

# Remediation and Operational-Level Grievance Mechanisms

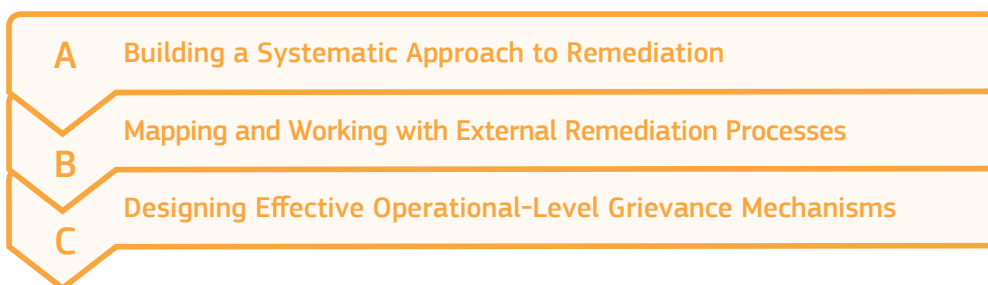
## What do the UN Guiding Principles Expect?

- ▶ Where a company identifies that it has caused or contributed to negative human rights impacts, it should provide for or cooperate in their remediation through legitimate processes.
- ▶ Companies should establish or participate in effective operational-level grievance mechanisms for stakeholders who may be negatively impacted by their activities, in order that grievances may be addressed early and remediated directly.

## Why is this Important?

- Unless a company actively engages in the remediation of impacts it has caused or contributed to, it cannot fully meet its responsibility to respect human rights.
- Negative impacts may occur despite a company's best efforts, given the complexity of operations and business relationships involved.
- Companies need to be prepared for this situation so they can respond quickly and effectively. Strong remediation processes can help prevent impacts from increasing or conflicts from resulting.

## What are the Steps Involved?



### Key Points for Implementation

- ▶ Having systems in place to enable remedy shows that the company is able to restore respect for human rights quickly and effectively, should impacts occur.
- ▶ One of the most systematic ways for a company to provide for the remediation of impacts is through an operational-level grievance mechanism.

### Possible Approaches

- **Defining “remediation” and “remedy”:** Remediation is the process of providing a remedy for a harm. Remedy can take a variety of different forms, including apologies, restitution, rehabilitation, financial and non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. While some forms of remedy are more likely in a judicial mechanism, many are possible through non-judicial processes as well.

For example, where a worker has been unfairly dismissed, an appropriate remedy may be reinstatement supported by appropriate compensation. In other cases, it may be harder to remediate negative impacts, for instance where physical or life-threatening harm is involved.

Companies should try to understand how those who have been impacted view different remedial options and which they consider to be most effective in their own circumstances. Whenever possible, it will be helpful to discuss this directly with complainants and explore available options. It can be important to ensure a complainant has her own sources of advice, to ensure she feels informed in reaching a view on remedy.

Where no agreement can be found on an acceptable remedy, it will usually be most appropriate for a legitimate, independent mechanism to reach a final decision. This may be through the courts or an administrative proceeding or some other, mutually-agreed process.

- **The extent and limits of a company’s responsibility to remediate:** When a company has caused or contributed to a harm, it has a responsibility to cease its contribution and provide or contribute to a remedy. This can be through judicial processes or through non-judicial processes that are generally considered to be “legitimate”: including, for example, providing a fair and independent process, being accountable, and producing outcomes that are consistent with human rights. Remedy may also be provided through an “operational-level grievance mechanism” provided by the company, or which the company participates in (see [Section VI-C](#) below).

ICT companies do not have to remediate:

- (a) Impacts they have neither caused nor contributed to: it is the responsibility of those who have contributed to the impacts to provide for or cooperate in their remediation. However, where the impacts are nevertheless linked to the ICT company’s operations, it has a responsibility to use its leverage to prevent or mitigate the risk of the impacts continuing or recurring (see [Section III-D](#) above);
- (b) Impacts they are alleged to have caused or contributed to, where the company does not agree with that allegation. However, the company may need to investigate the issue to be sure of its position and should avoid obstructing legitimate processes to investigate and adjudicate the issue, through the courts or administrative proceedings.

This said, companies will want to pay careful attention to whether they might in some way have contributed to impacts by others in their value chain. This could include:

- Pressuring a supplier to deliver a product under terms that incentivised excessive working hours or unpaid overtime;

- Providing surveillance technology to a government that uses it to track and persecute human rights defenders, journalists or members of a minority group;
- Engaging a security contractor without requiring adequate human rights protections, where the contractor then uses excessive force against local protestors around a facility or site.
- **The rationale for a systematic approach to remediation:** Much of an ICT company's efforts regarding human rights will focus on preventing negative impacts from happening. But even with the best policies and processes in place, things can go wrong, for instance because:
  - An individual makes a mistake;
  - Unforeseen issues arise for which the company is not prepared;
  - A business partner, supplier or a government abuses human rights in connection with some aspect of the company's products, services or technologies;
  - Stakeholder expectations change and previously agreed approaches are challenged.

Past or current impacts may come to a company's attention through its on-going assessment processes as part of its human rights due diligence (see [Section II](#)). They may also become apparent through other channels, such as:

- Stakeholder engagement processes;
- Observations of staff on the ground;
- Feedback from other groups or organisations working with affected stakeholders (eg NGOs, trade unions);
- Academic researchers;
- Media reports.

ICT companies need to have clear processes in place to respond, often rapidly, to situations where human rights impacts occur or are alleged to have occurred. Otherwise, they may find themselves taking unconsidered, untested approaches to situations in which individuals' safety may be at risk. This may result in negative human rights impacts being created or increased.

Remedies may be provided through various processes, including through negotiations with legitimate trade unions or worker representatives; or through action plans to address problems found through audits or review processes. Remedies may also be provided through operational-level grievance mechanisms.

- **The role of operational-level grievance mechanisms:** An operational-level grievance mechanism is a formalised means for affected stakeholders to raise concerns about any impact they believe a company has had on them in order to seek remedy. The mechanism should help to identify problems early, before they escalate, and provide solutions that include remedy for anyone impacted.

In the case of employees and other workers represented by trade unions, industrial relations processes involving management and those unions are themselves a form of operational-level grievance mechanism.

An effective operational-level grievance mechanism can support the company's due diligence process and help embed respect for human rights across the company, particularly by:

- Promoting internal discussions about impacts and how to address them – the process of designing the mechanism may already contribute to these discussions;
- Helping identify impacts and understand them from the perspective of affected stakeholders – this can directly contribute to the company's impact assessment processes;
- Providing feedback on the perceived effectiveness of company responses to impacts – this can help the company track its performance and make any necessary adjustments;
- Demonstrating that the company takes the concerns of affected stakeholders seriously – this can help build trust and reinforce relationships with affected stakeholders;

- Providing accountability for human rights impacts – this is critical to embedding the company’s commitment to respect human rights;
- Improving the quality of information available to management about impacts, grievances and community relationships – this can help secure management support for the mechanism;
- Illustrating where there may be weaknesses in company policies, procedures or practices – this can contribute to continuous improvement.

As always, companies should respect confidentiality and take steps to prevent retaliation against complainants.

## VI B Mapping and Working with External Remediation Processes

### Key Points for Implementation

- ▶ Remediation processes provided by the state or third-party institutions can provide alternative channels for affected stakeholders to raise complaints. Complainants should be free to choose which available channels they wish to use.
- ▶ Existing remediation processes may also help shape an operational-level grievance mechanism. They may:
  - Illustrate local stakeholders’ preferred approaches to resolving grievances and defining remedy, which can inform the design of any operational-level mechanisms;
  - Offer a formal point of recourse if an operational-level mechanism cannot achieve an agreed outcome.

### Possible Approaches

- **Mapping the landscape of grievance mechanisms:** Operational-level grievance mechanisms are just one channel for addressing complaints that a company has caused or contributed to negative impacts on people. In most societies there is a range of other mechanisms available. These typically include administrative and judicial mechanisms provided by the state. Additional mechanisms may be available where there is a:
  - National Ombudsman or similar office with a mandate that includes responsibility for the company’s products, services or technologies;
  - [National Human Rights Institution](#) that can handle complaints regarding alleged company impacts;
  - [National Contact Point](#) that deals with breaches of the [OECD Guidelines for Multinational Enterprises](#);
  - Relevant bilateral or other agreements in place, such as the EU-US Safe Harbour Framework for privacy-related complaints (which requires participating companies to select an independent dispute resolution provider to handle any customer or user complaints if they cannot be resolved satisfactorily by the company itself and gives enforcement authority to relevant state agencies).

Where trade unions are not legitimate or do not or cannot represent the whole workforce, other channels may be available, for example through local labour offices or nationally-recognised labour dispute resolution organisations.

Mapping the landscape of grievance mechanisms includes understanding how effective those mechanisms are seen to be in practice (for example, if courts are generally viewed as corrupt). This helps a company understand how an operational-level grievance mechanism might be positioned to add value and avoid undermining existing state-based processes.

- **Interacting with state-based and other external grievance mechanisms:**

Complainants may choose to seek remedy for an alleged impact through the court systems or an administrative proceeding, rather than approaching the company directly. A company has the right to contest allegations it believes are unfounded or inaccurate. In contexts where the courts are seen as weak or even corrupt, it may be helpful for the company to try to demonstrate that it is not trying to influence the due legal process while defending its position.

In some situations, ICT companies may find it useful to build recourse to state-based grievance mechanisms, such as appropriate national Ombudsman offices, into their own processes for handling grievances, where those mechanisms have expertise in dealing with kinds of human rights issues that the company faces.

In some cases, an ICT company may need to refer a complaint to the state authorities, in particular where it raises criminal issues or involves state authorities or agents. However, care should be taken in how these complaints are reported, particularly where the rule of law is weak or corruption is strong, because of the risk that complainants may be exposed to retaliation. This is particularly so where a complaint relates directly to action required of the company by the state.

- **Supplier-level grievance mechanisms:** It can be productive for ICT companies to encourage and even assist its suppliers to develop their own grievance mechanisms for workers. This can help reduce the risks of negative human rights impacts in connection with the company's operations. Wherever possible, these mechanisms should involve legitimate trade unions or worker representatives. ICT companies may still want to consider providing a "fall-back channel" for workers of suppliers, in case issues are not adequately addressed (see [Section VI-C](#)).

Supplier-level grievance mechanisms can be an important source of information about human rights impacts linked to an ICT company's operations. An ICT company may want to consider including in its contracts with suppliers a requirement to establish their own mechanisms, and request periodic reporting on the substance and outcomes of complaints. This can be most useful with those suppliers where risks of human rights impacts are particularly high.

### **Example: Supporting Suppliers' Development of Grievance Systems**

One device manufacturer constructively engaged with the management of individual supplier factories to support the development of the supplier's own management systems for tracking and addressing grievances. This began with a joint brainstorming session between the company's CSR representative and the supplier's management, hosted by the company. This led to a long-term partnership producing major innovations in the supplier's grievance-handling systems. The prospect of follow-on projects that would be supported by the company helped to incentivise the supplier's involvement in the process. The company also engaged with an NGO that had been highly critical of poor working conditions at the supplier factory, both in the development of the grievance mechanism and in training programs for the supplier's workers to build their capacity to use it.

### Key Points for Implementation

- ▶ The Guiding Principles state that operational-level grievance mechanisms should be: legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on dialogue and engagement, and a source of continuous learning.
- ▶ While these criteria mostly relate to the quality of the processes they offer, they include an important requirement that outcomes should be consistent with internationally-recognised human rights.
- ▶ Operational-level grievance mechanisms should not preclude access to judicial or other state-based processes, or undermine the role of legitimate trade unions. They should always take steps to prevent retaliation against complainants.

### Possible Approaches

- **Building on existing company mechanisms:** An ICT company may have separate grievance mechanisms for workers and for external stakeholders. Alternatively, they may have a combined mechanism or access point that can receive complaints from employees and other workers, suppliers and their staff, customers, users and potentially other business partners as well. Complaints may then be allocated for handling through different processes.

Whatever approach is adopted, grievance mechanisms need to fit an ICT company's local operating context. It is therefore best to design them close to the level where they will operate wherever possible, and with input from the groups for whom they are intended.

ICT companies can build on existing internal systems (e.g., whistle-blower mechanisms, customer complaints systems) that may already play an important role in providing avenues for individuals to raise human rights-related complaints.

- **Building internal support for an operational-level grievance mechanism:** It can be challenging to build internal understanding that complaints raised through an operational-level grievance mechanism are not a threat to staff nor necessarily a sign that the company is failing at its relationships with workers, customers, users or other affected stakeholders. It may be helpful to underline to staff the opportunities such mechanisms present for:
  - Receiving useful feedback on how the company is perceived;
  - Continuous improvement where complaints show there are weaknesses in policies, processes or practices;
  - Demonstrating that the company cares about the concerns of affected stakeholders and is committed to addressing them.

Where an ICT company is designing a new mechanism, it can be useful to make this a collaborative exercise. Involving people from key functions and departments across the company – including those whose actions may lead to complaints – can build support for the mechanism. Building in time for this internal engagement, as well as for engagement with affected stakeholders, can be important to the longer-term success of the mechanism.

Where an actual complaint arises, it is often appropriate to involve the department/function whose actions are the subject of the complaint in its investigation, while ensuring that the overall process remains independent. Where it is possible to involve them also in identifying solutions, and “owning” their implementation, this may help contribute to future prevention. At other times, it may not be appropriate

for those departments to be involved, for example where serious personal allegations are involved or where it may otherwise compromise a credible investigation of the complaint. They should nevertheless benefit from lessons learned, in order to prevent repetition.

- **Defining the scope of a mechanism:** It can be counterproductive to limit a grievance mechanism to complaints that name human rights issues or claim particular laws or standards have been breached. This risks missing impacts that could escalate over time into serious human rights risks or impacts. A grievance mechanism should be able to pick up a full range of concerns early enough to avoid their escalation and address underlying issues.

A mechanism should be able to exclude clearly vexatious complaints. However, it is risky to assume a complaint is vexatious without close attention and investigation. In some cases complaints that appear vexatious may in fact reflect legitimate issues that the complainant was afraid or unable to raise directly.

Vulnerable or marginalised individuals may be particularly disempowered from raising complaints. It may be possible to identify specific ways in which they can raise concerns without increasing their vulnerability, including through third parties speaking on their behalf. Wherever possible, it will be beneficial also to seek ways to gain their views directly.

- **Escalation of complaints:** An effective mechanism requires triggers for complaints to be escalated within the company, for example:
  - Where deadlines for responding to a complainant have not been met;
  - Where complaints raise potentially grave human rights impacts;
  - Where a complaint indicates possible criminal conduct;
  - Where a complaint implicates other companies or representatives of the state.

In the latter two instances, it can be important to report the matter to the relevant authorities, taking into account the issues highlighted in [Section VI-B](#) above. It will also be important that the complainant is not further disadvantaged as a result of the internal escalation, for example, if they are a worker and risk being seen as “causing even more trouble”.

- **Designing an effective grievance mechanism:** A poorly designed mechanism is often counter-productive: it can raise expectations among stakeholders without delivering on them, even increasing the sense of grievance. It may also distort the company’s assessments of how well it is managing human rights risk. Relevant experience of ICT companies seeking to build effective grievance mechanisms includes the following:
- **Grievance mechanisms where there are dispersed customers or users:** Some ICT companies, especially **telecommunications and Web-based services and software companies**, face particular challenges in designing mechanisms that are capable of effectively handling complaints from a potentially large number of highly dispersed individuals.

Possible approaches include:

- Promoting awareness of how to access the grievance mechanism through multiple channels, including the company’s own products, services or technologies (such as social networking pages), using language and media that are appropriate to the company’s different operating contexts;

### Criteria for Designing Effective Operational-Level Grievance Mechanisms:

The Commentary to Guiding Principle 31 describes the key criteria for effective operational-level grievance mechanisms. They 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;
- (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 informed about progress, and providing sufficient information about the mechanism’s performance to build confidence and meet any public interest at stake;
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognised 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;
- (h) **Based on engagement and dialogue:** consulting the stakeholder groups for whose use it is intended on its design and performance, and focusing on dialogue as the means to address and resolve grievances.

The [UN OHCHR Interpretive Guide to the Corporate Responsibility to Respect Human Rights](#) further explains these criteria. A [report on four pilots](#) conducted while the criteria were being developed illustrates their intent and implementation, including in the ICT supply chain context.



### Resources: Designing Operational-Level Grievance Mechanisms

For more about the UN Guiding Principles' effectiveness criteria, see:

- ▶ UN SRSG, Addendum to the UN Guiding Principles, *Piloting principles for effective company/stakeholder grievance mechanisms: A report of lessons learned* (undertaken by the CSR Initiative, Harvard Kennedy School)
- ▶ CSR Initiative, Harvard Kennedy School, *Rights-Compatible Grievance Mechanisms*
- ▶ CSR Europe, *Company Mechanisms for Addressing Human Rights Complaints (draft version for consultation)*
- ▶ Access, *Telco Remedy Plan*

For general information about non-judicial dispute resolution, see: [ACCESS Facility](#)

### Example: Collaborative Approaches to Addressing Worker Grievances

A number of equipment manufacturers who rely on factories that are closely located participate in a dialogue-based grievance mechanism supported by a leading local NGO and the national business association. Over a 5 year period, the participating factories saw a significant drop in discrimination and safety-related incidents, and a general reduction in the time taken to address such cases (from one year to two months in some instances). The mechanism has also created a space in which the different parties can talk about ongoing concerns relating to freedom of association and the use of agency workers, which did not previously exist. However, not all companies that are members of the business association participate in the mechanism and many workers lack an awareness of the standards it is intended to uphold. Further, some participants report that it has been hard to pursue conversations around systemic issues and that this has limited the mechanism's ability to address some of the most pressing human rights challenges.

- Clarifying the range of complaints that the mechanism is capable of receiving (e.g., related to Terms of Service, other company policies or specific company decisions or actions);
- Ensuring that the mechanism allows for anonymous complaints and seeks to appropriately protect complainants where there is a genuine fear of reprisal, including by engaging with security and civil society experts about good practices regarding secure access;
- Where the mechanism cannot reliably offer such protection, promoting secure access to a third party mechanism that can do so;
- Enhancing predictability and transparency about how complaints get resolved, including through promptly acknowledging receipt of complaints, providing indicative timeframes for a response, and reporting externally on the mechanism;
- Clearly communicating decisions when they have been taken, as well as the reasons for them, and explaining how to request a review of the decision,
- Developing the capacity to identify or recognise human rights-related complaints – whether they arise through existing processes or through new dedicated pathways for human rights complaints – and channeling them to the right internal experts;
- Implementing emergency flagging procedures where significant negative human rights impacts are raised that escalate the complaint to more senior decision-makers in the company;
- Formalising a civil society problem-solving, advisory, or oversight role as part of the mechanism's processes;
- Reviewing the effectiveness of the mechanism against the Guiding Principles' criteria on a regular basis with input from key stakeholders, including affected stakeholders.

It will also be important to capture concerns raised through informal civil society networks that such companies increasingly rely on in their stakeholder consultation processes (see [Section II-E](#) above), in addition to those raised through formal grievance mechanisms.

- **Grievance mechanisms for workers:** In the case of employees and other workers, the most appropriate channels for addressing complaints are often through discussions between trade unions and the management of the ICT company, or of the business partner or supplier concerned. Workers should not be discouraged from forming or joining trade unions for these and other purposes.

Relevant lessons from companies in the ICT sector about implementing grievance mechanisms to address the concerns of workers include:

- It can be beneficial to involve workers in the design, review or even joint oversight of the mechanism, particularly where trust in the company or mechanism is low. This can help ensure that the individuals for whom the mechanism is intended are willing to use it;
- It can be helpful to involve trained counsellors who are capable of addressing workers' emotional needs, particularly as an access point for raising grievances. Where counsellors bring a professional culture of confidentiality, independence from management, and the ability to



support workers across all problems ranging from the mundane to significant, this can help generate trust in the mechanism;

- It is important to provide a range of access points, and to promote awareness of them. These may include anonymous complaints boxes or “hotlines”, email, trade union representatives, elected worker or dormitory representatives, line managers, or a centralised counselling or ombudsman office;
- It is just as important to ensure that there are effective processes for following up on complaints, not least when they come via hotlines or complaints boxes.
- Standardising procedures can contribute to a more rigorous and more manageable process, including by: acknowledging receipt of complaints, providing indicative timeframes and updates, and reporting externally on the mechanism;
- It can be helpful to engage internal and/or external experts in evaluating whether actual and potential outcomes are rights-compatible, especially in challenging cases;
- Training can help build the capacity of workers to use the mechanism, conducted wherever possible with trade unions and other local civil society actors;
- It is important to identify when complaints come from individuals or groups in a position of heightened vulnerability or marginalisation and take this into account during the handling of their complaint and in identifying appropriate remedies;
- Actively seeking feedback about the mechanism can support continuous learning, for example through satisfaction forms (reflecting views on both the outcome and the quality of the process), worker exit interviews or monthly meetings with management;
- Communicating about outcomes from a mechanism in an appropriate form (e.g., anonymised, aggregated data or case studies), can demonstrate the value of using it – both to workers and to management.

It is important to ensure the grievance mechanism does not substitute for broader worker-management engagement, as this would signal that the company only wants to hear from workers when they have a problem. Conversely, it is risky to assume that such engagement covers the role performed by a grievance mechanism.

- **Grievances related to suppliers:** Where an ICT company has not contributed to a negative impact caused by one of its suppliers, it may nevertheless play a range of roles in helping to seek remediation. For example, it could:
  - Raise the issue with the supplier concerned, request them to address it directly and confirm the outcome;
  - Support the supplier in its efforts to address the issue, helping build its capacity to do so where this is weak;
  - Pass the issue to appropriate authorities where it raises criminal concerns;
  - Check whether there are appropriate protections in place to prevent complainants from retaliation in each of these cases;
  - Help the supplier develop or improve its own grievance mechanism, including drawing on the lessons identified above in designing grievance mechanisms for workers.

Companies with co-located suppliers can consider opportunities to work collectively to develop shared grievance mechanism models or processes, in collaboration with trade unions and other civil society partners wherever possible.

## Where to Start

For companies that are just starting to focus on processes to remediate human rights impacts or to develop operational-level grievance mechanisms, the following are some preliminary steps to consider:



## Questions to Ask

The following questions correspond to sub-sections A, B and C above. They should help test the extent to which the company's remediation processes, including operational-level grievance mechanisms, are consistent with the Guiding Principles:

### VI-A

#### Building a Systematic Approach to Remediation

- ▶ How do we build support across the company for operational-level grievance mechanisms?
- ▶ How do we track complaints and their outcomes to identify ways we can improve our policies and processes to prevent human rights impacts?
- ▶ How do we identify whether outcomes from remediation processes provide real "remedy" both in the eyes of the affected individuals and in line with internationally-recognised human rights?

### VI-B

#### Mapping and Working with External Remediation Mechanisms

- ▶ What is our understanding of the landscape of relevant external grievance mechanisms, both judicial and non-judicial, in our different operating contexts? How do we ensure that our understanding is as complete as possible?
- ▶ How do we ensure we engage constructively and appropriately with state-based grievance mechanisms, within our own rights to defend ourselves against allegations we consider inaccurate?
- ▶ What is the set procedure to deal with complaints involving criminal issues or state authorities and agents?
- ▶ Do we require that our suppliers have their own grievance mechanisms, and how do they relate to our own role in addressing complaints?

### VI-C

#### Designing Effective Operational-Level Grievance Mechanisms

- ▶ Are there existing mechanisms that we could build on in developing internal capacity to address human rights-related complaints?
- ▶ How do we involve internal and any external stakeholders in the design or review of grievance mechanisms?
- ▶ How do we know our mechanisms are effective from the perspective of those for whose use they are intended? How do we test this if we have highly dispersed customers or users?
- ▶ If grievances are not resolved through an operational-level mechanism, is it clear to all what the alternative channels are?