



# TOOLS

TO ENHANCE ACCESS TO  
EFFECTIVE GRIEVANCE  
MECHANISMS AND ENABLE  
EFFECTIVE REMEDY

# TOOLS

To Enhance Access  
to Effective Grievance  
Mechanisms and Enable  
Effective Remedy

***Shift***



## STRENGTHENING ACCESS TO EFFECTIVE GRIEVANCE MECHANISMS AND ENABLING ACCESS TO EFFECTIVE REMEDY

The **Equator Principles** (EPs) provide a robust framework for seeking to prevent and mitigate a range of environmental, social and human rights risks and impacts. However, even with robust implementation of the EP Standards, adverse impacts are an unfortunate reality for many business activities, including those connected to EP-financed transactions.

The EPs require that, for all Category A and, as appropriate, Category B Projects, clients<sup>1</sup> assess human rights risks and impacts in line with the **UN Guiding Principles on Business and Human Rights** (UNGPs) and develop and implement GMs that are scaled to the risks of the project. Specific requirements and guidance in relation to grievance mechanisms (GM) are provided under Principle 6 of the EPs and underpinning standards, including the **IFC Performance Standards** (PS), in particular PS1 and PS2 and associated guidance notes covering community and worker GMs, respectively. Under EP requirements the GM forms an integral part of a project's wider stakeholder engagement process, providing a process for grievances to be raised, assessed, tracked and resolved.

When legitimate grievances concerning adverse impacts occur, the EPs require that affected stakeholders will have access to effective remedy through the GM process, and the UNGPs call for access to remedy through a variety of institutional mechanisms, including GM processes. Remedy is both the process and the outcome that seeks to restore stakeholders harmed by project-related activities to the situation they were in prior to the impacts occurring. The responsibility for providing this remedy will in most cases rest with clients or with third parties undertaking project-related activities (including other project partners, suppliers, customers, or government actors). However, in practice, the parties responsible for providing remedy can in many cases lack either the understanding, the commitment, or the capabilities to provide effective remedy, or any remedy at all. Over the last several years, the Equator Principles Association (EPA) has enhanced its emphasis on access to effective remedy by referencing the importance of access to effective remedy in Principle 6 and by publishing a Guidance Note on Human Rights Impact Assessment (HRIA), which provides initial guidance on establishing effective project level GMs and enabling access to remedy for adverse human rights impacts.

While GM under the EPs are applicable to different types of grievances, this tool was developed in conjunction with Shift to provide additional guidance for EPFIs in their efforts to support clients in providing access to effective GM specifically in relation to adverse impacts on human rights and to enable clients' efforts to provide effective remedy when project-related human rights impacts occur. To "enable" clients' efforts means to play appropriate roles to ensure that, when adverse human rights impacts occur, client or parent entities and third parties are better equipped and more likely to provide remedy to affected stakeholders.

<sup>1</sup> The term "client" is used in the Equator Principles to identify the entity receiving financing or advisory services from EPFIs to develop, acquire or refinance a project or projects (e.g., project-related corporate loans). These tools highlight that to properly support effective GMs and enable access to effective remedy, additional organizational linkage and support from corporate parents may also be critical.

## STRENGTHENING ACCESS TO EFFECTIVE GRIEVANCE MECHANISMS AND ENABLING ACCESS TO EFFECTIVE REMEDY

The guidance is provided in the above context of wider EP compliance and is aligned with the expectations of the UNGPs, which in the decade since their endorsement have also influenced other norms and standards applicable to corporates and banks, including regional and national legislation, judicial decisions and banking industry standards and expectations for responsible lending and sustainable finance more broadly.

These resources are not intended to provide comprehensive guidance for establishing and implementing effective project-level GM, but rather are designed to supplement existing standards and guidance under the EPs specifically in relation to human rights impacts, and focus on connecting the dots between EPFIs and their clients. In particular, this tool should be used in conjunction with the IFC PS and associated guidance notes, related EP Association guidance notes (including guidance on HRIA, the role of IESCs in Effective Consistent Application of the Equator Principles, Evaluating Projects with Indigenous Peoples, and Incorporating Environmental and Social Considerations into Loan Documentation), and existing guidance developed elsewhere. See the Appendix 2 for a fuller list of additional resources.

**ABOUT THIS RESOURCE**

These resources have been developed collaboratively with Shift and are intended primarily for EPFIs, their clients and the independent consultants who support environmental and social risk due diligence, monitoring and reporting. Collectively, they are intended to help clients and EPFIs enhance remedy, by:

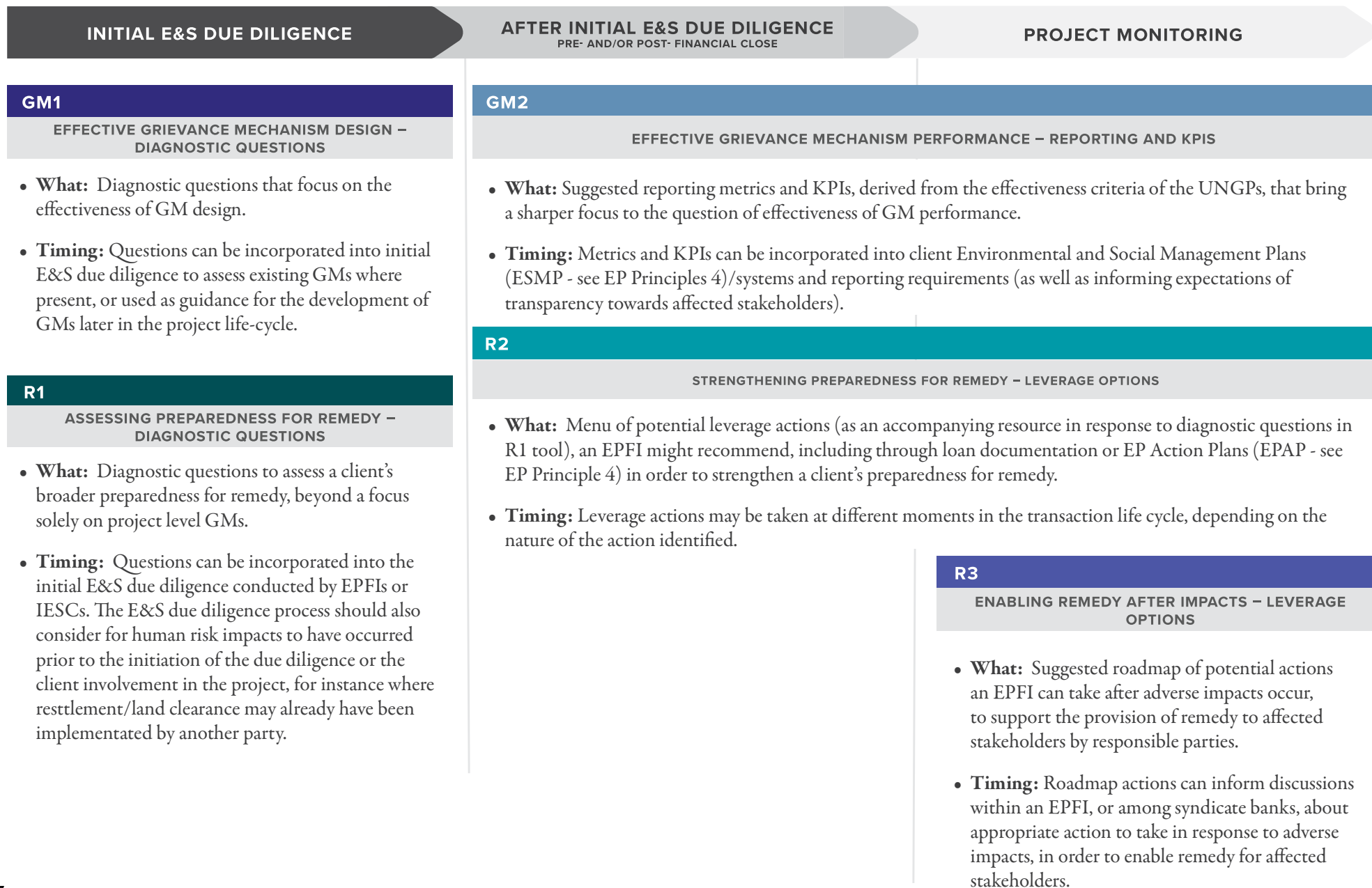
- Strengthening understanding of the processes and organizational strategies and structures needed to provide access to effective remedy, including project-level GMs.
- Focusing on the steps necessary to evaluate whether that infrastructure is in place at the start of the project life-cycle, and what tools are available to develop or enhance that infrastructure through banks' exercise of leverage with clients, including ways to use and strengthen that leverage at different stages of the project to support access to remedy.
- Offering robust approaches and metrics for assessing the performance of GMs and broader corporate responses to situations potentially requiring remedy, to help mitigate risk, limit potential liability, and meet international expectations.

**DISCLAIMER**

This document contains selected information and examples to support the understanding of the requirements in, and implementation of, the Equator Principles and does not establish new principles or requirements. The information and examples are provided without guarantee of any kind, either express or implied, including, without limitation, guarantees as to fitness for a specific purpose, non-infringement, accuracy or completeness. The Equator Principles Association shall not be liable under any circumstances for how or for what purpose users apply the information, and users maintain sole responsibility and risk for its use. Equator Principles Financial Institutions should make implementation decisions based on their institution's policy, practice and procedures. No rights can be derived from this publication.

## OVERVIEW OF THE EFFECTIVE GRIEVANCE MECHANISMS AND ENABLING REMEDY TOOLS

There are five related due diligence tools in this resource covering GMs (GM1 and GM2) and remedy (R1, R2 and R3). These tools are intended to guide EPFIs, clients and IESCs at various stages of the project finance transaction and due diligence process, particularly for higher-risk projects where project-level GMs are required or suggested and adverse human rights impacts are most likely to occur.



## TIMING OF MANAGEMENT CONTROLS WITHIN THE PROJECT LIFECYCLE AND FINANCING PROCESS

Pursuant to the EPs good practice for the timing of the management controls within the project and financing process is summarised as follows:

**1 CONDITIONS PRECEDENT**

As conditions precedent (CP) to signing/financial close ensure the ESMP, SEP and GM (as required under Principles 4, 5 and 6 respectively) meet the relevant requirements (including as specified in this tool for Human Rights issues) and that the client has sufficient resources/resource plans in place to implement such plans. Where an IESC has been appointed under Principle 7, their scope should include review of the adequacy of the plans and the client's capacity to implement them as part of their pre-financial close scope of work (see EPA guidance on consistent implementation of the Equator Principles).

**2 EPAP**

Specific 'one-off' actions required post-Financial Close to maintain compliance with the EPs (e.g. update to the GM prior to operations to reflect changing nature of risks and potentially operational controls) may be included in the EPAP.

**3 COVENANTED DOCUMENTS**

The client's ongoing compliance with the agreed E&S documentation including, inter alia, the ESMP, SEP and GM should be covenanted under the loan documentation. Additional requirements specific to Access to Remedy may also be included in the loan document to manage specific risks as described in this tool. (See EPA Guidance on Incorporating E&S Considerations into Loan Documentation for further details and broader E&S requirements to be included in loan agreements.)

**4 POST FINANCIAL CLOSE REPORTING**

Require self-reporting by the client, including on the implementation of the GM and including issues, outcomes and KPIs, as reporting covenants under the loan document. The structure/content of the self-monitoring reports can either be defined in the loan documentation or as a CP to signing.

**5 MONITORING PHASE IESC**

Appointment of a monitoring consultant for higher risk projects as per Principle 9 to review ongoing compliance with E&S requirements (including the GM/access to remedy requirements) as a CP to signing and the post-FC monitoring role/scope embedded as a covenant in the loan documentation.

**6 LOAN COMPLIANCE**

Compliance with loan requirements is managed through processes defined in the loan documentation, including review, cure periods and events of default (see also EPA Guidance for Incorporating E&S Considerations in Loan Documentation).

## ENABLING REMEDY: KEY TERMS

LEVERAGE	REMEDY	LEVERAGE FOR REMEDY
<ul style="list-style-type: none"> <li>• Leverage is the ability of a company (or EPFI) to influence the behaviors or practices of a third party.</li> <li>• Under the UNGPs, leverage is the expected action when a company (or EPFI) is linked to an impact caused by another party.</li> <li>• Leverage can come from many sources, including: contractual, commercial, relationship, expertise, and collaboration with others.</li> <li>• Leverage can take many forms: There is no defined set of actions a company (or EPFI) could take to seek to influence another party. These resources identify common approaches likely to be relevant in an EP transaction context.</li> </ul>	<ul style="list-style-type: none"> <li>• An adverse human rights impact is fundamentally an impact on basic human dignity. Remedy is the process and the outcome that seek to restore that dignity. The focus on process means that remedy should be stakeholder-driven. The focus on outcomes seeks to counteract, or make good, the negative impact.</li> <li>• Under the UNGPs, remedy is the expected action by a third party that causes or contributes to a harm.</li> <li>• Remedy can take many forms: apology, restitution, rehabilitation, compensation, sanction and guarantees of non-repetition. Ideally, the impacted party should choose the appropriate form(s) of remedy.</li> </ul>	<ul style="list-style-type: none"> <li>• Remedy is also relevant in situation of linkage under the UNGPs.* <b>Enabling remedy</b> is often one of the most powerful forms of leverage.</li> <li>• Although an EPFI in a situation of linkage may itself not have a responsibility to provide or contribute to remediation of an impact, there are many roles it can play to enable remedy by others.</li> <li>• Leverage for remedy means building and using influence with others to encourage, equip, or require them to meet their responsibilities with regard to remedy.</li> <li>• It includes taking actions <i>before</i> impacts occur, to strengthen preparedness for remedy, and actions <i>after</i> impacts occur, to support the provision of remedy by others in practice.</li> </ul>

## \* NOTE: Understanding Linkage and Responsibility for Remedy

See the EPA Human Rights Guidance Note for a discussion of the ways in which EPFIs and other actors might be connected to adverse impacts, including the UNGPs framework of cause, contribution and linkage. As that note and additional authoritative guidance from OHCHR and the OECD highlight, financial institutions can, in some instances, contribute to project-related impacts. In such cases, EPFIs will have a responsibility not only to use leverage to encourage remedy, but to contribute directly to remedy in a manner proportionate to their contribution. EPFIs should carefully analyze their involvement with impacts in specific cases to understand their responsibility related to remedy. (See Appendix 2 “Additional Resources - Analyzing Connection to Impacts”).



## GM 1 ASSESSING EFFECTIVE GRIEVANCE MECHANISM DESIGN

This tool provides a set of diagnostic questions that bring sharper focus to the question of effectiveness of GM design.

- The questions below are aligned and consistent with the criteria for effectiveness outlined in the UNGPs, incorporated by reference in EP Principle 6 (see graphic).
- The questions can be integrated into the E&S due diligence, including into the terms of reference of the IESC, as part of their review of the GM and the client's capacity to implement it prior to financial close. Questions can also be raised in later ongoing monitoring of GMs as they get operationalized.
- The GM should be designed and scaled to the projects' risks and impacts. If and as new risks and impacts are identified through the lifecycle of the project, the design and scale of the GM may need to evolve to reflect this changing context.

### WHY FOCUS ON EFFECTIVE PROJECT-LEVEL GRIEVANCE MECHANISMS?

Adverse impacts can still occur in many EP-financed transactions – even with effective risk assessment and integration of prevention and mitigation measures in the client's management system/ESMP. Effectively addressing and resolving those impacts is an essential part of any project's responsibility towards workers and its social license to operate with communities – and has also been demonstrated to directly affect project costs and profitability.

Where stakeholder concerns are effectively identified, addressed and resolved, the project is often left in a stronger position with affected stakeholders. Where impacts are not effectively managed, they often erode the project's social license to operate with stakeholders and escalate into much more significant issues – including disruptions to project activities, reputational harm, and regulatory or judicial processes. The primary mechanism for meeting this responsibility is often a project-level GM. Although the EP already require project-level GMs for Category A and, as appropriate, Category B projects, this tool provides detailed, practicable and actionable questions and steps that EPFIs, IESC's and clients can ask / take to ensure they are appropriately configured and resourced based on project risks and adequately monitored for performance in order to enhance their effectiveness throughout the project lifecycle, consistent with the expectations of the UNGPs.

There is a strong case for ensuring that project-level GMs are effective in practice and appropriately scaled to the

### EFFECTIVENESS CRITERIA

LEGITIMATE

ACCESSIBLE

PREDICTABLE

EQUITABLE

TRANSPARENT

RIGHTS COMPATIBLE

CONTINUOUS IMPROVEMENT

BASED ON DIALOGUE WITH STAKEHOLDERS

## GM 1 ASSESSING EFFECTIVE GRIEVANCE MECHANISM DESIGN

risks and impacts in an ongoing manner.

- **For Stakeholders:** Effective project-level GMs provide a structured process for affected stakeholders, including workers and community members<sup>1</sup>, to raise concerns or complaints about adverse impacts from business activities and to have those concerns effectively addressed by clients.
- **For Clients:** Effective project-level GMs provide clients with critical feedback about adverse impacts on people from project activities and allow them to take corrective measures to effectively address them, prevent escalation, and prevent future impacts. This can help clients more effectively manage social risks that could adversely impact the project, and in turn helps to maintain a project's social license to operate. This is equally relevant to other entities carrying out business activities connected to the project, such as joint venture partners, suppliers, contractors and government actors (particularly related to pre-construction land acquisition and resettlement).
- **For EPFIs:** Effective project-level GMs act as a primary safeguard, enabling reactive response to impacts that may occur including those not identified or fully addressed through the client's assessment and/or the initial due diligence. They can ensure that actual impacts are identified and addressed; that clients meet their responsibilities as expressed in the Equator Principles; and that credit, social, reputation and potential liability risks are effectively managed.

<sup>1</sup> Separate GM may be developed for communities and workers, and requirements and guidance are provided in IFC PS1/GN1 and PS2/GN2 respectively.

## THE BUSINESS CASE – IN FINANCIAL TERMS – FOR EFFECTIVE GRIEVANCE MECHANISMS

- One study found that, as a result of conflict between companies and local communities, a world class mining project with capital expenditure of between US\$3 and US\$5 billion would suffer roughly US\$20 million per week of delayed production in net present value terms. (“Costs of Conflict”, 2013).
- Another study highlighted community conflict as a critical component in calculating the financial market valuation of the publicly traded parent firms of mining companies: as much as 63 percent of the market capitalization of these companies can be linked to the quality of their stakeholder engagement – double the percentage linked to the value of the actual gold in the ground. (“Spinning Gold”, 2013).
- More recently, a study highlighted the cost-effectiveness of investing in preventive actions that mitigate social risk – including stakeholder engagement and project level GMs. Based on a review of 137 projects, research estimated potential financial losses of inaction to be, conservatively, \$25–40 million (or 24–37% of average net present value) from physical risks that could be mitigated and avoided by various actions. By contrast, the financial cost of effective preemptive social and environmental risk mitigation actions, which effectively avoid delays caused by disputes with stakeholders, was approximately 2% of total project costs. (“Financial Costs of Mitigating Social Risks”, 2021).

**GM 1 ASSESSING EFFECTIVE GRIEVANCE MECHANISM DESIGN: DIAGNOSTIC QUESTIONS**

LEGITIMATE

**Participatory Design and Oversight:**

- Did the process of designing the GM meaningfully involve affected stakeholders, representative of the groups for whom the mechanism is intended?
- Does the GM have a credible oversight body that includes meaningful representation of affected stakeholders, representative of the groups for whom the mechanism is intended?
- Is the GM suitably scaled to the project’s risks and impacts (and does it allow for the design to change to meet evolving risks and impacts over the project lifetime)?

**Operational Effectiveness:**

- Does internal management of the GM involve representation from different operational functions, including those whose activities may cause impacts?
- Is the GM designed to ensure effectiveness criteria are met at all project levels (including contractors/subcontractors)?
- Does internal accountability for the GM involve sufficiently senior leadership to convene internal participation across functions?
- Has the client dedicated sufficient financial resources for the effective operation of the GM, and any remedies that may need to be provided as a result of grievances?
- Do senior executives effectively support the GM, through internal and external communications, and are they regularly briefed on the performance of the GM, including trends and severe cases? (This is applicable where GM is in operation.)

ACCESSIBLE

**Barriers to Submitting Complaints:**

- Can grievances be raised through a variety of different channels, appropriate to local context and culture, based on stakeholder input?
- Are admissibility criteria sufficiently broad to ensure that all potentially affected stakeholders (as identified by the E&S due diligence) are able to file grievances about likely risks / potential impacts (as identified by the E&S due diligence)?
- Are initial evidentiary thresholds not so onerous as to deter the filing of legitimate complaints without undue burden on the affected stakeholder?

**Non-Reprisal:**

- Does the client have a formal commitment to non-retaliation, and a formal procedure and/or track record for addressing allegations of retaliation, including retaliation by parties other than the company itself (including individual managers, third parties, and other actors, including governments).
- Do senior leaders speak openly, including to stakeholders and relevant third parties connected to the project, about the value to the company of hearing stakeholder concerns and the company’s commitment to non-retaliation?
- Does the grievance process provide safeguards for stakeholders who may fear retaliation (including protecting the identity of complainants)?

**Awareness and Promotion:**

- Has the client taken proactive and effective steps to communicate with stakeholders about the GM, through multiple channels, in local languages, through means appropriate to local context and culture?

**GM 1 ASSESSING EFFECTIVE GRIEVANCE MECHANISM DESIGN: DIAGNOSTIC QUESTIONS**

**PREDICTABLE**

**Clear Procedure:**

- Does the grievance process have a clear procedure, identifying the steps in the process, internal responsibilities, and indicative (or required) timeframes?
- Does the grievance process have an effective system for tracking grievances and their status?

**Clear Expectations for Processes and Outcomes:**

- Are stakeholders informed upon filing a grievance of the process options and potential outcomes from the grievance, including the opportunities they will have to share their perspectives?

**EQUITABLE**

**Addressing Power Imbalances:**

- Does the client make relevant internal information about company activities available to complainants, to enable effective participation in the grievance process?
- Are stakeholders able to access appropriate expertise and be accompanied by external parties of their choosing?

**Escalation Pathways:**

- Does the GM have a clear escalation process, ideally managed by an independent third party, if the parties are unable to reach satisfactory outcomes through dialogue? For worker GM, is there an escalation pathway up the contracting chain?
- Are stakeholders informed of options to pursue their complaints through other avenues at the outset of a grievance process?

**TRANSPARENT**

**Transparency on Process:**

- Does the GM acknowledge receipt of grievances to complainants?
- Are complainants updated regularly about the status of their complaints, through means appropriate to local language, context and culture?

**Transparency on Performance:**

- Does the GM report periodically and publicly to the broader community of affected stakeholders about the performance of the GM, including the types of issues raised, the types of outcomes reached, corrective actions taken by the project, and other forms of remedy?
- Does the GM have protections in place to safeguard confidential information, and report publicly in ways that do not disclose confidential information?

**GM 1 ASSESSING EFFECTIVE GRIEVANCE MECHANISM DESIGN: DIAGNOSTIC QUESTIONS****RIGHTS-COMPATIBLE****Preserving Rights:**

- Are complainants explicitly informed about other avenues for raising complaints (such as judicial avenues) and other forms of remedies that may be available through those alternative processes?
- Are complainants required to waive their rights to other avenues of recourse in order to file a grievance, or to limit the types of remedies they might receive?
- Does the GM take steps to ensure that processes, outcomes and remedies accord with internationally-recognized human rights?
- Is it ensured that the GM does not impede access to judicial/administrative remedies available under law or substitute for GMs under collective agreements?

**Independent Processes:**

- Does the grievance procedure have clearly defined criteria to identify particularly severe impacts that may require independent process and expertise, rather than a company-led process?

**CONTINUOUS IMPROVEMENT****Operational Improvements:**

- Does the GM identify lessons and insights from grievances to prevent similar future impacts?
- Does internal grievance management or governance include relevant operational functions that may need to change behaviors or practices when root causes of grievances are identified?
- Does the GM have an internal and/or multistakeholder oversight function that periodically reviews trends in grievances and aggregates learning?

**Assessing Stakeholder Satisfaction**

- Does the GM's procedure include an assessment of complainant's satisfaction with process and outcomes as a routine part of any grievance?
- Does the client periodically engage with the broader community of stakeholders to seek feedback on the performance of the GM?

**Continuous Improvement of the Mechanism**

- Does the GM periodically review internal and external stakeholder feedback to identify and implement improvements to the grievance procedure and mechanism?
- Does the GM use KPIs (including those identified in Tool 2 below) to track and assess its performance?
- If relevant, what changes to the GM has the client made based on internal or external stakeholder feedback?

**GM 1 ASSESSING EFFECTIVE GRIEVANCE MECHANISM DESIGN: DIAGNOSTIC QUESTIONS****BASED ON DIALOGUE****Opportunities for Dialogue:**

- Do stakeholders have sufficient opportunities to participate in shaping the process, including input into the preferred process, presenting information, questioning the company, reviewing findings, and engaging on potential outcomes?
- Are potential outcomes informed by and/or reached through dialogue with complainants about the remedies being sought?

**Appropriately Skilled Staff:**

- Do the staff who manage the grievance process and interface with complainants have appropriate skills in inter-personal dialogue, interest-based negotiation and dispute resolution?
- Are the staff who participate in the grievance process on behalf of the company appropriately empowered to explore and commit to solutions, and/or do they have sufficient access to appropriate decision-making bodies or members of management to ensure timely and appropriate resolution of complaints?

**IMPLEMENTATION NOTE**

The nature and management of the grievance mechanism may need to evolve through the project lifecycle, for example from construction to operation. In addition, in some cases, for instance on sovereign loans, the EPC contractor rather than the client/borrower, may take lead responsibility for the implementation of the GM, especially during construction. In such cases, it is still important that the client recognizes and understands its role as having ultimate responsibility to ensure compliance with the client requirements under the EPs, including in relation to GM and remedy.



GM1

GRIEVANCE MECHANISM  
DESIGN: DIAGNOSTIC  
QUESTIONS

GM2

MONITORING EFFECTIVE GRIEVANCE  
MECHANISM PERFORMANCE:  
SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS  
FOR REMEDY: DIAGNOSTIC  
QUESTIONS

R2

STRENGTHENING  
PREPAREDNESS FOR REMEDY:  
SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY  
AFTER IMPACTS OCCUR:  
SAMPLE LEVERAGE ACTIONS

## GM 2 MONITORING EFFECTIVE GRIEVANCE MECHANISM PERFORMANCE: SAMPLE REPORTING METRICS

This tool provides a set of potential reporting metrics that can help clients, independent consultants, and EPFIs to monitor effective GM performance.

- These metrics can be incorporated into loan documentation, reporting requirements, or ESMPs and Management Systems (EP Principle 4), at the appropriate point in the financing and project cycle (see page 6). Additional KPIs can be used to evaluate performance over time.
- Given the focus on transparency in the EPs and IFC PS and the UNGPs effectiveness criteria, clients should be encouraged to disclose as much information on the performance of the GM as possible, in order to provide information sufficient to build trust and confidence in the mechanism. If affected stakeholders do not view the mechanism as legitimate, they will not use it, depriving clients of an early warning system of issues that need to be managed before they escalate into wider disputes. Clients may nonetheless have concerns over releasing sensitive information in the public domain, so that information should at a minimum be provided to consultants and EPFIs.
- KPIs need to be developed and interpreted carefully, in order to ensure that they align with the objectives of the GM. For example, a simplistic KPI of ‘number of grievances’ could incentivize informal resolution or behaviors that limit accessibility. Sample KPIs, and guidance on their interpretation, are included in the Appendix.

### RED FLAG FOR EFFECTIVENESS: ZERO COMPLAINTS

Stakeholder concerns, complaints and actual impacts are a reality of most business activities. GMs help companies identify and address issues through constructive, structured processes. ‘Zero complaints’ is therefore not the objective of a GM. Rather it is more likely a sign of ineffectiveness: that stakeholders either are not aware of the GM, or do not trust it as an effective channel for raising concerns and having them addressed.

GM 1

GRIEVANCE MECHANISM DESIGN: DIAGNOSTIC QUESTIONS

GM 2

MONITORING EFFECTIVE GRIEVANCE MECHANISM PERFORMANCE: SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS FOR REMEDY: DIAGNOSTIC QUESTIONS

R2

STRENGTHENING PREPAREDNESS FOR REMEDY: SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY AFTER IMPACTS OCCUR: SAMPLE LEVERAGE ACTIONS

**GM 2 MONITORING EFFECTIVE GRIEVANCE MECHANISM PERFORMANCE: SAMPLE KPIS & REPORTING METRICS**

**SAMPLE REPORTING DATA FOR GRIEVANCE MECHANISM PERFORMANCE**

NUMBER OF GRIEVANCES

REPORTING DATA	ADDITIONAL DETAIL
Number of grievances during reporting period	<ul style="list-style-type: none"> <li>• How many new grievances filed during the reporting period?</li> <li>• How many open (unresolved) grievances in total?</li> </ul>
Types of issues raised	<ul style="list-style-type: none"> <li>• What different categories of issues or impacts have been raised?</li> </ul>
Stakeholders filing complaints	<ul style="list-style-type: none"> <li>• What demographic data can be provided about complainants (based on factors relevant to the project context, such as: gender, age, location, ethnic group, employment status, etc)</li> <li>• Breakdown of the types of impacts by relevant demographic data</li> </ul>

**ILLUSTRATIVE REPORTING DATA FOR GRIEVANCE MECHANISM PERFORMANCE**

PROCESS

REPORTING DATA	ADDITIONAL DETAIL
Status of the grievances / resolution %	<ul style="list-style-type: none"> <li>• By issue type, what percentage or number of grievances are at each stage of the grievance procedure? (intake, initial assessment, investigation, dialogue, implementation, resolution, escalation, etc).</li> <li>• By issue type, what percentage of grievances are closed?</li> <li>• Were any grievances referred to another mechanism?</li> </ul>
Time to response / resolution	<ul style="list-style-type: none"> <li>• By issue type, what was the average response time to resolution?</li> </ul>
Stakeholder satisfaction with process (for closed complaints)	<ul style="list-style-type: none"> <li>• By issue type and demographic group, what level of satisfaction with the process did stakeholders report?</li> </ul>
Types of outcomes	<ul style="list-style-type: none"> <li>• By issue type, what types of outcomes were achieved? (i.e., rehabilitation / corrective action; compensation; apology; changes to company policy or practice; etc)</li> <li>• Number of plans or procedures that have been revised in response to a grievance</li> </ul>
Stakeholder satisfaction with outcomes	<ul style="list-style-type: none"> <li>• By issue type and demographic group, what level of satisfaction with outcomes did stakeholders report?</li> </ul>

OUTCOMES



GM 1

GRIEVANCE MECHANISM  
DESIGN: DIAGNOSTIC  
QUESTIONS

GM 2

MONITORING EFFECTIVE GRIEVANCE  
MECHANISM PERFORMANCE:  
SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS  
FOR REMEDY: DIAGNOSTIC  
QUESTIONS

R2

STRENGTHENING  
PREPAREDNESS FOR REMEDY:  
SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY  
AFTER IMPACTS OCCUR:  
SAMPLE LEVERAGE ACTIONS**GM 2 MONITORING EFFECTIVE GRIEVANCE MECHANISM PERFORMANCE: SAMPLE REPORTING METRICS****ADDITIONAL QUALITATIVE INFORMATION TO SUPPLEMENT REPORTING DATA****Issues Raised:**

- Did any particularly severe impacts occur, or were any grievances alleging particularly severe impacts filed, during this reporting period?
- During the reporting period, did the company participate in any external grievance processes, regarding impacts alleged to have occurred in connection with its operations?
- Were there any trends in the types of grievances filed between this reporting period and previous periods?

**Remedies Provided:**

- What different forms of remedy were provided by the client to stakeholders? Were these perceived as adequate by stakeholders?
- Were there any operational changes undertaken in response to specific grievances or observed trends? How was the impact of any changes measured or assessed?

**Oversight and Accountability of the Mechanism:**

- Were there any meetings of internal and/or joint oversight bodies? What were the key points of discussion?
- Were any activities undertaken to communicate or engage with stakeholders more broadly about the performance and outcomes from the GM, including the perceived adequacy of any forms of remedy provided?
- Were any other activities undertaken to evaluate and/or strengthen the effectiveness of the GM? Are any planned for the next reporting period?

GM 1

GRIEVANCE MECHANISM  
DESIGN: DIAGNOSTIC  
QUESTIONS

GM 2

MONITORING EFFECTIVE GRIEVANCE  
MECHANISM PERFORMANCE:  
SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS  
FOR REMEDY: DIAGNOSTIC  
QUESTIONS

R2

STRENGTHENING  
PREPAREDNESS FOR REMEDY:  
SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY  
AFTER IMPACTS OCCUR:  
SAMPLE LEVERAGE ACTIONS

## R1 ASSESSING PREPAREDNESS FOR REMEDY

GMs alone may not be sufficient to ensure that remedy responsibilities can or will be met in practice. Additional factors – such as a company’s understanding and commitment to meeting the remedy responsibility, the quality of their human rights assessment; and management systems, capabilities and extent of their resources – can all play a role in being able to deliver effective remedy. It is therefore essential that the EPFIs connected with a project, supported by their IESC, examine and agree these broader aspects of preparedness for remedy of clients, project partners and other value chain actors prior to signing and before impacts occur in order to create sufficient leverage to ensure that all parties are in a position to meet their responsibilities to deliver remedy in practice.

**This tool provides a set of diagnostic questions to assess a client’s preparedness for remedy.**

- It is intended for higher-risk projects, where adverse impacts are likely to occur during the course of a project, even with robust prevention and mitigation measures.
- It seeks to determine in advance of signing how likely the client is to meet its responsibilities with regard to remedy, so that EPFIs can recommend proactive and preemptive action to strengthen the client’s commitment and capability to provide remedy to affected stakeholders should it be necessary.
- These questions can be incorporated into the initial E&S due diligence, including in the terms of reference of E&S consultants.
- While these questions are focused on the client’s preparedness for remedy, the same questions can be adapted to inform the client’s own due diligence on project partners, such as key subcontractors, suppliers and joint venture partners, including government actors.

### ASSESSING PREPAREDNESS FOR REMEDY

1

GAPS IN CLIENT COMMITMENT  
& UNDERSTANDING OF REMEDY

2

GAPS IN CLIENT ASSESSMENT  
PROCESSES

3

GAPS IN MANAGEMENT  
SYSTEMS, CAPABILITIES &  
RESOURCES

GM 1

GRIEVANCE MECHANISM  
DESIGN: DIAGNOSTIC  
QUESTIONS

GM 2

MONITORING EFFECTIVE GRIEVANCE  
MECHANISM PERFORMANCE:  
SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS  
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QUESTIONS

R2

STRENGTHENING  
PREPAREDNESS FOR REMEDY:  
SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY  
AFTER IMPACTS OCCUR:  
SAMPLE LEVERAGE ACTIONS

## R1 ASSESSING PREPAREDNESS FOR REMEDY: DIAGNOSTIC QUESTIONS

### 1. CLIENT COMMITMENT AND UNDERSTANDING OF REMEDY

**Scope:** Does the client understand that remedy should extend to all types of human rights impacts, to various connections to impacts (contribution and causation), and to all types of affected stakeholders (e.g., workers and community members, and any relevant sub-groups)?

**Understanding of Remedy as Process and Outcomes:** Does the client understand that effective remedy may need to take many forms, and that remedy should involve stakeholders in a participatory process?

**Applicability:** Does the client understand that the responsibility to provide or contribute to remedy is engaged whenever the company causes or contributed to impacts, and that when it is linked to impacts (i.e., impacts caused by third parties), EPFIs may ask the client to use its leverage to enable remedy from the parties that caused or contributed to the harm?

**Grievance Processes:** Has the client expressed or demonstrated a willingness to participate in credible third-party processes? Does the client promote, invest in, and ensure the effectiveness of its GM?

**Track Record:**

- Has the client (or any parent companies) provided effective or appropriate remedy in the past for impacts it has caused or contributed to – particularly the types of impacts or stakeholders identified in the EPFI's or client's E&S due diligence?
- Has the client participated constructively in the past in external grievance processes?
- Alternatively, does the client (or any parent companies) have a track record of bad faith efforts, such as inappropriately disputing legitimate claims by stakeholders, using litigation to delay or impose costs, etc?

**Disclosure:** Does the client (or any parent companies) speak openly, including through public disclosure, about past or potential impacts, and or past instances where remedy was provided, and how insights and lessons learned were applied?

GM 1

GRIEVANCE MECHANISM DESIGN: DIAGNOSTIC QUESTIONS

GM 2

MONITORING EFFECTIVE GRIEVANCE MECHANISM PERFORMANCE: SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS FOR REMEDY: DIAGNOSTIC QUESTIONS

R2

STRENGTHENING PREPAREDNESS FOR REMEDY: SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY AFTER IMPACTS OCCUR: SAMPLE LEVERAGE ACTIONS

**R1 ASSESSING PREPAREDNESS FOR REMEDY: DIAGNOSTIC QUESTIONS**

**2. ASSESSMENT PROCESSES**

**Stakeholder Mapping:** Has the client undertaken effective stakeholder mapping, so that it knows who could potentially suffer harm from adverse impacts (remedy for whom)?

**Risk Identification:** Is the client’s assessment sufficiently robust such that the most severe and most likely impacts are known, to the greatest extent possible (remedy for what)?

**Stakeholder Engagement:** Is the client’s assessment informed by stakeholder perspectives (indicating that the client would be more likely to undertake a participatory approach to remedy (the ‘how’ of remedy)?

**Stakeholder Relationships:** Does the client have constructive relationships with stakeholders, such that if impacts were to occur, a constructive approach would be more likely?

**3. MANAGEMENT SYSTEMS, CAPABILITIES & RESOURCES**

**Grievance Mechanisms:** Does the client have effective systems or processes for stakeholders to raise concerns or complaints, and to have them effectively addressed, or has the client committed to participate in credible external grievance processes (NOTE: see Remedy Tools 1 and 2).

**Financial Resources:**

- If adverse impacts were to occur, is the client likely to have the financial resources required to provide remedy for those impacts (appropriate to size/scale of the project, severity of anticipated impacts, etc.)? (i.e., is the project budget-constrained)?
- Have funds been set aside for potential remedial measures?
- Does the client have insurance or contingency funds for the types of impacts of greatest concern?

**Technical Resources:** If adverse impacts were to occur, is the client likely to have access to the technical expertise necessary to provide remedy? (i.e., human resources with experience or expertise in fact-finding, appropriate legal expertise and experience, stakeholder engagement, etc.)?

**Internal Governance:** Does the client have the internal governance structures to take any necessary cross-functional action for remedy and/or leadership decisions that may be necessary?

GM1

GRIEVANCE MECHANISM  
DESIGN: DIAGNOSTIC  
QUESTIONS

GM2

MONITORING EFFECTIVE GRIEVANCE  
MECHANISM PERFORMANCE:  
SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS  
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QUESTIONS

R2

STRENGTHENING  
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SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY  
AFTER IMPACTS OCCUR:  
SAMPLE LEVERAGE ACTIONS

## R2 STRENGTHENING PREPAREDNESS FOR REMEDY

This tool provides a set of possible leverage actions to strengthen a client's preparedness for remedy. It should be used in conduction with Tool R1, which assesses a client's preparedness for remedy. Based on areas of concern highlighted in the client's HRIA and the IESC due diligence, EPFIs can use this tool to identify specific leverage actions that might strengthen a client's preparedness for remedy preemptively and proactively, before impacts occur. The selection of leverage actions utilised in any case should be appropriate to the scale of the human rights risks and impacts.

- Lead banks and the IESC can reference the menu of actions in their due diligence review and the development of recommendations for improvements prior to signing, while syndicate participants can reference these tools in their engagement with the lead bank/IESC or, where appropriate, with the client directly.
- The primary leverage approaches that an EPFI might use to encourage or require specific actions in different circumstances would include: client engagement, loan documentation or contractual provisions, and inclusion of specific actions and requirements within the ESMP and GM *etc.*. The specific circumstances of the transaction will help to determine which approaches are available and/or likely to be most effective.
- While these actions focus on strengthening a client's preparedness for remedy, some of them can be adapted to be applicable to third parties, including contractors and subcontractors, connected to the project.
- While an EPFI's ability to use and/or build leverage to encourage or require certain actions that would strengthen a client or a third party's preparedness for remedy may be greatest prior to signing and financial close, different actions can also be taken at different moments in the project life cycle, depending on the nature of the actions identified. The availability of actions later in the project life-cycle, including those recommended in Tool R3, will depend heavily on the various contractual or other provisions in the loan documentation that require client to act, or enable or constrain EPFIs from taking certain steps in different situations.
- EPFIs should consult internal and external legal counsel when seeking to embed leverage in loan documents or other binding mechanisms.

## STRENGTHENING PREPAREDNESS FOR REMEDY

1

### GAPS IN CLIENT COMMITMENT & UNDERSTANDING OF REMEDY

- Engage client and build the business case for remedy
- Encourage or require commitments to remedy through loan documentation provisions, action plans, or other forms of public commitment

2

### GAPS IN CLIENT ASSESSMENT PROCESSES

- Enhance Risk Assessments, Enhance Stakeholder Mapping and Engagement
- Assess Quality of Stakeholder Relationships

3

### MANAGEMENT SYSTEMS, CAPABILITIES & RESOURCES

- Strengthen the client's GM
- Ensure adequate financial resources
- Ensure adequate technical resources
- Require internal escalation mechanisms

GM1

GRIEVANCE MECHANISM  
DESIGN: DIAGNOSTIC  
QUESTIONS

GM2

MONITORING EFFECTIVE GRIEVANCE  
MECHANISM PERFORMANCE:  
SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS  
FOR REMEDY: DIAGNOSTIC  
QUESTIONS

R2

STRENGTHENING  
PREPAREDNESS FOR REMEDY:  
SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY  
AFTER IMPACTS OCCUR:  
SAMPLE LEVERAGE ACTIONS

## R2 STRENGTHENING PREPAREDNESS FOR REMEDY: SAMPLE LEVERAGE ACTIONS

### 1. CLIENT COMMITMENT AND UNDERSTANDING OF REMEDY

- **Engage client and build the business case:** Engage with client's executive leadership on expectations under the EPs, international frameworks, regulation, etc. Specific actions to consider:
  - **Business case:** through engagement, make the business case for remedying impacts (business continuity, including project delays; social license to operate; reducing litigation risk; risk management and de-escalation; workplace productivity; access to capital; etc.).
  - **Training:** share resources with the client explaining the responsibility for remedy, when it is required, what effective remedy entails, forms it might take; and encourage the client to undertake broader training on international frameworks and expectations (UNGPs, OECD Guidelines, etc).
  - **Industry platforms:** encourage or require the client to join an industry or sector platform focusing on responsible business conduct, including responsibilities with regard to remedy, and where appropriate, specific impacts of greatest concern.
- **Require commitment:** Encourage or require contractual commitments from the client, through loan documentation provisions, EPAPs, or through public commitment, that the client will meet its responsibilities with regard to remedy.
  - **Commitment to remedy clauses:** include remedy requirements in the covenanted GM and/or relevant loan documentation provisions on client's commitment to providing remedy for adverse impacts and to ensuring effective project-level GMs.
  - **Integrate commercial incentives/penalties:** integrate incentives / penalties tied to the client taking certain actions or achieving certain levels of performance with regard to remedy (e.g., conditioning loan disbursements on good faith / constructive engagement towards remedy for any outstanding impacts).
  - **Require resource allocations for remedy:** include commitments in the covenanted ESMP/GM and/or loan documentation to ensure financial resources are available for remedy (i.e., performance bonds, insurance, escrow accounts).
  - **Monitoring and reporting:** include appropriate frequency and rigor of monitoring and reporting requirements (on grievances, impacts, remedial efforts) to provide greater visibility to the EPFI in case of specific impacts. Include requirements for post-financial close IESC monitoring within the loan documentation (see also the EP Association Guidance on Consistent Implementation of the Equator Principles for further details on the post-financial close IESC scope of work).
  - **Escalation pathways:** require the client to agree to good faith participation in any complaints submitted to independent complaints bodies (MSIs, NCPs, judicial processes, etc).
  - **Transparency / disclosure clauses:** include contractual clauses allowing EPFI to make exception to general confidentiality clauses to disclose its leverage actions with regard to remedy, if client fails to take appropriate action towards remedy.
  - **Exit clauses:** ensure exit clauses in contracts, in case of client's failure to take acceptable steps to address adverse human rights impacts (see EP Association Guidance for E&S provisions in Loan Documentation for further details on approaches to cure periods and events of default).

GM 1

GRIEVANCE MECHANISM  
DESIGN: DIAGNOSTIC  
QUESTIONS

GM 2

MONITORING EFFECTIVE GRIEVANCE  
MECHANISM PERFORMANCE:  
SAMPLE REPORTING METRICS

R1

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QUESTIONS

R2

STRENGTHENING  
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SAMPLE LEVERAGE ACTIONS

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USING LEVERAGE FOR REMEDY  
AFTER IMPACTS OCCUR:  
SAMPLE LEVERAGE ACTIONS

## R2 STRENGTHENING PREPAREDNESS FOR REMEDY: SAMPLE LEVERAGE ACTIONS

### 2. DUE DILIGENCE PROCESSES

Through engagement, effective pre-signing/financial close due diligence (including by the IESC), agreement of the HRIA, ESMP and GM prior to signing and/or loan documentation, require the client to:

- **Enhance risk assessment:** Undertake more robust, targeted risk assessment, either directly or by engaging a jointly-identified third party with appropriate expertise, focused on better understanding of specific issues or risks likely to require remedy.
- **Enhance stakeholder mapping and engagement:** Strengthen stakeholder mapping and engagement by developing and implementing a robust stakeholder engagement plan so that the company has adequate baseline information about potentially affected stakeholders who might potentially require remedy, and existing routines for and experience with stakeholders, prior to impacts occurring, and so that company has relationships to leverage should remedy processes become necessary.
- **Assess quality of stakeholder relationships:** Undertake an assessment of stakeholder relationships, as both a diagnostic and a baseline for improving those relationships where necessary, before remedy is required.

Re-evaluation of the above maybe required throughout the project lifecycle to reflect, inter alia, project performance, changes in the project status (e.g. from construction to operation) and design, or evolution of the wider project context.

□



## R2 STRENGTHENING PREPAREDNESS FOR REMEDY: SAMPLE LEVERAGE ACTIONS

Through engagement, effective pre-signing/financial close due diligence (including by the IESC), agreement of the HRIA, ESMP and GM prior to signing and/or loan documentation, require the client to:

- Ensure that the client's GM addresses** (see Guidance Note and supporting resources on Effective Project-Level GMs):
  - 3rd-party assessment: Require robust third-party assessment of the project-level GM, and identify independent consultants with specific expertise in GM assessment.
  - Stakeholder perspectives: As part of the assessment of project-level GM, require an assessment of stakeholder perspectives on the GM.
  - Expert / consultant: Require the client to engage a third-party consultant with appropriate expertise to design and/or strengthen the project-level GM.
  - Internal governance: Require an internal cross-functional grievance management body, with appropriate escalation pathways to senior management.
  - External governance: Require a stakeholder oversight body to monitor and/or govern the GM.
  - External escalation: Encourage or require identification of an independent escalation mechanism (i.e. NCP, national regulatory authority, bank-level mechanism, etc), for stakeholders to utilize when recourse through the project-level mechanism is inadequate for some reason.
  - Internal escalation: For the worker GM, require a process of escalation up the contracting chain, including to the client. All workers should be made aware of the escalation process.
- Ensure adequate financial resources**
  - Require insurance or performance bonds for adverse human rights impacts
  - Require a reserve or escrow account as a remedy fund for adverse environmental and social (including human rights) impacts
  - Structure loan agreement to ensure that project or client has sufficient reserves for remedy for adverse environmental and social (including human rights) impacts
- Ensure adequate technical resources**
  - Hire internal expertise: the client to hire relevant internal expertise for managing grievances (i.e., stakeholder engagement, mediation, fact-finding, etc).
  - Build internal expertise: Identify and encourage the client to participate in appropriate training opportunities to build the required expertise internally
- Require internal escalation mechanisms**
  - Require disclosure of an internal process for escalation of remedy issues from project vehicle governance to broader corporate leadership of project entities.

Re-evaluation of the above maybe required throughout the project lifecycle to reflect, inter alia, project performance, changes in the project status (e.g. from construction to operation) and design, or evolution of the wider project context.



**R3 USING LEVERAGE FOR REMEDY AFTER IMPACTS OCCUR**

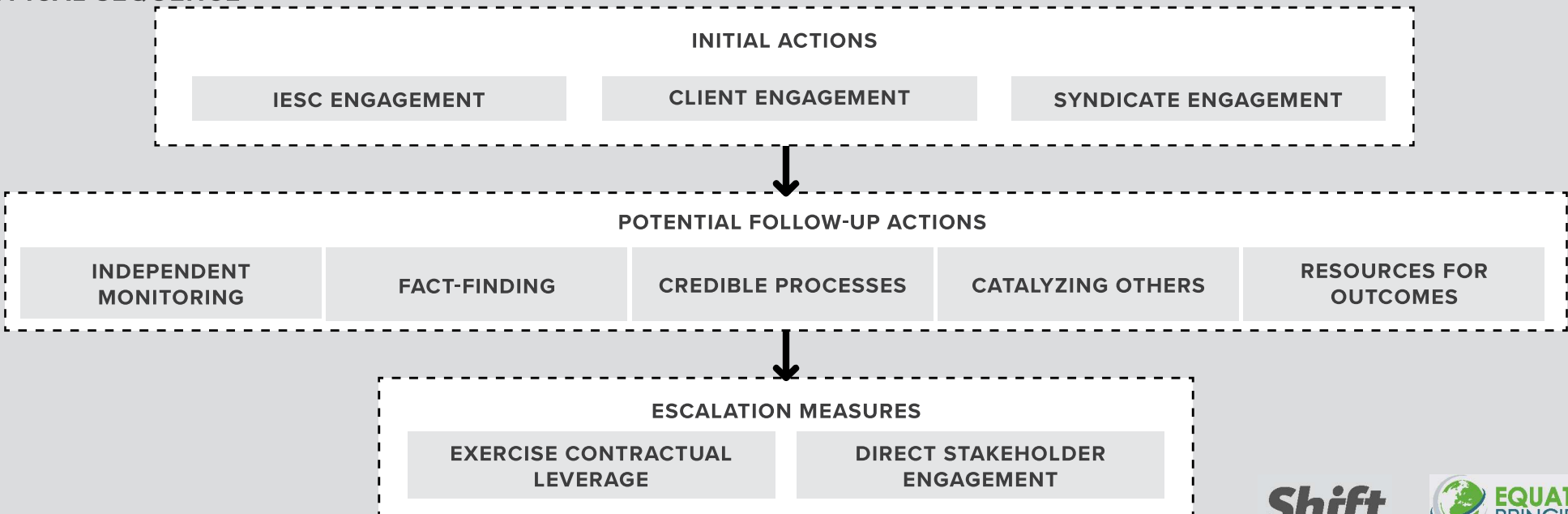
This tool identifies a number of options for specific leverage actions EPFIs might take after adverse human rights impacts occur, alone or in collaboration with other partners, to encourage or support clients or third parties to meet their responsibilities with regard to remedy. Lead banks and IESCs can reference the menu of actions when responding to impacts, while syndicate participants can reference these tools in their engagement with the lead bank or, where appropriate, with the client directly.

- It can be used whenever adverse environment or social (including human rights) impacts occur in any EP-financed transaction, regardless of initial categorization.

- It is intended to inform discussions within and among EPFIs and other co-financiers and their IESC.
- Each approach may have distinct objectives in helping parties overcome specific barriers to remedy. In many cases, an EPFI might use a number of these approaches, either in concert or in sequence.
- EPFIs should always assess their own involvement with an impact, and their corresponding responsibilities with regard to remedy. See EP Guidance Note on Human Rights Impact Assessments for further guidance, as well as additional guidance referenced in the Appendix 2.

**USING LEVERAGE FOR REMEDY (POST IMPACT)**

**TYPICAL SEQUENCE**



**R3**

**USING LEVERAGE FOR REMEDY AFTER IMPACTS OCCUR: SAMPLE LEVERAGE ACTIONS**

<b>CLIENT ENGAGEMENT</b>	
<b>INITIAL ACTIONS</b>	<p><b>When an EPFI first learns of an impact (directly or</b></p> <p><b>Engage on Remedy:</b></p> <ul style="list-style-type: none"> <li>Engage with the IESC, lead bank and syndicate to coordinate approach to engaging the client, in order to understand facts on the ground, and client or third party’s initial posturing with regard to remedy.</li> <li>Diagnose whether/which further actions might be needed, including expectations for action by client or third party, timelines, and shared corrective action plans.</li> <li>Communicate importance of remedy to client, in terms of both process and outcomes.</li> </ul>
	<p><b>If an EPFI has concerns about client capability...</b></p> <p><b>Encourage Expertise:</b></p> <ul style="list-style-type: none"> <li>Engage with the IESC to understand their view of the client’s capabilities and gaps in expertise</li> <li>Encourage the client or third party to engage with appropriate external expertise (as needed) to support credible approaches to remedy.</li> </ul>
	<p><b>If client or third party is not taking sufficient action or acting with enough urgency...</b></p> <p><b>Escalate Engagement (where necessary):</b></p> <ul style="list-style-type: none"> <li>Escalate engagement internally within the EPFI, to the bank’s executive leadership.</li> <li>Escalate engagement with the IESC and lead bank</li> <li>Escalate engagement to client or third party’s executive leadership.</li> <li>Consider exercising contractual leverage to improve responsiveness.</li> </ul>
<b>SYNDICATE ENGAGEMENT</b>	
	<p><b>When initial facts have been gathered...</b></p> <p><b>Inform and Align with Syndicate:</b></p> <ul style="list-style-type: none"> <li>Lead Bank or Agent: Inform syndicate partners of impacts and any initial client engagement.</li> <li>All Syndicate Participants and IESC: Discuss shared approach to further engagement, including expectations for action by client or third party, timelines, and shared corrective action plan.</li> </ul>

**R3**

**USING LEVERAGE FOR REMEDY AFTER IMPACTS OCCUR: SAMPLE LEVERAGE ACTIONS**

INDEPENDENT MONITORING	
<p><b>When an EPFI needs to monitor developments on the ground (before or after a remedy process is underway)...</b></p>	<p><b>Appoint an Independent Monitor:</b></p> <ul style="list-style-type: none"> <li>• If a monitoring IESC is not in place, consider appointing an independent consultant to monitor developments and report periodically to EPFIs on progress, barriers, emerging issues.</li> </ul>
FACT FINDING	
<p><b>If there is disagreement or uncertainty over facts on the ground, creating a barrier to progress on remedy...</b></p>	<p><b>Encourage / Support Credible Fact-Finding</b></p> <ul style="list-style-type: none"> <li>• Encourage client (or require, if contractual leverage exists) or third party to agree to credible fact-finding (independent or joint), supported by an expert neutral party respected by client and stakeholders, and offer resources to support fact-finding (such as identifying appropriate third parties).</li> <li>• Offer resources to support fact-finding (financial, identifying appropriate third parties) - the IESC may be able to provide such resources.</li> <li>• Require the client, if contractual leverage exists, to participate in credible, fact-finding supported or conducted by a neutral party.</li> </ul>
<p><b>If Client or third party is dismissive of allegations and unwilling to take further action, but EPFI remains concerned that allegations are credible...</b></p>	<p><b>Conduct Fact-Finding</b></p> <ul style="list-style-type: none"> <li>• Conduct a site visit to independently assess situation and engage in person with client (this should be undertaken in conjunction with the IESC).</li> <li>• Conduct or commission a credible expert to conduct a site visit to independently assess situation and navigate competing perspectives (this may be undertaken by the IESC if appointed or alternative independent expert).</li> </ul>

POTENTIAL FOLLOW-UP ACTIONS <sup>1</sup>

<sup>1</sup> The actions available to an EPFI (either the Lead Bank / Agent or a syndicate participant) will depend in many cases on the actions taken to strengthen preparedness for remedy before impacts occur, to create leverage through the legal and contractual provisions that govern the relationship, such as loan documentation clauses that may allow the EPFI or a hired consultant to visit premises, to engage directly with affected stakeholders, etc.

**R3 USING LEVERAGE FOR REMEDY AFTER IMPACTS OCCUR: SAMPLE LEVERAGE ACTIONS**

<b>POTENTIAL FOLLOW-UP ACTIONS</b>	<b>CREDIBLE PROCESSES</b>	
	<p>If there is substantial mistrust between the parties, the credibility of a company-led process may be perceived as unfair, or the parties are unable to make progress, but there is a willingness or desire to get to solutions...</p>	<p><b>Encourage mediation:</b></p> <ul style="list-style-type: none"> <li>• Encourage the client to hire a qualified, independent mediator or facilitator, through a process acceptable to all parties, and offer support and resources to client (such as identifying a roster of potential credible third parties).</li> <li>• Support mediation efforts (i.e., offer financial resources, identify a roster of potential credible third parties).</li> </ul>
	<p>If client or third party claims the issue is closed and/or remedy has been provided, but EPFI is concerned about adequacy of process or outcome...</p>	<p><b>Seek stakeholder verification:</b></p> <ul style="list-style-type: none"> <li>• Ask client or third party for evidence of stakeholder satisfaction with process and outcome; engage directly with affected stakeholders if necessary to verify.</li> <li>• Engage directly (or via the IESC) with affected stakeholders to assess satisfaction with process and outcome.</li> </ul>
	<b>CATALYZING OTHERS</b>	
	<p>If EPFI's (or syndicate's) leverage alone is insufficient to encourage or support appropriate client or third-party action...</p>	<p><b>Collaborate:</b></p> <ul style="list-style-type: none"> <li>• Engage with other concerned actors, as legally permitted, to build additional leverage by aligning and/or jointly engaging the client or third party to advocate for action on remedy.</li> </ul>
	<b>RESOURCES FOR OUTCOMES</b>	
<p>If financial resources are the primary barrier to remedy, but clients or third parties are committed to good process and outcome for remedy...</p>	<p><b>Identify resources:</b></p> <ul style="list-style-type: none"> <li>• Leverage EPFI expertise and networks to identify additional financial resources to support remedy outcomes, such as additional financing client might access for remedy.</li> </ul>	

GM 1

GRIEVANCE MECHANISM DESIGN: DIAGNOSTIC QUESTIONS

GM 2

MONITORING EFFECTIVE GRIEVANCE MECHANISM PERFORMANCE: SAMPLE REPORTING METRICS

R1

ASSESSING PREPAREDNESS FOR REMEDY: DIAGNOSTIC QUESTIONS

R2

STRENGTHENING PREPAREDNESS FOR REMEDY: SAMPLE LEVERAGE ACTIONS

R3

USING LEVERAGE FOR REMEDY AFTER IMPACTS OCCUR: SAMPLE LEVERAGE ACTIONS

**R3 USING LEVERAGE FOR REMEDY AFTER IMPACTS OCCUR: SAMPLE LEVERAGE ACTIONS**

**EXERCISE CONTRACTUAL LEVERAGE**

**When efforts to engage the client have failed or are no longer productive...**

**Exercise contractual provisions:**

- Exercise available contractual leverage, in an escalating fashion, based on what loan agreement allows, potentially including penalties, events of default, and/or responsible exit.

**STAKEHOLDER ENGAGEMENT**

**When client or third party is unwilling to engage meaningfully with stakeholders...**

**Engage directly with affected stakeholders:**

- Consider engaging directly (or via the IESC) with affected stakeholders, rather than relying on client or third party engagement efforts.

**When considering significant escalation moves, including potential exit...**

ESCALATION MEASURES

## 1. ILLUSTRATIVE KEY PERFORMANCE INDICATORS (KPIs) FOR MONITORING EFFECTIVE GRIEVANCE MECHANISM PERFORMANCE

GRIEVANCE MECHANISM KPIs			
	SAMPLE KPIs	INTERPRETATION	FOLLOW-UP QUESTIONS
NUMBER OF GRIEVANCES	1. A significant increase in the number of grievances brought to the mechanism in the period after its establishment, or when the project undertakes new business activities.	<ul style="list-style-type: none"> <li>Indicates both awareness of the mechanism's existence and confidence that it provides a credible first avenue of recourse.</li> </ul>	
	2. Over time, a decrease in the number of overall grievances, particularly those of a same or similar nature.	<ul style="list-style-type: none"> <li>Indicates EITHER that the project is adapting business practices to prevent similar grievances, OR that stakeholders have lost confidence in the ability of the mechanism to deliver remedy, or face new barriers to accessibility.</li> </ul>	<ul style="list-style-type: none"> <li>Can the client point to changes in operational policy, procedure or practice, and/or data on stakeholder perceptions to help interpret this KPI?</li> </ul>
	3. Decrease in the number of grievances pursued through other non-judicial mechanisms, NGOs or the media.	<ul style="list-style-type: none"> <li>Indicates both awareness of the mechanism's existence and confidence that it provides a credible first avenue of recourse.</li> </ul>	<ul style="list-style-type: none"> <li>Are there other explanations for a decrease in grievances pursued through other means, such as an increase in reprisals?</li> </ul>
ALTERNATIVE MEANS	4. The number of significant adverse events affecting the project (including worker strikes, slowdowns or other actions; community protests; adverse media or campaigns; or litigation).	<ul style="list-style-type: none"> <li>Possibly indicating that some subset of stakeholders lack awareness of, accessibility to, or confidence in the GM as an effective pathway for remedy, for at least certain types of issues;</li> <li>Possibly indicating more general weaknesses in stakeholder relationships.</li> </ul>	<ul style="list-style-type: none"> <li>How does the client interpret the fact that stakeholders are choosing means other than the GM to pursue their claims?</li> <li>Do the adverse events reflect issues beyond the scope of the GM to address (i.e., systemic impacts or contextual issues)?</li> <li>Are there legitimate reasons that the GM is not an appropriate pathway for addressing these issues?</li> </ul>
	5. Percentage of grievances resolved within indicative time frames	<ul style="list-style-type: none"> <li>Possibly indicating procedural effectiveness, if supported by data on stakeholder satisfaction with process.</li> </ul>	<ul style="list-style-type: none"> <li>Is there data on stakeholder satisfaction with process to support an interpretation of procedural effectiveness?</li> <li>How does the client interpret longer-</li> </ul>

## APPENDIX

## 1. SAMPLE KEY PERFORMANCE INDICATORS (KPIs) FOR MONITORING EFFECTIVE GRIEVANCE MECHANISM PERFORMANCE

INTERPRETING GRIEVANCE MECHANISM KPIS: FOLLOW-UP QUESTIONS			
	SAMPLE KPIS	INTERPRETATION	FOLLOW-UP QUESTIONS
OUTCOMES	7. Number of instances where substantial grievances lead to changes in operational policy, procedure or practice	<ul style="list-style-type: none"> <li>Indicating effective performance of the mechanism in leading to operational improvements, ensuring non-repetition of impacts.</li> </ul>	<ul style="list-style-type: none"> <li>What evidence can the client show to demonstrate that decreases in similar grievances are due to operational improvements and reduction of similar impacts (rather than loss of stakeholder confidence in the mechanism)?</li> </ul>
	8. Percentage of grievances resolved through agreed outcomes	<ul style="list-style-type: none"> <li>Possibly indicating effective performance of the mechanism in delivering effective remedy through dialogue.</li> </ul>	<ul style="list-style-type: none"> <li>Is there data on stakeholder satisfaction with outcomes (See KPI #9) to support this interpretation of the data, (as opposed to stakeholders agreeing because they see no other options)?</li> </ul>
	9. Percentage of complainants satisfied with the outcomes of their complaints	<ul style="list-style-type: none"> <li>Possibly indicating effective delivery of remedy.</li> </ul>	

## 2. ADDITIONAL RESOURCES

### Related EP Association Guidance

The following EP Association Guidance includes relevant guidance with respect to grievance mechanisms as part of the IESC scope of work, within loan documentation and as related to human rights impact assessments respectively:

- Guidance Note: To Support Effective Consistent Application of the Equator Principles, [https://equatorprinciples.com/app/uploads/PUBLIC-Guidance\\_Application-of-EP.pdf](https://equatorprinciples.com/app/uploads/PUBLIC-Guidance_Application-of-EP.pdf)
- Guidance Note: On Implementation of Human Rights Assessments under the Equator Principles, [https://equatorprinciples.com/app/uploads/Human\\_Rights\\_Assessment\\_Sept2020.pdf](https://equatorprinciples.com/app/uploads/Human_Rights_Assessment_Sept2020.pdf)
- Guidance Note: For EPFIs on Incorporating Environmental & Social Considerations into Loan Documentation, [https://equator-principles.com/app/uploads/Loan\\_documentation](https://equator-principles.com/app/uploads/Loan_documentation)

### Relevant IFC PS Guidance Notes

The IFC Performances Standards and associated guidance notes are available at: [https://www.ifc.org/wps/wcm/connect/9fc3aaef-14c3-4489-acf1-a1c43d7f86ec/GN\\_English\\_2012\\_Full-Documents\\_updated\\_June-14-2021.pdf?MOD=AJPERES&CVID=nXqnsjp](https://www.ifc.org/wps/wcm/connect/9fc3aaef-14c3-4489-acf1-a1c43d7f86ec/GN_English_2012_Full-Documents_updated_June-14-2021.pdf?MOD=AJPERES&CVID=nXqnsjp). Guidance notes 1 and 2 provide specific guidance in relation to requirements for community and worker grievance mechanisms respectively.

### Grievance mechanism design and implementation:

For more comprehensive guidance, EPFIs, independent consultants and clients might usefully reference:

- The International Council on Mining and Metals' (ICMM) guide, "Handling and Resolving Local-Level Concerns and Grievances", updated in 2019 ([https://www.icmm.com/website/publications/pdfs/social-performance/2019/guidance\\_grievance-mechanism.pdf](https://www.icmm.com/website/publications/pdfs/social-performance/2019/guidance_grievance-mechanism.pdf)), which is framed around the UNGPs effectiveness criteria, and provides good practice examples and case studies.
- EPFIs, consultants and clients are also likely familiar with the IFC's "Good Practice Note: Addressing Grievances from Project-Affected Communities", which predates the UNGPs, but provides a similarly comprehensive overview. <https://www.ifc.org/wps/wcm/connect/f9019c05-0651-4ff5-9496-c46b66dbee/db/IFC%2BGrievance%2BMechanisms.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-f9019c05-0651-4ff5-9496-c46b66dbee-db-jkD0-.g>

### Making the business case for effective grievance mechanisms:

To support the financial case for investing in effective grievance mechanisms, EPFIs, and clients might reference:

- "The Costs of Company-Community Conflict in the Extractive Sector", Rachel Davis and Daniel Franks, (May 2013), at <https://shiftproject.org/resource/costs-of-company-community-conflict-in-the-extractive-sector/>. This research is based on in-depth interviews with finance, legal and sustainability professionals in the extractive industries, and empirical case analysis of 50 projects worldwide. The research reports on the financial value at stake when conflict



## 2. ADDITIONAL RESOURCES

- “The financial costs of mitigating social risks: costs and effectiveness of risk mitigation strategies for emerging market investors”, Joseph Feyertag and Ben Bowie (September 2021), at [https://cdn.odi.org/media/documents/ODI\\_RE2.PDF](https://cdn.odi.org/media/documents/ODI_RE2.PDF). This research assesses the costs and effectiveness of environmental and social risk mitigation and management practices, finding a strong return on investments in such practice -- including stakeholder engagement, impact assessments and GMs. The research is based on analysis of financial data from 137 development finance institution (DFI) investments in emerging markets and supporting consultations with field-based experts.

### Analyzing Connection to Impacts:

EPFIs looking to assess their connection to impacts, and their responsibilities with regard to remedy, may wish to consult:

- The OECD Due Diligence Guidance, and forthcoming guidance specific to the financial sector on project finance, at: <https://www.oecd.org/investment/duo-diligence-guidance-for-responsible-business-conduct.htm>. The guidance presents a number of factors relevant to differentiating situations of contribution from situations of linkage.
- The Dutch Banks Sector Agreement’s “Enabling Remediation” paper, available at: <https://www.imvoconvenanten.nl/-/media/imvo/files/banking/paper-enabling-remediation.pdf>. This discussion paper, based on a multi-stakeholder dialogue process that included financial institutions, civil society organizations, government and experts, presents factors specific to the financial sector.
- The UN Office of the High Commissioner for Human Rights (OHCHR) letter in response to an inquiry from BankTrack, on the issue of contribution vs. linkage, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf>.