

Developing Effective Grievance Mechanisms in the Banking Sector



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BankTrack and Oxfam Australia

BankTrack
Vismarkt 15
6511 VJ Nijmegen
The Netherlands

Tel: +31 24 324 9220

Website: www.banktrack.org
contact@banktrack.org

Oxfam Australia
132 Leicester Street, Carlton,
Victoria 3053, Australia

P +61 3 9289 9444

Website: www.oxfam.org.au

ABN: 18 055 208 636/CC29173

Authors: Ryan Brightwell
and Daisy Gardener

Design: Stina Johansson
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Cover photo: Edilza with daughter Stephanie and son Jason. Edilza Duarte is part of the Guarani-Kaiowá Indigenous group who are recognised as the rightful occupants of the Jatayvary land in Ponta Porã, Mato Grosso do Sul state, Brazil. Large-scale farmers, cashing in on Brazil's sugar and soy boom, resisted the process of land return to Angela's community. The Jatayvary land is occupied by a sugar-cane farm that supplied to Bunge, and was supported by Australia's Commonwealth Bank. Edilza says "Water is a half-hour walk away. We leave the children unattended, and come back with 20L on our backs, even if we are pregnant. There is poison contaminating the soil and water. It harms the health of our children. We have food shortages, on and off. Before, the soil was really good and you could plant anything easily. Now, it's hard, and we produce much less than we used to, and in this situation we have to depend on others. It's really bad to have to depend on others. We don't know what we're going to eat, not natural, from our land. It's really hard to get jobs because of prejudice. We are always humiliated, it's hard to get by and to get jobs in the city. Photo: Tatiana Cardeal/Oxfam.

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Stop Kinder Morgan March and Traffic on Cambie Bridge, Vancouver, November 2016: A group of banks led by Toronto-Dominion Bank and the Royal Bank of Canada provided a CAD 5.5 billion credit facility for the pipeline, despite well-known impacts on Indigenous rights. The facility was later cancelled when the project was purchased by the Canadian government. Photo: Kent Lins via Flickr CC BY.

EXECUTIVE SUMMARY

Communities around the world are experiencing loss of land and access to water, forests and other natural resources.¹ These losses are often exacerbated by large extractive industry (including pipelines and hydropower), agribusiness and forestry projects that take place on indigenous and marginalised communities' land. Communities can also feel impacts like pollution downstream from projects.

While the business running the operation or project is primarily responsible for the impacts, they are not the only responsible party. Private sector banks are profiting from operations by earning interest from the money they lend to these businesses — sometimes lending in full knowledge that human rights abuses are occurring or are likely to occur. There are a growing number of cases where banks are considered to have contributed to human rights abuses through their finance. These include projects involving farmers being forced off their land, the destruction of sacred indigenous sites, environmental damage and violence against community members.² The impacts of business operations are being felt by communities and indigenous people around the world in Cambodia, Brazil, Papua New Guinea, Canada, the United States, Colombia, Mozambique and many other countries where there are extractive, agribusiness and forestry operations.

There is a growing global call for banks, including private sector commercial banks, to ensure that their lending

practices are not financing projects that adversely impact vulnerable people. Wherever such impacts may occur, banks are facing increasing calls to have grievance mechanisms available for communities to raise complaints and seek remedy.

In addition to civil society groups and communities calling on banks to be more accountable, banks have clear responsibilities under the United Nations Guiding Principles on Business and Human Rights (the Guiding Principles). These principles, adopted by the United Nations in 2011, call on all businesses, including banks, to establish or participate in effective operational-level grievance mechanisms for affected people to raise a complaint and have access to remedy.

It is important to note that grievance mechanisms are not a panacea. They are one tool among many that can be used by communities affected by banks' operations. Bank grievance mechanisms need to be designed thoughtfully and with careful attention to effectiveness criteria.

This paper reviews banks' responsibilities and provides suggestions and recommendations for how banks can develop and implement effective operational-level grievance mechanisms that will be legitimate, trusted and meet their responsibilities under the Guiding Principles.

BANKTRACK AND OXFAM AUSTRALIA RECOMMENDATIONS FOR BANKS



Protest against the financiers of the Agua Zarca Dam project 2014, including the Dutch development bank FMO. Photo: COPINH.

- 1. Acknowledge banks' responsibilities under the Guiding Principles regarding remedy and grievance mechanisms.** Banks should publicly acknowledge that their responsibilities under the Guiding Principles are to include remedy if they are causing or contributing to adverse human rights impacts, and to establish or participate in operational-level grievance mechanisms. They should also outline their approach to meeting these responsibilities.
- 2. Map the channels already in place and build on them.** Mapping the internal ecosystem of complaints channels and the external landscape of grievance mechanisms that are available to the bank's main stakeholder groups can help the bank understand what already exists and how to build on it. See ["Designing the mechanism: stakeholder groups to consider in scope"](#) (page 16).
- 3. Design grievance mechanisms with careful attention to the Guiding Principles effectiveness criteria.** This includes promoting the accessibility of the mechanism through improving transparency about clients and projects financed, consulting the intended users of the mechanisms in the design process and clearly laying out each step of the complaints process with indicative timeframes. See ["Developing a grievance mechanism in line with the effectiveness criteria"](#) (page 11).
- 4. Ensure that all main stakeholder groups have access to bank grievance mechanisms.** Banks' operations may impact a range of stakeholder groups, including employees, customers and communities affected by bank-financed projects and activities. Each of these groups should be able to access bank grievance mechanisms. Some of banks' most significant impacts arise from the activities they finance,



Indigenous-led Water Protectors resisting the construction of the Dakota Access Pipeline at Standing Rock, 2016. The pipeline was supported by a project loan from 17 banks. Citi, Mizuho, Bank of Tokyo Mitsubishi UFJ and TD Bank were the lead arrangers. Photo: Rob Wilson.

and so we recommend banks prioritise providing access to effective bank mechanisms for communities affected by these activities. See [“Designing the mechanism: stakeholder groups to consider in scope” \(page 16\)](#).

5. Consider both single-bank and multiple-bank options.

A grievance mechanism that allows a number of banks to participate — and which is open to communities affected by the finance of any bank participating — has the potential to be well-resourced, level the playing field for participating banks, provide a single point of contact for affected stakeholders, and be more independent (for example, allowing for an independent review body). This could operate alongside banks’ own mechanisms, with affected stakeholders able to choose to make a complaint through the joint bank mechanism (where the project is financed by multiple banks) and/or through the banks’ individual mechanism. See [“Types of mechanisms: stand-alone, multi-bank or industry initiative” \(page 18\)](#).

6. Ensure the Equator Principles Association develops a grievance mechanism that meets effectiveness criteria.

An effective Equator Principles grievance mechanism that can assess claims that the Equator Principles standards are not being met by signatory banks, and facilitate remediation, is long overdue. Signatory banks should push for such a mechanism to be developed in the current review of the Equator Principles as a priority. See [“Types of mechanisms: stand-alone, multi-bank or industry initiative” \(page 18\)](#).

7. Write consent into agreements with clients to publish corporate loan and project finance information related to businesses engaged in high risk areas. If affected users

are to engage with bank grievance mechanisms, they need to know which banks are financing the activities affecting them. See [“Disclosure: essential to accessibility, equity and legitimacy”](#).

8. Design mechanisms that can provide or enable remediation.

Bank grievance mechanisms should be designed to be able to provide remediation directly and can also support and enable clients in providing effective remediation. Regardless of where the mechanism is situated, it should be empowered and equipped to deliver remedy. See [“What do the Guiding Principles say about remedy and grievance mechanisms?” \(page 8\)](#) and [“Bank engagement with client grievance mechanisms” \(page 25\)](#).

9. Engage with clients’ grievance mechanisms to ensure they are effective.

Banks should engage with clients to ensure clients’ own mechanisms are effective, including monitoring how complaints are handled, setting expectations, providing guidance and holding them accountable. Banks can also engage with clients’ mechanisms in supporting the remediation of a specific adverse impact where the bank has contributed to the harm. Affected stakeholders can lodge a complaint directly with the bank as well as with the client; the two are not mutually exclusive. See [“Bank engagement with client grievance mechanisms” \(page 25\)](#).

10. Seek guidance where responsibilities are unclear. Banks should engage constructively with the UN Office of the High Commissioner for Human Rights and the UN Working Group on Business and Human Rights, as the “guardians” of the Guiding Principles, where they have questions or disagreements on how the principles should be interpreted.

Papua New Guinea, East Sepik province, Turubu Bay: Residents of Koptui village, who were affected by logging linked to logging company WTK Group. Impacts of the logging in villages around Turubu in the East Sepik province include food shortages, deforestation, health problems, water pollution and destruction of sacred sites. As described in April 2014 in *Banking on Shaky Ground*, public records and Oxfam’s research showed that Westpac likely had a relationship with WTK Group.

In 2016, the Supreme Court of PNG upheld that the Special Agriculture and Business Lease (SABLS) to Turubu land was invalid and that further logging was illegal. In November 2014, Westpac presented new documents on its relationship with the WTK Group in PNG stating that it had not had a relationship with one of WTK’s subsidiaries, WTK Realty Ltd. Meanwhile, logging continues in Turubu. Photo: Vlad Sokhin/OxfamAUS.



INTRODUCTION

The UN Guiding Principles on Business and Human Rights (the Guiding Principles) establish that businesses have a responsibility to respect human rights — meaning they should “avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved”. As part of meeting this responsibility, the Guiding Principles set out that businesses should “establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted”.³ To date, there has been little discussion on how this responsibility should be interpreted by private sector banks, and progress towards establishing such mechanisms has been limited. Meanwhile, misunderstandings and myths about this responsibility proliferate, and the individuals that these mechanisms are intended to serve lack effective avenues for securing remedy for human rights abuses they have experienced.

This briefing aims to provide some clarity on the responsibilities set out in the Guiding Principles for banks, and to explore options for how banks can fulfil their responsibilities in practice. Ultimately, we aim to help bring about a situation in which banks fully meet their responsibilities to respect human rights across their operations. We also aim to ensure adverse human rights abuses arising from bank activities are avoided where possible and addressed when they do occur. While we consider human rights risks to bank staff and customers,

our principal focus is on risks arising from banks’ client relationships, as it is these that are expected to account for their most significant adverse impacts.

In **section 1**, we explore the responsibilities set out in the Guiding Principles and what they mean for banks. **Section 2** discusses the benefits that effective operational-level grievance mechanisms can bring to the banking sector. **Section 3** considers how bank grievance mechanisms can work in practice, and how banks can constructively engage with client grievance mechanisms. We also consider concrete examples and the lessons these provide for private sector banks. **Section 4** presents some common questions and concerns raised by banks, based on a series of interviews and exchanges with bank representatives, and seeks to address these.

More than seven years on from the endorsement of the Guiding Principles by the UN Human Rights Council, banks are overdue in addressing their responsibilities to provide access to remedy, particularly in relation to the impacts of their finance. There are, however, hopeful signs that this could soon start to change, with a small number of banks making commitments and developing initiatives to work towards meeting their responsibilities. We hope this briefing supports these efforts and helps build momentum towards bank involvement in effective operational-level grievance mechanisms becoming the “new normal”.

1. GRIEVANCES AND REMEDY: BANK RESPONSIBILITIES

What do the Guiding Principles say about remedy and grievance mechanisms?

The United Nations Guiding Principles on Business and Human Rights ('the Guiding Principles') set out responsibilities for businesses (including banks) in both the "second pillar" on the business responsibility to respect human rights, and the "third pillar" on access to remedy. The most relevant principles on remedy and grievance mechanisms are 22, 29 and 31, with Principle 30 also relevant for industry or multi-stakeholder initiatives (such as the Equator Principles). The principles should be read together with the commentary to each.

Remediation: Principle 22. "Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes."

Important considerations for banks:

- The responsibility to remediate is separate from the responsibility to establish or participate in operational-level grievance mechanisms, although the two responsibilities are related. Grievance mechanisms can be an important and systematic channel through which banks can work to remediate an adverse impact.
- As the United Nations Office of the United Nations High Commissioner for Human Rights (UN OHCHR) has advised, a bank can cause an adverse impact "where the bank's activities alone (without those of clients or other stakeholders) are sufficient to result in the adverse impact", and it can contribute to an adverse impact "through its own activities (actions or omissions) — either directly alongside other entities, or through some outside entity, such as a client".⁶ Further guidance on when a bank might be considered to cause or contribute to a human rights impact is available from the UN OHCHR.⁷ BankTrack has set out a series of eight cases in which banks are likely to have contributed to human rights abuses.⁸
- Where a bank is directly linked to an adverse human rights impact through its finance (but has not caused or contributed to it), the responsibility to remediate the impact is not with the bank. However, the bank should exercise any leverage it has to prevent or mitigate the adverse impact.⁹ One approach to this may be to require or support its client to remediate the impact.
- Where the bank does not have leverage, there may be ways to build leverage. If it is unable to do so, the bank "should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so".¹⁰ The bank should also consider carefully whether this is in the interests of the affected community.
- There is a continuum between the categories of contribution and directly linked, such that if the bank fails to take reasonable steps to seek to prevent or mitigate an adverse human rights impact it is linked to, it may contribute to the continuation or recurrence of the harm.¹¹
- According to the Frequently Asked Questions on the Guiding Principles, "remedy may take a number of forms including an apology, compensation (financial or otherwise), the cessation of a particular activity or relationship, arrangements to ensure the harm cannot recur, or another form agreed upon by the parties and which meets the effectiveness criteria set out in Guiding Principle 31".¹²



Papua New Guinea, Turubu Bay: Christophilda stands in mangrove a swamp near the place where the logging company load logs to the barges in Turubu bay village. "I used to catch fish in this swamp, but now almost all the fish have disappeared because the water was polluted by oil from machines. The sea water near our village is also polluted. It's difficult to catch fish nowadays". Photo: Vlad Sohkin/OxfamAUS.

Operational-level grievance mechanisms: Principle 29.

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

Important considerations for banks:

- Although it forms part of the "third pillar" of the Guiding Principles, establishing an effective grievance mechanism is also "part of the corporate responsibility to respect" human rights, as Professor Ruggie noted in the Protect, Respect and Remedy Framework on which the Guiding Principles is built.¹³
- In the Guiding Principles, the term "operational-level grievance mechanism" refers to both company-level mechanisms and site- or project-level mechanisms. Such a mechanism "should be directly accessible to individuals and communities that may be adversely affected by a company".¹⁴
- Banks have many different stakeholders who may potentially bring human rights grievances, including employees, customers, suppliers and communities impacted by their finance. As the UN OHCHR has noted, "a bank may reasonably expect that most of its potential involvement with human rights harm may relate primarily to its client relationships".¹⁵ Following from this, we consider that banks should prioritise access to effective mechanisms for stakeholders affected by its client relationships.
- The responsibility to establish or participate in effective operational-level grievance mechanisms applies irrespective of a bank's link to an impact – in other words, they are not just for circumstances

of "cause and contribute". As the UN OHCHR has advised, "banks are expected to have mechanisms in place (their own or one they participate in) to respond effectively if or when grievances arise. This is separate from the substantive responsibility for remediation for identified harm, which is set out in Principle 22. While operational-level grievance mechanisms may be established in response to specific situations of adverse impact, the Guiding Principles intend for them to be established proactively and promoted, in order to provide an avenue for stakeholders to raise concerns and resolve them before they escalate into larger-scale grievances".¹⁶

- Banks can meet this responsibility in different ways, as this briefing explores in more detail. This includes setting up their own grievance mechanisms, participating in one or more grievance mechanisms established together with other banks, or participating systematically in clients' grievance mechanisms.
- The remediation of adverse impacts is only one of the two main purposes of operational-level grievance mechanisms, alongside "support[ing] the identification of adverse human rights impacts as a part of an enterprise's ongoing human rights due diligence".¹⁷ Grievance mechanisms need not necessarily provide remedy for every adverse human rights impact identified – they may enable or support clients to provide remediation, and it may be more appropriate to refer some categories of complaints to external processes including judicial processes (for example, due to their severity).¹⁸
- There is an acknowledged need for further discussion between the banking sector and other stakeholders to flesh out how grievance mechanisms may work in the banking sector in practice. This paper aims to provide a starting point for this discussion.

Collaborative initiatives: Principle 30. “Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.”

Important considerations for banks:

- Industry initiatives in the banking sector that are relevant for human rights considerations include, but are not limited to, the Equator Principles and the Dutch Banking Sector Agreement on Human Rights.
- The Guiding Principles make clear that such industry initiatives should ensure effective mechanisms are available “through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met”.¹⁹ To meet this responsibility, the Equator Principles should provide for such a mechanism to allow complaints regarding bank non-compliance with the Equator Principles themselves (over and above requiring grievance mechanisms for projects financed

under the Equator Principles). The commentary goes on to say, “the legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms”.

- Principle 30 does not discount banks having individual mechanisms as well as potentially joining or developing collaborative initiatives. “The mechanisms could be at the level of individual members, of the collaborative initiative, or both.”²⁰

Effectiveness criteria for non-judicial grievance mechanisms: Principle 31.

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning.²¹ Operational-level mechanisms should also be based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Papua New Guinea, Turubu Bay: Martha stands in front of the logging bridge that collapsed shortly after the logging company stopped using the road. The bridge blocked the river stream and water became dirty. The water was previously used by locals to wash sago, a source food for the community. Photo: Vlad Sohkin/OxfamAUS.



Developing a grievance mechanism in line with the effectiveness criteria

When designing a grievance mechanism, banks should pay close attention to the effectiveness criteria of the UN Guiding Principles and consider how they can practically implement these. Practical steps for implementing the effectiveness criteria have been developed by Harvard University and CSR Europe, among others.²² Drawing on these sources, below are some suggested steps banks can follow in developing their own mechanisms using the effectiveness criteria.

Legitimate

1. Consult with key stakeholders including potential user groups in the design, revisions and monitoring of the mechanism. Establish a system for feedback from users to improve the mechanism.
2. Communicate clear lines of accountability for the mechanism at the bank level and articulate a clearly defined process through which grievances will be addressed.

Accessible

3. Provide ease of access for complaints including making the mechanism available in the languages of all the countries where high risk category operations are being financed. Translate into new languages as new operations are financed.
4. Provide potential users with multiple access points to the mechanism to overcome accessibility barriers and ensure complaints are channelled to a single coordination point.
5. Include a policy that seeks to protect users from reprisals linked to accessing the mechanism.

Predictable

6. Clearly and publicly lay out each step of the process, with details of the individual or team that is responsible for handling complaints and indicative timeframes.
7. Provide information on the ways that the mechanism will approach the complaint (for example, dialogue, review of policy compliance, client engagement) and outcomes available through the mechanism. Ensure the mechanism is widely publicised and agree on provisions for implementing agreed outcomes.

Equitable

8. Provide users with access to information necessary to engage the mechanism. Banks need to write consent into

agreements with clients to publish corporate loan and project finance information related to businesses engaged in high risk areas (for example, agribusiness, forestry and extractives). Affected users will then know which bank/banks are financing the project affecting them and be able to engage with the mechanism. (See Disclosure Box [REF]).

Transparent

9. Keep users informed of progress throughout the process. Ensure that progress reports and the ultimate resolution are translated (as needed) and shared with users.

Rights compatible

10. The grievance mechanism should aim to identify sustainable, rights-compatible solutions that are acceptable to all parties.
11. Ensure that outcomes and remedies adopt the higher standard in case of conflict between national legislation and international human rights standards. Ensure that outcomes do not infringe on the rights of the mechanism user.
12. Key to legitimate grievance mechanisms is continuous improvement based on stakeholder and user inputs. Mechanisms that do not result in fair settlements for users will not be viewed as rights compatible or legitimate. Merely endorsing the Guiding Principles in a policy does not demonstrate how they are being respected through implementation.

Source of continuous learning

13. Regularly monitor and assess the performance of the mechanism, integrating feedback from stakeholders.
14. Ensure that lessons from the mechanism contribute to improve due diligence practices to ensure similar harm is not repeated.

Based on engagement and dialogue

15. Operational-level grievance mechanisms should prioritise engagement and dialogue as a way to seek resolution that is rights-compatible and acceptable to all parties. All parties to the dialogue should be encouraged to engage directly with one another and they should be able to bring others of their choice to support them through the process.

Papua New Guinea, Turubu Bay: Logging compound.
Photo: Vlad Sohkin/OxfamAUS.



Case study: the Compliance Advisor Ombudsman's performance against effectiveness criteria

Commercial banks can learn a lot from development banks about the development and implementation of grievance mechanisms. The World Bank's Office of the Compliance Advisor Ombudsman (CAO) is an independent accountability mechanism for the International Financial Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector lending arms of the World Bank. The CAO conducts investigations and reports directly to the President of the World Bank Group. The CAO has a number of processes and procedures in place that are in line with the effectiveness criteria of the Guiding Principles.

- **Legitimate:** The CAO was the first independent oversight body among international financial lenders to review complaints about private companies. In the last two decades, the CAO has facilitated agreements between communities and private companies as well as issuing reports that critique failures by World Bank officials to follow the bank's social and environmental policies. This has built some trust in the mechanism; however, outcomes and remedies will need to be improved to retain trust. Outcomes from a CAO facilitated dispute resolution process are publicly disclosed with the consent of the parties.
- **Accessible:** CAO partners with neutral third-party facilitators who are independent of CAO and IFC/MIGA, and who possess the appropriate cultural and linguistic

skills to work effectively with local stakeholders. Outreach and accessibility remains a challenge for the CAO. In its 2017 annual report, the CAO acknowledges, "many communities tell us that they do not have access to information about projects and grievance redress. Outreach is therefore an important part of our work".

- **Predictable:** The CAO guidelines clearly spell out timeframes for eligibility screening (15 days), and for conducting an assessment of the conflict and the stakeholders' alternatives for resolving the issue (120 days). The purpose of this assessment is to clarify issues raised by the complainant, to gather information on how other stakeholders view the situation, and to help the parties determine whether and how they may be able to resolve the complaint. The guidelines also explain steps regarding dispute resolution and compliance.
- **Equitable:** To ensure aggrieved parties have access to information to engage with the process, the CAO takes a proactive approach to raising awareness about the Office among these stakeholders to ensure that they know about CAO's existence, understand its mission and mandate, and are familiar with how CAO works to address complaints about IFC/MIGA projects. The CAO also publishes materials about the Office in Arabic, Chinese (Mandarin), English, French, Russian, Spanish, and Portuguese, as well as additional languages where deemed necessary. The



Papua New Guinea, Turubu Bay: Jerol; "When the company came and started logging in our place, lots of coconut palms were cut down. Now I have to walk for an hour to get dry coconuts for our dishes. Before they were growing close to my home". Photo: Vlad Sohkin/OxfamAUS.

CAO meets with potentially affected people and their representatives and disseminates information about CAO in the markets where IFC/MIGA does/do business through civil society organisations, World Bank Group offices, partner independent accountability mechanisms, the business community, academia, and other organisations.

- **Continuous learning:** The CAO has updated its operating guidelines based on independent reviews of the CAO's effectiveness, as well as several updates since 2000, including feedback from civil society groups.²³

In 2017, the CAO reported 75% of 21 cases in dispute resolution had reached full or partial agreement. These include agreements in Cambodia, Chad, and Mongolia between IFC clients and local communities.²⁴ However, the CAO has also been criticised that some outcomes for affected stakeholders have not been rights-compatible and have not delivered effective remedy.²⁵

Lessons for private sector banks from the CAO

The CAO, like all mechanisms, needs to undergo continuous improvement and learning. Recent analysis by academic and civil society groups has found that whilst the CAO makes recommendations for improvements to the IFC, it is sometimes not able to ensure that outcomes and remedies accord with internationally recognised human rights.²⁶

Despite some areas of critique, the CAO does regularly review its effectiveness, and the mechanism goes a long way to meeting many of the Guiding Principles effectiveness criteria.

The Guiding Principles advise that operational-level grievance mechanisms should focus on reaching agreed solutions through dialogue, and that where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism. The CAO is trusted in part because it is independent from the IFC. The use of an independent assessment body should be a consideration for banks wishing to adhere to this principle. Overall, the CAO can provide a model for commercial banks in many respects.

2. BENEFITS OF GRIEVANCE MECHANISMS

It is important to note that there are very real benefits for banks, as well as for their stakeholders, in meeting the responsibilities set out in the Guiding Principles regarding operational-level grievance mechanisms.

Advocates of strong management of human rights risks within banks will need to make the case internally for developing an operational-level grievance mechanism. This can be achieved by helping to build understanding of the value these mechanisms can bring to the banks' due diligence processes and reputation, as well as overcoming concerns that arise with opening up additional channels through which complaints may be directed to the bank.²⁷

Bank A: "It builds trust in that the bank understands its responsibility, it fosters accountability in the sense that people internally understand that we are going to be held accountable — because there are clear complaint mechanisms".

Bank B: "Trust is under threat in the banking sector, and grievance mechanisms are a way institutions can build trust".²⁸

Building accountability and trust

Grievance mechanisms send a strong signal to stakeholders — from communities and civil society to the bank's own shareholders — that the bank is prepared to be accountable

for its own policies and standards, as well as taking the concerns of affected communities and other stakeholders seriously. If a grievance mechanism is accessible, known to rights-holders and trusted by them, it can build trust in the wider business. The mechanism can reinforce community relationships, as well as being critical to operationalising the company's commitments to human rights.

By having clear procedures with transparent handling of complaints, the bank can deal with issues in a consistent and appropriate way, without the need for urgent damage control in response to high profile controversies, which can lead to reputational damage. By appropriately addressing complaints through effective and fair grievance mechanisms, banks can avoid complaints being escalated to other accountability mechanisms, such as National Contact Points, national human rights commissions, UN bodies and even courts.

Improved risk management

Early identification of complaints can allow banks to ensure disputes are resolved (whether by the bank or the client) before they escalate into widespread grievances that require expensive, time-consuming remediation measures. This can help reduce legal, reputational and other project or client risks. In this way, an effective grievance mechanism can be seen as an essential part of good risk management. Research has shown the costs to business associated with poorly managed community conflicts in the extractive sector, including opportunity costs relating to projects that did not



Papua New Guinea, Turubu Bay: Julian near her house in Maliu village. Locals are fighting against the logging company and trying to preserve their forests from illegal logging. Photo: Vlad Sohkin/OxfamAUS.

go ahead, and the costs of staff time, including at senior levels up to the CEO, resulting from staff time being diverted to managing conflict.²⁹ Similar costs are likely in other sectors financed by banks, and can also affect the banks themselves.

“There is indeed a strong business case for addressing issues of concern at an early stage through establishing a company mechanism for receiving and resolving complaints: an effective process ensures a timely resolution, prevents issues from escalating, limits the negative publicity and can serve to improve future processes and policy-making.” – CSR Europe.³⁰

Due diligence and continuous learning

An effective grievance mechanism forms part of an enterprise’s ongoing human rights and other due diligence by assisting in the identification of adverse human rights impacts — this is one of its two core purposes. Effective grievance mechanisms can improve the quality of information available to the bank about its impacts. As the commentary to Principle 29 sets out, “by analysing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly”. An effective

grievance mechanism allows a business to identify lessons for preventing future grievances and harms, including identifying changes needed to policies and due diligence procedures, which can contribute to continuous improvement. Avoiding future grievances can translate into efficiency, cost savings and avoided public controversies and legal disputes. Grievance mechanisms can also be a channel through which a bank can receive feedback on the perceived effectiveness of its response to impacts, helping to track effectiveness over time.

Better understanding affected communities

Large global banks do not typically have a close connection to the communities impacted by projects they finance. This means that when adverse human rights impacts arise as a result of bank-financed activities, it can be difficult for banks to understand the perspectives of rights-holders affected. For banks, establishing or participating in operational-level grievance mechanisms will open communications channels between themselves and rights-holders, and in doing so, can help banks better understand the perspectives of those affected by the activities they finance, leading to more meaningful engagement. This can be an important complement to a bank’s wider stakeholder engagement practices.



Papua New Guinea, Turubu Bay: Swindu, a resident of Koptui village, that was affected by logging. “Logging company destroyed my gardens while I was sick. When I got better and went to see what happened, it was all gone”. Photo: Vlad Sohkin/OxfamAUS.

3. BANKS AND GRIEVANCE MECHANISMS IN PRACTICE

While many private sector commercial banks have some aspects of a grievance mechanism in place, to date, none has established a mechanism that meets the effectiveness criteria of the Guiding Principles. Company grievance mechanisms do exist in other sectors — at the time of writing, Access Facility lists 51 company-level or project-level mechanisms³¹ — and independent accountability channels are common among public sector development banks. Many of these public sector banks are participating in financing the same projects or companies as private sector banks, but they have independent accountability mechanisms in place while private sector banks do not. To help encourage banks to close this gap, this section explores what effective grievance mechanisms in the banking sector could look like in practice.

Designing the mechanism: stakeholder groups to consider in scope

Banks have several, broadly distinct, groups of stakeholders from which human rights grievances or other complaints may arise. These include employees, customers (both retail and corporate), suppliers and communities who may be affected by bank-financed projects. Banks typically have channels

Palm fruit harvesting in a concession operated by a subsidiary of IOI Corporation in Sarawak, Malaysia. The company has been linked to labour standards violations including allegations of forced labour and denying access to trade unions, as well as long-standing land disputes. BankTrack contacted 15 banks financing IOI Corporation in 2016 and found no evidence that they had taken steps to prevent or mitigate these impacts. Photo:Wakx via Flickr, CC BY-NC-SA 2.0.





Drummond cable shovel photographed in Alabama, United States. Victims of severe human rights abuses in the vicinity of the company's Colombian operations have been seeking Drummond's involvement in a reconciliation process for many years, without success. Of the seven banks linked to the company that were contacted by BankTrack in 2016, five disclosed no response to the issue. Photo: Kelly Michals via Flickr, CC BY-NC 2.0

designed to respond to employee, retail customer and supplier grievances, including consumer complaints mechanisms or ethics hotlines, human resources complaints processes and relationships with trade unions. These will vary in the extent to which they fulfil the effectiveness criteria. Each of these groups of stakeholders should be able to access an effective grievance mechanism in which the bank participates.

Communities that may be affected by bank finance should be considered a priority for banks in considering their approach to remediation and grievance mechanisms. Bank grievance mechanisms that are designed with affected communities in mind are particularly under-developed, as previous BankTrack research has shown.³² This is problematic, given that — as the UN OHCHR has pointed out — banks can reasonably expect that most of their potential involvement with human rights harm may relate primarily to their relationships with corporate clients, and the impacts they may cause to communities.

When communities are affected by bank-financed activities, the bank's grievance mechanism should be one avenue that communities may choose to pursue (whether or not the bank has contributed to the impact), alongside grievance mechanisms operated by the bank's client. The community may choose to complain directly to the bank rather than the company it is financing (see "Bank engagement with client grievance mechanisms" [REF]). The affected community may alert the bank about a case and ask the bank to use its leverage with its client to prevent or mitigate harm including through the use of the client's own grievance mechanism. The community may request that the bank actively support the effective remediation of the harm. There are multiple

ways in which affected communities may choose to raise a complaint. In designing grievance mechanisms for affected communities, banks should consider how these work alongside client mechanisms in a way that maximises the chance of the impact being remediated.

Given the variety of stakeholder groups from which grievances may arise, it makes sense for banks to consider and map what channels are already in place for these stakeholder groups as a first step towards developing an effective approach to managing grievances in line with the Guiding Principles. For this reason, Shift — the non-profit centre of expertise on the Guiding Principles — has suggested designing grievance mechanisms with:

- multiple points of entry, such as various ways for stakeholders to raise issues or concerns;
- a single coordination point, where complaints are initially assessed and steered to an appropriate channel for resolution;
- multiple pathways for resolution, depending on the type of process that would be most appropriate for that particular issue; and
- a tracking link back to the single coordination point, to enable the company to learn from the impacts that are occurring, feed into the company's human rights due diligence processes, and to assess the effectiveness of the remediation ecosystem as a whole.³³

Designing the mechanism: issues to consider in scope

The Guiding Principles set out the expectation that businesses establish or participate in effective operational-level grievance mechanisms as part of their approach to respecting human rights. However, the scope of issues covered by a grievance mechanism should not be limited to human rights issues. It is not always easy to separate human rights and environmental impacts. For example, a company or project may cause adverse environmental impacts, which have knock-on effects on human rights, such as where pollution to groundwater impacts the rights of communities to water, sanitation and health.

Sector guidance from the European Commission recommends that "it can be counterproductive to limit a grievance mechanism to complaints that name human rights issues or claim particular laws or standards have been breached. This risks missing impacts that may not raise human rights issues immediately, but could escalate over time into severe impacts ... A grievance mechanism should therefore be able to pick up a full range of concerns early enough to avoid their escalation and address underlying issues."³⁴

Types of mechanisms: stand-alone, multi-bank or industry initiative

Following the Guiding Principles, banks are expected to establish or participate in operational-level grievance mechanisms. This does not necessarily mean that each bank must have its own grievance mechanism, but it does mean that individuals and communities who have a grievance to raise regarding the bank's activities should be able to raise it, to an effective mechanism in which the bank participates. This leaves banks with several options that are not mutually exclusive. These include: establishing their own single-bank mechanisms; establishing mechanisms for more than one bank; participating in mechanisms related to banking sector initiatives such as the Equator Principles; and participating in sector-level mechanisms established in other sectors. These options are considered in more detail below. Where banks do not establish their own mechanism but choose to participate in a multiple-bank mechanism, the bank should ensure it has clear two-way communication channels regarding human rights and environmental issues to allow a conversation where issues arise directly to the bank.

Single bank grievance mechanisms: Banks are encouraged to develop grievance mechanisms of their own, which are accessible to the full range of stakeholder groups they may potentially impact. Many banks that have made some progress towards engaging in grievance mechanisms have so far focused on beginning to develop their own, rather than working together with other banks. Advantages of this approach include that a bank can proceed with designing and establishing the grievance mechanism without the need to collaborate with other banks, which may allow for faster progress and efficiencies dealing with grievances as they arise. Once established, it can similarly make changes and improvements more easily without the need to wait for other banks. The bank may also be more easily able to ensure the mechanism has access to its client data, making it easier for the mechanism to investigate grievances. However, the bank would need to shoulder the costs and responsibility for designing the process itself.

Grievance mechanisms for multiple banks: As an alternative or as a supplement to developing their own grievance mechanisms, banks could meet their responsibilities by joining together on a peer-group, national, regional or international basis to develop a grievance mechanism. A grievance mechanism in which a number of banks participate could allow resources to be pooled and, if designed effectively, has the potential to be more independent, accessible and well-resourced than efforts by individual banks. This could in turn lead

to wide uptake of the mechanism by banks internationally. A joint mechanism would also be useful in cases where complaints relate to an impact linked to several banks, provided more than one of these banks were also party to the joint mechanism. In this instance, the mechanism would be useful for coordination and joint remedy of the community complaint. An international group with broad-based membership, such as the UN Environment Programme's Finance Initiative (UNEP-FI), could be well placed to play a role in establishing such a mechanism.

One example of a joint mechanism is the Independent Complaints Mechanism established by the Dutch development bank FMO and the German development finance institution DEG (see case study below). In addition, under the Dutch Banking Sector Agreement on Human Rights, the Dutch Banking Association (the NVB) has committed to establish a "voluntary advisory expert mechanism" to handle selected complaints regarding alleged breaches of the OECD Guidelines by signatory banks, including on human rights.³⁵ In the first instance, this will only handle complaints related to project finance. This "expert mechanism" is not described as a grievance mechanism, and its role is to advise the financial institution on how to handle cases brought, rather than to remediate the impact. However, this points towards the



possibility of effective grievance mechanisms being established on a national basis, by national banking associations.

Grievance mechanisms for banking sector initiatives:

As highlighted above, the Guiding Principles are clear that industry initiatives that are based on respect for human rights should ensure that effective grievance mechanisms are available, so complaints can be raised when people believe the commitments in question have not been met. The most notable example of a banking sector initiative with relevance for human rights is the Equator Principles — a voluntary but binding environmental and social risk management framework for project-related finance, currently adhered to by 92 financial institutions globally. Although the Equator Principles require the establishment of project-level grievance mechanisms for high-risk projects financed by Equator banks in “non-designated” (less developed) countries, there is currently no recourse for affected people or their legitimate representatives to complain to the Equator banks financing the project if they believe the banks have breached their commitments. Particularly given the record of problematic projects receiving finance “under Equator” and of allegations of breaches of these standards³⁶, an effective Equator Principles grievance mechanism is urgently needed.



Brazil, Jatayvary: The settlement known as Jatayvary of Guarani Kaiowa indigenous people, inside their demarcated land near Dourados, Mato Grosso do Sul, Brazil. The land is occupied by a sugar-cane farm that supplied Bunge and was supported by Australia’s Commonwealth Bank.

Robson says: “If we had our land, we would be more comfortable, relaxed, without threats, we would be secure and safe as it’d be our land.

“Many of us don’t have jobs. We live off hunting, trap animals, that’s how we live. The farmers threaten us with violence, and shoot us when we go into the woods to get wood to build our houses. They don’t want us to build our houses. Sometimes when they use pesticides, it rains and goes into the water. The stream becomes polluted by the chemicals and this causes diarrhoea, vomiting and allergies. Mostly it’s the children who have the problem.

I have 13 siblings. I was born in Dourados. I hope this land becomes ours, as this land is too small for these children who are coming up. Our children are discriminated against from the farmers’ children. Indigenous children don’t like to be discriminated against, so there are always fights. There is verbal abuse, about the way they dress etc. Sometimes we struggle to have enough to eat, especially when we struggle to find work.”

Photo: Eduardo Martino/OxfamAUS

For the banks participating in an Equator Principles grievance mechanism, such a mechanism could only assess complaints related to these banks’ project-related finance (ie finance to which the Equator Principles apply). It would not be able to hear complaints relating to impacts from other forms of finance such as general corporate debt, which are currently outside of the Equator Principles’ scope. Therefore, banks would most likely need to establish or participate in one of the previously mentioned types of mechanism in addition to an Equator Principles mechanism for such grievances to be heard. However, an Equator Principles grievance mechanism would move Equator banks towards meeting their responsibilities for a proportion of their finance, as well as providing participants with valuable insights for the development of other single or multi-bank mechanisms. It would also help ensure level playing field in applying the Equator Principles.

Bank participation in sector-level mechanisms for other sectors:

As well as creating single-bank, multi-bank or banking-sector-level mechanisms, banks can participate in sector-level grievance mechanisms outside of the banking sector. Grievance mechanisms have been established by several industry standard-setting bodies to handle complaints in the event that the standards are breached. As with an Equator Principles grievance mechanism, participation in such mechanisms does not substitute for an effective mechanism which is available and accessible for all communities that may be affected by a bank’s finance, as they are by their nature limited in scope to the particular sector, commodity or standard for which they are designed. However, they provide channels for some community grievances, and may enable the bank to coordinate with its clients in providing joint remediation.

One of the most prominent examples of a sector-level complaints mechanism in which banks participate is that of the Roundtable on Sustainable Palm Oil (RSPO). A number of banks, including ABN Amro, ANZ, BNP Paribas, Citi, Commerzbank, Rabobank, Credit Suisse, HSBC and ING, are RSPO members, meaning they can be a party to complaints raised through the RSPO Complaints System.³⁷ However there are significant concerns over this mechanism’s effectiveness, with an independent review in 2014 concluding that there were widespread and fundamental concerns with transparency, independence, efficiency, accessibility, and procedural consistency, no functioning monitoring system, little to no internal reflection or analysis of lessons learned, and that overall the mechanism did not meet the Guiding Principles’ effectiveness criteria.³⁸

Brazil, Jatayvary: Angela is the mother of Robson. Angela had 14 children, but three died when only three or four months old. Angela says: "My oldest child is 36. What I want is demarcation. The farmers use a lot of pesticides. The children get stomach aches, tummy aches. The aeroplanes fly right here, and spray pesticides (over us). I am age 57.

"We want our land back. We will have tranquillity, land where everyone can grow everything, we are asking for demarcation. This is what I want. If I have to wait another 15 years I may not make it. I'm old. I want it to happen soon. Then I could fish, have my grandchildren with me."

Photo: Eduardo Martino/OxfamAUS



Operating the mechanism: facilitating dialogue and reviewing compliance

Once established, bank grievance mechanisms, like other operational-level grievance mechanisms, should focus on dialogue as the means to address and resolve grievances. As the commentary to Principle 31 states, "since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism."

When a complaint to a bank grievance mechanism is submitted by an affected stakeholder and accepted, the mechanism should focus on establishing a dialogue to decide on agree solutions, whether or not the bank has contributed to the impact.

Good practice in grievance or accountability mechanisms established by public sector development banks is to provide complainants with an (informed) choice between dispute resolution, whereby the complainant, the client and other parties work towards a mutual and mediated solution of the issue, and/or compliance review, whereby the mechanism investigates whether the financial institution has complied

with its own policies. This is likely to be an appropriate model for operational-level grievance mechanisms in the banking sector.

Public sector accountability mechanisms are typically structured as independent mechanisms, with an independent panel of experts handling complaints. Such an independent structure is not a requirement for effective operational-level mechanisms to be established by banks, although it may emerge as good practice. However, guidance for companies establishing such mechanisms suggests establishing a stakeholder committee that can take an oversight role in the functioning of the mechanism, as well as participating in its creation.³⁹

Detailed guidance for how effective operational-level grievance mechanisms should operate in the banking sector for specific types of complaints is outside of the scope of this briefing paper, and further resources are suggested (see **"What resources are available to help?" page 30**). Further consideration from banks and other stakeholders is needed regarding how bank grievance mechanisms can best be structured and integrated into bank operations, as well as to appropriate third-party mechanisms for handling cases where adjudication is needed.

Current practice on grievance mechanisms in the banking sector

No large private sector bank currently operates a grievance mechanism in line with the effectiveness criteria of the Guiding Principles. While banks have held discussions about their responsibilities around access to remedy, this has largely taken place behind closed doors. For example, since 2014 a small group of large commercial banks from countries including the Netherlands, France, Spain and Sweden have met semi-regularly on an informal basis with experts from development bank accountability mechanisms, to discuss insights into the functioning of such mechanisms, but no information about these meetings has been made public.⁴⁰

In addition, the Thun Group of banks, an informal group of banks that discusses the implementation of the Guiding Principles, wrote in 2014 that “access to remedy is one of the key matters under discussion with the Thun Group”, and committed to discuss it further.⁴¹ However its subsequent 2017 discussion paper did not directly address the subject, instead claiming — controversially — that banks would generally not contribute to human rights impacts through their finance, but would only find themselves directly linked to such impacts through their business relationships. (There is mounting evidence that banks have contributed to human rights impacts through their finance in a number of cases,⁴² and advice from UN agencies has emphasised that banks can contribute to human rights impacts through their finance⁴³). The Thun Group paper also claimed that, where a bank is directly linked to an impact, “access to remedy ... does not apply” (although was amended in a later update of the paper). This confused the right of victims to access remedy whenever their rights are affected, with the responsibility of a bank to provide for or cooperate in remediation of impacts when it has contributed to them. In other words, affected people should still have access to remedy regardless of whether the bank itself has a responsibility for remediation.

While the Thun Group has avoided the topic of remedy and grievance mechanisms, several banks have made important steps to recognise their responsibility to develop such mechanisms, committed to develop them in future, or have made complaints procedures available to all potentially affected stakeholders.

Within the context of a regrettably slow pace of progress from the sector, the banks listed below offer examples of “current good practice” in the banking sector. These banks show they are beginning to address their responsibilities. Their efforts may serve as examples to other banks that may be starting to consider developing policies and practices.

Importantly, where banks have mechanisms or are part of joint mechanisms (including the list below), they will need to publish high risk corporate and project loan information before they can know that these mechanisms are accessible to stakeholders affected by their clients.

ABN AMRO, in its inaugural 2016 Human Rights Report, commits to “explore whether a grievance mechanism at the bank in relation to our lending activities is feasible as a last-resort option”. It also sets out its approach to asking corporate clients and investee companies to provide information on grievance mechanisms, with a focus “not on the mere existence of grievance mechanisms but on the question how a company verifies the effectiveness of its mechanism” and gives details of grievance channels for other stakeholders including clients and employees. Additionally, it publicly refers to an independent grievance mechanism (the Dutch OECD National Contact Point) and states that it will abide by its decisions.⁴⁴

Australia and New Zealand Bank (ANZ) sets out channels for employees, customers and “other stakeholders” to raise complaints as part of its human rights policy, although for “other stakeholders”, only a postal address for a compliance officer is provided. The policy states “we are working towards ensuring that all available mechanisms align with the Guiding Principles’ standards for effectiveness, so that they are trusted, accessible, predictable, equitable and transparent”.⁴⁵ For its customers, ANZ provides multiple access points and information about lodging a grievance but does not provide publicly available information on timeframes for each step in the process.⁴⁶

Banco do Brasil (BB) has an external ombudsman that can be contacted by “all segments of the public with which BB has a relationship”. The bank states that the ombudsman “was established in April 2005 to receive complaints, recommendations, suggestions and praise”, and reports that it has “offered suggestions regarding socio-environmental concerns”.⁴⁷

Credit Suisse makes a number of channels available for “indications of potential or real human rights impacts”, which are unrestricted and accessible in theory to affected communities. While this does not form a grievance process, the bank stated in an interview that it had participated in an exercise evaluating its processes against the Guiding Principles effectiveness criteria which identified potential improvements.

Deutsche Bank, in its Human Rights Statement, “encourages all its stakeholders to contact the bank in case they have a clear evidence of failure of Deutsche Bank’s responsibility to avoid any harm of human rights or its involvement in a human rights issue”.⁴⁸ No specific channels are offered, and there is no consistent procedure for handling complaints.

National Australia Bank (NAB) has employee grievance processes, whistleblower programs, and customer grievance processes.⁴⁹ In its 2017 Group Human Rights Policy, NAB states that it will have grievance mechanisms in place to allow those adversely affected to raise concerns and seek remedy (as appropriate), and refers to the Guiding Principles regarding the different forms that remedy may take. The policy states that affected parties raising concerns will be kept updated at appropriate times in such investigations. This policy statement is comprehensive in elaborating the possibility of providing a grievance mechanism to allow affected stakeholders to raise complaints and seek remedy. However, the procedure does not yet have steps and associated timeframes for stakeholders that may be affected by its clients' activities.⁵⁰ In a reply to the questionnaire for this research, NAB shared that its grievance mechanism will be set out more clearly on its website as the website is updated. NAB provides project names for a small number of projects through the Equator Principles reporting schedule, but does not currently report on its project financing or corporate loans across its high-risk sector portfolios.⁵¹

Standard Chartered has a "Speaking Up" program through which stakeholders can report complaints about breaches of law or regulation and non-compliance with bank policies. People affected by the bank's finance are not specifically mentioned as stakeholders, but the bank states in its reporting: "Our whistleblowing channels are available to anyone — colleagues, contractors, suppliers and members of the public". Specific channels are provided, although details of the procedure for handling complaints are limited.⁵²

Westpac includes a one-page section on "effective grievance mechanisms and access to remedy" in its Human Rights Position Statement and 2020 Action Plan. This sets out complaints channels for stakeholders, including members of the public, and includes a commitment to "refine and evolve existing feedback channels to better identify and remedy human rights issues that arise".⁵³ For its customers, Westpac has a feedback and complaints section of its website that includes a "What happens then" document. This document includes a timeframe for responding to inquiries, who in the bank addresses the concerns, how the issues can be escalated and options for appealing the decision. This type of process — including the timeframes and other relevant information — could be expanded to also include stakeholders affected by lending practices.

Brazil, Jatayvary:
Rosa and her mother
Angela at a creek near
their houses where they
bathe and wash clothes.
They claim that chemicals
used to grow sugar-cane
nearby contaminates the
water causing diseases.
Photo: Eduardo
Martino/OxfamAUS.



Disclosure: essential to accessibility, equity and legitimacy

Communities affected by agribusiness, extractive industry or other industrial projects and operations do not currently have access to information about which bank is financing those operations. Without access to information about the financier of the project or loan, communities do not know they may be able to raise a complaint.

For banks, publishing information about loans to high risk sectors (for example, agribusiness, forestry, oil and gas, and mining operations) is an important step if grievance mechanisms are going to meet the effectiveness criteria of the Guiding Principles.

For example, to be legitimate requires the mechanism to “enable trust from the stakeholder groups for whose use they are intended”.⁵⁴ The mechanism is unlikely to be considered fair and trusted if stakeholders can’t access fundamental information that enables them to access and utilise it. To be accessible requires the mechanism to be “known to stakeholder groups for whose use it is intended”. Stakeholders who are not aware of a bank’s link to the operations affecting them are not going to be aware that a mechanism exists. Without publicly available information on corporate loans and project finance being available, a bank grievance mechanism risks falling short against these criteria.

Banks should start publishing project and corporate loan information alongside the development of grievance mechanisms, otherwise they risk these mechanisms being unavailable and unused by the most important stakeholders.

Banks often claim that they are limited by legal or commercial constraints in extending disclosure, yet their sustainability reports regularly feature case studies that highlight their investment in particular companies and projects, including those with a more ethical focus such as renewable energy.⁵⁵ Banks also disclose deal information on loans, bonds and shareholding information to pay-walled financial databases to advertise who has achieved the biggest deals or the largest loan portfolio.⁵⁶ This information can include project, amount and type of finance.

Banks are generally able to disclose details of loans with their client’s consent and can reserve the right to disclose these details as a condition of finance. Disclosure of large corporate loans and large project financing is becoming more common but needs to become mainstream. In this process, privacy can still be retained for transactional banking.

Positive steps on disclosure:

Project finance reporting: The Equator Principles require that banks publicly report project names for completed project finance transactions, where they can obtain client consent. Most Equator signatories now publish information about projects with project names on the Equator Principles website. This type of disclosure should be extended to include project finance and corporate loans in high-risk sectors like agribusiness, extractives and forestry to enable affected communities to have access to information about who is financing operations. Furthermore, consent to disclosure should be made a mandatory condition of loan agreements with clients.

Corporate loan reporting: Triodos Bank, based in the Netherlands, names all companies, organisations and institutions that are part of its loan portfolio, as well as a breakdown of region, size and industry. Since 2009, granting permission for publication of business details is a condition for obtaining a loan, and appears in all Triodos loan agreements.⁵⁷ To preserve privacy, Triodos does not display home loans. Italian Banca Etica not only publishes information on its loans (name lender, term of the loan, amount), but also on potential transactions that are pending an external ethics committee. Dutch development bank FMO has implemented an early disclosure of potential investments mechanism that allows interested parties to provide feedback on the environmental, social and governance aspects of FMO projects before contracting.

Industry/sector specific client reporting: HSBC’s Agricultural Commodities Policy requires that clients in the palm oil sector to consent to HSBC being able to disclose its relationship with the client before the bank provides financial services.⁵⁸ While this is a very important policy step, HSBC has yet to start reporting these palm oil relationships, which will be key in the bank demonstrating that it is serious about implementing this policy.

Case study: The Independent Complaints Mechanism of FMO and DEG

The Independent Complaints Mechanism of the Dutch and German development finance institutions FMO and DEG was established in January 2014, and consists of the complaints offices of both institutions, and an independent expert panel of three members. Its latest annual report indicates that the Mechanism has received eight complaints to date, of which three have been determined admissible. The first complaint relates to the Barro Blanco dam in Panama, and the following two complaints both relate to the Sendou I coal-fired power plant in Senegal (and these were dealt with together).⁵⁹

As with many development bank accountability mechanisms, the Mechanism offers complainants either dispute resolution, whereby the complainant, the client and other parties work towards a mutual and mediated solution of the issue, or compliance review, whereby the Mechanism investigates whether the financial institution has failed to comply with its policies and standards. A combination of approaches is also possible. The three complaints accepted to date have focussed on compliance review.

While the expert panel is independent, FMO and DEG introduces contractual arrangements into their client agreements which ensure the independent expert panel and those they instruct to act on their behalf have the same access to client information, premises and senior management as the financial institutions themselves.⁶⁰

An assessment of the mechanism by a coalition of NGOs for the Glass Half Full report concluded that the mechanism presents an innovative model because its shared structure makes it “less beholden to either institution”.⁶¹ However, the handling of its first complaint regarding Barro Blanco has been subject to criticism, as has FMO’s reaction to it. Because the loan was made before the creation of the complaints mechanism, FMO/DEG found it challenging to secure the client’s participation in the complaint process, negotiating a confidential side agreement that the report said undermined the mechanism’s legitimacy and slowed the process.⁶² More fundamentally, FMO and DEG’s response to the findings did not commit to any measures to address the outstanding policy violations, although they did

acknowledge some deficiencies in their assessment and committed to make improvements to their appraisal and monitoring processes.⁶³ Two years after the complaint, the panel of the Independent Complaints Mechanism felt it necessary to express grave concerns as dam construction proceeded and indigenous lands were flooded without effective prior notice to the affected communities.⁶⁴

The FMO/DEG Independent Complaints Mechanism has particular relevance for private sector banks, considering that FMO has bank status, is an Equator Principles signatory and is partly privately-owned. Its experience can provide an important reference for commercial banks in terms of design and operation of their own mechanisms, as well as lessons for seeking to maximise client cooperation and meeting the effectiveness criteria. The Barro Blanco case, which is profiled in a detailed case study in the Glass Half Full report, also holds lessons, in that it shows that complaints mechanisms will only be effective if the bank is willing and able to address findings of non-compliance. It also shows the need for clear guidelines for handling complaints relating to transactions agreed prior to the set-up of the complaints mechanism, in ways that do not compromise legitimacy and predictability.



The Barro Blanco Dam, subject of a complaint to the Independent Complaints Mechanism of FMO and DEG. Photo: Anna van Ojik, Both Ends, 2017.

Bank engagement with client grievance mechanisms

When a human rights impact emerges that is linked to a bank's finance, the bank will usually be further from the impact than its client or investee company. To ensure the grievance is considered as close to the impact as possible, grievance mechanisms at the level of the client or project financed by the bank could be the most appropriate route for rights-holders seeking remedy where they exist, are effective and are appropriate to address the harm that has occurred. In practice however, there are a number of reasons why client mechanisms can fail to deliver remedy. For example, the country where the impact has occurred may have weak rule of law, be vulnerable to corruption and have an overall lack of accountability for investor and corporate impacts.⁶⁵

Many banks already require clients or financed projects to establish their own operational-level grievance mechanisms as a condition of finance. While this is positive, a bank's role must go beyond simply requiring a client or project grievance mechanism and then sitting back and assuming this will resolve any complaints. This approach is not sufficient to ensure that impacts are remedied and does not contribute towards fulfilling the obligation for banks to establish or participate in a grievance mechanism.



While banks may in theory meet their responsibilities to establish or participate in operational-level grievance mechanisms through participation in client mechanisms, there are many instances where this will not be practical or appropriate. In practice, banks will still require their own grievance mechanisms — or those in which they participate together with other banks.

For example, clients may not have grievance mechanisms in place, or these may not be effective and may fail to provide satisfactory remedy to rights-holders. Rights-holders may wish to raise a complaint to a bank mechanism rather than its client's, where the client is unwilling to remediate the impact or is not trusted by the community. A client-level grievance may take several years to process and may not result in any remedy for the affected stakeholders, particularly if the client caused the alleged abuse in the first instance.

Communities may also be reluctant to raise a complaint to the client where the community fears retaliation, feels it has a greater chance of securing remedy through the bank, or considers that the bank has breached its own policies. In these cases, the affected stakeholders should have the ability to raise a complaint to the bank.

In recent cases where banks are likely to have contributed to adverse impacts, meaningful remedy provided by the client has been lacking.⁶⁶ The provision of satisfactory remedy is particularly rare where the client is operating in a politically fragile state that is more prone to corruption, as well as weak rule of law. In such contexts, a bank-supported grievance mechanism may represent the only feasible way of resolving a dispute — which could otherwise continue to play out in ongoing community and public campaigns.

Therefore, we consider that banks should ensure communities have access to a bank-level grievance mechanism alongside client-level grievance mechanisms, and consider the two as complementary rather than mutually exclusive. Bank mechanisms could work with client mechanisms in various ways to maximise the potential for adverse impacts to be remedied, whether or not the bank is responsible for providing a remedy:

- Banks can use their leverage to help ensure their client provides remedy for a specific impact within an acceptable timeframe, for example by making further finance conditional on a mutually agreed (between complainant and client) remedy being provided.

- Bank mechanisms can investigate whether a grievance has been raised through the client mechanism, investigate the adequacy of any outcome in the view of the complainant, and use this information in deciding whether further remediation is needed from the bank itself.
- Bank mechanisms should work, where possible, in tandem with a client's grievance mechanism, where a client mechanism is in place and assessed as effective and timely. The banks should commit to cooperate in the process of resolving the grievance, including playing its role in remediating where it has caused or contributed the impact.⁶⁷
- Banks can require regular (eg annual) reporting from client or project grievance mechanisms, including reviewing the register of complaints, and ensure that grievances are being remedied appropriately as part of the banks ongoing human rights due diligence.

Limitations of company grievance mechanisms

Grievance mechanisms play an important role in ensuring human rights impacts are identified early and remediated, and in building a culture of accountability. However, they should not be seen as a panacea for resolving adverse human rights impacts. Indeed company-level grievance mechanisms have been criticised for failing to provide effective remediation, and other shortcomings in effectiveness. For example, in 2014 SOMO summarised the state of operational-level grievance mechanisms: "Because they are owned and operated by the same actors who have allegedly committed the abuse, these mechanisms often lack the confidence of stakeholders. They are not comparable to [other types of non-judicial] mechanisms because they are not as independent or robust."⁶⁸ As the commentary to Principle 31 states, "poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process."

To avoid these pitfalls, bank grievance mechanisms should be designed thoughtfully and with careful attention to effectiveness criteria, to ensure they do not undermine trust by providing a false promise of remediation. This includes consulting the intended users of the mechanisms in the design process — a step that is identified by the IFC's Compliance Advisor Ombudsman, for example, as crucial to overcoming issues around trust and accessibility, as well as being part of the effectiveness criteria of the Guiding Principles.⁶⁹ Similarly in the operation phase, one of the most important ways of ensuring grievance mechanisms act as a source of continuous learning is to find out how the affected communities, including both complainants and non-complainants, regard the complaints process.⁷⁰

Bank grievance mechanisms should also be designed with the wider landscape of judicial and non-judicial grievance mechanisms in mind. Bank mechanisms can be designed with reference to these other mechanisms and work in cooperation with them where appropriate.

A panel on effective company-level grievance mechanisms at the 2015 UN Forum on Business and Human Rights summarised that judicial mechanisms should be at the core of ensuring access to remedy, while non-judicial mechanisms have an important role to play in complementing and supplementing judicial mechanisms.⁷¹

As Professor Ruggie noted when elaborating the 2008 Protect, Respect and Remedy Framework: "Where a company is directly involved in administering a mechanism, problems may arise if it acts as both defendant and judge. Therefore, the mechanism should focus on direct or mediated dialogue. It should be designed and overseen jointly with representatives of the groups who may need to access it. Care should be taken to redress imbalances in information and expertise between parties, enabling effective dialogue and sustainable solutions. These mechanisms should not negatively impact opportunities for complainants to seek recourse through State-based mechanisms, including the courts."⁷²



Brazil, Jatayvary: Rosa and her mother Angela walk to a creek near their houses where they bathe and wash clothes. Photo: Eduardo Martino/OxfamAUS.

4. FREQUENTLY ASKED QUESTIONS

In interviews with bank representatives as part of the research process for this paper, as well as in informal conversations and secondary research, a number of questions and concerns about grievance mechanisms in the banking sector were frequently raised. This section aims to identify banks' most common questions and provide answers where possible, as well as pointing to areas that require future research.

Q1. Do we need grievance mechanisms if we are only "directly linked" to a human rights impact?

"With directly linked, grievance mechanisms are not an issue." – Bank C

It is one of the most common misunderstandings of the Guiding Principles that the responsibility to establish or participate in operational-level grievance mechanism depends on a bank's link to the impact — for example, whether the bank caused or contributed to the impact or is directly linked to it through a business relationship, but did not contribute. Grievance mechanisms are expected to be established proactively, before an impact occurs (as the UN OHCHR has advised). This is necessary to ensure grievance mechanisms can fulfil one of their two main purposes — supporting the identification of human rights impacts at an early stage. To do this effectively, the mechanism needs to be open to any legitimate concerns within its scope, regardless of

the business link to the impact. This includes legitimate complaints which may not amount to a human rights abuse.

As the Interpretive Guide to the Guiding Principles states: "Unlike many State-based mechanisms (courts, ombudsman's offices and so forth), an operational-level grievance mechanism does not have to wait until an issue amounts to an alleged human rights abuse or a breach of other standards before it can address it. It can receive and address concerns well before they reach that level and before an individual's or a community's sense of grievance has escalated."⁷³

It is only after such concerns have been raised that the bank can determine its level of responsibility for remedying the impact. As such, it would be impractical to restrict a grievance mechanism to only those circumstances where a bank has caused or contributed to an impact. It would also be out of line with the Guiding Principles. Principle 29, which establishes the responsibility for businesses to establish or participate in a grievance mechanism, does not discuss the relationship between the business and the impact. It is only the responsibility to remediate the impact (Principle 22) which is linked to whether the business caused or contributed to it. The difference is in the handling of the complaint and the action taken by the mechanism, which should be equipped to deal with all types of relationship.

The commentary to Guiding Principle 22 states that “where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations, products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so”.⁷⁴ Even in the instance of “directly linked” rather than “caused or contributed”, Oxfam Australia and BankTrack recommend that banks should play an active role to ensuring their client provides remedy that is rights-compatible and mutually agreed by all parties.

Q2. Is it enough to have grievance mechanisms for our employees and customers?

Banks have several groups of stakeholders who may potentially bring human rights grievances, including employees, customers, suppliers and communities impacted by their finance. Banks typically already have processes for handling complaints from customers and employees, and mapping this “internal ecosystem” — alongside the external landscape for remediation — is an important starting point in designing the bank’s grievance mechanism.⁷⁵

An operational-level grievance mechanism should be directly accessible to individuals and communities that may be adversely affected by a company.⁷⁶ As the UN OHCHR has noted, a bank may reasonably expect that most of its potential involvement with adverse human rights impacts may relate primarily to its client relationships. It is therefore important for banks to ensure they have a grievance mechanism that specifically enables complaints to be raised by people and communities impacted through the bank’s client relationships.

Q3. It’s confusing or inefficient for rights-holders if both banks and their clients have grievance mechanisms. Isn’t the client best placed to remediate its own impacts?

“It’s inefficient to complain to the bank” – Bank D

“From a rights-holder’s point of view, it is easier to have one grievance mechanism institutionalised for each sector. Otherwise you need to go to a whole bunch of places and knock on several doors.” – Bank E

Any grievance is best dealt with as close to the impact as possible, and so grievance mechanisms at the level of the client or project financed by the bank may often be the most appropriate route for rights-holders seeking remedy.⁷⁷ However, this assumes that such grievance mechanisms exist and are effective, which is often not the case. Additionally, a bank cannot fulfil its own responsibility to provide for —

or cooperate in — remediation of adverse impacts it has contributed to by leaving remediation to its clients. A hands-off approach that leaves remediation entirely to the client has clear risks for the bank as well as for rights-holders.

The principle that grievances are best dealt with close to the impact does not take away from the bank’s responsibility to establish or participate in operational-level grievance mechanisms itself. Communities may wish to raise a complaint regarding a project or company to the bank financing it for several reasons: the client may be simply unwilling to remediate the impact or may not be trusted by the community; rights-holders may feel they have a greater chance of securing remedy with the banks’ involvement; or they may perceive that the bank has breached its own policies. Grievance mechanisms should be equipped to coordinate as appropriate to the case at hand.

Rights-holders or affected communities may have considerable difficulty obtaining remedy from the client. This is particularly in the instance where the client is operating in an environment with weak governance, corruption and poor rule of law. It is also difficult where human rights defenders and complainants are at risk of retaliation. The client may not feel the need to remediate when the actions it has taken are not prosecuted in the country of operation, but are considered human rights abuses under international human rights and business standards.

Q4. Will we receive a flood of complaints? And how will we filter out those that are vexatious or invalid?

“You’re gonna get a lot of noise.” – Bank D

Rather than a flood of complaints, a more common problem facing new grievance mechanisms is a lack of complaints, due to problems of accessibility and awareness. The FMO/DEG Independent Complaints Mechanism received only eight complaints, of which three were admissible, in its first four years of operation. One of the most well-known non-judicial grievance mechanisms, the OECD National Contact Point system, resolved 35 “specific instances” (grievances) in the 2017 reporting period, of which 12 were not accepted.⁷⁸ Given that there are National Contact Points in every country adhering to the OECD Guidelines (46 currently listed) and that the channel applies across all business sectors, this does not indicate a problem of excessive or particularly vexatious complaints.

To ensure complaints are legitimate, a light screening process can be put in place to ensure complaints are eligible for the grievance mechanism (eg that the complaint pertains to an impact linked to the bank, that the issues fall within the scope of the grievance mechanism and the complainant has standing to file the complaint). One example is the CAO,



Brazil, Jatayvary:
Rosangela works as a health agent in a local health centre (she visits all the families in the community, evaluates the health issues and brings the more serious ones to the attention of the local nurse or sends people to the hospital in town when the cases are too serious). She lives and works in Jatayvary. Rosangela claims that chemicals used to grow sugar-cane contaminate the waters and pollute the air, along with the thick dust from passing trucks, causing diseases. Photo: Eduardo Martino/ OxfamAUS.

which has clear eligibility criteria.⁷⁹ The CAO’s guidance for others developing project-level grievance mechanisms also advises against rejecting grievances without first engaging in a conversation with complainants.⁸⁰

Q5. Will we open ourselves up to legal liabilities if we operate a grievance mechanism?

“I find it extremely worrying for a bank to provide remedy over the heads of a client, also from a legal point of view.” – Bank D

“A bottle neck is the fear for liability. Legal advice to overcome this fear, or misused excuse, is urgent.” – Member of FMO Independent Complaints Mechanism panel⁸¹

There is a concern that if banks intervene to remediate human rights impacts caused by their clients, the bank may become liable for the harm done. One answer to this question is that remedies can take a variety of forms, including an apology, provisions to ensure the harm cannot recur, compensation (financial or other) for the harm, cessation of a particular activity or relationship, or some other form of remedy agreed by the parties.⁸² Operational-level grievance mechanisms will typically focus on dialogue or compliance investigation, in the first instance, as the means to address and resolve grievances, which should not necessarily create legal liabilities.

Banks can additionally mitigate this risk by being clear in public information about the mechanism and what it exists

to do — ie that the acceptance of a complaint, and efforts to bring about remediation, does not suggest any acceptance of legal liability. Banks can also include clauses in loan agreements that require clients to cooperate with the bank’s grievance mechanism.

We have found no evidence that the establishment of any type of internal or industry grievance mechanism has led to increased legal liability. Rather, done properly, human rights due diligence reduces legal risk, while handling complaints through a formal mechanism can prevent more adversarial action being taken against the banks.⁸³

Q6. What if the bank does not have the leverage to remediate the impact?

Oxfam Australia and BankTrack recommend the bank should use whatever leverage it has with the client to prevent or mitigate the impact, which in some cases could involve the bank putting pressure on a client to actively engage in remediation of the harm. If the bank considers that it lacks leverage over its client, it could look for opportunities to increase leverage, or look at alternative means of resolving the grievance that may be less reliant on leverage over the client (see Q5, above).

The bank should first try to maximise the leverage it has, including through making any future lending contingent on the client cooperating in the remediation of the impact. Beyond this, there may be opportunities to increase leverage. One way of increasing leverage noted in the Guiding Principles (in the commentary to Principle 19) is by collaborating with other actors. If more than one financial institution, be it

a bank, investor or asset manager, is linked to a human rights impact, they may increase leverage through working collaboratively, for example through participation in industry-wide or multi-stakeholder collaborative efforts.⁸⁴

Where a bank is directly linked to an adverse impact caused by its client, but is unable to prevent or mitigate the impact (and has expended its efforts to increase its leverage), the bank should consider ending the relationship. However, before ending the relationship, the bank should consider that this also ends its leverage with the client and that terminating the relationship may itself have adverse human rights consequences. Particularly where a bank has contributed to an adverse human rights impact through its finance, “cutting and running” by ending the relationship will not absolve the bank of its remediation responsibilities towards the community that has experienced violations.

The Dutch Banking Sector Agreement on Human Rights includes a commitment to publish a study on how to increase leverage when supporting companies to improve responsible business conduct regarding human rights. This is expected to be published in 2018.⁸⁵

Q7. What resources are available to help?

For more information on designing effective grievance mechanisms with relevance to the banking sector, see:

- UN Office of the High Commissioner for Human Rights: [Advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector](#), June 2017
- Harvard Kennedy School of Government Corporate Social Responsibility Initiative: [Rights-compatible Grievance Mechanisms - A Guidance Tool for Companies And Their Stakeholders](#), 2008
- Shift: [Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights](#), Workshop Report, May 2014
- European Commission: [Sector Guides on Implementing the UN Guiding Principles on Business and Human Rights](#), 2013

- International Institute for Environment and Development (IIED): [Dispute or Dialogue? Community perspectives on company-led grievance mechanisms](#), 2013
- CSR Europe: [Assessing the Effectiveness of Company Grievance Mechanisms](#), 2013
- [The Grievance Mechanism Toolkit of the IFC’s Compliance Advisor Ombudsman](#)
- The database of existing non-judicial grievance mechanisms provided by ACCESS [Facility](#)

In addition, banks can engage with the UN Office of the High Commissioner for Human Rights and the UN Working Group on Business and Human Rights where they have questions or areas for further discussion on how the Guiding Principles should be interpreted.



Brazil, Jatayvary: Chief Arlindo Kaiowa. Photo: Eduardo Martino/OxfamAUS.

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Brazil, Jatavyary: Rosangela (here with daughter Soniele), works as a health agent in a local health centre. Photo: Eduardo Martino/OxfamAUS.