



How trade unions in the garment sector use grievance mechanisms

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Method

- This research project took place from January to September 2022. We combined desk research with semi-structured interviews. Interviewees were sent an introduction email or letter. Upon acceptance, we sent them a detailed set of questions. The questions we asked unions in production countries were slightly different from the ones we asked NGOs and unions in Europe. Some respondents chose to send us their answers or comments by email.

Complaints and grievance mechanisms

- Responsibilities of companies
- Examples of complaints and solutions
- Types of mechanisms
- Effectiveness



Routes to a solution

- Complaints are submitted through different channels.
- Turnaround can take several years, depending on the complaint's complexity, and the receiver's capacity and efficiency.
- Many grievances will never become a formal complaint – it is simply not worth the effort!



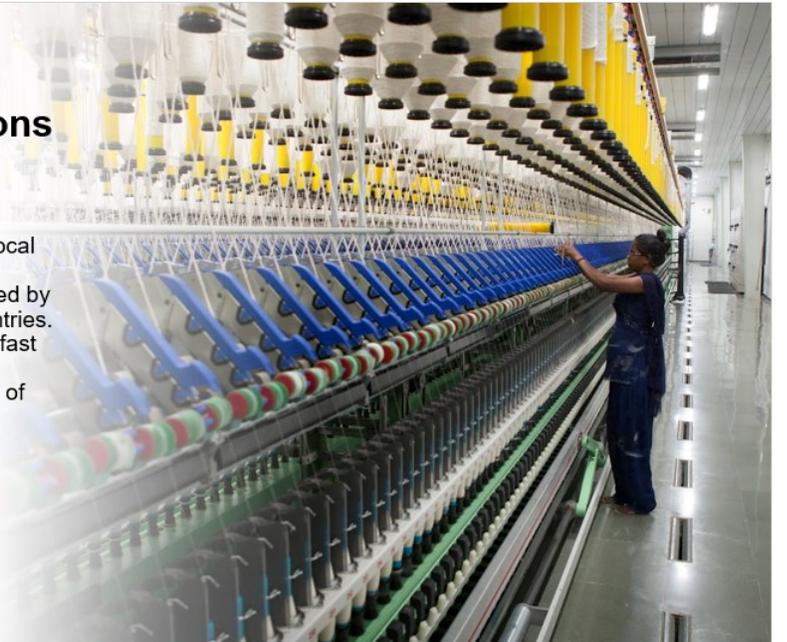
What do trade unions in production countries need?

- Basic knowledge on ways (routes) to submit complaints
- Organisational support to set up new unions
- Capacity building



Recommendations

- Focus on strengthening local mechanisms.
- Track complaints submitted by unions in production countries.
- Demand and help create fast routes to early remedy.
- Promote alternative ways of structuring complaints mechanisms.
- Take the issue of retaliation into account.
- Social dialogue is still essential.



Complaints and grievance mechanisms

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Responsibilities

- Access to remedy is a core element of the *UN Guiding Principles on Business and Human Rights* (UNGPs).
- According to the Guiding Principles, companies have a different degree of responsibility for providing remedy, depending on the extent to which they are involved in an adverse human rights or environmental impact.
- Where a business enterprise has caused or contributed to an adverse human rights impact, it should be actively engaged in its remediation, by itself or in cooperation with others.



Pillars of the UN Guiding Principles

Protect

- **State** duty to protect human rights

Respect

- **Corporate** responsibility to respect human rights

Remedy

- **Victims'** access to effective remedy

Examples of complaints

Employees

- Working hours
- Delays in payment of wages
- Intimidation and bullying
- Discrimination
- But also: poor quality of the food in the factory's restaurant or canteen

Community

- Access to a road on the factory's premises
- Use of chemicals, waste
- Water pollution
- Traffic accidents caused by employees of the factory
- Sexual harassment or assault by an employee



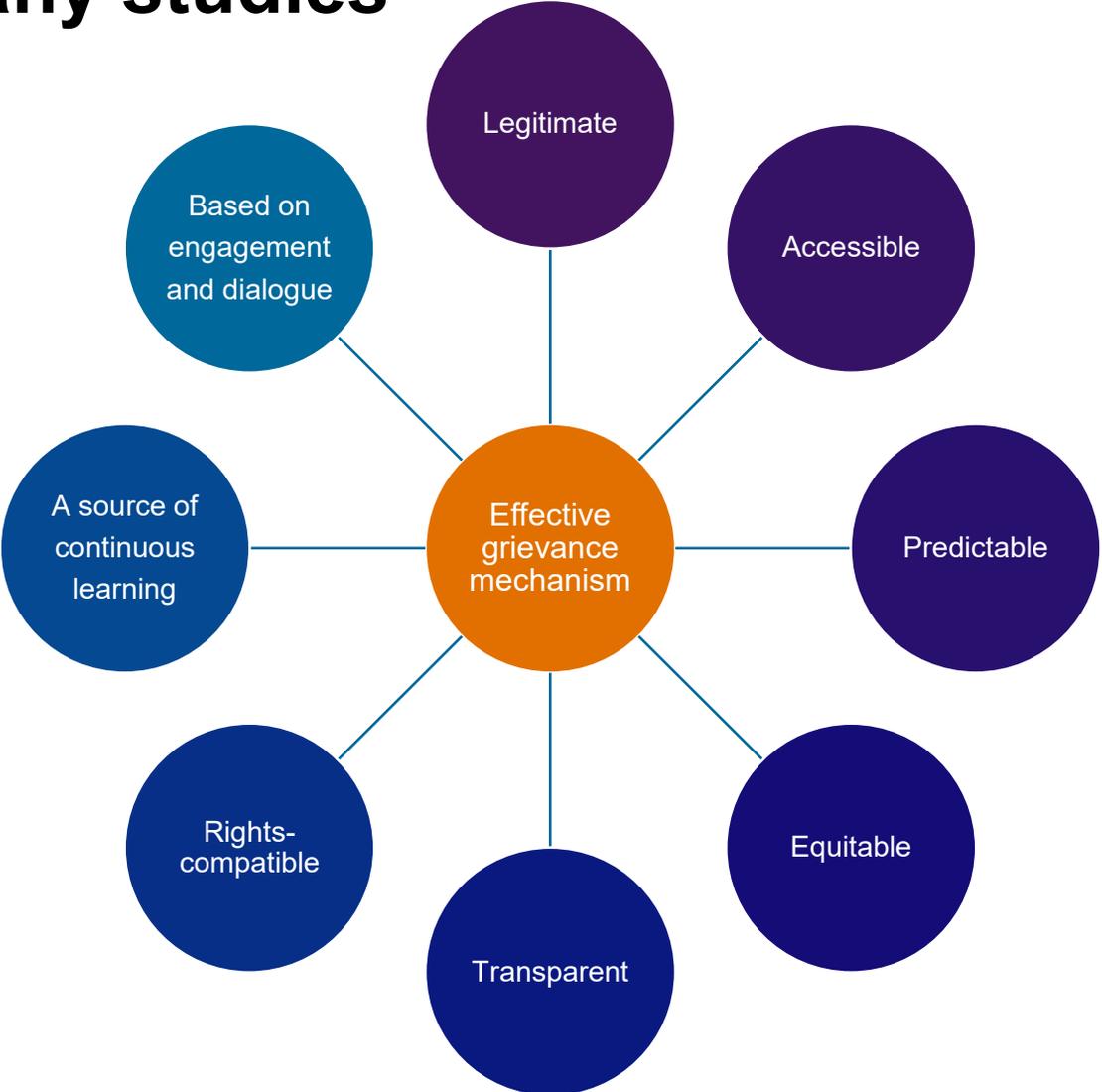
Examples of solutions

- **Apologies:** an apology for the poor treatment of workers or communities by the company.
- **Restitution:** cleaning up waste from a chemical spill and restoring land to previous condition, reinstating workers that have been unfairly dismissed.
- **Rehabilitation:** Provision (or payment for) of care, therapy or support for affected workers or communities.
- **Financial compensation:** compensation for loss of earnings or reimbursing a community for damages suffered.
- **Punitive sanctions:** fines for those responsible for causing the harm.
- **Measures to prevent future harm:** guarantees of non-repetition and new effective measures to prevent re-occurrence of the situation which has led to the negative impact.

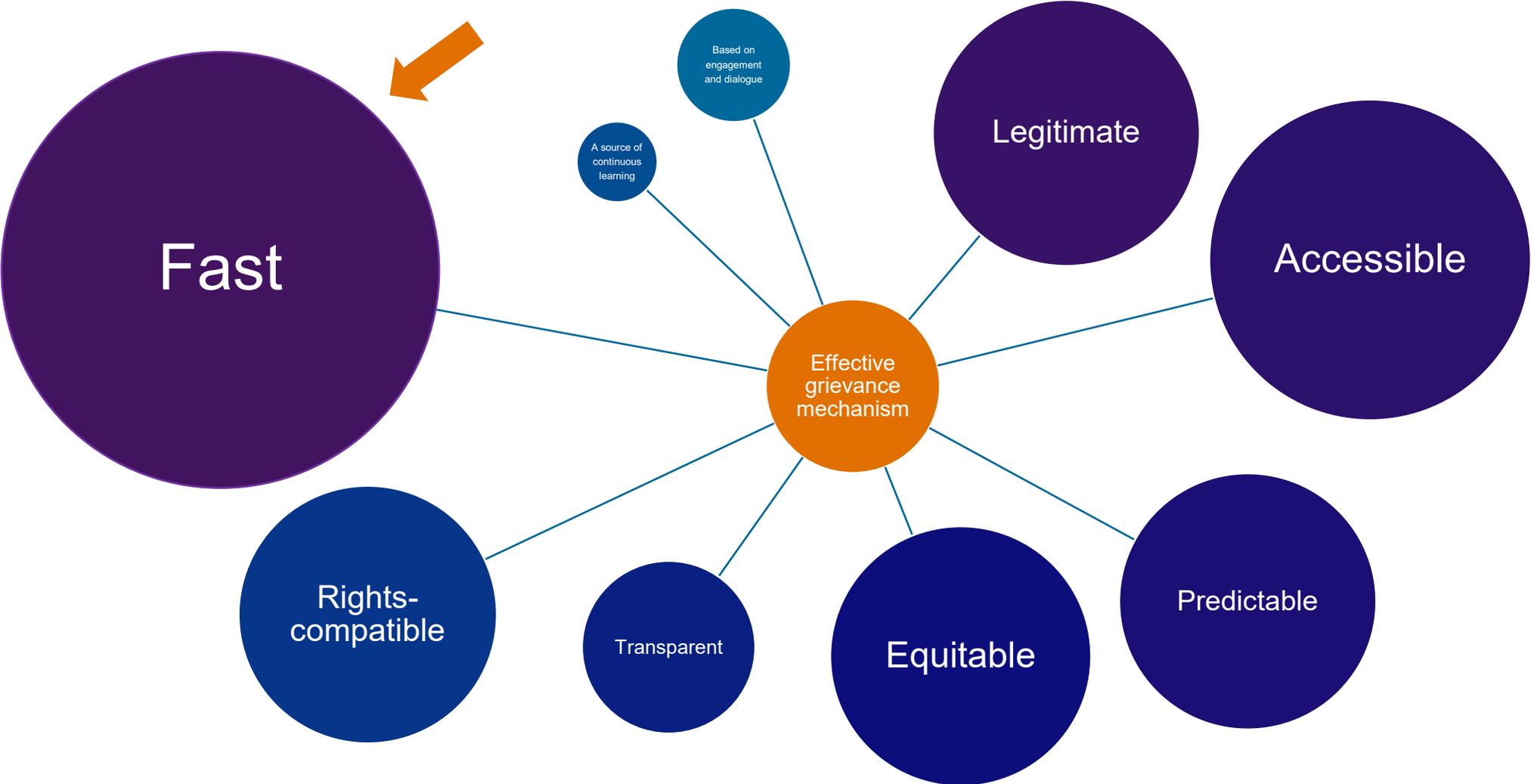
Types of mechanisms

- Governmental mechanisms: labour inspection, Ministry of Labour / Employment, court for small claims, civil court, criminal court in production countries.
- Company grievance mechanisms:
 - Direct workplace mechanisms: mechanisms operated by suppliers;
 - Supply chain mechanisms: operated, for instance, by a buyer / brand.
- Mechanisms operated by multi-stakeholder initiatives (MSIs) or sectoral initiatives.

Criteria for effectiveness, according to the UN Guiding Principles and many studies



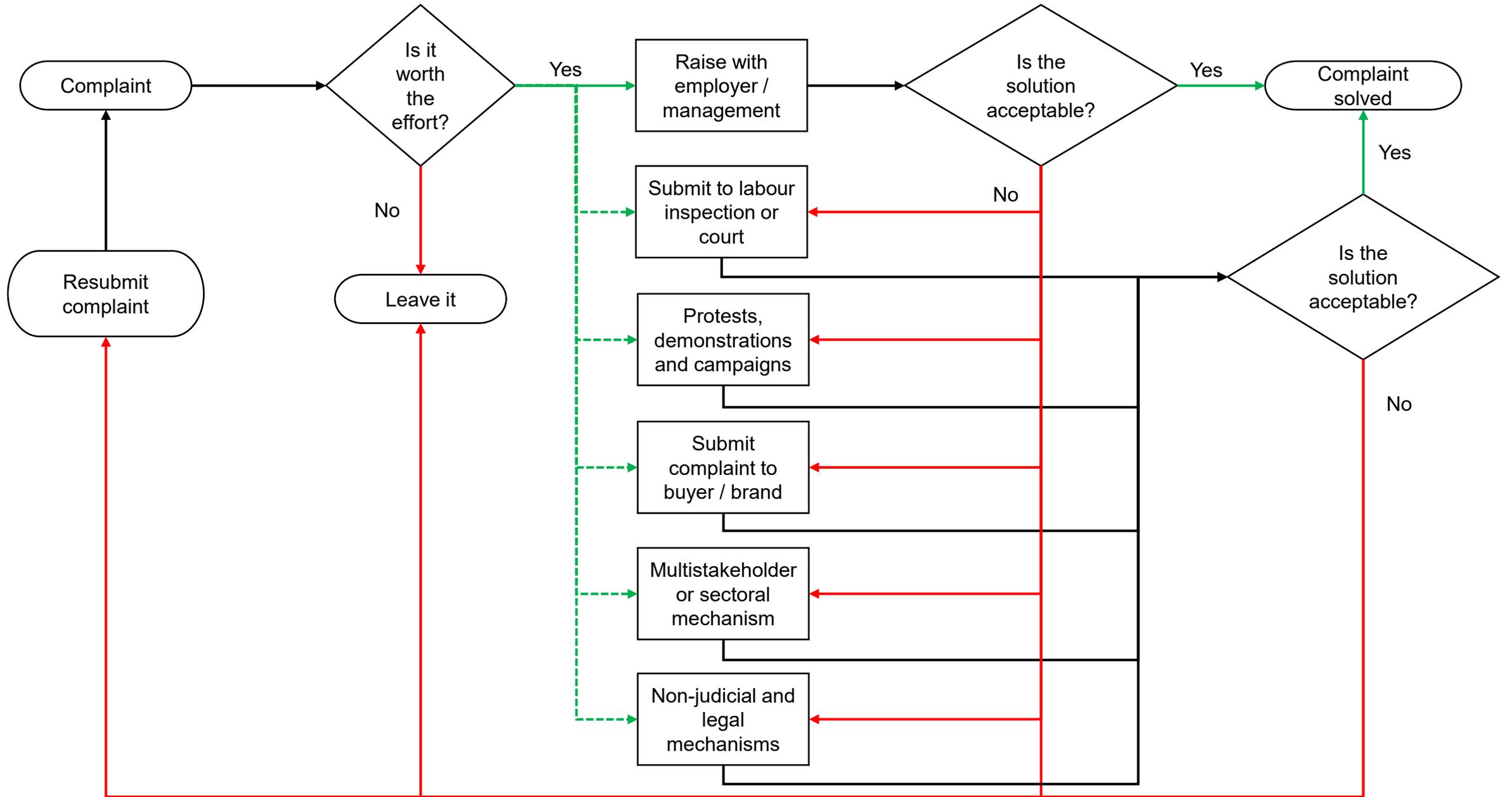
What effectiveness looks like for local union representatives



Routes to a solution

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- Turnaround can take several years, depending on the complaint's complexity, and the receiver's capacity and efficiency.
- Many grievances will never become a formal complaint – it is simply not worth the effort!





Raise with employer / management

- This is the most common route.
- In many cases, social dialogue (negotiations between employer and a representation of employees) is the best and most efficient way to achieve positive outcomes for workers.
- In many garment producing countries, unions are not welcome in factories or restricted by the government. Social dialogue is therefore practically impossible.

Submit complaint to labour inspection or court

- In several production countries, filing a complaint with a (lower or district) court, labour inspectorate or government mediation office can be an efficient way of achieving positive outcomes.
- In other countries, this route does not lead to outcomes fast enough, as employers tend to lodge appeals. In India and the Philippines, appeals against the decisions of lower courts can lead to cases that take many years.

Protests, strikes and campaigns

- In many cases, campaigning is an effective way to stress the importance of a grievance.
- Protests, strikes and campaigns are often used to reinforce a complaint that has been submitted via another route.
- In many production countries, protests or strikes can have major consequences for employees. They can be fired, arrested and / or prosecuted.
- Campaigning usually disrupts the relationship between employees and employers. If both parties are already engaged in a mediation procedure, protests, strikes and campaigns can be counterproductive.

Submit complaint to buyer / brand

- Although brands are not required to have their own complaints mechanisms, it is recommended.
- The threshold for this route is often high: the complainant must read and write English, and coordinate with an international union or NGO.
- The complaint mechanisms of brands are not always designed to deal with cases at supplier level. If a brand is a member of a particular multi-stakeholder or sectoral initiative, the mechanism of that initiative (for instance Fair Wear, Better Work / Better Factories) can be used.

Multistakeholder and sectoral mechanisms

- In the garment sector, this type of mechanism is used frequently after one or several other routes have been tried.
- Well-known mechanisms are:
 - Fair Wear Complaints Procedure
 - Clean Clothes Campaign's Urgent Appeal System
 - International Accord's Safety and Health Complaints Mechanism
 - Fair Labor Association's Third Party Complaint Procedure
 - Mechanisms of Global Framework Agreements (for instance IndustriALL with Inditex)
 - Social Accountability International's complaints procedure
 - Ethical Trade Initiative's Code Violation Procedure
 - Worker Complaints mechanisms of the Worker's Rights Consortium

International non-judicial mechanisms and legal mechanisms in buyer countries

- In some cases, complaints are submitted to mechanisms operated by international governmental organisations, such as the OECD, ILO, IMF and World Bank, or are submitted to courts in buyer countries.
- There is an evolving landscape of international mechanisms with legal / binding characteristics. Still, these are mostly perceived as soft-law because in general they lack the muscle to apply sentences and sanctions.
- There are no specific international courts for complaints against companies (yet). Some countries have adopted laws to regulate human rights and environmental due diligence. These laws are relevant to unions in production countries, as they apply to the supply chain of garment brands.

What do trade unions in production countries need?

- Basic knowledge on ways (routes) to submit complaints
- Organisational support to set up new unions
- Capacity building



Basic knowledge on ways to submit complaints

- Workers and union representatives in production countries know relatively little about the different routes to a positive outcome.
- Basic knowledge about human rights and local (national) labour laws is also often lacking.
- In a country like India, many new trade unions organisations are emerging. These unions are often not affiliated with international confederations, but they also need knowledge and know-how on how to file complaints.

Organisational support to set up new unions

- In many production countries it is difficult to set up a trade union or other type of workers' representation in garment factories. Workers who want to organise are often opposed by managers or owners.
- In some countries, such as India, many new, smaller unions are emerged. These unions are seldom affiliated with international confederations and lack contact with international NGOs, but need knowledge and knowhow on how to build their organisations and ways to address grievances.
- International unions, such as CNV International and Mondiaal FNV, can help employees in production countries to choose the right organisational structure and to shape their unions, works councils or worker committees.

Capacity building

- When workers organise and set up a union, they will receive grievances from other workers at some point. Unions need information and knowhow on the practicalities of submitting complaints and seeking access to remedy via different routes:
 - Which routes are available to us?
 - What does it take to submit a complaint via a particular route?
 - What are the risks?
 - Who should we involve?
 - What will it cost?
 - Who will bear the expense?
 - How long does it take to achieve an acceptable or positive outcome?

Recommendations

- Focus on strengthening local mechanisms.
- Track complaints submitted by unions in production countries.
- Demand and help create fast routes to early remedy.
- Promote alternative ways of structuring complaints mechanisms.
- Take the issue of retaliation into account.
- Social dialogue is still essential.



Focus on strengthening local mechanisms

- In collaboration with local unions, international unions **should help build better local mechanisms** so that these meet the UNGP effectiveness criteria + the additional criterion of speed.
- Unions can **strengthen local mechanisms by providing blueprints or formats, best practices, training, and by using them**: if mechanisms are not used and tested frequently, governments are unlikely to fund and staff them properly.
- Unions and civil society in production countries **should have a say in how local mechanisms function**.
- Unions in buyer countries **should ensure unions in production countries do not work in silos** and coordinate with relevant NGOs.

Track complaints submitted by unions in production countries

- International unions and unions in buyer countries can **use their leverage with brands to follow complaints** submitted by unions in production countries. Complaints are more likely to succeed if there is continuous interest and attention.
- It is important to **ensure the mechanisms' processes and decisions are transparent**. Often this is not the case. By keeping track of cases, doing research and publishing information about complaints, unions can promote transparency.
- To ensure the complaint mechanisms are implemented effectively there should be an **independent monitoring system**. The monitoring could be done by a third party or by the trade unions.

Demand and help create fast routes to early remedy

- Most routes do not lead to acceptable solutions quickly enough. Complainants often have to wait many months or even years before their complaint are solved. In relatively straightforward cases, for instance when a worker has not received severance pay, mechanisms should **use the principle of “balance of probabilities” early on**. If the complainant presents the most probable version of the truth, the handler of the complaint should take a decision that favours the complainant without having to go through an extensive investigative process.
- Mechanisms should offer a timely solution to the complainant. If a complaint is deemed admissible and likely to be truthful, **early or provisional remedy should be provided**. In practice, this would mean that a worker would be compensated or rehabilitated even before the handler has found conclusive evidence.
- **Multistakeholder, sectoral and international initiatives with complaint mechanisms should set up common funds**, for instance with contributions of brand members, to finance early or provisional remedy for workers and other complainants.

Promote alternative ways of structuring complaints mechanisms

- In many cases, **complaints can be handled by independent volunteers, mediators, brokers, magistrates and / or consultants**, who may work on a paid or pro bono basis, instead of a committee or team of several (legal) experts. This is likely to reduce the handling cost and speed up the process.
- Not all complaints are equal. For some complaints, a **simpler, shorter procedure** is needed. Unions should work with existing mechanisms to explore fast-tracking for (1) straightforward complaints and (2) complaints about very urgent and potentially fatal matters (for instance issues around fire safety). Some mechanisms already do this, such as the Accord's grievance mechanism.
- Local workers and trade unions find it difficult to file complaints through the international complaint mechanisms due to the **language barrier**. Therefore, these mechanisms should be fully available in local languages.
- In many multistakeholder and sectoral mechanisms, **unions and civil society organisations from production countries should be represented better**. All too often, they are not part of decision-making processes.

Complaint mechanisms and social dialogue

- Social dialogue can prevent some of the issues (that are addressed by complaints) from happening in the first place.
- Many complaints can also be resolved through social dialogue.
- Complaint mechanisms do not replace social dialogue and we should not rely too much on complaint mechanisms only.
- Social dialogue is essential.

More information

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