

5 November 2021

Amfori
The Gradient Building
Avenue de Tervueren 270
1150 Brussels
Belgium

Re: Comments on the policy of the Amfori Supply Chain Grievance Mechanism

Thank you for the opportunity to comment on the [piloted procedures](#) of Amfori’s Supply Chain Grievance Mechanism (SCGM). As an international legal non-profit that advocates for people harmed by internationally financed projects, Accountability Counsel employs community driven and policy level strategies to access justice. We have developed a tool called the Accountability Console (available at www.accountabilityconsole.com), which includes a useful benchmarking system for measuring best policies and practices for independent accountability mechanisms. We would be happy to provide you with a demonstration of the Console, as well as with a link to the soon-to-be published Good Policy Paper on Independent Accountability Mechanisms, drafted by civil society organizations experienced in helping communities navigate grievance mechanisms for the purpose of identifying model language from existing policy provisions as they relate to our below recommendations. Please reach out to our Policy Director, Margaux Day, at margaux@accountabilitycounsel.org to coordinate.

2. General Principles

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [3]

Please indicate if any principle is missing or whether one of the current principles should be reformulated:

The inspiration of the UNGP effectiveness criteria is evident in the descriptions of the present principles (for example inclusivity seems to encompass the “based on engagement and dialogue” criterion); however, we strongly suggest specific reference to each of the criteria so as to avoid the perception that the SCGM policy is indeed underemphasizing certain criterion. We recommend specifically expounding on the principle of accessibility by describing commitments to raise the profile of the SCGM so that stakeholders are aware of the mechanism, and to produce policy documents, reports, and communications in the preferred language of complainants. We further offer the following recommendations regarding certain principles detailed in the policy:

Independence: We appreciate the effort to develop a sufficiently independent mechanism that balances Amfori member participation and the imperative to display legitimacy and build trust with potentially affected stakeholders. For the SCGM to function effectively, it must be trusted by all stakeholders, including local communities, Amfori members and their business partners, and interested civil society

organizations (CSOs). We therefore recommend providing a commitment within the policy and its associated materials to disclose the following details:

1. **The names and contact information of the SCGM Secretariat staff, the vetted pools of investigation and remediation handlers, the SCGM’s organizational structure, the location of the SCGM headquarters and operational offices, and the SCGM’s reporting lines and orientation within Amfori’s organizational structure.** Transparency on these key details will provide critical perspective on the actual and perceived neutrality of the office to help potentially affected stakeholders trust the office to consider and handle grievances in earnest.
2. **A description of the selection and hiring process for the SCGM Secretariat, and whether the position is term limited.** The independence and integrity of the mechanism can be protected in several ways, including by (a) imposing a term-limit for the head of the SCGM, (b) including external stakeholder representatives on selection committees for hiring SCGM leadership; and (c) imposing pre- and post-employment bans on SCGM principles to prevent the perception of a revolving door between Amfori members and the SCGM.
3. **A description of the hiring process for SCGM staff.** IAM staff should be selected by the mechanism’s leadership. The mechanism should be responsible for hiring its own staff to increase stakeholders’ confidence in its independence and authority.

Transparency: While we agree that the SCGM should publish periodic and annual reports related to the status of complaints and activities and performance of the SCGM, we urge improving transparency by including in its complaint registry a list of pending, completed, and closed cases, including ineligible complaints, with links to complaint letters (redacted if complainants request confidentiality). Providing all public materials in full will serve to legitimize the process and reduce perceptions of impropriety.

Additionally, transparency can be improved by disclosing within the policy or other publicly accessible materials the funding and budget of the mechanism, as well as the aforementioned details related to hiring, staffing, leadership, personnel, location, and organizational structure.

Remedy: The SCGM policy has admirably confronted the challenge of delivering actual remedy for adverse supply chain impacts that run counter to the human rights and environmental commitments of Amfori’s [BSCI Code of Conduct](#). In our experience, accountability mechanisms cannot help deliver meaningful remediation if its members are reticent or unwilling to engage in the process. We therefore recommend closing the potential accountability gap by updating the Code of Conduct and other environmental and social policies to include requirements to (a) post notice and disclose the existence of the SCGM and other grievance mechanisms, and (b) participate with candor and good-faith in grievance handling processes, as is required by section 2 of the [SCGM Participation Standards](#). The SCGM policy should make clear the expectation of complaint Respondents and their business partners to grant SCGM investigators full access to pertinent information, project sites, and interviews with personnel. Additionally, the SCGM should be adequately staffed and resourced to deliver on its mandate to facilitate

remedy, and its pool of investigation and remediation handlers should possess human and labor rights expertise to deliver rights-compatible remedy.

Further, we recommend the following revisions to the SCGM [Remediation Step-by-step Guidance](#):

1. The option for complaint respondents to select unvetted remediation handlers outside of the pool of approved remediation handlers risks the trust of project-affected stakeholders. To promote legitimacy of process and prevent dialogue from shutting down before remediation efforts begin, the provision should either be removed or condition the selection of a remediation handler not included in the pool of remediation handlers on the consent of complainants.
2. The general requirement that remediation handler's be appointed after investigation thwarts a potential option for reaching remedy early, before or contemporaneous to an investigation. If complaint respondents are apt to acknowledge harm and provide redress early, then that should be encouraged and not stifled by rigidly sequencing investigations and remediation.

Inclusiveness: The principle of inclusiveness and accommodating the specific needs of complainants is admirable; however, the policy should expressly state how inclusiveness will be worked into the review of SCGM policy and related guidance. We urge a principled commitment to inclusiveness and consultation for future reviews just as you have done by opening this present opportunity to comment on the design and pilot of the mechanism.

4. Admissibility Criteria

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [3]

Please indicate if anything is missing or whether a criterion should be reformulated.

With respect to who may submit a complaint, we recommend expressly stating under section 4.5 that communities *and/or their chosen representatives* may submit a complaint, similar to as is allowed for “workers and their legitimate representatives” to submit claims. While grievance mechanism processes should be sufficiently accessible to communities so that they do not need advisers, in practice, community members face language, resource, technological, and information barriers that make it difficult if not impossible for them to pursue a complaint independently. While the SCGM may inquire into the authorization for complainant representation, it should not obstruct individuals’ access to remedy by limiting their choice of representatives. To do so would establish an unequal requirement for complainants vis-à-vis Amfori members and their business partners, which are likely advised and represented by consulting and legal teams.

Admissibility can also be improved by including within the range of eligible issues threats and instances of reprisals or retaliation for pursuing recourse through other mechanisms, as well as potential harm that

has not yet occurred but has a degree of probability. The SCGM policy should not preclude opportunities to correct environmental and social risks that have not yet caused damage.

6. Complaint Admissibility

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [4]

Is the procedure formulated in a clear and understandable manner? If not, please indicate how you would reformulate the procedure.

Preliminarily, with respect to section 5.2. “Complaint Submission,” accommodating language barriers can be improved by including a commitment to make every effort to communicate in the preferred language of complainants. The present caveat that the SCGM cannot guarantee that it can receive complaints in all existing local dialects risks dampening stakeholder confidence in the mechanism. Better language can be modeled after the policy of the Compliance Advisor Ombudsman of the International Finance Corporation and Multilateral Investment Guarantee Agency, i.e.:

“While CAO’s working language is English, CAO seeks to make reports and communication materials available in relevant local languages to promote accessibility. CAO issues public information materials in the official languages of the World Bank Group (Arabic, Chinese (Mandarin), English, French, Russian, Spanish, and Portuguese), and additional languages where deemed necessary. CAO makes available these materials in electronic and hard copy and by other culturally appropriate means.

Complainants may submit a complaint to CAO in any language, and CAO’s correspondence and engagement with the Complainant and its representatives will be in both the language of the complaint and English.”

If budgetary constraints restrict the ability to accommodate language needs, then we urge funding the mechanism more appropriately so that it can facilitate communication -- a base function of a grievance mechanism.

With respect to “Complaint Admissibility,” we encourage enhancing transparency under section 6.3 by mentioning that admissibility determinations will be published along with the original complaints (materials redacted for confidentiality), and a summary of the complaint to the SCGM website after decisions are communicated to complainants and respondent member(s).

Overall, the admissibility procedure seems formulated in a clear and understandable way. We urge developing translated versions of the policy to improve accessibility.

7. Complaint Investigation

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [3]

Please indicate which elements you would propose to add or change. Also, please indicate whether the included timeframes are realistic and if not, what would be more adequate from your experience.

The option for complaint respondents to select unvetted investigation handlers outside the pool of approved handlers, as detailed by section 7.2 of the SCGM policy and step 7.1 of the [SCGM Investigation Step-by-step Guidance](#), risks the trust of project-affected stakeholders. To promote actual and perceived legitimacy of process, the provisions should either be removed or conditioned on the consent of complainants. To the point, section 4 of the SCGM [Participation Standards](#), does not sufficiently impose an obligation on investigation handlers to recuse themselves from the grievance redress process if there is an actual or apparent conflict of interest. Inasmuch as the credibility of investigation handlers is critical to the integrity of the SCGM policy, the requirement to demonstrate “structural separation” between past services and the investigation must also be accompanied with the consent of complainants.

We urge specifically referencing and providing a link to the SCGM Investigation Step-by-step Guidance in the complaint investigation section, as the guidance details critical information related to the scope, practice, and timelines for investigation and reporting. Cross-referencing the two policies serves to improve accessibility.

While we support the ambition to address grievances in a timely manner, we urge that the policy contemplate the potential for investigation timelines beyond 30 days, especially where issues and the scope of harm run deep. We therefore recommend updated the sentence in section 7.5 of the SCGM policy that reads “The investigation process strives to be conducted within a reasonable timeframe not exceeding thirty Business Days” to instead read “The investigation process strives to be conducted within a reasonable timeframe, typically thirty Business Days, but timeframes may be extended considering the breadth and scope of the alleged harm.” Accordingly, section 9.2 of the SCGM policy and step 7.3 of the SCGM Investigation Step-by-step Guidance should relax the rigid requirement for investigation handlers to upload investigation reports on the SCGM case management “within 30 business days” after they are selected to investigate. Instead, the policy should require investigation handlers to release and publish investigation reports at the conclusion of the investigation, noting that this should occur typically within 30 Business Days after initiating investigation, but investigation and reporting timelines may be extended with the consent and approval of the parties in consideration of the scope and breadth of issues and alleged harm.

8. Escalation

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [3]

Please indicate which elements you would propose to add or change.

The provision that allows investigation handlers to assist complainants on whether to seek recourse through other judicial or non-judicial means only emphasizes the point that parameters are needed to ensure that investigation handlers selected outside of the vetted pools can be trusted to not divert scrutiny of respondent actions. Whereas the SCGM [Investigation Step-by-step Guidance](#) offers that advice on escalating claims should be offered only after a determination that a complaint is not founded, the SCGM policy itself should make explicit that advice on escalation should be offered only at the conclusion of an investigation where remediation is not offered. As the section is presently positioned before the section on “Investigation Closure,” the policy creates confusion as to when escalation may be offered, potentially in contradiction to the Step-by-step Guidance.

We therefore recommend placing the section after the sections on Investigation Closure, and clarifying that escalation may be offered only after the investigation report is finalized and presented to complainants.

9. Investigation Closure

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [3]

Please indicate which elements you would propose to add or change. Also, please indicate whether the included timeframes are realistic and if not, what would be more adequate from your experience.

As recommended above, the Investigation Closure section should precede the section on Escalation to ensure that investigations are not unscrupulously derailed.

Section 9.1 relates that investigation reports must include both the findings of an investigation and a determination of whether a complaint is grounded or whether no conclusion is possible. As a matter of transparency and diligence, we urge specifying within the policy that investigation findings should take care to address every issue raised by the complaint. Thoroughness will serve to facilitate remediation dialogue and assure complainants that all of their concerns were duly investigated.

Additionally, section 9.2 of the SCGM policy and step 7.3 of the SCGM Investigation Step-by-step Guidance should relax the rigid requirement for investigation handlers to upload investigation reports on the SCGM case management “within 30 business days” after they are selected to investigate. The 30-day limit is highly atypical for independent complaints investigation. For example, the policy of IFC/MIGA Compliance Advisor Ombudsman allows for opportunity to deliberate on the schedule and time frame so as to not stymie the scope of investigation or robust consideration of the allegations. As another example, the policy of the Green Climate Fund’s independent accountability mechanism, the Independent Redress Mechanism (IRM), which considers complaints related to the activities of all accredited entities, their clients, and their sub-clients, acknowledges that “[t]he time required for . . . compliance investigation will vary depending on the nature, complexity and scope of the GCF funded project or programme and the

alleged adverse impacts and non-compliance.” Nonetheless, the IRM policy states that investigations should ordinarily be completed within one year after investigation has commenced.

We strongly urge building similar opportunities for crafting timelines suited to the allegations presented by a complaint. The timeline for the investigation process as it exists now much more resembles the investigation *appraisal* processes typical of major independent accountability mechanisms. In general, the timeframe of investigation appraisal is 30-45 days, which allows for a preliminary look into whether complaint allegations are grounded and worthy of a full investigation into potential policy violations. We urge that timeline considerations within the SCGM policy ensure that complainants have access to a full and complete investigation

The SCGM policy should require investigation handlers to release and publish investigation reports at the conclusion of the investigation, noting that this may typically occur within 30 Business Days after initiating investigation, but investigation and reporting timelines may be extended with the consent and approval of the parties in consideration of the scope and breadth of issues and alleged harm.

10. Complaint Remediation

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [3]

Please indicate which elements you would propose to add or change. Also, please indicate whether the included timeframes are realistic and if not, what would be more adequate from your experience.

Similar to our recommendations for the compliance investigation section, the complaint remediation section should specifically reference and provide a link to the SCGM Remediation Step-by-step Guidance, as the guidance details critical information related to the process and timelines for remediation. Cross-referencing the two policies serves to improve accessibility and predictability.

The requirement that remediation plans must be developed in consultation with complainants and their representative is critical and needs to remain in the final version of the procedures. In addition to that requirement, the SCGM policy should also state explicitly that remediation plans should be developed with Free, Prior, and Informed Consent of Indigenous Peoples where Indigenous lands and rights are implicated by remedy solutions.

The timeline of no more than 20 days to devise remediation plans is atypical of timelines for devising actions plans in response to findings of non-compliance. In the context of development finance accountability mechanisms, the average timeline for consulting and coalescing on a plan of action to address issues of concern lies somewhere between 30 and 60 days (for examples, see the policies of the African Development Bank Independent Recourse Mechanism [30 days], the IFC CAO [50 days], and the GCF IRM [60 days]). We recommend extending the maximum timeline to at least 30 days to promote ample room for consultation and agreement.

11. Complaint Remediation Monitoring

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [4]

Please indicate which elements you would propose to add or change.

Good practice dictates that complaints mechanisms have the mandate to monitor remediation until *all* instances of non-compliance have been remedied. The present SCGM Policy and [Remediation Step-by-step Guidance](#) qualify that if there is incomplete or no remediation, the SCGM may consider escalating issues to judicial authorities to ensure that respondents perform on the remediation plan agreed to by contract, in consultation with the complainant. We feel this stands to be an excellent exercise of leverage to deliver on remedy, and we would encourage integrating regularized reporting on the implementation of remediation plans onto the SCGM case registry to promote transparency and encourage adherence to agreed timelines for actions within remediation plans. Presently, section 11.3 of the SCGM Policy allows remediation handlers to verify whether a complaint was *fully* remediated after the timeline for the remediation plan has run. We urge allowing intermittent reporting on specific actions as according to the schedule of a remediation plan to promote more efficient delivery of remedy and mitigate the risk of zero action taken to address harm.

Lastly, the section 11.1 of the SCGM policy should detail exactly how remediation monitoring can occur. We recommend incorporating policy language similar to that used by the Social and Environmental Compliance Unit of the United Nations Development Programme (“[M]onitoring may involve desk review, correspondence with the affected communities, progress reports [from complaint respondents], and onsite inspections, as appropriate”), or that of the Asian Development Bank Accountability Mechanism (“The methodology for monitoring may include [i] consultations with the complainants, the borrower, the Board member concerned; Management; and staff; [ii] a review of documents; and [iii] site visits. The [mechanism] will also consider any information received from the complainants and the public regarding the status of implementation”). Including this language promotes predictability of process and precludes remediation handlers from simply trusting and not verifying progress reports submitted by the parties.

13. The Appeal Procedure

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [4]

Please indicate which elements you would propose to add or change. Also, please indicate whether the included timeframes are realistic and if not, what would be more adequate from your experience.

We appreciate the effort to enable a path to appeal the handling of investigation and/or remediation processes directly to the SCGM Secretariat. We urge that all appeal letters and decisions related to the

appeal made by the SCGM be included in the public complaint registry, redacted for confidentiality as requested. This serves to enhance transparency and trust in the mechanism.

The 10-Business Day timeline for filing appeals should be extended to at least 30 days to allow adequate time for complainants to articulate their concerns in written form, collect any supporting documentation, and potentially seek to have their appeal translated. In our experience working with communities adversely impacted by internationally financed projects, time is often needed for groups of complainants to deliberate amongst themselves whether to pursue a specific course of action like an appeal.

Additionally, the timeline for filing an appeal should be adjusted from the date of a decision regarding the implementation status of the remediation plan to the date that complainants actually receive the decision. This is especially true if the appeal is premised on inadequate communication by the investigation/remediation handler, which could implicate whether complainants were ever notified of the release of the decision to begin contemplating whether to draft an appeal.

14. Miscellaneous

On a scale of 1-5, 1 being 'needs drastic improvement' to 5 being 'no further improvement needed,' what improvements do you think this section needs? [2]

Please indicate which elements you would propose to add or change.

With respect to the section on evaluation and continuous improvement, we recommend that the policy provide a link to the key performance indicators relied on by the Amfori Secretariat to evaluate the SCGM annually.

The continuous improvement section also overlooks the opportunity for the SCGM to provide systemic advice to Amfori and its members based on its complaints handling experience. Advisory functions are a largely embraced feature of accountability mechanisms because of their ability to provide invaluable institutional lesson learning to improve due diligence and performance, and help institutions prevent repeating similar harm in future.

We strongly recommend equipping the SCGM with an advisory function that would allow it to undertake and publish independent analysis on trends and systemic issues arising from its cases. The SCGM's advice could also extend to providing input on development and revision of Amfori's Code of Conduct and related policies and guidelines. Should this recommendation be taken on board, we urge that SCGM advice be provided transparently to advance supply chain due diligence beyond the members of Amfori. Additionally, the SCGM should monitor the implementation of its institutional advice as means of benchmarking good practice in the management of supply chain complaints.

The policy should also expressly state that the reviews of the SCGM will be done through a public process in order to ensure its continuous improvement and that it remains responsive to complainants. Reviews should include a public consultation process, soliciting input from potentially-affected people,

past complainants, and other stakeholders. Model consultation processes for reviewing peer accountability mechanisms include a first-round public consultation on the existing policy and a second-round public consultation on the draft revised policy. Draft documents should be disclosed as a part of the consultations, and the comment periods should last at least 60 days. Additionally, there should be in-person and/or virtual consultation events held in multiple regions reflecting the financial institution's areas of operations. The final revised policy should be published along with a matrix of all recommendations received and whether they were adopted or not.