



# **Non-judicial Grievance Mechanisms in Global Supply Chains**

## **Recommendations for Institutionalisation, Implementation and Procedural Design**

### **- Executive Summary -**

Ulla Gläßer, Robert Pfeiffer, Dominik Schmitz and Helene  
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## Executive Summary: Table of contents

I.	<b>Introduction: The role of non-judicial grievance mechanisms in the realm of business and human rights</b> .....	3
II.	<b>Aims of the research project and methodological approach</b> .....	5
III.	<b>Findings of the research project</b> .....	7
	1. Advantages of institutionalised cross-company grievance mechanisms.....	7
	2. The complaint mechanism as an institution, operating system and process .....	8
	3. Institutionalisation: governance structures of grievance mechanisms .....	10
	4. Implementation in the supply chain.....	11
	5. Procedural design using alternative dispute-resolution procedures.....	12
	6. Designing the grievance mechanism as a learning system .....	13
	7. Combining design recommendations in the model of an Integrative Grievance System	15
IV.	<b>Outlook</b> .....	19

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## I. Introduction: The role of non-judicial grievance mechanisms in the realm of business and human rights

Globalised economic structures present opportunities while also posing formidable challenges.<sup>1</sup> They open up new markets and new production facilities, thereby creating employment and income for the population of production locations. The downside of global supply and value chains, however, is the frequent inadequate enforcement of human rights as well as of labour, social and environmental standards.

Hazardous and even life-threatening working conditions, excessively long working hours, unduly low pay, sexual harassment, child labour and severe pollution are still everyday realities in many parts of German and European supply chains. Existing deficiencies are particularly highlighted by global crises like the Covid pandemic which shut down parts of global supply chains, abruptly depriving thousands of people of their livelihood.

This raises the question as to which stakeholders are or should be responsible for the conditions of production in global supply chains and for their adverse and damaging effects on people and the environment.<sup>2</sup>

The *UN Guiding Principles on Business and Human Rights* (UNGP),<sup>4</sup> adopted unanimously by the UN Human Rights Council in 2011,<sup>3</sup> emphasise both the state duty to protect human rights and the corporate responsibility to respect them as well as the need for effective remedies in cases where human rights are violated.<sup>5</sup> Principles 25 to 31 of the UNGP call for access to effective state-based and non-state-based judicial and non-judicial grievance mechanisms, which should be mutually complementary.

There are still gaps in this system of effective remediation for which the UNGP call. With regard to judicial remedies, aggrieved individuals face considerable obstacles to access; a violation of the law, moreover, can only be asserted retrospectively before the courts, which may lead to compensation at best.

Easily accessible non-judicial grievance mechanisms therefore fulfil a complementary function for more effective human rights protection in various respects.

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<sup>1</sup> See German Federal Foreign Office, *National Action Plan for Business and Human Rights, 2016-2020*, p. 4.

<sup>2</sup> For a summary of the current debate, see Landau and Hardy, 'Transnational Labour Governance in Global Supply Chains: Asking Questions and Seeking Answers on Accountability', in Delautre, Manrique and Fenwick (eds), *Decent work in a globalized economy: Lessons from public and private initiatives*, 2021, p. 43.

<sup>3</sup> HRC, Resolution 17/4: Human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/RES/17/4, 6 July 2011.

<sup>4</sup> OHCHR, *Guiding Principles on Business and Human Rights*, UN Doc. HR/PUB/11/04, 16 June 2011.

<sup>5</sup> "As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.", OHCHR (see footnote 4 above), p. 27, UNGP 25.

As these mechanisms may provide compensatory remedies as well as future-oriented and preventive measures, they complement the state system of judicial remedy. Moreover, well-functioning grievance mechanisms serve as “early warning systems”, enabling companies to adjust their mandatory risk assessment.

This potential of non-judicial grievance mechanisms, however, has yet to be fully tapped.

Through our research report we intend to contribute to the establishment and improvement of effective grievance mechanisms by presenting background material and connections as well as recommendations. The report offers an overview of important aspects of institutionalisation, implementation, procedural design and quality assurance of grievance mechanisms. It also proposes potential solutions and presents a draft model of an Integrative Grievance System. This Integrative Grievance System (IGS), which should be understood as a prototype, places a grievance mechanism in its organisational context and highlights the need to interlink it with other mechanisms for implementing human rights (especially social auditing, social dialogue and capacity-building). It uses a combination of mediation, conciliation and arbitration to effectively deal with grievances. By means of various feedback mechanisms and differentiated reporting obligations, the IGS becomes a learning system.

The research report is primarily addressed to those who – in businesses, business associations, trade unions, as institutional operators of grievance mechanisms and in NGOs – deal with the establishment or improvement of non-judicial grievance mechanisms. The report is also intended to demonstrate to human rights organisations the capabilities of these mechanisms so that they can critically monitor and constructively influence their establishment. Researchers will find a wide range of subjects for further study in the report. Last but not least, the report contains suggestions for the regulation of grievance mechanisms and therefore also addresses legislators and other political actors.

This executive summary provides an overview of the aims and methodological approach (part II) and the findings (part III) of the research project on the design of non-judicial grievance mechanisms in global supply chains as commissioned by the Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz (BMJV)*). The outlook (part IV) offers a practical road map and suggests subjects for future research.

## II. Aims of the research project and methodological approach

In December 2019, the Federal Ministry of Justice and Consumer Protection commissioned a research team from the European University Viadrina at Frankfurt (Oder) to develop practical guidelines for designing non-judicial grievance mechanisms for victims of human rights violations in global supply chains. In particular, the team was to explore the potential of alternative dispute resolution (ADR) in the realm of business and human rights, focusing especially on the transferability of practical experiences in the field of consumer dispute resolution in Germany.

A normative starting point of the research project is the responsibility of enterprises to participate in non-judicial grievance mechanisms for victims of human rights violations in their supply chains, as postulated in the UNGP.<sup>6</sup> A corresponding statutory duty was established in June 2021 when the German Parliament (the *Bundestag*) adopted the Act on Corporate Due Diligence in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten).<sup>7</sup> The recommendations made by the European Parliament to the European Commission for a corresponding EU directive also provide for a corporate duty to implement effective non-judicial grievance mechanisms. To spell out what this duty means, the recommendations of March 2021 refer explicitly to UNGP 31, which sets out the following eight effectiveness criteria for non-judicial grievance mechanisms:

**Table I:** Effectiveness criteria set out in UNGP 31

Legitimate <sup>8</sup>	Accessible <sup>9</sup>	Predictable <sup>10</sup>	Equitable <sup>11</sup>
Transparent <sup>12</sup>	Rights-compatible <sup>13</sup>	A source of continuous learning <sup>14</sup>	Based on engagement and dialogue <sup>15</sup>

<sup>6</sup> OHCHR (see footnote 4 above), p. 31.

<sup>7</sup> Federal Law Gazette I 2021, p. 2959.

<sup>8</sup> **Legitimacy:** Stakeholder groups for whom the grievance mechanism is intended should be able to trust it. The grievance mechanism should guarantee fair proceedings.

<sup>9</sup> **Accessibility:** The grievance mechanism should be known to all stakeholder groups. It should provide adequate assistance for those who may face particular barriers to access.

<sup>10</sup> **Predictability:** The mechanism should provide a clear and known grievance procedure in terms of the process, its potential outcomes and the means of monitoring its implementation. An indicative time frame should therefore be established for each stage.

<sup>11</sup> **Equitability:** The mechanism should ensure that aggrieved parties have reasonable access to the sources of information, advice and expertise that they need to engage in a grievance process on fair and informed terms.

<sup>12</sup> **Transparency:** The grievance mechanism should keep parties to a grievance procedure informed about its progress and inform the public fully of its activity.

<sup>13</sup> **Rights-compatibility:** Outcomes and remedies should accord with internationally recognised human rights.

<sup>14</sup> **Source of continuous learning:** The grievance mechanism should draw on internal processes of quality control, assurance and development and contribute externally to the prevention of future violations of human rights.

<sup>15</sup> **Based on engagement and dialogue:** Potential users of the grievance mechanism should be involved in shaping and implementing it. An independent third party should be brought into procedures culminating in a decision. Precedence should be given to conflict-management procedures based on dialogue.

The purpose of the practical recommendations developed by the research team is to contribute to the fulfilment of these abstract UNGP effectiveness criteria when specific grievance mechanisms are designed. They also relate to the empirically underpinned Accountability and Remedy Project III (ARP III) conducted by the Office of the High Commissioner for Human Rights (OHCHR), which specify the UNGP effectiveness criteria.<sup>16</sup>

Proceeding from an analysis of the relevant literature and existing empirical findings relating to non-judicial grievance mechanisms, the research team conducted their own empirical studies on two levels: on the one hand a study of eight existing grievance mechanisms<sup>17</sup> by means of a documentary analysis<sup>18</sup> and on the other hand a survey, based on interviews of experts from various stakeholder groups (representatives of enterprises, trade unions, NGOs and institutions offering grievance procedures) as well as a supplementary online survey<sup>19</sup>.

As part of the examination of the selected grievance mechanisms, we developed a system of design categories covering practically relevant issues<sup>20</sup> relating to the institutionalisation, implementation, procedural design and quality assurance of grievance mechanisms. This system of design categories can be used to describe or analyse as well as design or optimise a non-judicial grievance mechanism.

On the basis of the design categories, we identified good practices in existing grievance mechanisms<sup>21</sup> and potentially transferable elements from consumer dispute resolution.<sup>22</sup> This was

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<sup>16</sup> The concluding report (ARP III Main Report) was published in May 2020; OHCHR, *Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based grievance mechanisms*, UN Doc. A/HRC/44/32, 19 May 2020; on the various stages in the multi-stage methodological approach used in ARP III, see OHCHR, *op. cit.*, pp. 5 and 6.

<sup>17</sup> In accordance with the research brief we included various types of non-state grievance mechanisms in the case studies. We examined the grievance mechanisms of the Adidas Group, the Bangladesh Accord, the Bench Marks Foundation (BMF), the Dutch Agreement on Sustainable Garments and Textiles (Dutch Agreement), the Fair Labour Association (FLA), the Fair Wear Foundation (FWF), the DEG (German Investment and Development Company), part of the KfW Group, and the Roundtable on Sustainable Palm Oil (RSPO). Information on the working practices and procedures of the Swiss National Contact Point for the OECD Guidelines for Multinational Enterprises, as an example of a state-based grievance mechanism, were collected by means of an expert interview. The Hague Rules on Business and Human Rights Arbitration were also analysed as part of the project as an example of a specific arbitration system focused on business and human rights; in the absence of a dedicated implementing organisation, however, the Rules were not classified as a grievance mechanism.

<sup>18</sup> The examination of the selected grievance mechanisms was based on an analysis of publicly accessible sources and of internal descriptions of the mechanisms; in some cases it was possible to obtain additional information from expert interviews.

<sup>19</sup> The survey took the form of a primarily quantitative stakeholder survey conducted as part of an online conference held jointly with the Federal Ministry of Justice and Consumer Protection in September 2020.

<sup>20</sup> A general summary of the identified design issues is provided in the annex to the research report. <sup>21</sup> Good practices were identified by comparing current practice within grievance mechanisms with the relevant ARP III outcomes specifying the UNGP effectiveness criteria.

<sup>22</sup> The main sources in this case were interviews we conducted with the heads of five German consumer dispute resolution bodies.

enriched by general reflections on the applicability of alternative dispute-resolution procedures to the realm of business and human rights.

On this basis we developed the IGS as a prototype model for an institutionalised cross-company<sup>1</sup> non-judicial grievance mechanism, consolidating the research project's many findings and recommendations.

### **III. Findings of the research project**

We now offer a brief presentation of the main research findings on the following points: advantages of institutionalised cross-company grievance mechanisms (chapter III.1), the underlying perception of a grievance mechanism as an institution, functional system and process (III.2), the governance structures of organisations administering a grievance mechanism (III.3), the implementation of grievance mechanisms in global supply chains (III.4), aspects of procedural design using alternative dispute resolution (ADR) procedures (III.5), the constitution of a grievance mechanisms as a learning system (III.6) and the combination of design recommendations in the IGS model (III.7).

#### **1. Advantages of institutionalised cross-company grievance mechanisms**

A comparison of company-based and cross-company grievance mechanisms yielded an important initial finding underpinning the subsequent stages in our research, namely that cross-company mechanisms offer numerous significant advantages over company-based mechanisms:

- higher level of independence of individual grievance procedures and the grievance mechanism as a whole from the influence of individual companies,
- considerable efficiency gains for the institutionalisation and continuous implementation of the mechanisms by pooling the resources of purchasing companies, possibly within a specific industry or region,
- enhanced efficacy of grievance procedures through jointly funded training and more rapid professionalisation of the staff who assist in and manage the procedures,
- continuous regional accessibility of grievance mechanisms through long-term local implementation, regardless of any changes of supplier in the supply chains of individual purchasing companies,
- consolidated access to remedies for victims of human rights violation and a resulting increase in their confidence in the predictability and quality of the grievance procedure,
- more effective enforcement of remedial and preventive measures against suppliers by means of incentive systems operated collectively by purchasing companies,

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<sup>1</sup> Cross-company mechanism means a mechanism administered by multiple companies, industry associations or multi-stakeholder groups.

- possibility of establishing a comprehensive learning system that encourages learning processes at various levels (within institutions, enterprises, industries and societies) while linking the grievance mechanism with other mechanisms for implementing human rights, particularly social dialogue and social auditing.<sup>23</sup>

Hence, the main focus of future developments should be on the establishment of institutionalised cross-company grievance mechanisms. These may well be complemented by company-based mechanisms but cannot be replaced by them.

## **2. The grievance mechanism as an institution, operating system and process**

Our analysis of existing cross-company grievance mechanisms shows that the actual grievance mechanism is embedded in an administering organisation – and that a wide range of measures for implementing human rights are needed to promote and guarantee its use. The institutionalisation and implementation crucially influences the performance of the grievance procedure. Organisational learning processes must therefore be initiated and evaluated at all of the aforementioned levels.

On the basis of this conclusion, a comprehensive system of design categories was devised by the research team to provide a framework which clearly maps relevant design issues, approaches and recommendations.

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<sup>23</sup> For more information, see chapter 4.2.2.1 of the research report.

**Table II:** System of design categories for non-judicial grievance mechanisms

<b>Institutionalisation</b>
- Governance structures
- Development of material standards
- Funding of the grievance mechanism
- Incentive schemes for member companies
- Dispute resolution within the institution
- Focus on vulnerable groups

<b>Local implementation</b>
- Transparency of the supply chain
- Adaptation of purchasing practices
- Promotion of local social dialogue structures
- Capacity-building
- Links between social auditing and the grievance mechanism
- Incentive schemes for supplier companies
- Raising awareness of the grievance mechanism

<b>Procedural design</b>
- Participants in the proceedings
- Submission of complaints
- Admissibility of grievances
- Criteria for case assessment
- Choice of procedure
- Qualification profiles for staff assisting in and managing the grievance procedure
- Place of proceedings
- Language of proceedings
- Duration of proceedings
- Procedural costs
- Transparency of the dispute resolution process
- Dealing with power asymmetries
- Consideration of the interests of particularly vulnerable victims
- Fact-finding
- Protection of parties to the proceedings
- Outcomes of proceedings
- Implementation of agreements/decisions

<b>Development of a learning system</b>
- Quality assurance and development
- Reporting system

This system of design categories, which is introduced in chapter 4 of the research report, lays the foundations for the subsequent chapters.<sup>24</sup> The design categories listed in the table above can thus be used

- to classify the findings from the analysis of the expert interviews (see chapter 5 of the report),
- to systematise good practices in the design of grievance mechanisms and the corresponding ARP III specification of the UNGP effectiveness criteria (chapter 6),
- to cluster related design issues (chapter 6),
- to incorporate knowledge transferred from consumer dispute resolution practice (chapter 8), and
- to consult specific parts of the practical guidelines that are consolidated in the IGS model (chapter 9).

Even though the classification system is based on a cross-company institutionalisation of grievance mechanisms, the recommendations on procedural design, on local implementation and on the development of a learning system can also be applied to the design of purely company-based mechanisms.

### **3. Institutionalisation: governance structures of grievance mechanisms**

A grievance mechanism should be embedded in a cross-company multi-stakeholder organisation that also pursues other complementary approaches for observing corporate responsibility for human rights in supply chains, particularly capacity-building, social dialogue and social auditing and interlinks these with the grievance system. Communal funding models ensure that resources can be used efficiently to finance these measures<sup>25</sup> and at the same time serve as incentive schemes for member companies. Within the organisation administering the mechanism, members should also establish specific rules of conduct and other standards<sup>26</sup> that can be used as criteria for case assessment in grievance procedures.

Parity of representation in the governance structures of the administering organisation is the key to independence and legitimacy of the grievance mechanism. Accordingly, its main decision-making body should contain representatives of member companies – and, where appropriate, their associations – and an equal number of representatives of national and global trade-unions and organisations representing the interests of victims of human rights violations.

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<sup>24</sup> Only chapter 7 of the report turns away from the structure of the system of categories to broaden the focus to allow for a basic introduction to the subject of alternative dispute resolution (ADR) and, on that basis, to explore the specific application potential of ADR processes in the realm of business and human rights.

<sup>25</sup> In this context the research report devotes special attention to ways of communally funding the fixed staffing and material expenditure of the grievance system as well as case-related procedural costs and the cost of any preventive and remedial measures; see chapter 9.2.

<sup>26</sup> These standards should set requirements for the conduct of member companies – with regard to their purchasing practices, for example – and for the conduct of any of their suppliers – with regard to occupational health and safety, for instance.

The main decision-making organ should be assisted by independent bodies with an advisory function, that is to say by an advisory board and by bodies comprising experts on specific subjects. Thus the interests of vulnerable groups should already be taken into account at the institutional level in the structures and decision-making processes of the organisation administering the mechanism.<sup>27</sup>

#### **4. Implementation in the supply chain**

It is an essential requirement for the implementation of grievance mechanisms that sufficient transparency be established regarding supply chains and that obligations be passed on to suppliers at each link in the chain by means of cascading contract provisions.<sup>28</sup> In this way the important functional interlocking of the grievance system with local social-dialogue structures, capacity-building programmes and social-auditing efforts can be achieved.<sup>29</sup>

To this end it is necessary to create effective structural incentives for suppliers to participate, such as commitments to minimum purchase prices and long-term supply arrangements. It is not unusual for (purchasing) member companies of an organisation administering a grievance mechanism to adapt their purchasing practices – by guaranteeing fair prices and reasonable delivery deadlines in order to make it economically possible for suppliers to adhere to human rights standards in general and in particular to honour any obligations arising from specific grievance proceedings.<sup>30</sup>

If grievance mechanisms are to be effectively implemented, it is essential to proactively raise awareness of their existence and to make them accessible in local production facilities and communities. In particular, potential complainants should be informed of the channels through which grievances can be submitted, the cost-free nature of the grievance process, the option of anonymous submission, the admissibility criteria, the expected course of proceedings, measures for the protection of parties and support and advisory services that are available to complainants.<sup>31</sup>

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<sup>27</sup> It is recommended that institutional decisions be fully aligned by default with the needs of vulnerable groups, including recourse to professional expertise and to relevant knowledge obtained from the participation of vulnerable persons or from surveys of such groups.

<sup>28</sup> On this point see chapter 9.3; approaches that fall under the heading of contract social responsibility and the use of blockchain technology are especially promising in this respect.

<sup>29</sup> See chapter 9.2.

<sup>30</sup> It is recommended that precedence be given to voluntary commitments on the part of member companies of the administering organisation to adopt fair purchasing practices towards their suppliers, such as giving minimum price guarantees and setting reasonable production and delivery deadlines; see chapter 9.2.

<sup>31</sup> See also the OHCHR's recommendations on matters relating to public information in its ARP III report (footnote 16 above), policy objectives 11, 12 and 13.

Within companies, designated staff representatives can help to raise awareness about the mechanism; measures to increase awareness of the opportunities to raise complaints should also be systematically integrated into capacity-building programmes.<sup>32</sup> A particular challenge arises when such information also has to reach potential victims of human rights abuses who are homeworkers, act as informal providers of supplies or services or are third parties outside company structures.

## **5. Procedural design using alternative dispute resolution (ADR) procedures**

With regard to the design of grievance procedures, the research report contains detailed recommendations on 17 subcategories, ranging from the available types of procedure and matters concerning the admissibility of a complaint through the investigative orientation of fact finding and measures to counteract imbalances of power and to provide effective protection for participants in proceedings to matters concerning the duration of proceedings, transparency and the implementation of decisions.<sup>33</sup>

Mediation and conciliation as traditional forms of non-judicial dispute resolution<sup>34</sup> can generally be applied to human rights grievances, given their specific focus on individual interests and needs. In particular, the emphasis on active listening, interests and needs in mediative conflict management can contribute to the development of tailor-made, sustainable and forward-looking preventive and remedial measures in individual cases<sup>35</sup> and to the long-term preservation, creation or restoration of trust between aggrieved parties and respondents.<sup>36</sup> Compared with state-based court proceedings and arbitration, mediation and conciliation procedures also permit greater flexibility in terms of covering diverse constellations of parties, since they are not bound by the strictures of a bipartite system.

Certain conditions must be met, however, if the effectiveness of a mediation or conciliation process based on the parties' self-determination and self-reliance is to be ensured in cases relating to business and human rights. Since these ADR procedures are often conducted in a context of serious violations of rights and existential economic dependence, the procedure must provide an adequate counterweight to structural power imbalances between the conflicting parties.

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<sup>32</sup> On this point, see also chapter 9.3 on capacity-building.

<sup>33</sup> See chapter 9.4.

<sup>34</sup> The characteristics of each of the traditional ADR procedures and the differences between them are presented in chapter 7 of the research report.

<sup>35</sup> Due to the focus on parties' individual interests, special consideration can be given to the living conditions and needs of particularly vulnerable complainants in the proceedings and in the final decision.

<sup>36</sup> For this reason, the two types of procedure are combined in the Integrative Grievance System into the hybrid process of conciliatory mediation.

As far as outcomes are concerned, those responsible for grievance procedures must strive to ensure that effective, rights-compatible remedial and preventive measures are agreed which match the identified interests of complainants.<sup>37</sup>

Should consensus-based procedures fail to yield an agreement within a reasonable time, the parties must have the option to obtain a binding decision reached by an arbitration tribunal within the grievance mechanism. While the member companies of the organisation administering a grievance mechanism should commit themselves to participate in such arbitration proceedings on accession, complainants must be able to choose freely whether they wish to pursue their grievance through arbitration proceedings or whether they prefer to do so by bringing an action before a state court.

Regardless of the chosen form of procedure, the body administering the grievance mechanism should assume responsibility, or co-responsibility, for the prompt and full implementation of the final decision.

## **6. Designing the grievance mechanism as a learning system**

As part of its institutionalisation and implementation in a specific framework – region, industry, etc. – the design of a grievance mechanism must be adjusted to the specific local conditions. In the course of its operation the mechanism as well as its administering organisation should be continuously developed and adapted to changing circumstances. To ensure its essential adaptability and ultimately its efficiency and effectiveness, a grievance mechanism must be designed from the outset as a learning system.<sup>38</sup>

To this end, systematic feedback routines must be established.<sup>39</sup> The resulting feedback on specific grievance proceedings and on the implementation of decisions, but also on the operation of the contact points for complainants, must be processed with a practical focus and have tangible effects for users, potential users and the relevant stakeholder groups. Thus the feedback routines and regular exchanges conducted by those responsible for the grievance mechanism with representatives of stakeholder groups and the staff of other bodies administering grievance mechanisms should lead to continuous optimisation of the grievance mechanism and of its procedural options.

At the same time, a grievance mechanism should promote learning processes in its users' spheres, particularly in boardrooms, on the shop floor, in trade unions and local governments and, in particular, should feed into participating companies' human rights risk assessment. The key is a refined reporting system tailored individually to the various user groups.<sup>40</sup>

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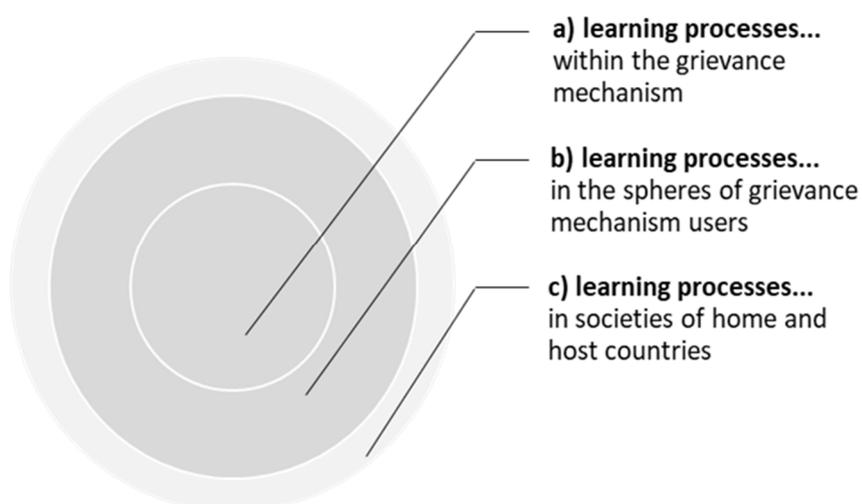
<sup>37</sup> For further information on the conditions for effective use of consensus-based ADR procedures where there are gross imbalances of power, see chapter 7.2.

<sup>38</sup> On the various layers of a learning system, see chapter 9.5.

<sup>39</sup> For a detailed treatment of this point, see chapter 9.5.1.

Finally, on a societal level, grievance mechanisms should produce focused learning impulses within the member companies' home countries as well as the production sites of companies in their supply chain.<sup>41</sup> Public reporting can help to raise awareness among political decision-makers and civil society of grievances and urgent need for action as well as of beneficial developments and replicable practices within global supply chains.

In accordance with UNGP 31, criterion (g), grievance mechanisms should therefore implement the concept of a learning system as a source of continuous learning at three levels:



**Figure I:** The IGS as a learning system

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<sup>40</sup> See chapter 9.5.2.

<sup>41</sup> See chapter 9.5.3.

## 7. Combining design recommendations in the model of the Integrative Grievance System

In chapter 9 of the research report, a comprehensive and coherent grievance system – the IGS – is modelled to show how the diverse interdependent design layers of institutionalisation, implementation and procedural design can be coordinated and interlinked with each other.<sup>42</sup>

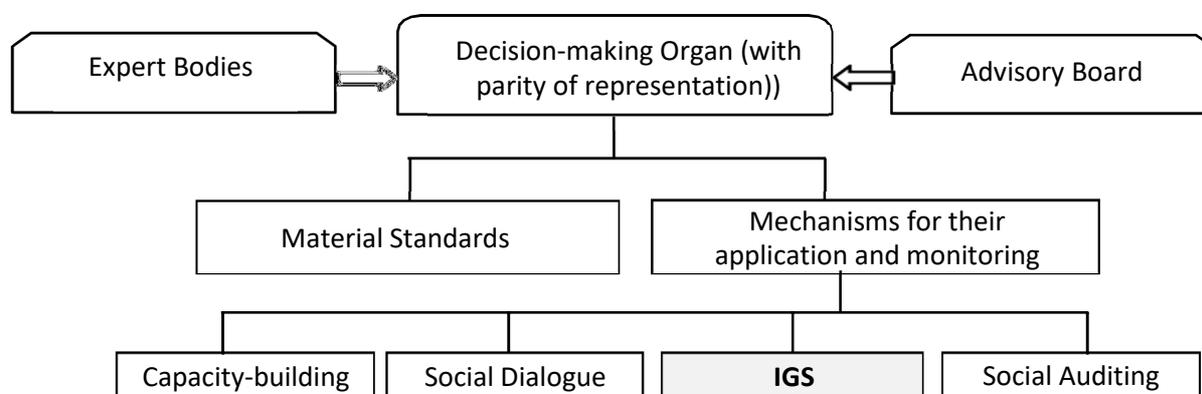
The IGS is intended to effectively address various conflict constellations in the field of business and human rights in global supply chains. To this end, it encompasses

- three geographical tiers of institutionalisation and implementation,
- three different procedural tracks for various users, and
- two complementary dispute resolution procedures.

The institutionalisation and implementation of the IGS takes place at the following geographical levels:

- 1) **transnational/supraregional:** seat of the administering organisation and headquarters of the grievance system
- 2) **national/regional:** points of contact<sup>43</sup> for aggrieved parties
- 3) **local:** local conflict management in companies and communities

The position of the IGS in the overall institutional structure of a multi-stakeholder organisation and in relation to the spectrum of the organisation's other activities for the protection of human rights in global supply chains is shown in the following diagram.



**Figure II:** Institutional incorporation of the IGS in the administering organisation

<sup>42</sup>The developed prototype of the Integrative Grievance System (IGS) was greatly refined to reflect practical conditions and for the sake of relevance, because numerous practical design issues do not arise until abstract recommendations are concretised through modelling. In the practical implementation of our recommendations it is possible and advisable to adopt the pragmatic approach of relying on suitable existing structures so as to make efficient use of synergetic potential. If, in the optimisation of existing grievance mechanisms, the focus is on individual design layers or factors, the Integrative Grievance System model can also be consulted on specific points or in parts.

<sup>43</sup> The regional contact points for dispute resolution perform important functions in publicising the IGS (see chapter 9.2), in linking the IGS with other mechanisms of action (see chapter 9.3) and in establishing the IGS as a learning system (see chapter 9.5).

The grievance system primarily addresses workers in the member companies of its administering organisation and their direct and indirect suppliers as well as trade unions. In addition, it also addresses third parties<sup>44</sup> who are adversely affected or harmed by a company's business activity (track A).<sup>45</sup> The grievance system, moreover, should also open up a procedural channel for disputes between member companies and their suppliers (track B) and an intra-institutional dispute settlement mechanism for disputes between its members (track C). Because of the limited scope of the research project, the recommendations are focused on track A, in accordance with the research brief.

For all tracks, two complementary types of alternative dispute resolution procedures are available in the IGS, namely the dialogue-based conciliatory mediation, a hybrid format combining elements of mediation and conciliation, and arbitration proceedings.<sup>46</sup> A conciliatory mediation begins as a facilitative interest-based mediation and can turn into a more evaluative norm-based conciliation procedure if the parties cannot enter into an agreement or if the power imbalance is too severe. In the following paragraphs, we highlight the recommendations on the graduated use of these types of procedure. For a comprehensive presentation of the IGS and the associated design recommendations, see chapter 9 of the research report.

In track A of the IGS, grievances may be submitted by workers, trade unions or affected third parties, such as local communities, groups or individuals, who claim that their respective legally protected rights have been violated or explicitly or implicitly threatened in their relations with member companies or their suppliers.<sup>47</sup> In addition, trade unions, NGOs or organisations representing the interests of victims of human rights violations may act on behalf of victims and at their request or with their consent to claim violations of legally protected rights or explicit or implicit threats to those rights. In track A, a grievance may be directed against member companies and their direct and indirect suppliers.

The first procedural step within the IGS is normally a conciliatory mediation procedure, which is ideally conducted locally at the seat of the production facility or in the affected community. The primary aim of this conciliatory mediation is to enable the parties to the dispute to develop, on their own responsibility, effective and rights-compatible remedial and preventive measures with the assistance of mediating neutral third parties.

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<sup>44</sup> These may be individuals, groups or even communities.

<sup>45</sup> The addressees are also meant to include workers operating outside company structures, either homeworkers or informal suppliers of goods or services to businesses, whose human rights may be infringed.

<sup>46</sup> On becoming members of the IGS administering institution, member companies make a general declaration – at least for track A – accepting the final jurisdiction of an arbitration tribunal for all grievances which cannot be consensually resolved by conciliatory mediation or for which such a procedure appears inappropriate.

<sup>47</sup> As in the other options described below, a claim may be made if it appears that a violation of legally protected rights or an explicit or implicit threat to those rights on the part of an IGS member company or its direct or indirect suppliers cannot be entirely ruled out.

If the parties to a dispute cannot arrive at such an outcome on their own, the person conducting the proceedings develops a recommendation for an interest- and norm-based<sup>48</sup> settlement, which only becomes binding if the parties to the dispute give their consent.

If the parties can neither reach a solution developed on their own responsibility nor agree to a proposed settlement in the conciliatory mediation, the conciliation process gives way to arbitration proceedings unless the complainants, after consulting with the regional contact point, decide to bring the matter before the state courts.<sup>49</sup> This downstream arbitration procedure as part of the IGS is intended to give complainants the opportunity to have their grievance processed quickly at no extra cost and resolved by means of a binding, rules-based<sup>50</sup> decision taken by an impartial arbitration tribunal, if a consensual agreement cannot be reached.

In some cases, it may be in the complainants' best interest to go straight into the arbitration process without prior mediation/conciliation. This may either be because the complaint relates to a particularly serious violation of legally protected rights or because a binding temporary injunction is needed.<sup>51</sup> The latter may be the case where a violation is ongoing, where there is a risk that the victim's situation will worsen or where there is a threat of reprisals made by the respondent or third parties.

The arbitration proceedings, whether conducted after or in lieu of mediation/conciliation, take place at a designated supraregional venue. On the basis of the agreed procedural rules the arbitrators adequately redress existing structural power imbalances between the parties to the dispute and provide for the parties' protection.<sup>52</sup>

They reach a binding decision on the grievance which is based, among other things, on the facts of the case that have already been ascertained by an investigation team from the regional contact point<sup>53</sup> and on the assessment criteria adopted internally by the institution<sup>54</sup>, and they may order remedial and/or preventive measures.

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<sup>48</sup> Besides the applicable legal provisions, the norms underlying the recommendation for a settlement are the material standards of the organisation administering the IGS.

<sup>49</sup> This option must always remain open to complainants; see chapter 9.1.

<sup>50</sup> Besides the applicable legal provisions, the norms underlying the recommendation for a settlement are the material standards of the organisation administering the IGS.

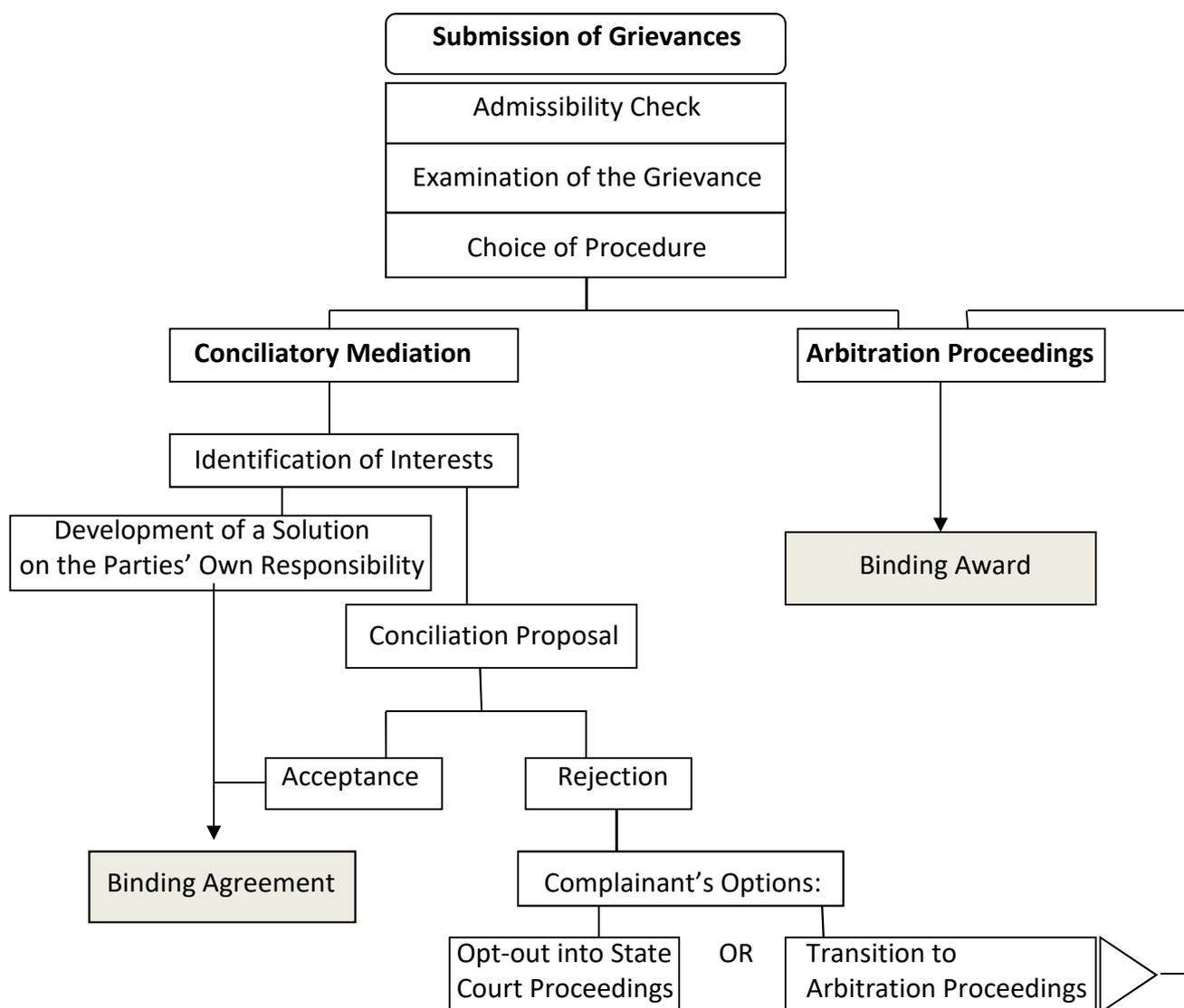
<sup>51</sup> Proceedings for such a temporary injunction may also be instituted and conducted alongside a pending conciliatory mediation procedure.

<sup>52</sup> See also chapter 9.4 on dealing with power asymmetry and protecting parties to proceedings.

<sup>53</sup> See also chapter 9.4 on the ascertainment of facts.

<sup>54</sup> As part of the arbitration procedure, however, a second instance may be established to review any decisions. In view of the focus of the research project on the potential for dialogue-based alternative dispute resolution procedures, this design variant of arbitration proceedings in the IGS model is only presented as an option and is not examined in detail.

In all of the procedural variants offered by the IGS, the tracking of the implementation of the agreed or prescribed remedial and preventive measures by the regional or supraregional contact point is of key importance.<sup>55</sup>



**Figure III:** IGS procedural sequence, track A

<sup>55</sup> Functional linkage with the local social dialogue structures and social auditing systems is also recommended when it comes to monitoring the enforcement of decisions; see chapter 9.4. Implementing the outcome of proceedings.

#### IV. Outlook

The full and detailed research report is intended to bring together hitherto divergent strands of discussion on business and human rights, provide a more precise and systematic stocktaking and analysis of grievance mechanisms in this field and reach a better understanding of the ways in which the operation of non-judicial grievance mechanisms depends on the context in which they are applied.

The IGS that was developed as part of the research project is a prototype model that offers starting points and guidelines for the design of non-judicial grievance mechanisms in terms of institutionalisation, implementation, procedural design and quality assurance. These various design dimensions are systematically linked; the IGS, however, can also be used as a compendium to find answers to specific individual design questions or to further develop particular aspects of an existing grievance mechanism. In this respect the research report in general and the IGS in particular provide both assistance in designing new grievance mechanisms and ideas for optimising existing ones.

To supplement and review the design proposals, there will be a particular need in future for empirical research that sheds more light on victims' interests and on the ways in which grievance mechanisms operate "on the ground". It would also be very valuable to monitor systematically the sustainability of remedial measures – ideally by means of longitudinal studies.

Despite the scope of our investigations, numerous relevant issues could only be highlighted in our research project but not resolved; that must be left to future research<sup>56</sup> and experimental practice. This applies especially to the need to devise detailed funding models for cross-company grievance mechanisms and, in that context, incentive schemes for companies to participate in such mechanisms. The question how sensitivity to vulnerable groups can be consistently integrated into the institutional structure and procedural practice of a grievance mechanism urgently needs further attention; in particular, more research is needed to establish how grievance mechanisms can take account of the complex circumstances and interests of women and of working children and young people. Ways of incorporating existing internal structures, decision-making processes and traditional conflict-management practices of indigenous groups into the design of grievance procedures must also be explored.

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<sup>56</sup> See the more comprehensive research wishlist in chapter 10.

In practical terms there is an urgent need for training measures for those who conduct grievance procedures so that sufficiently qualified professional neutral third parties are available to handle the expected increase in the caseload of ADR-based grievance procedures.<sup>57</sup> With less stringent formalisation of a conflict resolution process, the quality of the grievance procedure depends even more on the skills and integrity of the person who conducts it.

The quality and effectiveness of non-judicial grievance mechanisms should be guaranteed by means of appropriate provisions in the relevant instruments of national and European legislation. Legislators should also set statutory incentives for the institutionalisation of cross-company grievance systems, for companies' participation in those systems and for a reporting system that promotes transparency.<sup>58</sup> Last but not least, laws relating to business and human rights should be shaped as learning legislation; in other words, they should include an obligation to undertake regular formative evaluation.

A major subject for future discussion is the combination of the human-rights perspective with a focus on the environmental impact of globalised economic activities. The aim here should be to link considerations on grievance mechanisms for instances of human rights violations and for cases of environmental pollution.

For all of these reasons the systematic promotion of a global learning community in the realms of business and human rights and environmental protection seems to be a major strategic task that could be undertaken at the European level by the European Union and also by the Council of Europe. By forming networks and sharing experience, mechanism providers and experts in the field of grievance mechanisms accelerate learning processes and the dissemination of good practices relating to non-judicial grievance mechanisms across disciplinary, sectoral and national boundaries. This, in turn, helps to enhance the quality of the procedural options and ultimately the protection of human rights.

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<sup>57</sup> Many of the interviewed experts regretted the difficulty of finding sufficiently qualified neutral third parties with the required personal aptitude and contextual familiarity to conduct specific grievance proceedings.

<sup>58</sup> See the discussion in chapter 8 on provisions of the German Consumer Alternative Dispute Resolution Act (*Verbraucherstreitbeilegungsgesetz, VSBG*) that may serve as an example as well as the comments on reporting in the context of grievance mechanisms in chapter 9.5.2.