



Remedy in the Context of Multi-Stakeholder Initiatives Summary Report

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I. Introduction

Over the past decade, multi-stakeholder initiatives (MSIs) addressing business and human rights issues have increased in number and popularity. While there is no clear definition of “MSI,” in the context of business and human rights, they can generally be described as a process by which diverse actors—including government, business, and civil society—interact to make business processes more “socially or environmentally sustainable.”¹ According to Principle 30 of the UN Guiding Principles on Business and Human Rights (UNGPs), MSIs that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available. While the UNGPs lay out a number of effectiveness criteria for grievance mechanisms, they are silent on many challenging and complex issues relating to MSI-related mechanisms and grievance channels.

This meeting sought to understand how various MSIs approach issues related to access to remedy, how these mechanisms interact with other grievance mechanisms, and what role MSIs should play in the remedial context. The discussion was based around four MSIs: The Fair Labor Association (FLA), the International Code of Conduct Association (ICoCA), the Global Network Initiative (GNI), and the Voluntary Principles on Security and Human Rights (VPs). Multiple complex issues regarding the role and efficacy of MSIs in relation to providing remedy were addressed, including: (1) understanding the role of remedy in MSIs; (2) what kind of remedy should MSIs provide; (3) MSIs as a mechanism for handling complaints; and (4) how MSIs should engage with company-level grievance mechanisms.

II. The Evolution of Multi-Stakeholder Initiatives and Remedy

The dialogue began with an overview of the four MSIs and how they deal with the question of remedy. A brief presentation of the four MSIs demonstrated that significant variation exists. For some MSIs, consideration of remediation issues took place when they were first established, whereas for other MSIs, the issue of remedy was not considered until later in their development. Reasons for the different approaches include the nature of the violation and the

¹ Mariëtte van Huijstee, *Multi-stakeholder Initiatives: A Strategic Guide for Civil Society Organizations*, SOMO (2012), <https://www.somo.nl/multi-stakeholder-initiatives/>.

sector; temporal elements such as when the MSI was established and whether it could draw from the experiences of its predecessors; and the effect that the UNGPs, which were issued in 2011, have had on the development of MSIs established since then.

Fair Labor Association

The FLA has accountability and monitoring mechanisms that have been in place since its inception. Compliance with the FLA Charter is monitored annually through audits of factories on a five percent random sample basis. Acknowledging that this procedure would not sufficiently identify and address all labor rights violations, the FLA developed a complaint mechanism called “safeguards” to respond to allegations of systemic or individualized serious violations of workers' rights in facilities used by any company that has committed to FLA labor standards.

It was noted that the FLA safeguards do not require a strict exhaustion of all possible remedies. However, the FLA prefers that the complaints it receives are vetted beforehand with the factory in question or with the relevant government authorities, if appropriate. The FLA may be willing to take up cases that cannot be vetted but should be heard, including cases relating to freedom of association.

The unanimous endorsement of the UNGPs in 2011 provided an important moment to reflect on and strengthen the FLA’s complaints handling process. As a result, a review of the safeguards program was conducted in 2011 by an independent party, and reforms have since be made to establish clearer timetables, standards for intake, and improved communications with all parties.

The International Code of Conduct Association

The development of ICoCA was motivated by a dramatic increase in in the use of private security providers in Iraq and Iran and a frustration with contractor immunity from liability in relation to events at Abu Ghraib and Nisour Square. As a result, the issue of access to remedy has been considered by the MSI since its inception in 2010. The timing of the development of ICoCA is also relevant in that negotiations and consultations around the UNGPs were also underway. It was therefore highlighted that those involved in developing ICoCA were actively following the UNGP process and trying to incorporate those discussions into the development of ICoCA.

ICoCA’s approach to the issue of access to remedy was described as having three components: (1) to verify consistency with the International Code of Conduct for Private Security Providers (“the Code”); (2) to provide oversight of implementation; and (3) to address and respond to grievances. On the issue of complaints, it was noted that ICoCA does not take “purely contractual” cases or “personnel related cases;” effective remedy as defined by the UNGPS informs ICoCA’s approach to complaints processes.

An important element of ICoCA is that it has been designed to facilitate access to a fair grievance process; however, the Association is currently scoping the appropriate balance between a focus on the adequacy of company level mechanisms and the role of ICoCA itself in responding. However, it was recognized that within the private security provider sector, there are some situations or certain kinds of violations that are not appropriate to raise at a company level. A number of the challenges ICoCA faces in its remedial approach were explored. One issue is that private security providers, unlike the other types of companies involved in other MSIs, provide a service for another entity (either a major corporation or a government). This distinction raises questions around responsibility and accountability where the actor is a service provider to another entity. Another issue is that the Code covers a broad range of human rights abuses, whereas some other MSIs focus on a single category of grievances (e.g., the standards disputes). Lastly, private security provider companies may be smaller entities compared to companies in other sectors, with less financial resources and governance infrastructure.

Global Network Initiative

GNI was launched in 2008 with the publication of the GNI Principles on Freedom of Expression and Privacy, and became fully operational in 2010. GNI's Implementation Guidelines require participating companies to provide whistle-blowing mechanisms or other secure channels through which employees and other stakeholders can confidentially or anonymously report violations of the Principles without fear of associated punishment or retribution. In relation to providing remedy, several participants raised issues unique to GNI, including the possible scale of complaints encompassing hundreds of millions, if not billions, of people. Another issue raised related to the original intent of GNI—to help companies deal with governments pressuring or compelling companies to carry out human rights violations, such as divulging user data, censoring content and other content restrictions, and shutting down networks. Participants questioned whether incorporating additional issues related to access to remedy might be broadening its original intent and objective.

It was expressed in the discussion that establishing standards for this sector and accountability through an independent assessment process was prioritized ahead of developing a remedial mechanism to respond to harms, given that the sheer number of potential victims presents a significant challenge to grievance mechanism design and implementation. Ideas have been explored such as creating an online portal to receive complaints, but concerns of spam and the logistics of verifying legitimate complaints remain.

Voluntary Principles on Security and Human Rights

The VPs were created in 2000, a time when there were relatively few MSIs in existence from which to draw lessons. While the VPs acknowledge the importance of access to remedy and the unique challenges that arise in the context of security issues, it was recognized by participants that the VPs are not as developed on the issue of access to remedy as some other MSIs. For example, although it is encouraged, the VPs do not require member companies to have their own grievance processes. Furthermore, there is no mechanism for third parties to raise

complaints or concerns of non-compliance. There is an internal grievance process to raise such issues, but that process is available only to VP members. The potential of the VPs to address disputes was highlighted in the mediation between Newmont and Oxfam, a case in which the VPs facilitated an independent review of Minera Yanacocha's security and human rights policies and procedures.²

While a UNGP alignment document was developed last year that delves into the VPs' processes and access to remedy,³ it was noted that the VPs have not been updated, elaborated, or improved since the release of the UNGPs.

III. MSIs and Access to Remedy

This part of the discussion revolved around what kind of remedies MSIs should provide. Specifically, should MSIs only address violations of the underlying code of conduct or principles upon which the MSI is founded? Or, should MSIs seek to compensate victims for broader human rights violations; direct victims to other dispute resolution mechanisms; or target systemic issues? For this conversation, breakout groups were established to facilitate more interactive discussion of these issues. Discussion revealed both recurring themes in some areas as well as a lack of consensus in others.

Accountability or Remedy

A significant amount of time was spent on what remedial actions MSIs should be responsible for and the type of remedy they could or should provide. Many participants found the distinction between accountability and remedy useful: accountability is when the MSI addresses compliance with the mechanism's underlying code or principles, and remedy is when the MSI responds to and addresses a human rights violation. In general, the majority of participants agreed that, at a minimum, MSIs should be responsible for holding their members to account for alleged code of conduct breaches. To ensure legitimacy, MSIs must oversee and monitor members to ensure that they meet the requirements of the overarching code or principles, and provide an avenue for complaints about alleged violations. There was less convergence on the broader role MSIs should play in relation to remedy and the categories of harms for which they should be responsible. It was further recognized that the approach will vary significantly depending on contextual issues, such as an MSI's objectives and the sector in question. In addition, because some MSIs have been developed to address specific issues or goals, it is important to consider each MSI's purpose and capabilities.

² Oxfam America, *Oxfam calls on mining company to respect human rights* (July 1, 2009), <https://www.oxfamamerica.org/press/oxfam-calls-on-mining-company-to-respect-human-rights/>.

³ *The Voluntary Principles on Security and Human Rights: Linkage between the Voluntary Principles and the U.N. Guiding Principles on Business and Human Rights* (2016), <http://www.voluntaryprinciples.org/wp-content/uploads/2016/05/VPs-UNGPs-Document-April-20161.pdf>.

Supporting Existing Grievance Mechanisms

Participants recognized the need for a comprehensive framework of robust grievance mechanisms, and that MSIs can and should be a part of that framework. When considering MSIs as a forum for remedy, they should not be considered as a substitute for State-based mechanisms, but rather as a complementary tool. It was expressed that MSI grievance mechanisms should only exist when necessary, and that they should play a secondary role when stronger alternatives are available. The challenge is that many MSIs have been developed in response to governance gaps on a particular issue or within a specific sector, and alternate remediation channels may not be available. MSIs may, therefore, need to consider how they can facilitate access to or advocate for stronger State-based grievance mechanisms or ensure that member companies establish effective operational grievance mechanisms.

Additionally, it was noted that MSIs should be clear about what type of harms or violations they will respond to, and what harms should be left for State-based mechanisms. Many questioned whether MSIs are the right forum for grave human rights violations (e.g., murder), and noted that these types of violations should be addressed through State judicial mechanisms.

MSIs as Complaint Handling Mechanisms

Throughout the meeting, there was a lack of consensus among participants about whether MSIs should handle complaints. The position of many participants was that the ability to handle complaints depends on the purpose of the MSIs and the sector in which it operates. However, noting that there are a number of MSI that have developed or are in the process of developing a grievance mechanism, the discussion highlighted that there are some commonalities and general lessons that should be considered. For example, before an MSI establishes a grievance mechanism, it should carefully map out the types of complaints it expects to receive; who might bring forward these complaints; who might be causing the harm; what additional remediation channels are available; and the kinds of remedies the MSI can provide. It was stressed that MSIs should acknowledge existing avenues for accessing remedy, including State-based and company-based grievance mechanisms, before creating a grievance structure. Furthermore, it is important for MSIs to clearly think through their accountability mechanisms and governance structures so that they can effectively communicate and demonstrate to both internal and external stakeholders the kinds of accountability and responsibility the MSI can provide.

Participants raised challenges associated with capacity and timing, noting that complaints are difficult to deal with, especially when the MSI itself is still being developed. The discussion revealed a keen interest from participants to review and collect examples of findings arising from complaints handled by MSIs. Additionally, participants agreed that because MSIs commonly operate in areas where there are very few avenues for victims to be heard, MSIs can serve as a place for victims to have a voice and be recognized. It was agreed that MSIs have the potential to bring all participants together to discuss grievances in a way that other grievance

processes may not be able to facilitate. The idea that remedy issues should be considered by MSIs through a victim-centered approach gained broad consensus.

The discussion further highlighted that MSIs should look to other grievance mechanisms for examples and guidance on how to operate an effective grievance mechanism. The Office of the Compliance Advisor/Ombudsman (CAO) at the International Finance Corporation (IFC) was cited as a mechanism that should be considered further by MSIs. It was noted that the CAO has a number of functions, including an advisory function that analyzes emerging problems and provides broad advice to the IFC. In addition, the CAO has a complaint handling function, whereby grievances are resolved through mediation or dispute resolution. Lastly, the CAO has a function to ensure compliance with IFC standards. It was noted that on occasion there was a connection between judging compliance and changing company practice. Participants also suggested a review of the types of complaints that come through the OECD National Contact Points and how they are mediated as an example of practice.

Additional potential functions of an MSI

In addition to MSIs operating as a complaint handling mechanism, a number of other potential functions in relation to access to remedy were explored. These functions include:

1. **Advice, guidance, and review:** Participants agreed that MSIs are well-placed to play an advisory role to their members on remedial issues. At the company level, MSIs are in a position to support and advise on operational grievance mechanisms and to drive best practice. MSIs could also play a role in setting standards for company grievance mechanisms and undertaking reviews to ensure those standards are met. In relation to government members, MSIs should look to work with governments on legal reform and opportunities to strengthen State-based grievance mechanisms. Participants agreed that, in the context of remedy, the key question is not just what remedy MSIs can provide, but how they might be able to facilitate access to remedy in other fora.
2. **Respond to systemic human rights issues within their sector:** Participants agreed that MSIs have a good understanding of systemic issues within their respective sectors. As a result, MSIs should facilitate institutional reforms and advocate for large-scale policy changes that address grievance issues on a systemic level. MSIs are in a unique position to advocate for such changes because they represent a mixture of key stakeholders.
3. **Engagement and leverage:** MSIs are well-placed to exercise leverage over their members and engage with them to strengthen grievance mechanisms. Participants highlighted that some MSIs may have leverage over their members due to the possibility of incurring reputational damage and economic sanctions. For example, the FLA could deny FLA accreditation to violating member companies. It was expressed that if other MSIs can wield leverage within their respective sectors, this could lead to opportunities to enhance and strengthen members' grievance mechanisms.

IV. Relationship and Engagement with Company Grievance Mechanisms

During the latter half of the meeting, breakout groups discussed concrete ways in which MSIs can work with and support company-level operational grievance mechanisms. A strong consensus emerged that MSIs have the potential to support and strengthen their company members' mechanisms, though this potential has not been realized.

The discussion emphasized the positive role of MSIs as a space to facilitate dialogue among various stakeholders. MSIs are well-placed to share examples of positive practice and continually push for higher standards within their memberships. MSIs also should become repositories of information, knowledge, and resources for their stakeholders. It was also expressed that MSIs should provide greater guidance to companies regarding company-level grievance mechanisms. One option in this regard is for MSIs to issue advisory memos similar to those issued by bar associations to improve good practice among member companies. Participants felt that precise guidance would be welcomed, and agreed that it is likely that many companies would be willing to uphold more onerous expectations as long as these expectations are clearly defined. It was also noted that some companies may be members of multiple MSIs, and therefore may receive guidance from multiple secretariats. As a result, there is a need to articulate key principles while also ensuring flexibility for member companies. MSIs could also serve as an appeals forum for decisions arising out of company-level disputes, thereby creating a body of precedent.

Additionally, participants acknowledged the importance of considering practical limitations on staff, money, and resources. Some MSIs have a smaller membership base and fewer resources than others. These limitations highlight the need for an industry as a whole to work together toward delivering effective grievance mechanisms at all levels.

Several participants thought it ideal to have a complaint resolved by whatever available mechanism is closest to the issues raised by the complaint, which often means that company-level mechanisms are best placed to respond. However, the weaknesses of these mechanisms were also noted. Referring to observations through the dispute resolution process at the CAO, it was noted that company-level mechanisms are often ineffective and lack community engagement and input. Concerns were raised about the legitimacy of company-level mechanisms, in recognition that grievance mechanisms are ineffective without trust in the wider community. Participants explored examples of how companies have taken proactive efforts to engage in dialogue with local communities and build trust.

Participants agreed that MSI-led monitoring of company-level grievance mechanisms could provide an additional avenue to enhance legitimacy. It was also noted that innovative approaches should be considered to enable local communities to participate in the monitoring process. The Equitable Food Initiative's (EFI) standards on food and labor safety was provided as an example of workers acting as monitors, giving potentially affected individuals' agency in the monitoring process.

V. Next Steps

The meeting explored the role of MSIs in the context of remedy. Many of the conversations were challenging, and revealed that on many issues there is still a lack of clarity and consensus. However, participants agreed on a number of key areas to push the agenda further.

The meeting highlighted the need for easily accessible examples that illustrate how different claims are dealt with within MSIs—both in relation to remedying violations of the underlying code or principles and remedying particularized harms. Furthermore, the meeting revealed the need for data and statistics on the types and numbers of complaints MSIs receive. In this regard, participants from various MSIs expressed interest in learning more about independent accountability mechanisms such as the CAO and OECD National Contact Points and how they publically report on their complaints and develop cases studies.

The discussion also revealed that MSIs should provide clear guidance and tools for companies in relation to their operational grievance mechanisms, and that MSIs can play a much stronger role in this regard. There is also a clear need to focus on issues of legitimacy, specifically focusing on legitimacy from the perspective of rights-holders rather than from the perspective of industry. Additionally, the interplay between company-level and MSI grievance mechanisms was highlighted as another fruitful area for further discussion.