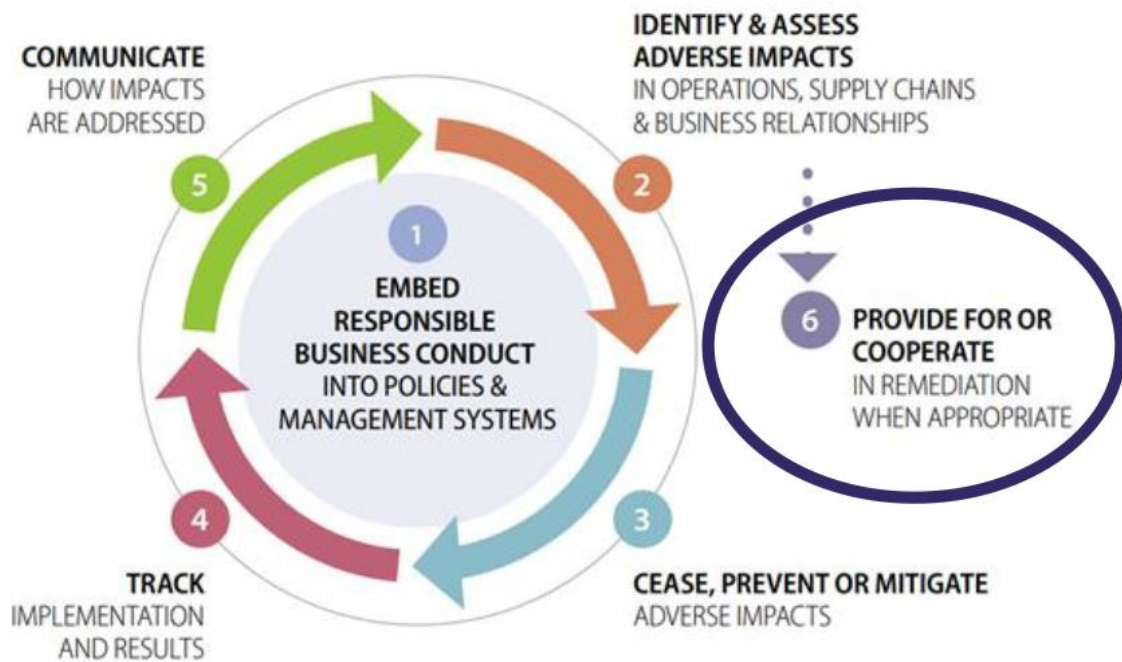


# Advice on the development of a grievance mechanism

## IRBC Floriculture Agreement



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## Executive summary

This report describes best practices used in, and advice regarding developing a grievance mechanism in light of the Dutch IRBC agreement floriculture for the floricultural sector.

Analyses found that the provisions in the benchmarks, standards and within the agreement business operations are not fully OECD and UNGP aligned (Chapter 2).

Providing for remediation and cooperating with relevant parties is first and foremost a responsibility which needs to be taken by individual companies. Therefore, companies are advised to set up an operational grievance mechanism (Chapter 3). The steps to take entail: facilitating receipt and handling complaints and grievances; providing for or cooperating in remediation; and monitoring and improving the effectiveness of the mechanism.

Besides establishing an operational grievance mechanism at the companies' local level, multiple stakeholders often have a role in the grievance mechanism and should collaborate to effectively provide access to remedy. The report recommends a structure for effective remediation along the floriculture value chain (Chapter 4), possibly involving standards, government bodies, producer associations, as well as multistakeholder initiatives and the NCP.

It concludes with recommendations for players in the floriculture agreement, both for the individual companies and collectively (Chapter 5).

# 1. Introduction

In support of the Due Diligence activities undertaken by the companies under the IRBC Agreement for the floriculture sector, the firm Sustainable Supply Chain Consultants (formerly Van Hulsen Consulting) was asked by IDH to ‘Research and propose a grievance mechanism for the companies and the auction under the IRBC agreement’.

The reason for this assignment was that, even though a grievance mechanism is a requirement in all IRBC agreements, there is currently no grievance mechanism that is fully aligned with the OECD and UNGP expectations of such mechanisms. However, various initiatives are being adapted and further developed.

In this research, we assessed the FSI benchmarks and standards and existing best practices in the floriculture sector as well as various additional guidelines and developments in other sectors. Moreover, discussions were held with various experts regarding a complaint mechanism, to present this overview for the floricultural IRBC agreement.

This report summarizes the results and describes:

- the elements of a grievance mechanism present in current instruments for the participants of the IRBC Floricultural Agreement (Chapter 2);
- steps, recommendations and advice on how to further develop a grievance mechanism and access to remedy (Chapter 3);
- opportunities for a structure, or a means for different bodies in the floriculture value chain to collaborate, for the grievance mechanism (Chapter 4).

It concludes with recommendations for agreement parties and the agreement as a whole (Chapter 5).

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## 1.1 Reasons to provide for or cooperate in remediation

Providing for, or cooperating, in remediation is required when undertaking Due Diligence (step 6 in the Due Diligence cycle). Being able to receive and handle incoming complaints and grievance from affected parties or their representants, and providing solutions, or remedy, to affected stakeholders, is essential to address human right abuses and environmental issues in value chains.

It is first and foremost a responsibility which needs to be taken by individual companies; suppliers, traders/buyers and retailers. It serves as an early warning system for issues which may be larger than a single employees’ or communities’ complaint; the scope of the risk could be much larger. It also assists companies with monitoring which non-salient risks there may be in their value chain. It also aids companies in constantly improving their Due Diligence efforts, by providing a ‘feedback loop’ for the effectiveness of an action which a company might be taking with a supplier. Some societal organisations claim that a company which does not receive any complaints regarding abuses, does not have an effective Due Diligence, as there are no international value chains without issues.

Furthermore, an operational grievance mechanism provides employees and other stakeholders with the mechanism to first attempt to solve issues internally, within the companies’ own structures and processes, before seeking external support, advice and remediation. Solving issues at the level where they occur (‘locally, e.g. on the site of production’) can best be done in good dialogue so that all those

involved can work towards solutions. Filing complaints with other organisations than the company it primarily involves should not be the first, best or desired option for stakeholders.

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## 1.2 Guidance on grievance mechanisms

For development of a grievance mechanism for the IRBC Floriculture Agreement partners, three documents provide the background to how such a mechanism should function:

- [IRBC Agreement for the Floricultural sector](#) (2019): the requirements in the section about a grievance mechanism (section 3.7)
  - [OECD Guidelines for Multinational Enterprises](#) (OECD MNE Guidelines)
  - [UN Guiding Principles on Business and Human Rights](#) (UNGPs)
- Please refer to Annex A for the relevant sections in these documents.

The key message in these documents is:

*A complaint or grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. To handle those grievances, it is necessary to have a grievance mechanism in place as well as provide access to remedy.*

International standards regarding responsible business conduct (RBC) require individual companies to be able to receive grievances (either directly, or through a multi-stakeholder initiative (MSI) or another relevant organisation), assess and follow up on these grievances and provide remedy. Hence establishing a procedure to allow for remediation of affected stakeholders remains an individual companies' responsibility.

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## 1.3 UNGP Effectiveness criteria

The UNGPs set out effectiveness criteria for non-judicial grievance mechanisms (p. 33). These are listed in article 31 of the criteria.

*Art. 31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:*

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

- f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

Operational-level mechanisms should also be:

- h) (h) 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.

When designing a grievance mechanism, it is advised to cross-check the mechanism against the Effectiveness criteria above, to ensure that the mechanism can have its desired effect in providing remedy (when needed) to the individual or group. The criteria can also be used to assess and evaluate grievance mechanisms once made operational.

## 2. Existing Grievance mechanisms or complaint procedures in the floricultural sector

The companies that are part of the IRBC Agreement and which are also part of FSI, all use the [FSI basket of standards](#) to manage and monitor their volumes of sustainably sourced flowers and plants.

The FSI basket of standards is a selection of standards which are fully transparent, comparable and by means of independent benchmarking, have demonstrated to comply with criteria on Good Agricultural Practices (GAP), Environmental and Social sustainability. The Basket of Standards can be used by private partners for responsible sourcing. It acknowledges the great variety of standards and certifications in a specific sector contributing to higher levels of sustainability, while avoiding unnecessary audit duplication, confusion for market players and increased costs. Standards in the Basket are benchmarked against international reference points through a benchmarking process.

Some of the standards in this basket (section 2.2), as well as the underlying benchmarks against which they have been tested and admitted (section 2.1), were reviewed regarding the existence of, and functioning of a grievance mechanisms/complaint procedure.

Additionally, all company participants in the IRBC Agreement were interviewed, and they were asked about their current grievance/complaint procedures and remediation options, and best practices were identified in the Floriculture sector (section 2.3).

In this chapter the practices which were found are described.

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### 2.1 FSI basket of standards benchmarks

In two (GAP and Social) of the three pillars of the FSI basket of standards (GAP, environmental and social) in the benchmarks for these 16 FSI standards, a grievance or ‘complaint’ procedure is required:

- GAP benchmark (Global GAP, v. 5.1), requirement 8.1:

AF. 8	COMPLAINTS	
	<i>Management of complaints will lead to an overall better production system.</i>	
AF. 8.1	Is there a complaint procedure available relating to both internal and external issues covered by the GLOBALG.A.P. Standard and does this procedure ensure that complaints are adequately recorded, studied, and followed up, including a record of actions taken?	A documented complaint procedure is available to facilitate the recording and follow-up of all received complaints relating to issues covered by GLOBALG.A.P. actions taken with respect to such complaints. In the case of producer groups, the members do not need the complete complaint procedure, but only the parts that are relevant to them. The complaint procedure shall include the notification of GLOBALG.A.P. Secretariat via the Certification Body in the case that the producer is informed by a competent or local authority that he/she is under investigation and/or has received a sanction in the scope of the certificate. No N/A.
		Major Must

- Social benchmark (SSCI, Part III B1 Primary production scope, v. 1.0), requirement 12:

## CHAPTER 12.

# Grievance Mechanisms

NUMBER	SSCI BENCHMARKING REQUIREMENTS
12.01	The standard shall require that a written procedure to address complaints or concerns is established. The grievance mechanism shall be accessible and understandable to all workers and external parties.
12.02	The standard shall require that the confidentiality of any complaint raised is provided, and information is revealed only as necessary to investigate and handle the complaint.
12.03	The standard shall require that no worker or external party that lodged a complaint in good faith is retaliated against.

Although the benchmarks against which the standards are analysed do require a complaints or grievance mechanism to be set up by standards, they are not fully aligned with the aforementioned UNGP effectiveness criteria (section 1.3). Several points of attention are to be addressed in order to work towards alignment:

- The grievance mechanisms required in these benchmarks are generally not accessible (criterion a: known to stakeholder groups), and consequently not highly legitimate (criterion b: trusted by stakeholders and accountable as a fair grievance process).
- Furthermore, as no specific guidance is given on process and criteria from the benchmarks to the standards on how a grievance mechanism should operate, they are not predictable (criterion c: providing clear and known procedures) nor equitable (criterion d: ensuring that aggrieved parties have reasonable access to sources of information) nor transparent (criterion e: informing parties about progress) nor rights-compatible (criterion f: ensuring that outcomes and remedies accord with internationally recognized human rights).
- More operationalisation of these expectations set out in the benchmark is needed in order to bring them in line with the UNGP effectiveness criteria for such mechanisms. Only then will continuous learning (criterion g: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms) be possible.

Altogether, benchmarks, standards and companies implementing a grievance mechanism should do so based on engagement and dialogue, something which seems to still need to take place in order to design, operationalise and run a grievance mechanism in line with UNGP effectiveness criteria (see section 1.3).

Once the benchmark addresses the above points of attention, it will enable standards to set up grievance mechanisms in line with the UNGP effectiveness criteria.

Some individual FSI standards are reviewed about requirements for complaints mechanisms. It is recommended to perform a comparative analysis of the standards and UNGP effectiveness criteria at



a later stage (once grievance mechanisms are established and have evolved), to draft specific recommendations for the benchmark and/or standards to develop UNGP compliant grievance mechanisms.

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## 2.2FSI Standards

Additionally, two standards that comply with the requirements in the FSI basket (social pillar) and were mentioned by stakeholders as in existence and exemplary, were reviewed.

The conclusion of the review of these two standards is in line with the conclusion on the benchmark: a complaints or grievance mechanism is included, but more operationalisation of this requirement is needed in order to bring them completely in line with international standards and expectations of grievance mechanisms and individual companies' requirements to provide access to remedy, as expected by the OECD, the UNGP's (including the UNGP effectiveness criteria) and the Floricultural Agreement.

The practical requirements and implications of such a complaints or grievance mechanism, in line with OECD and UNGP expectations (see paragraph 1.2), needs to be further specified in the standards documentation.

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## 2.3 Current practices of agreement parties

The current practices among business partners of the agreement, traders, producers, and retailers were also reviewed (during interviews). Across those companies, current practices ranged broadly. All companies have complaints mechanisms focussed on process and product quality, open to both staff and customers. Most companies also have confidentiality advisors that are available for both internal and external grievances related to more than just product quality. As such, the companies are all accessible for (external) stakeholders. Nonetheless, some indicated that their current systems are inadequate for receiving complaints or grievances regarding such as inadequate wages or pollution, since these types of complaints/grievances would not be dealt with by the correct internal departments.

One company also had a helpline to provide a 'whistleblowing' line to report any violation of their code of ethics or any other internal policy or external legal requirement. Reports are entered directly on a secure third-party hosted system to ensure confidentiality. That platform makes these reports available only to specific individuals who are responsible for investigating and resolving each report. Where there has been a violation of the Code of Ethics or the law, appropriate disciplinary action may be taken by the employing company.

Though progressive, this system too can be improved by bringing it in line with the UNGP effectiveness criteria. Issues to look at – per UNGP effectiveness criteria – may include (but are not limited to):

- A & B: Informing stakeholders about its existence
- C, D & E: Publicly describing the processes and procedures, and information flows in more detail
- F: Describing some of the outcomes of previous grievance and potential outcomes of fictive situations and
- G: Undertaking an assessment of the current mechanism in order to identify lessons and improvements.

**Conclusion – Best practices covenant participants**

In conclusion, most IRBC Agreement Parties have a grievance procedure for internal purposes (for example a confidential contact person) and a complaints procedure for clients for quality related issues. However, there are no specific mechanisms available for other stakeholders (in the supply chain or others) to file a grievance related to IRBC issues, apart from the company telephone number on the website and the availability of a CSR (/RBC) person.

Altogether, benchmarks, standards and companies implementing a grievance mechanism should do so based on engagement and dialogue, something which seems to still need to take place in order to design, operationalise and run a grievance mechanism in line with UNGP effectiveness criteria (see section 1.3).

None of the currently used grievance mechanisms by the businesses in the agreement run a grievance mechanism which is fully aligned with OECD expectations, or has taken into consideration the UNGP Effectiveness criteria (see section 1.3).

### 3. Developing a grievance mechanism

Multiple guidelines on how to develop a grievance mechanism in line with the theoretical expectations of the UNGPs and the OECD due diligence theory exist., and several existing grievance mechanisms were reviewed<sup>1</sup>.

The following reports by expert-organisations were used to develop the structure and order of these steps, and can be further consulted:

- [Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights](#), May 2014, Shift
- [Access to remedy- Practical guidance for companies](#), ETI, 2019
- [Doing Business with Respect for Human Rights, Chapter 3.8 Remediation and Grievance Mechanisms](#) - Global Compact Network Netherlands, Oxfam and Shift, Online guide
- Due Diligence Toolkit for Responsible Business Conduct, KNSV, Online toolkit:
  - [Step 3: Grievance mechanisms](#)
  - [Step 8: Remediation](#)

Taking the analysis of existing initiatives in the floriculture sector and amongst involved agreement parties into consideration, the following steps can be followed:

Step 1: Facilitate receiving and handling complaints and grievances (paragraph 3.1)

Step 2: Provide for, or cooperate, in remediation (paragraph 3.2)

Step 3: Monitor and improve (paragraph 3.3)

Below, these steps are described, and advice and recommendations are given.

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#### 3.1 Step 1: Facilitate receiving and handling complaints and grievances

**Step 1.1: Develop and articulate policies for international responsible business conduct (IRBC), including receiving complaints or grievances, with regard to your company's own operations, supply chains and other business relationships**

The first step in any complaints procedure or grievance mechanism to start access to remedy is to make it explicit that the company is accepting complaints or grievances. This can be made explicit in a (IRBC/CSR) policy, a Code of Conduct (such as currently in development in the Floriculture agreement), as well as communicated on the website, in Terms of Delivery and/or any other official communication to value chain partners and stakeholders. All companies are expected to have an early warning system in place through which they can be informed of negative impacts in their own operations or supply chains. Such early warning systems can also be part of an effective grievance mechanism established by the company itself, or a collective grievance mechanism the company is adhering to (through a multi-stakeholder initiative for example).

Internally, many companies arrange this through a Code of Ethics, or an ethical protocol where they lay down requirements regarding how employees are treated, how they interact with suppliers and

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<sup>1</sup> Please refer to the References section at the end of this document

other business relations, which harmful materials may be used etc. These criteria may of course also be part of your overall IRBC policy, or separately linked to it.

Consider using policies developed by others, and amend these to your specific circumstances. Some good examples/check lists are:

- [KNSV Potential General RBC Themes](#)
- [UNILEVER Code of Business Principles and Code Policies](#)

**Step 1.2: Be explicit in your IRBC policy and/or Code of Conduct where complaints/grievances should be reported, and how and under which circumstances they can be made.**

Despite having laid down your expectations, something can still go wrong in your own operations, with your suppliers, partners, or with the environment or in communities living around production locations. Therefore, it's important to describe in your IRBC policy and/or Code of Conduct the channels where complaints or grievances from within or outside your company can be received. It is also pertinent to describe what type of grievances the mechanism is capable to receive, and what other (independent, external) mechanisms are in place to receive complaints and grievances.

Examples include:

- Whistle-blower / ethics hotlines
- Providing contact information for a company's ombudsman
- Supplier relationship contacts
- Relevant department contacts
- Consumer complaints mechanisms, for example through a customer service desk

A collective grievance mechanism at the level of Floriculture trade organisations or the FSI may be a possible avenue to receive complaints and grievances as well (see Chapter 4).

Non-state grievance mechanisms come in many forms, including:

- Company grievance mechanisms
- Mediation forums or arbitration
- Grievance mechanisms of certification systems (sometimes in the forum of complaint panels)
- Internal dispute resolution mechanisms of indigenous peoples and local communities governed by customary laws
- Grievance mechanisms provided as part of jurisdictional approaches

Analyses in other sectors have shown that grievance mechanisms are most effective when designed and operated in partnership with other companies and relevant stakeholders such as trade unions and local NGOs representing workers or communities. Most businesses should consider participating in and supporting a grievance mechanism provided by an external, independent organisation, in order to promote the early identification and remedy of human rights abuses and negative impacts for workers. Examples where multiple companies have established an external, independent grievance mechanism in multi-stakeholder setting include the [Fair Wear Foundation](#), [Bangladesh Accord](#) and [FSC](#). The Accountability Framework initiative (AFi), a collaborative effort to build and scale up ethical supply chains for agricultural and forestry products led by a global coalition of environmental and human rights organisations, has produced sample Terms of reference for a company grievance mechanism in Annex 2 of their [Remediation and Access to Remedy guidance](#).

For an example for a grievance mechanism of an individual company, please refer to annex B of this publication.

### Step 1.3: Develop an operational grievance mechanism

An operational grievance mechanism allows employees, suppliers, clients, local communities and other stakeholders to voice concerns about IRBC issues

Besides merely expressing that your company is open to receiving complaints or grievances, this needs to be made operational. To the very least:

- define the types of complaints that fall under scope and the mechanisms;
- define and communicate available outcomes;
- plan for awareness-raising through multiple channels;
- define escalation protocols.

Please find below a box describing quality guarantees of an Operational Grievance Mechanism (OGM):

**Key quality guarantees of an OGM:**

- ✓ **Awareness:** Ensuring that workers know about and can access the remediation system, particularly women workers who are often unaware of or lack access to such systems. We recommend running dedicated awareness-raising sessions for women workers, preferably with female facilitators, and providing safe spaces for women to meet and discuss concerns.
- ✓ **Trust:** The administration of the system should be perceived as fair and impartial, and not biased towards protecting managers. Again, this is critical to empowering women workers to use these systems.
- ✓ **Transparency:** Workers should be made aware of the possible outcomes of going through the process, both positive and negative.
- ✓ **Efficiency:** Processes should be thorough and efficient, with remedies for serious rights violations implemented immediately.
- ✓ **Supportive:** Even in instances where the company's operations did not directly cause the negative impact, the worker should feel supported in addressing an issue that impacts on their wellbeing and ability to work. It is important to ensure that the response and support provided is proportionate to the incident in question and the level of pain and suffering caused.
- ✓ **Complementary:** Remedial actions should support state responsibilities and not undermine public processes.

If a company and those affected cannot reach agreement on the appropriate remedy, it may be necessary to involve a neutral third party as a mediator or turn to adjudication.

Source: [Access to remedy- Practical guidance for companies](#), ETI, 2019

Companies are recommended to take these key quality guarantees into account, in addition to the UNGP effectiveness criteria (described above in paragraph 1.2). An example of a grievance procedure of a company, that largely meets the UNGP effectiveness criteria, can be found in annex B.

After making such a procedure it is important to make an effort to inform workers, clients, neighbours, suppliers, trade unions, local NGOs and people working at suppliers about the existence of the grievance mechanism. Tailor your communication to the culture, language and capacities of the local communities.

You may want to encourage first tier (=direct) suppliers to also set up a grievance mechanism. Such a grievance mechanism may enable them to effectively obtain information for their own due diligence. Consider including this as a mandatory issue in the supplier Code of Conduct (CoC) and possibly

monitor its existence and efficacy through the self-assessment questionnaire (SAQ), or by assessing audit reports of certification schemes where a grievance mechanism is expected at the supplier level.

In the CoC which was developed considering the Floriculture agreement, there is a demand to suppliers to set up a Grievance Mechanism. Its effectiveness can subsequently be monitored through the SAQ in development.

Your strategy may also involve helping suppliers to build their capacity to operate in line with ethical standards. Most labour issues should be resolved at the worksite level, promoting worker wellbeing, while maintaining productivity. You may opt for helping to build (key, important) suppliers' capacity to create effective human resources systems capable of handling all levels of grievances — with clear escalation protocols, as appropriate. At least ensure that your suppliers are familiar with, committed to, and trained on your Code of Conduct and ethical policies or requirements.

#### **Step 1.4: Arrange for high level commitment, and secure resources to operate the grievance mechanism**

It is advised to secure high level executive commitments in your own, and your supplier's company, and (financial, personnel) resources to work with suppliers on these issues at the production level.

Please note the resolution of issues relating to workers' rights should take place primarily at a local level. Where local mechanisms are absent or fail to resolve a grievance in an appropriate way, supply chain grievances should be raised directly through mechanisms operated by buyers, multi-stakeholder initiatives (MSIs) like the Floriculture Agreement, or FSI, or other initiatives such as certification schemes. See also Chapter 4, where a structure is suggested.

#### **Step 1.5: Develop procedures and assign personnel to analyse the incoming complaints and take appropriate action.**

Whether you operate your own grievance mechanism, or are connected to a MSI receiving complaints from your value chain, you will need to think about how complaints or grievances about your own business operations, or your supply chain partners, are dealt with, when they occur.

Develop rules and procedures which are reliable and predictable and take into consideration the UNGP effectiveness criteria (see section 1.3) for grievance mechanisms. Think about issues such as who will be involved and at what stage, how and when you will communicate to complainants (/give feedback regarding the process to the MSI), how will you involve supply chain partners (see Chapter 5) and local stakeholders etc.?

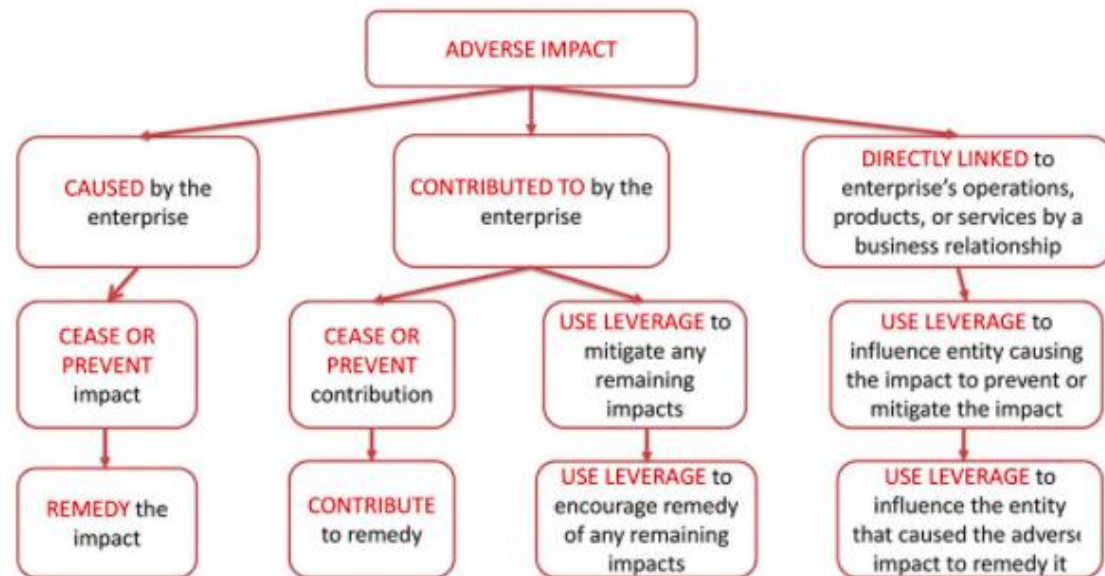
Make sure to include an escalation process (if the complainant and the company cannot resolve the issue, they can turn to another, higher authority/body) that allows you to learn from both serious complaints and instances where the issue cannot be resolved at site level.

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### **3.2 Step 2: Provide for, or cooperate, in remediation**

Now that the company has laid down the basis for a grievance mechanism, it is important to provide remedy for those affected:

- by your own operations - your company 'caused' the adverse impact;
- or by your value chain partner business operations - your company 'contributed' or is 'directly linked' to the adverse impact.



Remedy responsibility

Graph: When should a company remediate adverse impacts?

Source: [Agreements on IRBC, Access to Remedy, SER](#)

If a complaint or grievance is reported, and considered 'receptive' by your company, you will need to determine the next steps to remediate.

### Step 2.1: Investigate the case.

Consult with the affected stakeholders, determine what the severity and reversibility is of the harm done, and who is responsible for causing the harm.

Assess whether the dispute can be solved at the producer/supplier level.

- If yes: involve local NGOs, trade unions, business partners. Initiate remedial measures, if possible following established procedures (for example paying overtime according to established rates). Provide restitution or compensation, or ask your supplier to provide it. Ensure to report the incidence to relevant authorities (for example law enforcement, NCP) where the incident is deemed a criminal offence, or state-sponsored violation.
- If the issue cannot be/is not resolved at the local level, monitoring and action at the corporate level is needed. The company may implement corrective and preventative measures with suppliers, unions and others (for example standard owners/auditing bodies).

If you have identified that you cause or contribute to adverse impacts, you must then provide for or cooperate with remediation. If you have not caused or contributed to the adverse impacts, evaluate the situation and discuss the issue with the relevant supply chain partners in order to ensure that the situation does not re-occur.

## **Step 2.2: Determine remedy options**

Identifying what the affected worker(s) and/or community needs and wants, and responding proactively with the relevant partners is important to ensure the remedy is appropriate for the affected stakeholder. Try to restore the affected person(s) to the situation they would have been in had the adverse impact not occurred (where possible). Remediation can come in many forms, including apologies, restitution, rehabilitation, restoration, financial or non-financial compensation, punitive sanctions, injunctions (an order by a court to one or more of the parties in a civil trial to refrain from doing, or less commonly to do, some specified act or acts), and guarantees of non-repetition.

Consider judicial vs. nonjudicial mechanisms - The state is the paramount provider of remedy — that is, its national laws, its judicial system and its labour inspectorate should act to uphold human rights principles in its jurisdiction, as well as enforce laws to punish the perpetrators (or provide avenues for civil remedy). State grievance mechanisms can be both judicial or non-judicial, such as administrative procedures before an executive agency or ministry, criminal and civil litigation before the nation's courts and/or dispute resolution before a national human rights ombudsman. The UNGPs acknowledge that while judicial mechanisms are "at the core of ensuring access to remedy", non-judicial mechanisms such as national human rights institutions have "an essential role in complementing and supplementing judicial mechanisms".

Assess the state's ability, capacity and inclination to prevent and redress human and labour rights violations of workers in its jurisdiction.

A company may be sourcing from dozens if not hundreds of locations around the globe. Conducting an in-depth analysis for each location is resource-intensive, and in many cases the data may simply not be readily available. It is therefore recommended to prioritise high-risk countries, where state systems appear to be particularly weak.

Rather than ceasing production in countries with a weak rule of law, it is recommended that you use your influence with local government representatives to improve justice systems, highlighting the fact that improvements are likely to increase productivity and tax revenues.

Companies may not be able to provide each of the remedies mentioned above themselves. Typically, only states grant injunctions or demand punitive sanctions. In these cases, companies should cooperate in legitimate processes to award and implement such remedies where they are determined to be part of a fair and just remedy.

What a fair and just remedy is, will depend on the circumstances of each case. However, the below considerations should be observed:

- The remedy that is offered or provided must be rights-compatible, meaning that the remedy is in accordance with internationally recognised human rights and does not result in re-victimization or infringement of the rights of others.
- The remedy should also be fair and proportional to the gravity of the harm suffered and never offered in lieu of potential criminal liability,
- The remedy should be awarded for both pecuniary (monetary) and non-pecuniary harm, and The remedy should not be inadequate...owing to lack of information or power imbalance.

## **Step 2.3: Ensure the affected party receives the remedy**

Enable remediation that is proportionate to the significance and scale of the adverse impact. Comply with the law and identify international guidelines on remediation where available. Where such



standards or guidelines are not available, consider a remedy that would be consistent with what has been provided in similar cases.

### 3.3 Step 3: Monitor and improve

**Step 3.1: Monitor and evaluate the grievance mechanism**

Some CSOs claim that when a company receives no grievances at all, their Due Diligence is not functioning well enough. In every value chain, in every business operation, things go wrong. Besides being able to provide remedy to those affected by adverse impacts, the grievance mechanism is a way to monitor your own IRBC ambitions.

Please find below a table with KPI’s to evaluate your grievance mechanism performance.

**Examples of key performance indicators (KPIs) on grievance mechanisms <sup>84</sup>**

KPI	Interpretation
A significant number of complaints or grievances are brought to the mechanism in the period after its establishment.	Indicating both awareness of the mechanism’s existence and confidence that it provides a credible first avenue of recourse.
A reduction, over time, in the number of grievances pursued through other non-judicial mechanisms, NGOs or the media.	Indicating both awareness of the mechanism’s existence and confidence that it can provide a credible and effective first avenue of recourse.
Over time, the number of grievances of the same or similar nature decreases.	Indicating that staff are learning from past mistakes and adapting practices and/or operating procedures where appropriate.
Audits show a reduction in incidents of non-compliance with applicable standards.	Indicating that grievance processes are contributing to the identification and remediation of non-compliance incidents.
A reduction in absenteeism and staff turnover and/or an increase in productivity among suppliers’/contractors’ workers.	A partial indicator of reduced worker grievances and improved worker satisfaction, most relevant in relation to supply chains and contractors.
Standard operating procedures (SOPs) have been reviewed and amended where investigations reveal significant and repeat grievances despite staff following existing SOPs.	Indicating that lessons for management systems are being learnt and integrated to reduce the likelihood of the same kind of grievances recurring.

Source: *Doing Business with Respect for Human Rights, Chapter 3.8 Remediation and Grievance Mechanisms* - Global Compact Network Netherlands, Oxfam and Shift

If your company is not receiving any, or only little complaints or grievances, consider whether the mechanism was communicated well enough in the value chain, whether your supplier is not abiding

by the IRBC principles you set out in the CoC or purchasing conditions, whether a grievance mechanism is already operating well enough at local, regional or national levels etc. Either way: determine best practices and brilliant failures of the grievance mechanism and continuously improve upon its functioning, so that you can signal adverse unwanted impacts in your own and your value chain partners' operations, before they become large issues.

### **Step 3.2: Collaborate to improve**

An operational grievance mechanism is one of the tools to continuously improve your Due Diligence, and ameliorate your performance with regard to respecting human rights and avoiding environmental pollution. If your grievance mechanism is well designed and operates successfully, it can be a constant source of knowing what risks there are in your value chain for specific locations, product groups or supplier methods.

Regularly consult with the stakeholder groups for whose use it is intended on the design and performance of the grievance mechanism. Focus on dialogue as the means to address and resolve grievances.

In the Floricultural sector, many standards (/certification schemes) are in use. Some require certified companies to have a mechanism to receive complaints, while others have not developed such requirements. When a standard holder (and other MSIs) does not offer its own grievance mechanism, or another way for rights holders to directly appeal to or raise grievances with it, or is not receptive to all the issues or risks which should be considered in IRBC due diligence, an initiative loses a key means of detecting whether their members are failing to resolve complaints as required by their standards. This also means that potential breaches of the certification scheme may persist undetected by the standard holder.

It is therefore recommended to collaborate with standard holders and larger initiatives such as the FSI, to improve production circumstances and monitor results of your efforts.

## 4. Effective remediation along the floriculture value chain

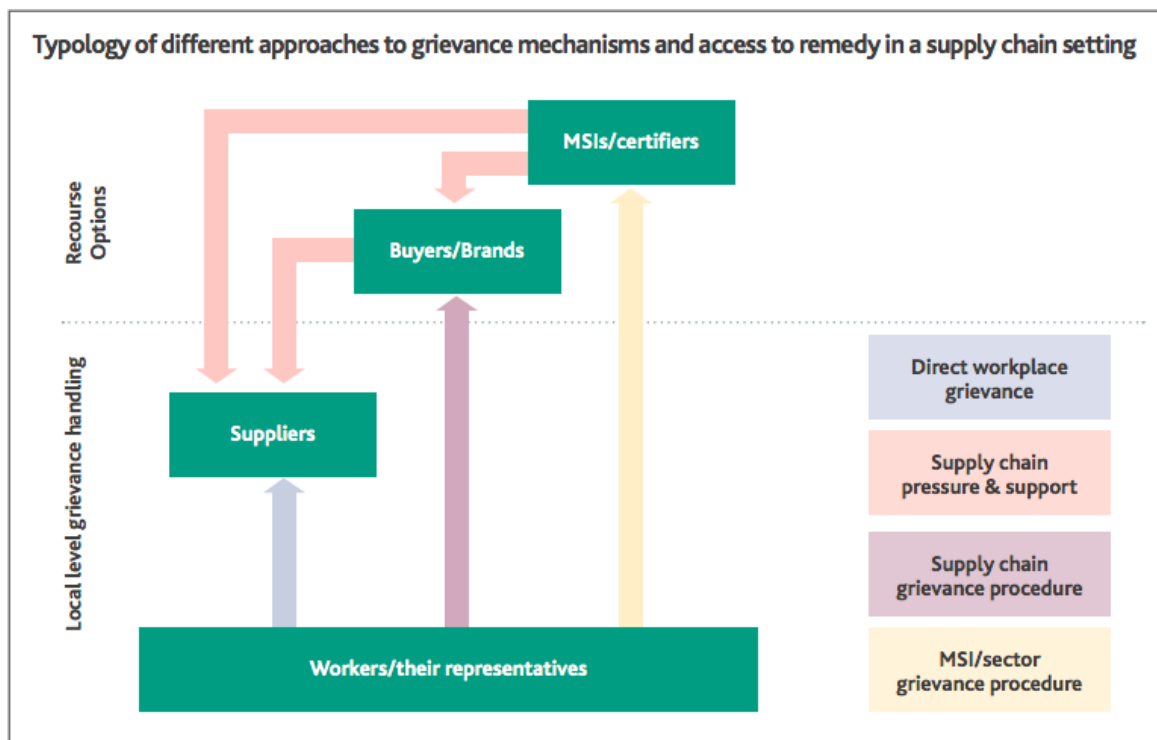
Ideally, complaints and grievances are first and foremost received and solved at the level where the impact occurred, at the company (buyer or supplier's organisation), the 'local level'. In the previous chapter recommendations were given as to how to develop a grievance mechanism at local level. Often, multiple stakeholders have a role in the grievance, and should collaborate to effectively provide access to remedy. For example, an escalation procedure where a complaint can be referred to another (independent, 'higher authority') body in case it cannot be solved at the companies' level, should be part of an effective grievance mechanism. And besides that, other stakeholders can often play a role in developing and implementing remedy for affected stakeholders.

In this chapter further recommendations are given regarding a 'structure' for multiple parties to work together and ensure access to and provision of remedy.

Based upon the current practices in the sector, the existing guidelines regarding developing an effective grievance mechanism (see the References), and advice given by experts, it is recommended that the grievance mechanism should make use of the following structures:

1. Local structures to start with
2. Standards and/or national governments and/or producers associations
3. (International) Multi-stakeholder sector initiatives
4. NCP

Below these levels are further elaborated upon.



Source: [Access to remedy- Practical guidance for companies](#), ETI, 2019

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## 4.1 Start local

Ideally, grievances from workers or affected communities are dealt with at the level where the grievance occurred, the 'local level'. Therefore, asking suppliers to ensure there are hotlines or access points to receive grievances or complaints, and mechanisms to deal with them is important.

It could be that HR departments, local trade unions and/or local governmental agencies need to be made aware of your RBC principles before they will be receptive or capable to deal with grievances and complaints.

Besides asking suppliers to set up a grievance mechanism, (buyer/trade) companies themselves should also set up a mechanism at their 'local level' to receive complaints and grievances.

If a complainant or stakeholder and your local business partner are not capable of resolving the issue locally to full satisfaction, make sure there are escalation procedures in place where the complainant can turn to.

The same holds for when the grievance cannot be adequately, or to full satisfaction, be dealt with at the (buyer/trade) company level; make sure there is an escalation procedure in place so that the case can be assessed by another (independent, 'higher authority') body.

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## 4.2 Make use of existing standards, national governments and/or producers associations

When a grievance cannot be solved locally, or is of such a scale that it involves multiple suppliers/buyers, standard owners and certification bodies, (local) governments and/or producers organisations in a country should be made aware.

Durable solutions are those which become common practice, something which can be facilitated by adding criteria to certification standards. By updating standards, monitoring of the effectiveness will also take place during audits, giving (buyer level) companies the data they need to monitor their grievance mechanism, and improve upon it.

Governments and enterprises share the responsibility in ensuring access to remedy for human rights abuses as a consequence of business practises. States could provide remedy — that is, its national laws, its judicial system and its labour inspectorate should act to uphold human rights principles in its jurisdiction, as well as enforce laws to punish the perpetrators (or provide avenues for civil remedy).

However, jurisdictions vary in creating and applying criminal laws and labour provisions. Moreover, corruption and inefficient justice systems can be a further barrier for workers in seeking remedy. Despite this, companies should ensure that their own remedial systems complement and do not undermine local judicial mechanisms. The role of legitimate trade unions in addressing labour-related disputes should also be acknowledged.

Producer associations could also play a role; they intend to promote their sector and/or their members, so it should be of interest that large or complicated adverse impacts are dealt with appropriately by companies in their sector.

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### 4.3 Bundle forces in (international) multi-stakeholder sector initiatives

In case adverse impacts and grievances cannot be resolved at upstream levels of your value chain, it is an option to signify international Multi-stakeholder initiatives (MSI's) operating at buyer level, such as FSI. They can contribute in various ways:

- MSIs could exert influence on certification schemes, governments and/or producer associations to change production practices or better arrange working conditions.
- They could also collect and share best practices to avoid or mitigate adverse impacts or grievances from other countries/value chains.
- And they can play a role in assessing remedy options for similar cases in other sectors.

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### 4.4 Turn to the NCP as last resort

All countries that subscribe to the OECD guidelines have a National Contact Point (NCP), which is responsible for handling enquiries and contributing to the resolution of conflicts arising from the conduct of companies.

One of NCP's core tasks is handling reports from individuals, civil society organizations and companies who have a disagreement about the application of the OECD Guidelines. Companies and CSOs can turn to the NCP which provides a mediation and conciliation platform for resolving practical issues that may arise.

The NCP cannot make legally binding recommendations for the resolution of grievances, and the provision of remedy; it can only make recommendations.

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### 4.5 Final remark: access to remedy remains an individual companies' responsibility

With all the options above, it is important to add that individual companies will still be required to be able to receive grievances (either directly, or through one of the bodies indicated above), assess and follow up on these grievances and provide remedy. So even if a collective mechanism is developed, companies will need to arrange some kind of grievance mechanism and the consequent provision or cooperation in providing remedy, if indeed the company caused or contributed to adverse impacts (see also chapter 3).

## 5. Recommendations for the IRBC Floriculture agreement

Based on the analyses described above, advices of experts which were consulted, the current status of facilitating access to remedy and the existence of grievance mechanisms in the sector, the following is to be recommended to individual companies and as a collective action via the IRBC Agreement:

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### 5.1 Recommendations for companies

For the short term:

1. Ensure that your own IRBC (internal, ethics) policy, and related internal grievance processes are in place and functional, to assess and handle complaints/grievances (see Chapter 3 for practical steps to take and advice on how to do these).
2. Ensure that setting up a grievance mechanism at supplier level, as well as adhering to collective grievance mechanism (for example, standard owner, MSI) is part of the Code of Conduct you send out to suppliers.
3. Work with direct, important (high-risk) suppliers to ensure that access to remedy is arranged at their level (see Chapter 3 above for practical steps and recommendations).

For the long term:

4. Work in collaboration with an external, independent party and/or other companies and industry bodies (standard owners, trade unions, producer associations, trade organisations etc.) to set up a broad grievance mechanism which is capable to receive complaints.
5. Analyse the options there are for providing remedy in different cases.
6. Evaluate the grievance mechanisms at various levels (see Chapter 4) and continuously improve upon their functioning.

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### 5.2 Recommendation for the IRBC agreement

For the short term:

1. Support the establishment of a grievance mechanism in individual agreement parties; for example, provide guidance on establishing a policy and procedures (for example asking for a signed CoC), train companies on the OECD expectation regarding access to remedy and grievances.
2. Draft recommendations regarding standards' facilitation of grievance mechanisms and monitoring of grievance mechanisms with certified supply chain partners, and discuss these with the standard owners.
3. Investigate the options (including costs) of setting up a collective grievance mechanism for the agreement parties (/in MSI setting) versus awaiting new legislation and NCP (see below).

For the long term:

4. Follow-up on the inclusion of a grievance mechanism under the 16 FSI standards (for example, include it as a prerequisite in FSI-benchmarks), and provide support and guidance based upon experiences in the sector with individual companies' and suppliers' grievance mechanisms.
5. Continue to follow deliberations regarding the new Dutch due diligence legislation, which will probably mandate setting up a grievance mechanism for companies and sectors.

6. Set up a grievance mechanism along the value chain, via an MSI, standard owners and certification bodies, (local) governments, producers organisations and/or NCP.

## Annex A: Sections in guidance documents regarding grievance mechanisms

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### Requirements in the Floriculture Agreement text

[IRBC Agreement for the Floricultural Sector](#) - section about grievance mechanism:

3.7 In line with their responsibility as set out in the OECD Guidelines and UNGPs, the Companies are committed to promoting access to remedy when adverse impacts occur. As grievances may say something about the effectiveness of the due diligence process, in the first year of the Agreement the Parties will establish a Grievance Mechanism Working Group (see Clause 10.12) to investigate how individual companies can discharge this responsibility or whether a collective grievance mechanism can assist them in doing so. The recommendations of the Working Group will be submitted to the Steering Committee for decision making. The Parties do not intend this arrangement to prevent or hinder those experiencing adverse impacts from asking the National Contact Point for the OECD Guidelines to help them resolve issues arising in specific cases in which the OECD Guidelines are applicable.

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### The OECD guidelines and UNGP description of a grievance mechanism

The [OECD MNE Guidelines](#) (p. 34) recommend that enterprises have processes in place to enable remediation. Furthermore, the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), states that ‘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 (p, 24: point 22)’.

The UNGP’s also explain that a grievance is understood to be a perceived injustice evoking an individual’s or a group’s sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.

The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought (p. 27).

It is further advised in these guidelines that in order 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 (p. 31: point 29).



# Annex B: Example of a grievance procedure for a company

**1. All**

- All employees, clients and other stakeholders can file a grievance.
- Employee who receives the grievance registers it on the grievance form and explains the person on the procedure.
- It is possible to file a grievance anonymous.
- Send grievance form, and other possible documentation received within 2 working days to department manager and CSR manager. The complainant receives a copy of the form.

**2. Department manager and CSR manager**

- Try to find out cause and background of grievance, possibly in coordination with other stakeholders.
- Contact the complainant within 14 days. If there is any reason for delay in addressing the issue, this will be communicated to the complainant.
- Deal with appeals by gathering more information and investigate further.

**3a. Department manager and CSR manager**

- Decide whether action is required or not, in dialogue with the complainant. Make sure the decision is in accordance with international recognized human rights.

**3b. Complainant**

- May decide to appeal with senior management

**4. Department manager and CSR manager**

- If action is required, try to find a solution within 7 days in dialogue with the complainant, and possibly in coordination with other stakeholders. If there is any reason for delay in addressing the issue, this will be communicated to the complainant.
- Make sure the decision is in accordance with international recognized human rights
- Record the solution and send a copy to the complainant.

**5. Complainant**

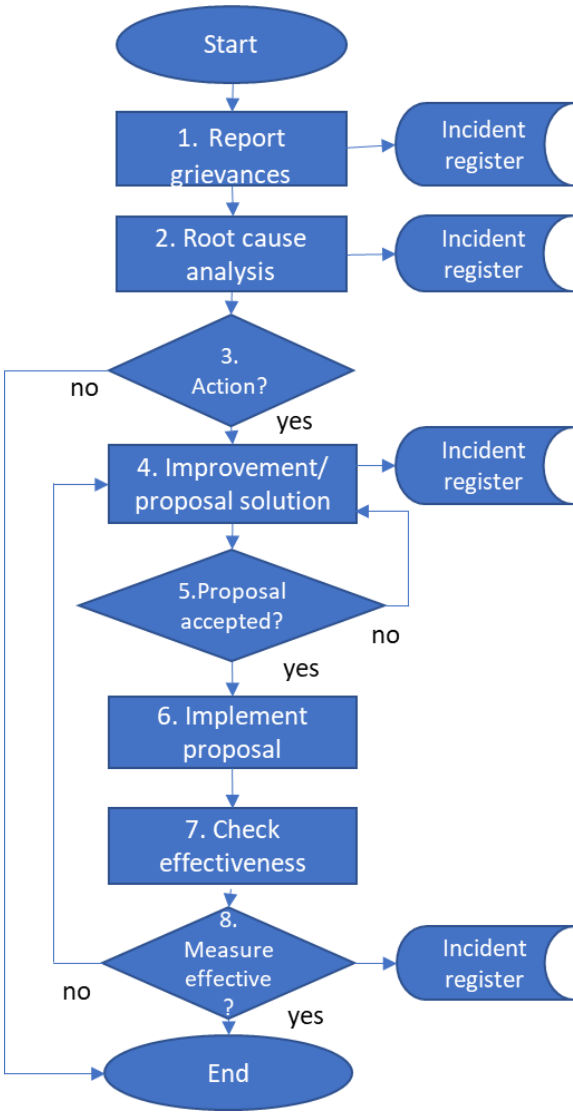
- If he/she agrees with the proposal for improvement, it will be implemented. The complainant may decide to appeal with senior management.

**6. Department manager and CSR manager**

- Implement the solution or have it implemented, in coordination with the complainant, and possibly with other stakeholders. Deal with appeals by investigating further.

**7/8. CSR manager**

- Discusses all ongoing grievances once a month with the management team. Learning experiences will be shared with employees, if applicable, by the MT. In case employees are involved personally, confidentiality is preserved.
- Checks the effectiveness of the measure within 3 months. The complainant is requested whether he/she is satisfied with the solution and the procedure followed. Record this on the grievance form.



## Terminology

Appeals mechanism	A process by which the parties, or one of the parties involved in the grievance, can turn to an (independent, higher authority) body in case they are dissatisfied with the initial outcome of the grievance procedure. Here parties can request a formal change to the official decision.
CSR	Corporate Social Responsibility; practices and policies undertaken by corporations that are intended to have a positive influence on the world.
Early warning system	A set of capacities and processes needed to generate and disseminate timely and meaningful warning information to enable organizations implicated by a human right or environmental risk, to prepare and to act appropriately and in sufficient time to reduce the possibility of larger harm.
Escalation protocol	A set of rules which clarify the boundaries and channels of decision-making regarding the grievance mechanism, or the grievance itself, in order so solve the problem quickly and with clarity. If the issue cannot be resolved at the level (site, standard etc.) it was brought to, the rules in the escalation protocol determine which other options need to be pursued.
MSI	Multi-stakeholder initiative; bringing multiple stakeholders together to participate in dialogue, decision making, and implementation of responses to jointly perceived problems.
RBC	Responsible Business Conduct; it entails companies taking account of human rights, working conditions and the environment in their operations.

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### General guidances and toolkits

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