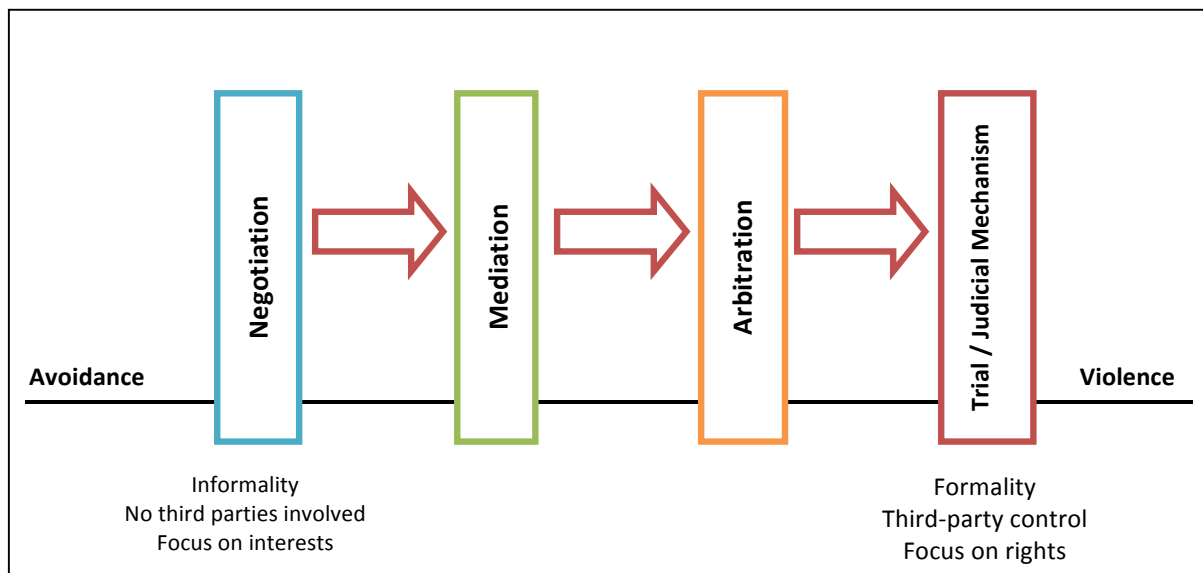


Figure 1. Source: Smith & Martinez 2009, p. 127.

Negotiation is the most informal procedure of all, where the focus is on interests and where the parties retain control over the procedure and the outcome. Mediation can be a formal or informal procedure, but it necessarily involves a neutral third-party who does not have the authority to impose a binding decision. Arbitration and judicial mechanisms are the most formal procedures of all, involving a third party with the power to impose binding decisions over the rights of the parties submitted under its authority (Smith & Martinez 2009, 127).

Chapter 2. Company-based grievance mechanisms

Some multi-stakeholder initiatives, such as the UN Global Compact, provide a code of conduct or require certain performance standards. But these mechanisms function above the operational level of companies, and some of them do not provide companies with guidance on grievance mechanisms (Corporate Social Responsibility Initiative 2008, 11), or lack a fully developed complaint mechanism aiming at solving disputes between companies and stakeholders (Vermijs 2008, 101). Hence, establishing grievance mechanisms at the company level can provide a better, more effective and direct procedure to address grievances between a company and its stakeholders.

Companies have now the opportunity – and challenge – of regulating themselves. This means that they should implement policies and practices that aim at protecting human rights, and environmental and labour conditions in the business context. These policies and practices are almost entirely self-regulated and in a way demonstrate that companies recognize that human rights, labour conditions and the protection of the environment have become a greater issue (Backer 2010, 125). Self regulation is comprised of three issues. First, self regulation means that companies will assess their impact on human rights, environment and labour conditions. Second, companies should report information on its activities. And third, companies must provide assurance, meaning that they must let people know that they are responsible of respecting human rights policies, and that they support good labour conditions and environmental conservation (Backer 2010, 125). Business self-regulation has been, on the one hand, welcomed by both business and civil society; but on the other hand it has also been criticized of appearing innovative but not being systematic (Backer 2010, 125). For this reason, in his 2010 report John Ruggie developed guiding principles that should be applicable to all grievance mechanisms, providing some degree of systematization of grievance mechanisms (Ruggie 2010b).

2.1 What do company-based grievance mechanisms currently look like?

State of the Art

Companies' grievance mechanisms vary in structure and procedure (negotiation, mediation, etc.). However, some patterns can be identified. The examples of grievance mechanism studied by Rees and Vermijs (2008) allow seeing, on average, what grievance mechanisms look like. Rees and Vermijs categorize grievance mechanisms by level of implementation (company, industry, national, international, etc.) and by type of process

(information facilitation, negotiation, mediation, arbitration, etc.). Their research studies 28 cases² out of which 4 are of companies (Rees & Vermijs 2008, 4).

From this research it can be drawn that grievance mechanisms in companies are composed of three phases, each one of them triggered by a not satisfactory solution of the grievance: (1) registration and proposed solution, (2) mediation/conciliation, or negotiation³, and (3) arbitration, or mediation/conciliation with a third party of higher hierarchy than in the previous mediation/conciliation procedure. These stages are not present in all existing grievance mechanisms. However, as it will be presented in the following chapter, they can compose a grievance mechanism model. Not all conflicts are the same, thus not all conflicts should be handled the same way. Each one the conflict resolution procedures – negotiation, mediation and arbitration – addresses conflicts differently with varying degrees of formality and party-control over the outcome. A grievance mechanism should offer its users all possible alternatives to solve disputes, including the option of revising a non-satisfactory outcome.

2.2 What should company-based grievance mechanisms look like? John Ruggie's Guiding Principles

In 2011, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, drafted a report on "Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework" (Ruggie 2011). This framework consists of three pillars: the State duty to protect against human rights abuses by third parties (including business) through appropriate regulation; the corporate responsibility to respect human rights, which means "to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur" (Ruggie 2010a, 3); and better access for victims to effective remedy of non-judicial mechanisms only.

² Examples on the company level are BTC Pipeline/ BP in Azerbaijan, Gap Inc. in Lesotho, Hewlett-Packard in Mexico, and Xstrata Copper in Peru. Examples on the industry level are Clear Voice Hotline, Fair Labor Association, Fair Wear Foundation, International Council Toy Industries, Voluntary Principles Security & Human Rights, and Workers Rights Consortium. Examples on the multi-industry level are Ethical Trading Initiative and Social Accountability International. Examples on the national level are India's National Human Rights Commission, Kenya's National Commission of Human Rights, New Zealand's Human Rights Commission, Cambodia's Labour Dispute System, South Africa's Labour Dispute System, and UK's Labour Dispute System. Examples on the regional level are African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, and the Inter-American Development Bank. And the examples on the international level are Global Union Federations/TNCs, International Labour Organization, Organization of Economic Co-Operation and Development, United Nations Global Compact, World Bank Group (CAO), and World Bank Group Inspection Panel (Rees & Vermijs 2008, 4).

³ Like in the case of BP's grievance mechanism on the BTC Pipeline project in Azerbaijan (Rees & Vermijs 2008, 4).

According to Ruggie, grievance mechanisms should perform two key functions: (1) "tracking" human rights performance by providing a channel to those impacted by companies' operations where they can raise concerns if they feel they are being (or will be) harmed; and (2) once identified, addressing grievances and remediating harms early and directly by the company (Ruggie 2011, 25). Furthermore, Ruggie establishes as effectiveness criteria for non-judicial grievance mechanisms the following (Ruggie 2010, 26):

- (i) Legitimate: Having clear, transparent and sufficiently independent governance.
- (ii) Accessible: Being publicized to the end-users, and provide the necessary information and assistance to make use of it. This includes overcoming barriers due to language, literacy, awareness, finance, distance and fear of reprisal.
- (iii) Predictable: Providing clear and known procedure with a time frame for each stage, defined types of process and outcomes that can be expected, and monitoring procedure on the implementation of the resolution.
- (iv) Equitable: Ensuring that those aggrieved can have access to information and advise necessary to make use of the grievance mechanism on fair and equitable terms.
- (v) Rights-Compatible: Providing outcomes and remedies that are in accordance with internationally recognized human rights standards.
- (vi) Transparent: Having a transparent process and outcome, namely the receipt of complaints and the key elements of their outcomes.
- (vii) A source of continuous learning: Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.
- (viii) Based on engagement and dialogue: Those mechanisms implemented on the operational level should be based on direct or mediated dialogue that leads to agreed solutions (Ruggie 2011, 26).

Ruggie's effectiveness criteria pave the way to designing an effective grievance mechanism that can be implemented by business at the operational level. But there is a warning. The effectiveness criteria were developed by Ruggie taking into account the responsibility that business have to respect human rights. Thus his work was limited to human rights only, and excludes the rest of issues that fall under the concept of CSR. As such, one of the main features of the effectiveness criteria is the use of the rights-based approach to solve conflicts between a company and its stakeholders.

The rights-based approach, as Ruggie and Harvard University's Corporate Social Responsibility Initiative note it, is ideal to guarantee that any settlement reached through a company-based grievance mechanism respects and supports the human rights of the aggrieved parties (Corporate Social Responsibility Initiative 2008, 7). According to John Ruggie, the human rights framework within which companies operate should include as a minimum set of rights those emanating from the following conventions: (1) *The International Bill of Rights*: (i) Universal Declaration of Human Rights, (ii) the International Covenant on Civil and Political Rights, (iii) the International Covenant on Economic, Social and Cultural Rights; (2) *Core Conventions of the International Labour Organisation (ILO)*: (i) Convention 29 on Forced Labour, (ii) Convention 87 on Freedom of Association and Protection of the Right to Organise, (iii) Convention 98 on the Right to Organise and Collective Bargaining, (iv) Convention 100 on Equal Remuneration, (v) Covention 105 on the Abolition of Forced Labour, (vi) Convention 111 on Discrimination (Employment and Occupation), (vii) Convention 138 on Minimum Age, (viii) Convention 182 on Elimination of the Worst Forms of Child Labour; UN Declaration on the Rights of Indigenous Peoples (if indigenous peoples are involved); and the Code of Conduct and other commitments taken by the company (Ruggie 2010b, 13).

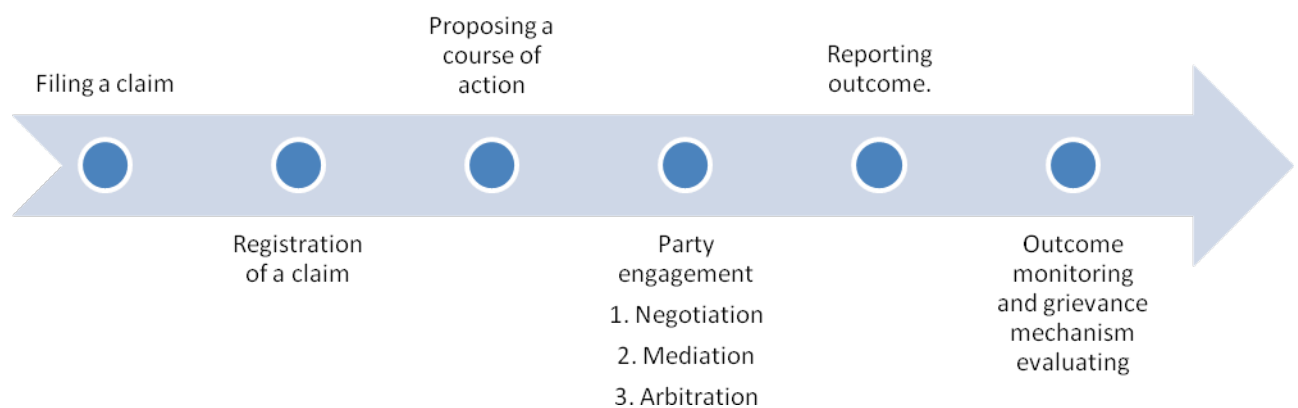
This means that a company-based grievance mechanism can only use a rights-based approach to conflict resolution when a controversy revolves around rights derived from the listed legal instruments. Given that not all instruments regulating labour conditions are considered part of the human rights framework, and that international environmental law, norms and values hardly allocate rights to individuals, many labour issues and environmental concerns cannot be addressed through a rights-based approach under a company grievance mechanism. These issues are best handled through an interest-based approach.

Chapter 3. A model of company-based grievance mechanisms

In the United Nations 'Protect, Respect and Remedy' Framework, John Ruggie establishes that business have the responsibility of respecting human rights (Ruggie 2011). By way of fulfilling such responsibility, he says, business should consider the implementation of company-based grievance mechanisms that function on the operational level, in order to provide access to remedy to those being affected by the company's operations (Ruggie 2011, 22).

In this chapter a model for a company-based grievance mechanism that provides remedy to all CSR issues will be proposed. As already mentioned, John Ruggie's work focused on human rights only. Even though human rights form a very important part of CSR, there are other issues – such as environmental damage or poor labour conditions for workers – that companies should address. This model aspires to present the basic elements and steps that a grievance mechanism should ideally include in order to provide effective remedy to its users. These elements and steps have been elaborated based on the Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework by John Ruggie (2011), research by Harvard University's Corporate Social Responsibility Initiative, and other theoretical concepts on dispute resolution, most of which have been presented in the previous chapter.

The company-based grievance mechanism model is composed of six steps or phases: (1) filing of a claim, (2) registration of a claim, (3) proposing a course of action, (4) party engagement - negotiation, mediation, and arbitration, (5) reporting outcomes, and (6) outcome monitoring and grievance mechanism evaluating.



3.1 Filing a claim

The first step consists of an individual or a group approaching an access point of the company grievance mechanism to file a claim. All stakeholders of a company should be granted access to the grievance mechanism, and at this point all grievances should be filed and admitted into the mechanism. It is in the following stages of the mechanism that grievances are evaluated and considered. When filing a claim, the principle of accessibility and equitability should be observed (Corporate Social Responsibility 2008, 23-24)

According to Ruggie, one of the effectiveness criteria for non-judicial mechanisms is *accessibility* (Ruggie 2011, 26). This means that the mechanism must be known to all stakeholder groups for whose use they are intended, and should provide adequate assistance for those who may face particular barriers to access (Ruggie 2011, 26). Thus, firstly all the steps of the mechanism and access points must be well-publicized. It is advised that at least one of the access points should be independent from the corporate management (Corporate Social Responsibility Initiative 2008, 21). This external point of access can be a partner with skills and knowledge on dispute handling or human rights, such as a local NGO, or the national commission of human rights or ombudsman. For example, Hewlet Packard in Mexico works with the Center for Reflection and Action on Labor Issues (CEREAL), a local NGO, to identify and address the grievances of workers in their supply chain factories. This NGO also functions as a point of information, and provides training on human and labor rights to workers (Rees & Vermijs 2008, 17).

And secondly, barriers to access must be avoided as much as possible. Some of these barriers may consist of a lack of awareness of the mechanism, language literacy, costs, physical location, fears of reprisal (Ruggie 2011, 27), levels of education, access to internet and other communication infrastructures such as phone and mail (Compliance Advisor/Ombudsman 2008, 11). The barriers to access may differ depending on the context in which a company operates. But as minimum condition, in all cases the procedure to file a complaint should be clear and simple, and in the appropriate languages. If needed, assistance on filing the complaint should be provided, for instance in of illiteracy (Corporate Social Responsibility Initiative 2008, 21-22). The Compliance Advisor/Ombudsman (CAO), the independent recourse to the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) proposes in-person methods to foster community accessibility to the company. Such approach suggests that companies could have staff regularly present in the local communities to take complaints as a way of putting a 'human face' on the communities' relationship and

engender trust (Compliance Advisor/Ombudsman 2008, 11). This approach is, perhaps, the most suitable for companies whose operations have potential severe impacts.

Finally, it is noteworthy to mention that a good way of building trusting relationships with stakeholders and overcoming barriers of access of a grievance mechanism is performing due diligence, before and during a company operates in communities and implements a grievance mechanism. Companies must study the local socio-economic conditions and the cultural context of the place where they will operate and the communities that will be impacted by their activities (Ruggie 2011, 16). Even though this procedure is out of reach of this report, it is important to acknowledge here its relevance as a condition to a successful grievance mechanism. Companies can only foster trusting company-stakeholder relationships and have a good conflict management by becoming acquainted with the local context and communities. Various international organizations and multi stakeholder initiatives, such as the IFC and CAO, have already touched upon and developed this topic⁴.

Regarding *equitability*, companies should ensure the inclusion of this principle in their grievance mechanisms by providing an informed access to remedy (Marmorat 2009 9). According to John Ruggie equitable grievance mechanisms means that they

"[...] ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms" (Ruggie 2011, 26).

End-users of the grievance mechanism should be able to acquire knowledge and advice on human rights, as well as information on technical issues about all avenues for recourse. This way, the inherent imbalance in the knowledge between companies and stakeholders can be overcome. Once again, a good way of achieving this is through building partnerships with CSR-knowledgeable institutions such as NGOs or human rights commissions (Corporate Social Responsibility Initiative 2008, 16).

⁴ See some of the most relevant sources such as "Guide to Human Rights Impact Assessment and Managements" by the International Finance Corporation, UN Global Compact and International Business Leaders Forum, available at http://www.ifc.org/ifcext/sustainability.nsf/Content/OurStories_SocialResponsibility_HumanRights_Publication; "Due Diligence for Human Rights: A Risk-Based Approach" by Corporate Social Responsibility Initiative Working Paper No. 53, Harvard School University, available at http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_53_taylor_etal.pdf; "Human Rights Translated: A Business Reference Guide", by UN Global Compact, available at http://www.unglobalcompact.org/docs/news_events/8.1/human_rights_translated.pdf; and "G3: Community Impacts", by Global Reporting Initiative, available at <http://www.globalreporting.org/NR/rdonlyres/6D00BC14-2035-42AB-AB6A-5102F1FF8961/0/CIReportfinalnew.pdf>

Equitability should, in the end, empower local populations to be in the position to effectively negotiate (Wilson 2009, 47). This becomes particularly relevant when companies are working on a developing project that has several adverse impacts in social and environmental issues (International Finance Corporation 2009). The empowerment of local people should consist first of their understanding on what their rights are. Secondly, they should also be knowledgeable of the use of the range of existing mechanisms (both non-judicial and judicial) that can help them defend their human rights and other interests (Wilson 2009, 47). In case of high-impact projects, companies must take this into account and include in their CSR policies ways of ensuring the equitability of parties (International Finance Corporation 2009). They could for instance provide local communities with training, disseminate information, create school-based materials, etc. (Wilson 2009, 47). For example, a project of the construction of a liquefied natural gas plant in Yemen developed creative ways of engaging with the communities affected by the project. One of them are the school awareness programmes, which engage the community through theatre, performing arts and educational activities to communicate with the community while overcoming low literacy levels in villages. This awareness programme engages with students with the aim of reaching a broader audience, which includes women and other marginalized groups (Hirst *et al.* 2010, 8).

3.2 Registration of claim

This second step consists of registering a claim that has been brought directly by the grievant party to the company, or through the external access point to the mechanism functioning as a representant of the aggrieved. This step is being considered apart from the first one because it may occur in the two instances mentioned: directly to the CSR department in charge of handling complaints, or through an external partner to the company providing support in the implementation of the grievance mechanism.

According to Ruggie a grievance mechanism should be *transparent*. This means that throughout the whole process the CSR department handling complaints should be at all times

"keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness [...]" (Ruggie 2011, 26).

The company must provide (in writing or orally) acknowledgment of receipt to the complainant within an established deadline, typically within 2 to 7 days (Corporate Social Responsibility 2008, 24).

Furthermore, another relevant principle at this stage is *predictability*. According to Ruggie, predictability of a grievance mechanism means that it is

"providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation" (Ruggie 2011, 26).

It is important that when acknowledging the receipt of a claim the claimant is also informed of what the next step consists of, including the corresponding deadline, and an overview of the whole procedure. Such information should of course be available on other sources, e.g. internet, company's CSR department, partner institutions such as NGOS, posters posted on workplaces or public spaces in a small community, etc.

3.3 Follow-up and proposal for a course of action

Once the company has received and registered a claim, it must proceed to evaluate, classify and, if necessary, investigate the aggrieving issues to be in the position of deciding on a course of action – be it the implementation of a specific remedy or a dialogue-based process. The company should inform this to the complainants, and other parties involved (such as a partner NGO, human rights commission or ombudsman) if any. This stage must follow the principles of transparency and predictability. Having a transparent follow-up and proposal of course of action requires that the users of the grievance mechanism are well informed over the status of their claim. Hence, the claimants and/or their representatives should receive this proposal in writing – and orally in case of illiteracy – instructions as clear as possible explaining how the grievance will be addressed – by negotiation, mediation or arbitration.

Moreover, in order to safeguard the predictability of the grievance mechanism the overall handling of complaints should be under the responsibility of a CSR department headed by a member of senior management. This department must be actively involved with the community and should communicate to other stakeholders when complaints potentially involving a group of individuals have been filed. This person and his supporting staff must be properly trained to handle the complaints, and be capable of identifying key issues and treating every complaint seriously. According to CSRI, "[n]o complaint [...] should be rejected out of hand so long as there is some nexus with the company's activities. Even where a complaint appears at first sight to be ill-founded [...] it may be an expression of an underlying, legitimate, grievance that warrants addressing" (Corporate Social Responsibility Initiative 2008, 31). In order to decide on the course of action, a company must first evaluate and classify the complaints.

3.3.1 Classifying complaints and proposing a process

In this phase, grievances will have to be analyzed and evaluated in order to propose a course of action. This will depend on the complexity of the issue and what the position of the company is in the issue (e.g. full or partial recognition of the claim, or plain rejection of the claim). When informing the claimants on the position the company has on the issue at hand, the company must (fundamentally) justify such position. According to the Compliance Advisor/Ombudsman to the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), a grievance is "an issue, concern, problem, or claim (perceived or actual) that an individual or community group wants a company or contractor to address and resolve (CAO 2008, iv).

This grievance or pre-conflict stage may be a concern that could be resolved by the company by simply providing the claimant with the information needed, or it may be a straight forward claim made to the company requesting from it a specific course of action. In the second case, the company may accept or reject – partially or completely – the claim (Felstiner 1980-1981, 635-636). A compromise offer is a partial rejection of a claim, which initiates a negotiation that is aimed at ending the dispute. An outright rejection of a claim creates a dispute, with two or more conflicting parties (Miller & Sarat 1981, 52-53). When a full rejection of a claim takes place, mediation with the help of a neutral third party or arbitration may be the best way to proceed.

This evolution and classification of claims is also used by the CSRI to determine what the best route of action is (Corporate Social Responsibility Initiative 2008, 32-34). In general, the CSRI advises that in most grievances some form of dialogue-based procedure between the company and the complainants takes place. CSRI proposes a classification based on four characteristics: issue, party, acceptance and solution. This evaluation and classification provides a good example of how to systematize and increase the transparency and predictability of the grievance mechanism. All of the studied elements can be classified as simple or complex. Single-issue and single-party grievances are simple, whereas multiplicity in issue and/or parties makes complex grievances. A simple grievance also means having a grievance recognized by the company as legitimate, whereas a grievance contested by the company in whole or part makes a grievance complex (Corporate Social Responsibility Initiative 2008, 32). Finally, a simple grievance has a specific solution that is either requested or evident; while a complex grievance does not have a requested solution or if it does is contested or unclear (Corporate Social Responsibility Initiative 2008, 32-34).

In this stage, according to the CSRI it is also important that while the claim is being analyzed the parties involved must be carefully identified (Corporate Social Responsibility Initiative 2008, 26). There may be more parties that may not be evident but that could have a position in the dispute. Complex grievances may require the involvement (as parties or observers) of sourcing, contracting or partner companies in the case of supply chain situations, or a wide group of the local community. In case of dialogue-based procedures, advisers to the parties should ensure that the parties engage directly in the dialogue and not through them. All the parties should have the maximum authority possible to reach an agreement (Corporate Social Responsibility 2008, 26-28).

CSRI presents the various scenarios that could emerge from the combination of the four characteristics of a grievance, and provides examples of proposed processes to address complaints (Corporate Social Responsibility Initiative 2008, 32-34). On the first scenario, all of the elements of the grievance are simple (issue, party, grievance accepted by the company and with specific solution requested or evident). Depending on the issue at hand, the company may decide to implement the remedy requested by the claimant, or it may decide to also meet face to face with the complainant. According to the CSRI, meeting face to face "provides an opportunity to ensure that the complainant has been aware of sources of advice available regarding his/her rights [...] and [e]ven if the meeting is simply to clarify understandings and confirm a course of action, the face-to-face contact can help build a sense of respect that can foster positive relations for the future" (Corporate Social Responsibility Initiative 2008, 33-34).

On the second scenario there are two complex elements of a grievance: there are multiple parties and/or multiple issues. The claim however is not contested by the company. In this type of cases the CSRI (2008) recommends companies to propose a face-to-face meeting to grant the request made by the claimants, and to clarify any doubts they may have. Again, this can also be favorable for the company-claimant relationship and provides to the claimants the sense that their grievances are being taken seriously (Corporate Social Responsibility Initiative 2008, 34).

On the third and fourth scenarios there are more complex elements in the claim: a claim is rejected by the company and/or there is no solution being requested or evident like in case 3, and/or there is a multiplicity of parties making a claim like in case 4. In these cases a face-to-face meeting can be a good start. This way the issues can be discussed, evidence can be found, and a mutually-agreed solution can be found through negotiation. If negotiation fails, a neutral third party will have to mediate (Corporate Social Responsibility Initiative 2008, 34).

Scenario 1.



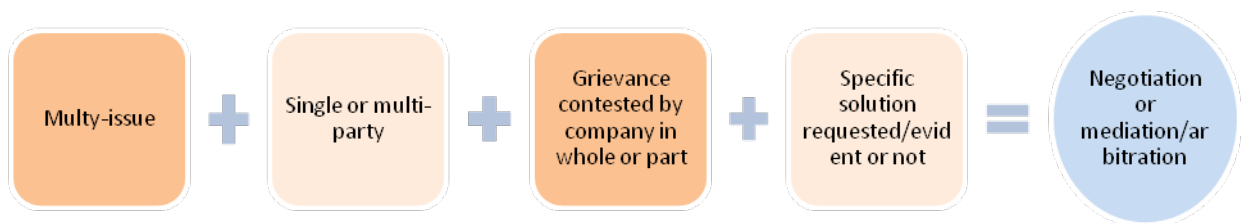
Scenario 2.



Scenario 3.



Scenario 4.



Scenario 5.



Corporate Social Responsibility (2008), pp. 32-33.

Finally, according to the CSRI only in the most complex situation, like is the case on scenario 5, is it more desirable to start a grievance procedure with a facilitated dialogue such as mediation (Corporate Social Responsibility Initiative 2008, 36).

It is very important that the company staff responsible for the implementation CSR grievance mechanism carefully analyzes the type of procedure that is more adequate to solve each one of the claims. The handbook on stakeholder engagement by the International Financial Corporation (IFC) provides a couple of examples that illustrate this. A simple case could be a complaint about a company truck that keeps on running over chickens in the road. This case could be readily resolved through direct interaction between the complainant and the company's staff. If meeting face to face does not result successful, the claimant should have the possibility of accessing to mediation. A more complex case also presented by the IFC consists of community allegations of widespread ground water contamination. Such case could be of a serious or urgent nature and require immediate intervention by senior managers and subsequent mediation (International Financial Corporation 2007, 71).

The company-based grievance mechanism model here proposed contemplates three stages of action that can be employed by its users according to their needs: (1) face-to-face meeting or negotiation, (2) mediation and (3) arbitration. When a company receives and files a claim, and after having carefully evaluated it, the person or unit in charge of CSR has to propose the claimant a route of action that designates on which of those three stages the grievance mechanism should start. If the starting stage did not bring a satisfying mutually-agreed solution, the parties can move up to the following stages as necessary. The three stages form a continuum of steps with increasing degrees of formality. The parties may use these stages as a linear procedure that begins with negotiation and ends with arbitration (Smith & Martinez 2009, 128). However, they should also have the possibility of looping up or down within this continuum if they desire to do so (Smith & Martinez 2009, 128). Also, with no exception and at any point of the grievance mechanism a claimant can bring its case to the judicial system if desired (Ruggie 2011, 25).

3.4 Party Engagement

One of John Ruggie's effectiveness criteria is that of grievance mechanisms addressing conflicts through party engagement and dialogue (Ruggie 2011; CSRI 2008). This can be done through dispute resolution procedures – be it negotiation, mediation or arbitration. Hence, he proposes the implementation of company-based grievance mechanisms *based on engagement and dialogue* "as means to address and resolved grievances" (Ruggie 2011, 26), and when adjudication is needed it should be provided by a legitimate and independent third party (Ruggie 2011, 27).

On the work done by John Ruggie and CSRI there is an emphasis on human rights-based grievance mechanisms. In this report it is argued that grievance mechanisms should be fit to

solve not only human rights but all CSR issues, such as labour and environmental concerns. Companies' operations can potentially affect human rights, but they can also cause severe environmental damages and violate minimum labour conditions – especially in the case of countries with weak governance and law enforcement. Therefore we propose that disputes handled by the grievance mechanism model here presented should solve disputes through interest-based dialogue procedures whose outcomes support human rights, international labour standards and applicable environmental law, norms, values and standards.

According to the conflict resolution theory studied in the previous chapters, the dialogue-based dispute resolution procedures are negotiation, mediation and arbitration. As already explained, they vary on the degrees of formality and party-control over the outcomes. Hence, these three procedures, on that order, compose the ideal steps made available to parties in the resolution of company-stakeholder conflicts on CRS issues.

The way that dialogue-based procedures form a fruitful alliance with rights-based (and in this case with all CSR issues) approaches is well explained by CSRI. Rights-based approaches may contemplate procedural and substantive elements. The procedural elements consist of implementing a fundamentally fair procedure where affected individuals and groups can seek remedy based on inclusion, participation, empowerment, transparency and attention (CSRI 2008, 7). The substantive element comes into play when complaints have a human right claim. Controversies raised over some labour or environmental concerns, however, cannot be dealt with through a right-based approach. Apart from the fact that companies are obliged to adhere to national law, businesses are not legally obligated to observe international environmental law, and most of the the international labour regulations, and because individuals cannot exercise environmental-rights in a way they can exercise their human rights , it is best that companies address such concerns through interest-based approaches.

3.4.1 Negotiation

Negotiation can be a good initiating stage in a grievance mechanism. This is usually the ideal method to solve simple or relatively straight-forward issues where there is no or little disagreement between the parties. However, this does not mean that more complex issues cannot be discussed under this procedure to start discussing the parties' interests.

In a negotiation parties retain control over the desired process and the outcome (Smith & Martinez 2009, 127). In the process, the parties to a claim meet face to face and discuss the grievances they have. In cases where the claimant wants to remain anonymous, he or she should

be able to have someone representing him in the grievance mechanism to the extent that is possible (CSRI 2008, 21).

3.4.2 Mediation

When negotiation fails, or when the issue at hand is too complex to be solved through negotiation, a neutral third-party should come to the table to help the parties find a mutually-agreed solution (Corporate Social Responsibility Initiative 2008, 34-36). A neutral and objective third-party plays an essential role in guaranteeing the *legitimacy* of a grievance mechanism. As Ruggie describes it, a grievance mechanism must find ways of

"enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes"(Ruggie 2011, 26).

In order to maintain neutrality, the mediator should not be affiliated to any of the conflicting parties. Ruggie points out that grievance mechanisms can provide recourse through a mutually acceptable external expert or body (Ruggie 2011, 25). Hence, the company may seek partnerships with recognized and legitimate external institutions with trained individuals on conflict resolution. Local NGOs, Human Rights Commissions or an Ombudsman could be examples of institutions that could perform this role in company-based grievance mechanisms (Nijhof & Bruijn 2007; Corporate Social Responsibility Initiative 2008). The partnership with a respected and trusted institution becomes crucial especially in countries where there are limits to an independent judiciary or properly functioning administration (Marmorat 2009, 18). For instance the former High Commissioner for Human Rights, Louise Arbour, has referred to the recent increasing role of National Human Rights Institutions in handling grievances. She mentions that these institutions can provide information and advice on avenues of recourse for the victims (Arbour 2008).

In cases where specific human rights, internationally recognized labour standards or environmental law, norms, values and standards are violated, a mediator experienced on such legal fields should participate leading the parties through an evaluative mediation process. This type of mediation consists on a mediator drawing on law, industry practice or other relevant sources to provide direction and advice to the participants on appropriate grounds for settlement (Rees 2010, 4). Critics to this type of mediation argue that rights-based mediation limits the possible solutions by breaking away from interest-based approaches. However others like Rees (2010) assert that in practice there is a leeway for contextual interpretation, which is understood as 'open spaces' within the boundaries of minimum human rights standards (Rees 2010, 9). These open spaces are often typical of economic, environmental and social rights.

Often, they even appear to be competing rights. Thus, a consensus-seeking, joint-fact finding procedure can ultimately lead to an agreement (Rees 2010, 100).

As a final remark, it is relevant to mention that being experienced in CSR issues should not be the only characteristic that companies should look for when designating a mediator. Personal traits, cultural background and other contextual elements of the claim may be of relevance to increase the chances of a successful mediation procedure. This topic is however out of the reach of this paper and should be further researched in other instances.

3.4.3 Arbitration

In the most complex cases where mediation does not redeem successful outcomes and the parties are looking for a procedure where one or more neutral third parties decide the best possible solution to a dispute. According to Menkel-Meadow arbitration is a

"private process of adjudication in which parties in dispute with each other choose decision-makers (sometimes one, often a panel of three) and the rules of procedure, evidence, and decision by which their dispute will be decided" (Menkel-Meadow 2002, 949).

In this procedure the parties still have more control over the process than in litigation. However, the decision is final within this procedure (the parties can take their case to court if desired), and it can be as binding as the parties stipulate it (Smith & Martinez 2009, 127).

In a company-based grievance mechanism, the parties can select an arbiter to handle their case. Another possibility is a panel of arbiters where each party selects an arbiter, so that those two arbiters will choose a third one. A fair procedure to appoint a (set of) trained and well-respected arbitrator(s) is a necessary element to safeguard the legitimacy of this procedure. A good example of this practice is the grievance mechanism of the Swiss mining group Xtrata, operating in Peru. Once conciliatory procedures fail, Xtrata's grievance mechanism allows community complaints to access arbitration. An Arbitration Court formed by three arbitrators is appointed: Xtrata and the community designate one arbitrator each, and these two arbitrators subsequently appoint a third one which is usually an ombudsman. The court investigates and decides on the cases, and does not allow appeals on the decision (Rees & Vermijs 2008, 21). These types of procedures balancing power differences between the company and communities are essential in company projects with potential social and environmental high impacts (Compliance Advisor/Ombudsman 2008). NGOs and Ombudsmen can be designated to function as arbiters, like is the case of British Petroleum's (BP) operations at the Baku-Tblisi-Ceyhan (BTC) pipeline in Azerbaijan (Rees & Vermijs 2008, 8-9).

3.5 Outcomes

In all cases and with no exception all parties must be informed of the outcomes of the grievance mechanism and have agreed to it. (Corporate Social Responsibility Initiative 2008, 23-25). According to Ruggie's guiding principles grievance mechanisms dealing with human rights should be *rights compatible*. This means that they must ensure that "outcomes and remedies accord with internationally recognized human rights" (Ruggie 2011, 26). In the case of this grievance mechanism model environmental and some labour issues will have to be dealt with through interest-based approaches. We recognize that in some cases, especially on controversies over environmental concerns, the outcomes may consist of a mutually agreed settlement that meets the parties' interests, but they may not be in the best interest of the environment. The question is whether there are or should be minimum standards for environmental conservation or other types of guidance on the basic criteria that settlements involving environmental issues should consider. This issue, however, is beyond the scope of this paper and it requires further research. .

Rights and interests interact in complex ways, causing individuals' notions of justice vary from each other (Rees 2010, 12). A remedy can function as "a treatment for an injury, a means for counteracting something undesirable, or a means for legal reparation" (Marmorat 2009, 9). According to Marmorat, an effective remedy should be composed of the following elements (Marmorat 2009, 10):

- "A remedy can identify sustainable solutions to grievances by raising companies' awareness of their impacts on individuals, workers and communities in their overseas operations
- A remedy helps to structure incentives for companies to reverse and mitigate negative impacts
- A remedy should enable those whose lives are affected by business activities to obtain affirmation of their rights and to seek remedies for violations of their rights
- A remedy should provide business with clear and predictable standards and one means to address actual or potential abuses of rights before they escalate into conflict or become subjects of litigation" (Marmorat 2009, 10).

Other scholars advise that apologies should be part of all outcomes. They argue that the use of corporate apologies is not only good business and good ethics, but also may play an important role in satisfying the complainant. By acknowledging the legitimacy of the grievance, admitting responsibility for the violation and expressing genuine regret, a company can

communicate concern for future relations, making a complainant feel appreciated and valued (Runnels 2011, 492).

John Ruggie summarizes that redress must encompass "apologies, restitution, rehabilitation, financial or non-financial compensation [...], as well as prevention of harm through, for example injunctions or guarantees of non-repetition" (Ruggie 2011, 22). Once the disputing parties have agreed on a remedy, the settlement of the agreement can include a mechanism to monitor or follow-up the remedy's implementation, if necessary (CSRI 2008 39-40). The outcome, and its implementation mechanism if any, should be formally recorded in writing, and confirmed and signed by the parties. It is advised that the outcomes of the grievance mechanism become public to ensure transparency of the procedure, unless otherwise requested by the claimant (CSRI 2008, 38-39). If no agreed solution was found in the company-based grievance mechanism a report describing the process and reasons of lack of remedy should also be on the records.

Finally, in order to meet the principle of legitimacy, the claimant should be then informed, either by the company or by a partnering institution (e.g. NGO, Ombudsman), over the alternative paths of recourse – other external non-judicial mechanisms, or national administrative processes or courts.

3.6 Outcome monitoring and grievance mechanism evaluating

John Ruggie prescribes that grievance mechanisms should be a *source of continuous learning* for companies by "identify[ing] lessons for improving the mechanism and preventing future grievances and harms" (Ruggie 2011, 26). Outcome-monitoring and evaluation is usually carried out internally by companies, or through audits by certification initiatives. However, there is a widespread skepticism about the ability of both internal monitoring and evaluation procedures and those of certification auditors to guarantee full transparency (Wilson 2009, 40).

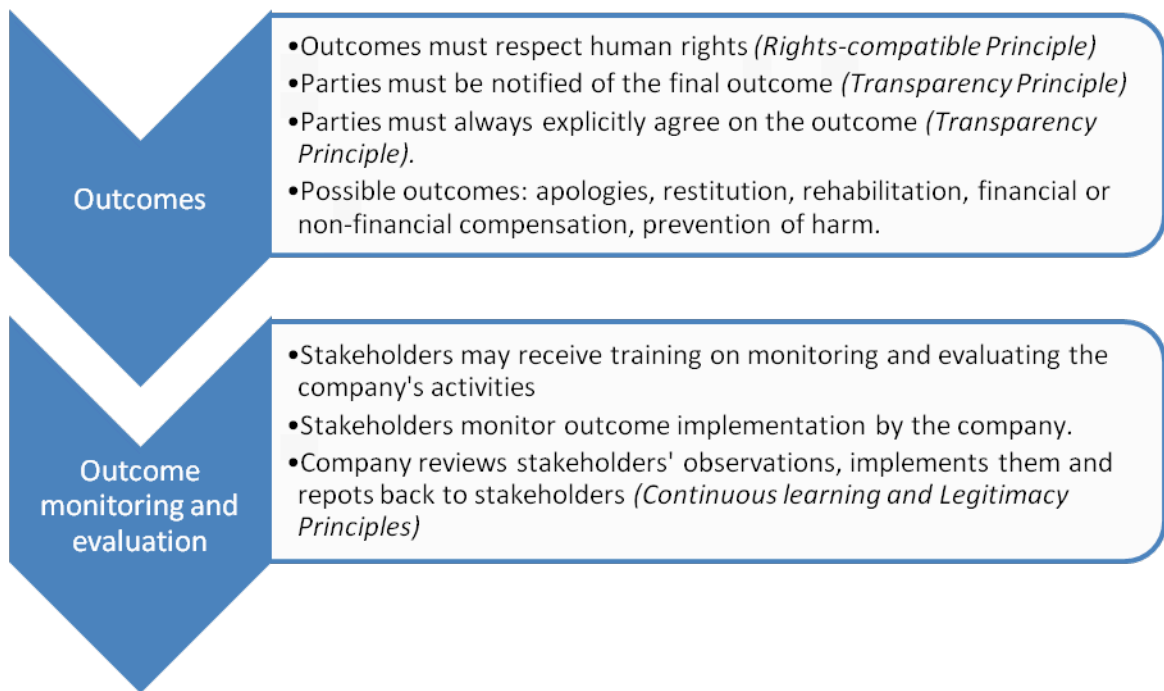
In reaction to this skepticism, NGOs and researchers working on CSR suggest a new technique denominated 'participatory monitoring and evaluation'. This type of monitoring and evaluation consists of involving local communities and other relevant stakeholders in the monitoring of outcome implementation and an evaluation of the company's activities that have an impact in local communities and other stakeholders. The company subsequently reports back to them the results, addressing the issues raised by the stakeholders (Wilson 2009, 40). Evaluation and monitoring of outcomes and company's activities can also play an important role in legitimizing the grievance mechanism, building trusting community-company relationships, and preventing future conflicts.

The company Veracel⁵, operating in Brazil, is an example of business implementing this type of monitoring. Veracel established the Odour Perception Network to monitor its pulp mill. The network, composed of a group of volunteers living in neighboring communities, receive training on recording and reporting the perception of odour (Wilson 2009, 40). This is just an example of how companies and their stakeholders can look for creative alternatives that empower the local communities by promoting its involvement in CSR.

The graph on the next pages simplifies and illustrates the elements of a grievance mechanism, including the steps of each stage with their corresponding effectiveness criteria of John Ruggie.



⁵ See Veracel's website www.veracel.com.br



Conclusion

This report aimed at providing an overview of alternative conflict resolution procedures, summarizing the state of the art of CSR grievance mechanisms, and proposing a model of company-based grievance mechanism on CSR issues. This model is composed of the basic steps and types of third party engagement that companies should offer to those being affected by a company's operations. The model was on the most part deducted from John Ruggie's Guiding Principles for the implementation of the UN ' Protect, Respect and Remedy' Framework and publications of Harvard University's Corporate Social Responsibility Initiative Program.

The model presented here should not be taken as a finalized product. Access to non-judicial remedy in the field of CSR is at moment a rising topic that still rests in its early stages. There is a need of more research and practical implementation of grievance mechanisms by companies in order to further develop them. Only by putting them into practice it will be possible to draw conclusions with more confidence over what works best. For instance, there could be more research done on the ways environmental issues should be addressed and the elements that the settlements should have in order to guarantee the protection or restoration of the environment, the characteristics that a mediator should have, or on effective ways of involving and empowering local communities. After all, empowerment of communities may be one of the most important effects that a grievance mechanism can have in the long term.

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