

Mapping Grievance Mechanisms in the Business and Human Rights Arena



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Introduction

Background

This document forms part of the research background to a project of the Corporate Social Responsibility Initiative at Harvard University's John F. Kennedy School of Government. The project is focused on mechanisms for resolving grievances in the business and human rights arena. It aims to examine the strengths and weaknesses of existing grievance mechanisms in order to highlight lessons to be drawn from their experience, consider how they might be improved and explore what model mechanisms might look like for the field of business and human rights.

This mapping sets out in summary form a range of existing grievance mechanisms from a variety of different contexts, whether industry or multi-industry, national, regional or international, private or public, based on law or voluntary standards. The aim here is to describe the mechanisms as factually as possible in order to provide a platform for further analysis as to how effective these mechanisms are and how well they are implemented in practice, but such judgments are not the purpose of this work.

The common denominator among the mechanisms is that they a) address the impacts of corporations, b) explicitly or implicitly reference human rights and c) are non-judicial. Their purpose is to find resolutions to grievances outside the judicial process for various reasons such as cost saving, time saving, a desire to avoid confrontation and a need to protect the integrity of an institution or initiative. Some of the mechanisms can proceed in parallel with judicial processes; others are intended to avoid the need for judicial processes and some take effect once a case is filed with a judicial body in order to encourage parties to come to a resolution prior to any judgment.

The mechanisms are described in accordance with three defining characteristics: their institutional level or location, their key functions and the type of process they offer.

Institutional level/location

The mechanisms appear in the document according to the following order of categories:

1. **Company:** Mechanisms initiated and/or run by companies themselves to handle grievances related to their own operations or those of their suppliers/contractors.
2. **Industry:** Mechanisms linked to multi-stakeholder or collaborative initiatives that focus on a single industry.
3. **Multi-Industry:** Mechanisms linked to multi-stakeholder initiatives that encompass more than one industry.
4. **National:** Mechanisms that are organised through a national body or within a particular state, such as the national human rights institutions.
5. **Regional:** Mechanisms that operate in a certain region of the world – mainly the Regional Development Banks.
6. **International:** Mechanisms that operate around the world, or at least across multiple continents, such as the Compliance/Advisor Ombudsman of the World Bank Group.

Key functions

Each mechanism is described in line with seven functional categories, each consisting of between one and five questions indicated by a sub-heading in the margin. The functions, sub-headings and the questions they reflect are set out in the table below.

Introduction

Table 1: Overview of functional categories and questions addressed

FUNCTION	CATEGORY	QUESTIONS ADDRESSED
Standards	<i>Source of Standards</i>	<ul style="list-style-type: none"> What is the source of the standards for the complaints/grievances? Are they based on human rights law, non-legal mandatory standards or non-binding standards?
	<i>Particular Rights</i>	<ul style="list-style-type: none"> Do they focus on particular rights or do they relate to any human rights concern? Are they tailored for the particular institution or do they reference external standards?
Access	<i>Education and Information</i>	<ul style="list-style-type: none"> Is there an education/information programme on the mechanism's availability?
	<i>Admissibility Criteria and Limitations</i>	<ul style="list-style-type: none"> What are the admissibility criteria? Who can bring a complaint? Against whom can it be brought? Are there other limitations?
	<i>Parallel Grievance Processes</i>	<ul style="list-style-type: none"> Can the mechanism proceed when the same dispute is under consideration in another mechanism (legal or other)?
	<i>Resource Assistance</i>	<ul style="list-style-type: none"> Is there any resource assistance to complainants?
	<i>Non-Retaliation</i>	<ul style="list-style-type: none"> Are there any measures to ensure non-retaliation against complainants?
Agents	<i>Administration</i>	<ul style="list-style-type: none"> Who runs the mechanism?
	<i>Other Participants</i>	<ul style="list-style-type: none"> Who can take part in the process?
Process	<i>Description</i>	<ul style="list-style-type: none"> What types of process are available under the mechanism and how do these operate?
	<i>Time Limits</i>	<ul style="list-style-type: none"> Is there a time limit on the process or any part of it?
Outcomes	<i>Range of Outcomes</i>	<ul style="list-style-type: none"> What is the range of possible outcomes from the process?
	<i>Appeal</i>	<ul style="list-style-type: none"> Is there a provision for appeal – on process or on substance?
Enforcement	–	<ul style="list-style-type: none"> What provision is there for enforcing outcomes (court referral/sanction)?
Transparency	–	<ul style="list-style-type: none"> What provision is there for public transparency at various stages in the process?

Introduction

Type of process

The mechanisms are also described in terms of one or more of six different types of process that may typically be used to address a grievance: information facilitation, negotiation, mediation/conciliation, investigation and adjudication. These categorisations can be found at the beginning of each description together with other key data on the mechanism's geographical scope, the year of its creation and the number of complaints it handles. While each of these process categories leaves scope for varying approaches in practice, they can broadly be understood as follows:

1. **Information Facilitation:** the gathering and dissemination of information on grievances, with any further action on that information largely left to its end-users.
2. **Negotiation:** direct dialogue between the parties to the grievance with the aim of resolving the grievance or dispute through mutual agreement.
3. **Mediation/Conciliation:** direct or indirect dialogue between the parties assisted by an external, neutral/objective facilitator with the aim of resolving the grievance through mutual agreement. The facilitator may take a more or less active and intrusive role in the dialogue process.
4. **Arbitration:** a process by which neutral arbitrators selected by the parties to a dispute hear the positions of the parties, conduct some form of questioning or wider investigation and arrive at a judgment on the course of action to be taken in settling the grievance or dispute, often, though not always, with binding effect on the parties.
5. **Investigation:** a process of gathering information and views about a grievance or disputed situation in order to produce an assessment of the facts.
6. **Adjudication:** the formation of a judgment on the rights and wrongs of parties in a situation of dispute and on any remedies needed, which may be binding on the parties or lead to some form of sanction. Usually the culmination of an investigation, adjudication is distinct from arbitration in that it does not require agreement by the parties on who will adjudicate, nor does it involve a formal process of hearings.

Limitations

There are inevitably some limitations on these attempts to categorise mechanisms. Some may fit into more than one category, such as the National Contact Points of the Organisation for Economic Co-operation and Development (OECD), which are located at the national level, yet part of a multilateral initiative and may take complaints from individuals in any state. Here they are designated as international. Some types of mechanism are addressed collectively; for instance, the National Contact Points are described in terms of the OECD's procedural guidance to all NCPs; and the International Framework Agreements are discussed in aggregate terms, while reflecting some variations in their approaches. In the case of both national labour dispute systems and national human rights institutions, three different examples of each are described in full, in order to illustrate some of the approaches taken.

Finally, the ways in which these mechanisms engage business in their dispute resolution processes vary. In some cases companies are always and directly involved, for instance under the Fair Labor Association's Third Party Complaints system. In others, companies are involved in some of the disputes handled, but may not be a party to others, as in the case of the National Human Rights Commissions of India, Kenya and New Zealand, which handle complaints against both governmental and corporate actors. In the case of some multilateral development banks, such as the European Bank for Reconstruction and Development and the Inter-American Development Bank, the primary object of a complaint is the Bank itself, yet companies implementing the projects that form the basis of complaints may be parties to the process and/or implicated in the outcomes.

Introduction

Table 2: Core processes at a glance

ORGANIZATION	INFORMATION FACILITATION	NEGOTIATION	MEDIATION/ CONCILIATION	ARBITRATION	INVESTIGATION	ADJUDICATION
Company Level						
BTC Pipeline/BP, Azerbaijan		●		●		
Gap Inc., Lesotho	●		●	●		
Hewlett-Packard, Mexico			●		●	
Xstrata Copper, Peru				●	●	
Industry Level						
Clear Voice Hotline sm	●					
Fair Labor Association			●		●	
Fair Wear Foundation					●	
International Council Toy Industries					●	
Voluntary Principles Security & HR*		●				●
Workers Rights Consortium					●	
Multi-Industry Level						
Ethical Trading Initiative			●		●	
Social Accountability International					●	
National Level						
India: National HR Commission					●	●
Kenya: National Commission HR			●	●	●	●
New Zealand: HR Commission			●			
Cambodia: Labour Dispute System			●	●		
South Africa: Labour Dispute System			●	●		
UK: Labour Dispute System			●	●		
Regional Level						
African Development Bank			●		●	●
Asian Development Bank			●			●
Eur. Bank Reconstruction & Dev.			●		●	●
Inter-American Development Bank					●	●
International Level						
Global Union Federations/TNCs		●	●			
International Labour Organization						●
Org. Economic Co-operation & Dev.			●		●	
United Nations Global Compact	●					
World Bank Group (CAO)			●		●	●
World Bank Group (Inspection Panel)					●	●

* HR = Human Rights

Introduction

Table 3: Key facts of included mechanisms

ORGANIZATION	GEOGRAPHICAL COVERAGE	YEAR ESTABLISHED	APPROXIMATE NUMBER OF COMPLAINTS ¹
Company Level			
BTC Pipeline/BP, Azerbaijan	Azerbaijan	2002 (ended 2006)	220
Gap Inc., Lesotho	Lesotho	2004 (informal 2000)	50 (2000)—0 (2007)
Hewlett-Packard, Mexico	Mexico	2005	N/A
Xstrata Copper, Peru	Peru (Las Bambas)	2005	108 (total)
Industry Level			
Clear Voice Hotline sm	Latin America	2007	0 (to date)
Fair Labor Association	World	1999	10
Fair Wear Foundation	Asia, East. Europe, North Africa	2004	4–5
International Council Toy Industries	World (China)	2007	0 (to date)
Voluntary Principles Security & HR*	World	2007	1 (to date)
Workers Rights Consortium	World	2000	50
Multi-Industry Level			
Ethical Trading Initiative	World	2001	2–6
Social Accountability International	World	1999	20 (total)
National Level			
India: National HR Commission	India	1993	74,444*
Kenya: National Commission HR	Kenya	2002	2,274*
New Zealand: HR Commission	New Zealand	1993 (revised 2001)	1300+
Cambodia: Labour Dispute System	Cambodia	2003	470 (total)
South Africa: Labour Dispute System	South Africa	1995	123,472
UK: Labour Dispute System	United Kingdom	1975	100,000+* (ind.), 1000* (coll.)
Regional Level			
African Development Bank	Africa	2004 (began 2006)	1 (to date)
Asian Development Bank	Asia and Pacific	1995 (revised 2003)	5 (since 2004)
Eur. Bank Reconstruction & Dev.	Centr./East. Europe, Centr. Asia	2003 (began 2004)	1–2
Inter-American Development Bank	Latin America, Caribbean	1994	5 (total)
International Level			
Global Union Federations/TNCs	World	1988 (first agreem.)	N/A
International Labour Organization	World	1981	5 (total)
Org. Economic Co-operation & Dev.	OECD + 10 non-OECD Countries	1976 (revised 2000)	19 (total all NCPs)
United Nations Global Compact	World	2004	56 (total)
World Bank Group (CAO)	World	1999	5–6
World Bank Group (Inspection Panel)	World	1994	3–4

¹ Numbers are averages of eligible complaints per year unless otherwise indicated and are up to November 2007. Numbers with a * contain *all* complaints received, whether against the organizations itself, government or business and regardless of whether they were deemed admissible.

DESCRIPTIONS

COMPANY LEVEL

BTC Pipeline/BP, Azerbaijan

“Construction Phase”

- REGION ■ Azerbaijan
- COMPLAINTS ■ Average of 220 per year
- ESTABLISHED ■ 2002 (ended in 2006)
- CORE PROCESS ■ Negotiation; Arbitration

Background

The Baku-Tblisi-Ceyhan (BTC) pipeline links the landlocked Caspian Sea with the Mediterranean. It runs 1,768 kilometres across Azerbaijan, Georgia and Turkey. British Petroleum (BP) is the main operator, while approximately 70% of BTC costs are funded in the form of financing by third parties, including the European Bank for Reconstruction and Development, the International Finance Corporation and a number of export credit agencies and commercial banks. The complaints mechanism for the construction phase of the pipeline in Azerbaijan was initiated by BTC and run with the help of local NGOs and experts.

Standards

The mechanism provided for community members to raise any grievances, which could include, but were not necessarily limited to, human rights-based grievances. Rights-based grievances could be linked to provisions in domestic law; voluntary standards adopted by BTC, namely BP's own Code of Conduct and the Voluntary Principles on Security and Human Rights; or standards required of them by the International Finance Corporation (IFC), a partial funder of the project. These standards included a mix of tailored standards (the Voluntary Principles on Security and Human Rights, IFC standards) and cross-cutting external standards (domestic law, the Universal Declaration of Human Rights).

Access

Education and Information

Advice to the communities on what the company was doing and, in the event of concerns, how to contact the relevant Community Liaison Officers (CLOs) formed part of the public disclosure planning for the project. It was undertaken through a road show to the different communities and through subsequent distribution in the communities of posters and laminated cards with the CLOs' contacts.

Admissibility Criteria and Limitations

Any communities or community members along the pipeline who claimed to be impacted by the pipeline construction could register a complaint. Complaints could be brought regarding the activities of the BTC consortium or a contractor engaged by them on work related to the construction of the pipeline. No complaints were excluded and BTC did not make any prima facie judgments on their legitimacy. The only requirement was to have a name and contact point for the complainant so that a response could be provided.

Parallel Grievance Processes

Alternative non-judicial processes could proceed in parallel (e.g. via the Compliance/Advisor Ombudsman of the World Bank Group or an OECD National Contact Point). Litigation was a local matter and handled separately by BP's legal department. It was up to the complainant whether to take a case to court, but the process implied a presumption that BTC would not do so.

BTC Pipeline/BP, Azerbaijan

Resource Assistance BP gave a grant to a local NGO, the Center for Legal and Economic Education (CLEE). In those cases where complainants (mainly on land issues) were not happy with the result of their complaint, CLEE was available to provide free legal advice and to represent them in any court case.

Non-Retaliation Retaliation was not considered to be an issue.

Agents

Administration Three organisations played a central role in the mechanism:

- The BTC consortium in Azerbaijan (primarily BP) set up the mechanism, hired the CLOs and provided grants to CLEE.
- CLEE was engaged by BP to provide the function of arbiter in cases where direct negotiations did not succeed.
- The Institute of Architecture or the National Oil Company provided assessments as part of a Commission of external experts in the event of technical disputes, such as whether vibrations from company trucks had caused damage to properties.

Other Participants Any party with a direct stake in the grievance, including local authorities, could participate in the process. The complainant(s) were able to bring an adviser or other person in support of them to the settlement negotiations. The process was not open to other individuals or organisations.

Process

Description Grievances were registered primarily with the Community Liaison Officers (CLOs): six local individuals hired by the BTC consortium, formed into three groups of two, with each group covering communities along one third of the pipeline's length in Azerbaijan. All grievances – whether submitted in writing or orally – were recorded in a log. Either the CLOs or their manager would then contact the relevant company division or staff member(s) responsible for the issues that formed the subject of the grievance. They would seek an acceptable solution to the grievance and revert to inform the complainant(s) of the proposed action.

If the complainant was not content with the solution proposed, the CLO would arrange for all interested parties – including local authorities – to meet in order to seek a common settlement. The CLO would bring documents covering the history of the complaint and any technical papers to the meeting. Other parties could bring their own documentation. The meeting was conducted as a direct negotiation, without any external facilitator or mediator.

If this dialogue-based process did not lead to an agreed settlement, and where the issue in dispute related to land, compensation or other primarily non-technical issues, the complainant(s) could take the matter to the CLEE, a local NGO, engaged by BP to provide the function of arbiter in such situations. CLEE would review all documents related to the complaint and produce a finding or opinion on the appropriate outcome. Neither side was bound a priori to accept that finding, but BP/BTC did so in practice in every case.

Time Limits Complaints had to be acknowledged within seven working days and were to be closed within 30 days of receipt. Often the process was much quicker, but closing some complaints took much longer, particularly where they involved factors not entirely under BP/BTC's control, such as where a contractor disputed a complaint or refused to resolve it.

BTC Pipeline/BP, Azerbaijan

Outcomes

Range of Outcomes Most of the complaints were in relation to land, with compensation the usual outcome, and the level of proposed compensation often the subject of the complaint. Other complaints included damage to roads or property and, where liability was accepted, outcomes could include direct material remedy of the damage or compensation.

Appeal The complainant(s) retained the right to take the matter to court if no settlement was agreed through dialogue and they disputed the arbitration finding or opinion of CLEE.

Enforcement

There was no formal provision to guarantee that the recommendations were followed through. In non-technical cases, BTC undertook to comply with the findings of CLEE. Neither in the case of settlements emerging from dialogue, nor in the case of CLEE findings were the complainants required to sign off on the outcome.

Transparency

BTC was required to report on the process to the lender auditors and their reports were in the public domain.

Links & Sources

- BP Homepage www.bp.com
- BP BTC Website www.bp.com/sectiongenericarticle.do?categoryId=9006669&contentId=7015093
- Information on BTC pipeline at the International Finance Corporation www.ifc.org/btc

Gap Inc., Lesotho

Grievance Policy and Procedure

- REGION ■ Lesotho
- COMPLAINTS ■ From approximately 50 in 2000 to none in 2007
- ESTABLISHED ■ 2004²
- CORE PROCESS ■ Information Facilitation; Mediation/Conciliation; (Arbitration³)

Background

Gap Inc. is an international specialty retailer offering clothing, accessories and personal care products, headquartered in San Francisco, USA. It operates more than 3,100 stores worldwide and has over 150,000 employees. Its annual revenue in 2006 was US\$15.9 billion. Gap Inc. sources products from third-party contract suppliers in more than 50 countries around the world and has been sourcing from Lesotho for more than seven years. Lesotho has a population of approximately 1.9 million, with high unemployment, and an HIV/AIDS infection rate of over one-third of the population. The Lesotho economy is heavily dependent on the garment industry.

There are three levels of grievance process for workers in contract factories in Lesotho that supply Gap Inc. Gap Inc. encourages factories to have their own grievance mechanisms in line with guidance they provide and in which they train factory personnel. Gap Inc.'s Social Responsibility Manager for the region may also get involved, whether as a contact point for information and advice, or in a conciliation or informal mediation role. Finally, parties may turn to Lesotho's own statutory mechanisms for labour dispute resolution – the Lesotho National Development Corporation and/or the Directorate for Dispute Prevention and Resolution. These institutions have evolved considerably over recent years, in part due to assistance from the International Labour Organization. This description covers the system as a whole since all three levels are available to workers in Gap Inc.'s factories.

Standards

Source of Standards The standards that Gap Inc. requires from its suppliers are laid out in the company's Code of Vendor Conduct. The Code was developed in 1996 and is based on the International Labour Organization's Core Labour Conventions and other United Nations norms. Gap Inc. is currently working towards aligning its Code of Vendor Conduct with the Codes of the Ethical Trading Initiative and Social Accountability International. Complaints may also relate to issues and interests outside of the Code of Vendor Conduct.

Particular Rights The Code of Vendor Conduct includes the following standards: compliance with local and national law, discrimination, forced labour, child labour, wages and hours, working conditions, housing (if applicable) and freedom of association.

² Formal procedures were adopted in 2004. The mechanism ran informally from 2000.

³ Information Facilitation and Conciliation are core processes that Gap Inc. offers itself; Mediation and Arbitration are provided by the other institutions in Lesotho to which workers in Gap Inc. supply factories have access.

Gap Inc., Lesotho

Access

Education and Information Union officials know how to contact Gap Inc.'s Social Responsibility Manager, as do some of the other factory workers. Gap Inc. organises training sessions for Human Resource managers in the factories to make them aware of the Code of Vendor Conduct and of the opportunity to contact Gap Inc. for questions and concerns. The Code of Vendor Conduct is also posted in the factories.

Admissibility Criteria and Limitations Since this is not a formal process, there are no formal criteria. Complaints, in particular those that have not been resolved through formal mechanisms in Lesotho (see below), are usually brought to Gap Inc.'s Social Responsibility Manager by the union, on behalf of one or more workers. Gap Inc.'s Social Responsibility Manager may also be made aware of complaints that are pending through formal mechanisms in case he/she is needed to help play a facilitation role between parties.

Parallel Grievance Processes The Social Responsibility Manager can still be contacted when the dispute is under review in another mechanism or the courts.

Resource Assistance There is no resource assistance to complainants, but the involvement of Gap Inc.'s contact person does not incur costs for the party. Gap Inc. often helps to play a facilitation role in the formal mechanisms.

Non-Retaliation Gap Inc. requires that employees and shop stewards/worker representatives who lodge a grievance or participate in this procedure, shall not suffer any discrimination, victimisation, loss of earnings etc.

Agents

Administration The informal mechanism is run by Gap Inc.'s Social Responsibility Manager for the region, which includes Lesotho. Other organisations that play an important role in the dispute resolution process in Lesotho are the Lesotho National Development Corporation (LNDC) and the Directorate of Dispute Prevention and Resolution (DDPR), both of which are government-created bodies.

The LNDC falls under the Ministry of Trade and Industry, Cooperatives and Marketing. Its mandate is to initiate, promote and facilitate the development of manufacturing and processing industries, mining and commerce in a manner calculated to raise the level of income and employment in Lesotho. Its functions include industrial relations, under which mandate it can intervene in disputes between employers/workers/workers' unions and advise employers and employees on matters pertaining to labour laws and employer/employee relations, with a view to preventing and resolving disputes in order to attain and maintain harmonious relations between the parties.

The DDPR was created under the Labour Code (Amendment Act) 2000 to prevent and resolve labour disputes efficiently and effectively. It has the following functions:

- to attempt to prevent and resolve labour disputes through conciliation;
- to resolve trade disputes through arbitration;
- to advise employees, employers and their organisations on the prevention of trade disputes and
- to compile and publish information about its activities, statistics on dispute prevention and resolution and significant arbitration awards.

Other Participants Managers, unions and workers can all take part in these processes.

Gap Inc., Lesotho

Process

Factory-Level Process

Description

Union representatives in supply factories approved by Gap Inc. can take complaints or grievances to Gap Inc.'s Social Responsibility Manager for the region. The Social Responsibility Manager will first usually encourage the union to take up the issue directly with factory management and will follow up with both parties where that is done. In 2000 it was the norm for most complaints to come first to the Social Responsibility Manager; today relations between unions and management have much improved and the sides will usually engage directly as a first step. The Social Responsibility Manager remains informed about disputes in factories that supply Gap Inc. and may still offer advice or coaching to one or other party.

Gap Inc. provides guidelines on grievance policy and procedures to supply factories and trains personnel managers to implement them. Factories may implement slightly varied procedures. The guidelines contain three steps and an overarching requirement that there be no retaliation against complainants:

Stage 1: Immediate Supervisor (2 days)

- The employee, with the assistance of a shop steward or worker representative if wanted, shall first raise the grievance verbally with his/her supervisor, or the latter's supervisor in the event of the grievance against an immediate supervisor.
- It must be made clear to the supervisor that an official grievance is being lodged, although the process is verbal at this stage.
- The supervisor shall investigate the grievance and attempt to resolve it within two days. If the supervisor's decision is not acceptable to the employee, the matter goes to the next stage and a grievance form needs to be completed.

Stage 2: Departmental Head/Manager (3 days)

- The Manager shall attempt to resolve the grievance and to this end will convene a meeting/enquiry consisting of the aggrieved employee, the shop steward/worker representative, the supervisor and the HR/Personnel Officer/Manager.
- At the enquiry, the relevant persons, including witnesses, may make representations/statements. Minutes of the enquiry shall be taken.
- The Manager shall attempt to resolve the grievance within three days of the grievance form being handed to him/her.
- If the grievance is resolved, the form is completed and filed in the employee's personnel file.
- If the grievance is still unresolved at this stage, and the employee wants to take the matter further, the employee shall proceed to the next stage. Any further facts and the reasons for the failure to resolve the issue shall be included on the grievance form.

Stage 3: Company Manager (5 days)

- The Company Manager, or a nominee (must be a senior management person) must be given the grievance form together with the minutes of the enquiry in order to make a final decision.

Gap Inc., Lesotho

- The Company Manager may make his/her decision based on the report or may make further investigations if deemed necessary.
- The Company Manager shall make his/her decision known to all parties within five days of receiving the report. This decision shall be in writing.
- At this stage, the grievance procedure is exhausted and the Company Manager's decision is final. If the aggrieved employee is still not satisfied, he/she may refer the grievance to the applicable legal channels, such as the DDPR, the Labour Court or a Labour Official.

Gap Inc. Engagement

Where the Gap Inc. Social Responsibility Manager still needs to become involved, he/she will typically gather information by reviewing documents, making factory visits and talking to the parties to the dispute, separately or together, depending on the nature of relations between the sides. Based on these investigations, the Social Responsibility Manager may advise the union and/or management, including pointing out if they are missing some important facts, while being clear that they can use the DDPR to pursue the matter further. If a grievance raises issues of rights that reflect breaches of Gap Inc.'s Code of Vendor Conduct or domestic law, the Social Responsibility Manager requires the factory to remediate the situation. In case of an interests-based dispute where there is no breach of rights, he/she may assist the parties in negotiations and possible conciliation, either shuttling between them or bringing the parties together in dialogue.

National Institutions

Since 2000, two other institutions have emerged as relevant for labour dispute resolution in Lesotho. The Lesotho National Development Corporation (LNDC) functions as an institution to bring parties together before any formal process is set in motion. For example, LNDC intervenes in strikes and tries to reconcile workers and managers.

When this informal process fails, the more formal process of the Directorate of Dispute Prevention and Resolution (DDPR) can be engaged, which can consist of conciliation and arbitration. The majority of cases taken to the DDPR pertain to unfair dismissals.

Conciliation

When a dispute has arisen and one of the parties has approached the DDPR, a conciliator is appointed to help the parties resolve the dispute and reach a consensus. This is a compulsory first step, but the outcome is entirely dependent on the will of the parties. The conciliator alerts and advises the parties on the relevant law and possible consequences of the positions they have taken. If an agreement is reached, the conciliator helps the parties write down the terms of the agreement and the agreement is signed by all.

Arbitration

The Labour Code provides that any dispute over rights that is not resolved by conciliation must go to arbitration. In the case of a dispute over interests, the complainants have a right to embark on a strike or a lockout although they may agree to go for arbitration. There is an exception for workers in organisations that provide essential services, who are obliged to refer their dispute for a compulsory arbitration.

Gap Inc., Lesotho

Outcomes

Range of Outcomes Outcomes may include remediation or any other redress agreed between management and workers, with or without the involvement of Gap Inc.'s Social Responsibility Manager or a conciliator from the LNDC or DDP. Where Gap Inc.'s Social Responsibility Manager identifies a breach of the Code of Vendor Conduct or domestic law he/she will require immediate remediation. Where the DDP gets involved the result could include any agreed settlement or a binding arbitration award.

Appeal All parties can at any time take the dispute to the DDP or the Labour courts if unhappy with outcomes from the factory-level process or Gap Inc.'s engagement. An agreement under DDP conciliation is written and becomes binding. A DDP arbitrator's decision is final and is binding. It has the same force and effect as an order of a court of law. It can be taken for review by the Labour Appeal Court.

Enforcement

Gap Inc. requires factories to remediate all non-compliances with its Code of Vendor Conduct. Compliance is an important aspect of the business relationship and non-compliances can result in the termination of that relationship/contract. Once processes rise up to the DDP, the conciliated agreements or arbitral awards are legally binding on the parties.

Transparency

During the process it is up to the parties (workers and management) to communicate the proceedings and outcomes of the process to their constituencies. Gap Inc. does not publicise specifics related to grievances with which the company becomes involved, on the grounds that sensitive issues are involved.

Links & Sources

- Gap Inc. Homepage www.gapinc.com
- Gap Inc. Social Responsibility www.gapinc.com/socialresponsibility
- Information on DDP [www.e-airc.gov.au/ilo/discuss/msgReader\\$160](http://www.e-airc.gov.au/ilo/discuss/msgReader$160)
- LNDC Homepage www.lndc.org.ls

Hewlett-Packard, Mexico

Mexico Grievance Mechanism

REGION	■ Mexico
COMPLAINTS	■ N/A ⁴
ESTABLISHED	■ 2005
CORE PROCESS	■ Investigation; Mediation/Conciliation

Background

Hewlett-Packard (HP) is one of the world's largest IT companies, with revenue totalling \$104.3 billion for the fiscal year to October 31, 2007. Its offerings span IT infrastructure, global services, business and home computing and imaging and printing. It is headquartered in California, USA, serves over 1 billion customers in more than 170 countries and has approximately 172,000 employees worldwide. Mexico is one of the electronics industry's preferred countries for contract manufacturing due to the combination of low costs, speed to market, customs and duties, and infrastructure for logistics and transportation. In the first quarter of 2007, there were around 400,000 workers in the Mexican electronics industry.

The competitiveness to gain market share has created pressures to reduce labour costs. This has in turn created a wide range of flexible work systems and the use of outsourcing services, which causes conflicts between workers and employers. To solve these conflicts, Hewlett-Packard initiated cooperation in 2005 with the Mexican NGO, Center for Reflection and Action on Labour Issues (CEREAL). Under the system subsequently developed, workers use CEREAL as their first point of contact when the unions or their employer fail to respond to a complaint. CEREAL contacts the factory management to establish dialogue and try to solve the issues. If there is no response or immediate resolution, complaints can be elevated to the Mexican Chamber of the Electronics Industry (CANIETI) and then to the brand companies sourcing from the factories in an effort to achieve a solution. This description covers the system as a whole since all four levels are available to workers in Hewlett-Packard's supply factories. The system is now also used by a number of other major IT companies, such as Siemens and IBM.

Standards

Source of Standards Complaints can relate to any issue, including alleged non-conformance with HP's Social and Environmental Responsibility conformance expectations as outlined in the Electronic Industry Code of Conduct (EICC). Their Supply Chain Social and Environmental Responsibility (SER) Policy requires HP suppliers to integrate human rights as well as environmental, health and safety and labour policies into their business and decision-making processes. The EICC is a non-legal code with which member companies of the EICC initiative are required to comply. They must also ensure that at least their first-tier suppliers are in compliance, and if possible other levels in their supply chain as well.

Particular Rights The EICC covers labour rights – in particular forced and bonded labour, child labour, working hours, wages and benefits, humane treatment, non-discrimination and freedom of association. The

⁴ The Numbers of complaints raised by CEREAL that specifically related to HP supply factories was not available at the time of publication.

Hewlett-Packard, Mexico

standards are broadly based on ILO Core Conventions. Other standards in the Code relate to health and safety, the environment and management systems in support of Code implementation

Access

Education and Information

CEREAL, in collaboration with ITESO – El Instituto Tecnológico Y de Estudios Superiores de Occidente (a private university in Guadalajara) – provides training and a diploma on labour rights and related issues for electronics sector workers. HP provides training on the EICC standards to the management of local electronics sector companies through a local organisation, CADELEC.

Admissibility Criteria and Limitations

Any worker or group of workers in a supply factory covered by the mechanism can register a grievance regarding management at the factory in question.

Parallel Grievance Processes

Both the workers and the companies have the right to legal recourse at any stage in the process. However, given the complexities of the legal system as well as its costs in terms of both time and money, this grievance mechanism is now the preferred route for seeking remedy.

Resource Assistance

CEREAL, which is funded independent from HP and the electronics industry, provides advice to complainants and represents their concerns to management, so that workers have not costs except for the time invested in the process.

Non-Retaliation

CEREAL's involvement ensures that the identity of complainants can remain confidential.

Agents

Administration

The creation of the mechanism was originally driven by Hewlett-Packard. The process is now driven severally by the labour rights NGO CEREAL, which initiates the process when it receives a complaint, by the Chamber of Electronic Industries in Mexico (CANIETI) which can mediate grievances and by the brands. Hewlett-Packard continues to play a leading role as a brand. Through CANIETI a variety of other major IT companies now also use the mechanism, including Siemens and IBM.

Other Participants

CEREAL on behalf of complainants, the factory management, CANIETI and the brand company can all be involved at different stages in the process.

Process

Description

There are four stages to the process:

1. If electronics workers do not feel comfortable communicating their concerns directly to the factory management, or do not get resolution when they do, they can take their complaint to CEREAL. Initially CEREAL will work with the complainant in an effort to resolve the issue, particularly where it may relate to a lack of information or misunderstanding of systems (e.g. how to read a paystub).
2. If unresolved, CEREAL engages directly with the factory management to try to address the grievance. It has direct agreements with the various factories to take on this role and has contacts with the relevant human resource managers. Their purpose is to review the information available from both parties, allow the company the opportunity to do an investigation and then to negotiate with both sides.
3. If still unresolved, CEREAL may raise the grievance to the level of the CANIETI, which has assumed a formal role in the process. CANIETI representatives mediate between factory, CEREAL and worker(s) in the search for a satisfactory resolution. Their role is

Hewlett-Packard, Mexico

to facilitate communication, encourage settlement and support standards and good practices.

4. If there is still no satisfactory outcome, the brand(s) sourcing from the factory in question are notified. They will work with the factory and CEREAL in an effort to resolve the issues, bringing their leverage to bear as appropriate.

Time Limits There is an agreed timeframe of four weeks within which any complaint should be resolved.

Outcomes

Range of Outcomes Any form of remediation of a legitimate grievance is possible in order to rectify the situation. In the short term, the aim is to resolve the immediate issue for the worker. In the long term it is to improve labour conditions by changing practices so these situations are not repeated. If CEREAL still believes there has not been a satisfactory solution after all stages are completed, it can publish findings to that effect in its annual report.

Appeal Stage 3 acts as an initial appeal on the substance if there is no resolution at the factory level; Stage 4 is a further form of appeal. There is no further appeal within the mechanism beyond the fourth stage, but recourse to the courts remains open to the parties.

Enforcement

The ultimate sanction if a legitimate grievance remains unresolved is for the sourcing company or companies to withdraw. However, the aim is to use all possible means, including industry leverage, to secure remediation.

Transparency

There is a non-disclosure agreement with the supply factories, according to which the grievance at issue will not be made public whilst the four stages of the process are underway. If it then still remains unresolved, any party can publicise the fact as they wish.

Links & Sources

- Code of Conduct www.eicc.info
- HP Global Citizenship Programme www.hp.com/hpinfo/globalcitizenship
- HP Supply Chain Programs www.hp.com/hpinfo/globalcitizenship/environment/supplychain/index.html

Xstrata Copper, Peru

Standard for Disputes, Complaints and/or Claims

- REGION ■ Peru
- COMPLAINTS ■ Total of 108 since inception⁵
- ESTABLISHED ■ 2005
- CORE PROCESS ■ Investigation; Arbitration

Background

Xstrata Plc (“Xstrata”) is a global mining group with its headquarters in Switzerland. It operates in seven commodity markets. The Group's operations and projects span 18 countries and employ approximately 43,000 people (including contractors). In August 2004, following a competitive bidding process, Xstrata Copper was granted a term of up to six years to complete exploration and feasibility work at the Las Bambas copper project in Southern Peru. The project has established a number of initiatives to engage the local community including the establishment of an independent advisory group and a social involvement plan. It has also established a complaint mechanism in order to address grievances of local individuals and groups.

Standards

Source of Standards The mechanism is based on human rights law and the company's own standards. Xstrata's Business Principles include an endorsement of the principles in the Universal Declaration of Human Rights. Its Health, Safety, Environment and Community Standards include a commitment to respect the rights of local communities.

Particular Rights The grievance procedure applies to any situation where an individual is not happy about how the operation is conducted or inappropriate personal treatment, including any human rights-related complaint.

Access

Education and Information Several workshops have been held to provide information about the mechanism. Small guides explaining the grievance procedure are also distributed.

Admissibility Criteria and Limitations Only those working at the Las Bambas Project and residents of the communities affected by the project may file complaints. All complaints from these parties are accepted. When filing a complaint, the person must specify the type of complaint (e.g. damage to animals, lands, pastures or people; damage to houses or infrastructure; environmental damage; human rights and/or relocation; breach of agreements, etc.).

Parallel Grievance Processes The system does not allow for duplicate processes. The substance of any complaint being processed by the judiciary will not be addressed under the grievance procedure. If the complainant wants to take his/her complaint to court, he/she needs to remove it from consideration by this grievance procedure.

⁵ Four in 2005; 59 in 2006; and 45 in 2007 (up to November).

Xstrata Copper, Peru

Resource Assistance Community Relations Officers are responsible for ensuring that any community members who wish to present a complaint are provided with the necessary information on the process to follow, in their own language. If complainants are illiterate, their verbal complaint is written down and read back to them; they then sign their confirmation of its accuracy.

Under the grievance procedure's first two instances, the complainants do not incur any expenses. Under the third instance, an Arbitration Court is appointed, and accommodation and/or transportation expenses are paid by community residents and Xstrata on an equal basis.

Non-Retaliation There is no specific provision to avoid retaliation.

Agents

Administration The administration is different under each of the three instances. In the first instance, complaints are handled by Xstrata's Coordination Office, consisting of a group of Xstrata personnel identified by the Head of Community Relations and approved by the General Manager of the Project. In the second instance, the process is managed by the Complaints System Defence Counsel: one individual chosen jointly by Xstrata and the leaders of the various local communities. The Defence Counsel must be a professionally qualified individual who is known, respected and of excellent standing in the region. His/her costs are paid by Xstrata. In the third instance, the process is handled by an Arbitration Court of three arbitrators selected by Xstrata and the community leaders.

Other Participants Only the "interested parties" may take part in the process. Interested parties are those working at the Las Bambas Project and community residents or their representatives.

Process

Description Every complaint received from eligible parties is accepted, analysed and a reply must be provided.

There are three levels of jurisdiction or "instances." All complaints (individual, family or community complaints) can proceed through the first two instances. Only community complaints or individual complaints supported by the community may go to the third instance.

First instance

When a complaint is received, it is entered into a complaints log. Xstrata's Coordination Office informs the complainant of the details of the process. The Head of the Coordination Office appoints a person or a group to conduct an investigation and verify the evidence submitted. The investigator has 20 days to carry out the investigation and propose a resolution. The complainant then has 15 days to accept or decline the offer made. If he/she accepts the decision, an agreement form is completed by the parties. If he/she declines, the complaint proceeds to the second instance.

Second instance

Unresolved complaints pass to the Complaint System Defence Counsel (Defensor del Sistema de Reclamo) whose technical team has 30 days to conduct a further investigation. The Defence Counsel may make a case for additional time, if needed. Xstrata covers all costs of the investigation. The Defence Counsel then makes a decision on a proposed resolution of the complaint, which is transmitted to the complainant. The complainant has 30 days to accept or reject this decision. If accepted, an agreement form is completed by the parties.

Xstrata Copper, Peru

Third instance

Only community complaints or individual complaints supported by the community may advance to this level of the grievance procedure. An Arbitration Court formed by three arbitrators is appointed. (Xstrata and the community appoint one arbitrator each, and these two arbitrators appoint the third one, typically an ombudsman.) Here, the Court is in charge of analysing and investigating the case and making a decision, which cannot be appealed. The Arbitrators have three months for the investigation, analysis and proposal of a resolution.

Outcomes

Range of Outcomes Compensation or remediation may be ordered, or an agreement may be reached on some other form of remedy.

Appeal Complainants may appeal decisions in the first instance, transferring it to the second instance. Decisions on community complaints or individual complaints supported by the community can be appealed after the second instance, transferring them to the third instance (i.e. the Arbitration Council). If a complainant wishes to appeal the decision of the Arbitration Council, he/she may take the case to court. In this case, the Xstrata's Coordination Office must provide all documentation on the complaint to the court. Xstrata accepts the outcome in each of the three instances without appeal.

Enforcement

There are no means to enforce outcomes. However, a monitoring committee, consisting of one representative of Xstrata and representatives of each of the communities in the project's area, is responsible for reporting on and evaluating the status of claims at each stage of the process.

Transparency

Only the interested parties (including community residents) may know the status of the processes.

Links & Sources

- Xstrata Plc Homepage www.xstrata.com
- Las Bambas Project Website (English and Spanish) www.lasbambas.com

DESCRIPTIONS

INDUSTRY LEVEL

Clear Voice Hotlinesm

Clear Voice Hotlinesm Service

- REGION ■ Latin America⁶
- COMPLAINTS ■ None as yet; mechanism newly established
- ESTABLISHED ■ 2007
- CORE PROCESS ■ Information Facilitation

Background

The Clear Voice Hotlinesm Service is designed to be an independent and confidential communications channel for workers, a training program for managers and an accountability tool for buyers in global supply chains. Factories or other employers subscribe to the Service. Clear Voice Hotlinesm Service representatives are located in the regions in which the employees are working, have native language and cultural skills and have undergone training by the Clear Voice Hotlinesm Service.

Standards

Source of Standards The Clear Voice Hotlinesm Service can be used in relation to any workplace Code of Conduct required by buyers of their suppliers. While employees are free to use the Clear Voice Hotlinesm to communicate any employee-related information, the management training and information provided by Clear Voice Hotlinesm is designed to sustain Code of Conduct compliance.

Particular Rights The standards in the Codes of Conduct of the companies that use the service are typically based on core labour rights in the International Labour Organization's Conventions.

Access

Education and Information Besides information available on the Clear Voice Hotlinesm Website, the managers and workers of a signatory company are given an orientation briefing, and posters are disseminated in factories. When a factory signs up for the Service, every worker receives a flyer with brief information about the main features of the Service, as well as how confidentiality is guaranteed and where to report a grievance. Representatives visit the factory periodically to reinforce the availability of the Service.

Admissibility Criteria and Limitations A complaint can only be brought by a worker of a factory or other employer that has signed up for the Service. Any other report of a grievance, whether by an outside party or worker that is not part of a signatory company, will be directed to other mechanisms. A worker is encouraged to disclose who has generated the problem they are reporting, whether they believe the problem is isolated or widespread and whether it is a one-time or ongoing issue.

Parallel Grievance Processes When the Clear Voice representative is contacted by the worker, the representative informs the worker about grievance mechanisms available within the factory and, where appropriate, outside the factory as well. The determination as to whether a report is filed with Clear Voice is left to the worker to determine after being informed of his/her options.

⁶ Due to be available in Asia and Europe/Middle East from 2008.

Clear Voice Hotlinesm

Non-Retaliation Factories that sign up for the Service need to pledge not to retaliate. If retaliation is found, buyers are immediately notified and the Service will be terminated. In addition, anonymity is provided by the Service if requested by the complainant.

Agents

Administration The mechanism is run by the Clear Voice Hotlinesm Service and its representatives. The central office is accountable for the quality of the reporting and for maintaining the protocols that protect the confidentiality and, if requested, the anonymity of complainants.

Clear Voice Hotlinesm representatives are located in the region in which the factory, or other employer, is located. Representatives are native speakers and knowledgeable about local customs. The service aims to ensure that they are versed in social compliance standards and grievance procedures, experienced in interviewing and establishing rapport with workers and able to gain their trust.

Other Participants Only workers, senior management and buyers have access to information, and can be contacted by the Clear Voice Hotlinesm Service representatives. No organisation can be part of the process without the express permission of the parties.

Process

Description Clear Voice Hotlinesm representatives function as the focal point of the Service. Factory workers contact them via local telephone, email or website. The representative listens to the complaint and in response tells them how their confidentiality is guaranteed and what will be done in the event of any retaliation. There is no cost to the worker who uses the Service.

The first step is to inform the worker of the option of exploring existing grievance mechanisms. The worker may then choose to try resolving the dispute through those mechanisms or directly file a report with Clear Voice Hotlinesm. The second step is for the Clear Voice representative to report the complaint to the senior management of the factory, keeping the worker's identity anonymous. Finally, the representative reports back to the worker on what action is being taken.

Clear Voice Hotlinesm reports serious issues and aggregated data to the buyer.

Time Limits There is no set time limit, although employers are encouraged to respond as quickly as possible.

Outcomes

Range of Outcomes The senior managers of factories are informed and asked to take action. Buyers receive monthly summary reports and can use them to identify Code of Conduct violations requiring attention.

Appeal As this is not a formal process, there is no place for appeal in the process. Workers, however, can repeat a complaint if no adequate action is taken.

Enforcement

The oversight of actions taken by factories rests with buyers who use aggregated data to review factory progress.

Clear Voice Hotlinesm

Transparency

The process is entirely confidential between factory, buyer and the Service. As such, there is no public transparency without the express permission of the parties.

Links & Sources

- Clear Voice Hotlinesm
(English) clearvoicehotline.net
- Clear Voice Hotlinesm
(Spanish) vozclara.net

Fair Labor Association

Third Party Complaint Procedure

- REGION ■ World
- COMPLAINTS ■ Average of 10 per year
- ESTABLISHED ■ 1999
- CORE PROCESS ■ Investigation; Mediation/Conciliation

Background

The Fair Labor Association (FLA) is the successor to the Apparel Industry Partnership initiated under the Clinton Administration in 1997. It is a multi-stakeholder initiative involving universities, NGOs and 20 affiliated brand-name companies with the aim of promoting adherence to international labour standards. In joining the FLA, companies sign up to implement the FLA Code of Conduct, which focuses on labour rights, including in their supply chains. The FLA conducts independent monitoring and verification with the goal of ensuring that the FLA's Workplace Standards are upheld wherever FLA company products are produced. The Third Party Complaint procedure was established to strengthen the FLA system by serving as a vehicle through which any person or organisation could confidentially report to the FLA any situation of serious non-compliance with the FLA's Code or Principles.

Standards

Source of Standards The FLA's Code of Conduct is obligatory (though not legally-binding) for companies affiliated to the FLA, who must apply it in their own operations including their supply chains, and for FLA-affiliated universities and colleges who require their licensees to abide by it as well. The Code is a tailored set of labour rights standards that are grounded in the provisions of the core International Labour Organization Conventions.

Particular Rights The Code refers to the following particular rights: forced labour, child labour, harassment and abuse, health and safety, freedom of association and collective bargaining, wages and benefits, work hours and overtime compensation.

Access

Education and Information Awareness-raising of the FLA's Third Party Complaint is provided through informational meetings and consultation forums. Information and complaint forms in various languages are available on their website.

Admissibility Criteria and Limitations Any person, group or organisation can make a third party complaint. Complaints can be made with regard to any FLA affiliated company, supplier or university licensee. A complaint must relate to a case of serious non-compliance with the FLA Code of Conduct or Principles of Monitoring that could not be resolved through other mechanisms. Complaints can be submitted in writing or (initially) by phone. Complainants must provide information about the factory involved, specific and verifiable information that non-compliance has occurred and details of any prior report of the complaint to the factory or another body.

Parallel Grievance Processes The mechanism is explicitly not intended to replace or undermine existing internal channels for relaying grievances at the factory level or existing legal processes at the country level.

Fair Labor Association

However, it is also recognised that factory-level mechanisms and local government processes may not be effective in protecting workers' rights; therefore, the FLA evaluates each situation on a case-by-case basis.

Resource Assistance There are no financial costs to a complainant.

Non-Retaliation Third party complaints are made directly to the FLA such that there is no risk of retaliation from the factory management. If requested by the complainant, the FLA will keep the complainant's identity confidential from the FLA-affiliated company as well as from the supplier involved.

Agents

Administration The mechanism is run by the FLA. This includes the possibility of their asking external parties (accredited monitors, experts or mediators) to play a role.

Other Participants Any relevant parties, including the workers, factory management, the FLA-affiliated company, trade unions, NGOs, monitors and relevant government authorities may be involved in the process.

Process

Description There are four steps to the Process. Step 1 allows the FLA to assess the reliability, verifiability and applicability of the complaint. If the decision is made to move the complaint to Step 2, the FLA provides the FLA-affiliated company or licensee with the allegations of non-compliance at its sourcing factory. The FLA-affiliated company or licensee has 45 days to investigate the allegation(s), and if verified, remediate the non-compliance. The FLA-affiliated company must report back to the FLA Executive Director as to its assessment and work. Where this process does not achieve a satisfactory outcome (i.e. there is no agreement on non-compliance issues and/or remediation and/or the dispute continues), the FLA moves the complaint to Step 3, where the FLA proactively initiates a process of rectifying the problem at the factory. This may take the form of an independent external investigation, mediation process or arbitration process, depending on the situation. In Step 4, the company will work with the FLA to develop an appropriate remediation plan and monitor its implementation.

Outcomes

Range of Outcomes If the process identifies that a supplier factory is falling below the Code of Conduct standards, the FLA-affiliated company should require that the supplier factory implement remediation, which may then be monitored by independent auditors. In the case of mediation, any outcome on which the parties agree is possible, provided this is in line with the Code of Conduct. This may include compensation.

Appeal If a grievance is not resolved at factory level or following the investigation by the FLA-affiliated company, then the FLA gets directly involved. There is no further recourse beyond that point. This does not preclude recourse to further, external mechanisms, including litigation.

Enforcement

Remediation and other agreements can be monitored and may – where agreed – be subject to additional enforcement provisions. In one instance, the parties agreed to submit any disputes over the implementation of the settlement to arbitration.

Fair Labor Association

Transparency

During the FLA Third Party Complaint Process, the complainant is informed at every step of the process and asked to acknowledge and verify any remedial actions and improvements in the workplace. The FLA reports publicly on the process, any non-compliance issues identified and remediation results for cases that move beyond Step 2 of the complaint process.

Links & Sources

- FLA Homepage www.fairlabor.org
- FLA Third Party complaint procedure www.fairlabor.org/about/complaints

Fair Wear Foundation

Complaints Procedure

- REGION ■ Asia, Eastern Europe and North Africa⁷
- COMPLAINTS ■ Average of four to five per year
- ESTABLISHED ■ 2004
- CORE PROCESS ■ Investigation

Background

The Fair Wear Foundation (FWF) is an initiative involving trade unions, NGOs, companies and business associations in the garment sector. It aims to promote humane labour conditions through its Code of Labour Practices. Member companies endorse this Code by committing themselves to auditing labour conditions in their garment factories against the provisions of the Code and to implementing improvements where necessary. While the process is in theory quite detailed, the Fair Wear Foundation emphasises the tailoring of solutions to each specific case. Complaints can also be filed on how FWF carries out its own activities, such as verification audits or contacts with local partners.

Standards

Source of Standards The standards in FWF's "Code of Labour Practices for the Garment Industry of Labour Practice" are binding on its corporate members, though do not have legal force. The Code is based on International Labour Organization Core Conventions and the Universal Declaration of Human Rights and focuses on core labour rights and supply chain responsibility.

Particular Rights FWF's Code includes the following labour standards: forced labour, discrimination, child labour, freedom of association and the right to collective bargaining, payment of a living wage, excessive overtime and a safe and healthy workplace.

Access

Education and Information Public information and education are provided through the FWF Website. Posters with the complaint procedure must be visible in local languages in factories with the telephone number of the FWF Contact Person. During audit interviews and monitoring of corrective action plans workers are informed about the mechanism and business cards of the Contact Person disseminated. In China, a small booklet with information about the procedure and the telephone number of the Contact Person is disseminated among all workers. In the other countries similar documents are in development.

Admissibility Criteria and Limitations Complaints can be filed by workers, their representatives and NGOs. The complaints can be brought against suppliers, member companies and the FWF and its procedures. The complaint is only admissible if it concerns a violation of the FWF Code of Labour Practice.

Parallel Grievance Processes There is no set rule about whether the complaint procedure can proceed if under review by another body or mechanism. However, at all times FWF will seek cooperation with other (local and non-local) organisations to find the best solution.

⁷ Member companies currently operate in Bangladesh, Bulgaria, China, India, Laos, Macedonia, Poland, Romania, Thailand, Tunisia, Turkey, Ukraine and Vietnam.

Fair Wear Foundation

Resource Assistance There is no direct resource assistance for complainants. However, FWF pays for the costs until admissibility is decided and may provide extra resources, including for a local partner organisation, if required for the investigations and report. The member company and supplier are responsible for costs of the corrective action plan.

Non-Retaliation By default, FWF will guarantee a complainant's anonymity during the entire procedure. The only exception made, with consent of the complainant, is when anonymity could make it impossible to find a solution. Regardless, the complainant is free to reveal his/her name if so desired.

Agents

Administration FWF strives to have a designated Contact Person in every country or region where a member company has supply factories. The Contact Person is the FWF's representative and should speak the local language, be versed in what is going on in the factories and at all times be easily accessible. His/her telephone number functions as a "hotline" to receive complaints from workers.

The Contact Person and FWF headquarters can both receive complaints, but the Contact Person has to do an initial assessment of the complaint and undertake investigations. Although the Contact Person has some freedom to resolve the complaint, he/she should at all times remain in contact with FWF Headquarters, which oversees the implementation of the complaints procedure.

Other Participants The Contact Person and FWF aim to involve the factory and local organisations as much as possible. They also involve other parties, where necessary, including FWF member companies and other relevant stakeholders such as unions. In practice, another party, such as an NGO involved with the same factory or a member company, may take over (temporarily) the coordination of the process. It is also possible that parties hire mediators to facilitate talks between unions and factories.

Process

Description There are two stages in the process: *local* and *beyond local*. These can work in sequence, but also be intertwined or work in parallel. The *local* process starts with the Contact Person deciding whether the complaint is admissible under FWF's procedures. If the Contact Person decides that the complaint is admissible, and the complaint concerns relations between employer and employee(s), the Contact Person will first deal with it through the factory's internal complaints procedure. Even if the complainants have already used the internal channel unsuccessfully, they should try again with the help of the Contact Person. The task of the Contact Person is to monitor whether this is dealt with correctly and without delay. If mediation or any other kind of intervention is needed, the Contact Person may give advice on whom to involve but cannot intervene him/herself. The Contact Person will inform FWF at all times about any complaints received and how he/she is dealing with them.

The *beyond local* stage is used when:

- the problem does not concern relations between employer and employee;
- the Contact Person can't solve the problem as outlined above, for example because workers who raised the complaint might be victimised;
- the problem persists after his/her attempts or
- support from a member/partner company is needed to help solve the problem.

After receiving the complaint, FWF will decide on its admissibility (if necessary, after having gathered more information). Within a week FWF will consult with the member company on steps to be taken. These steps can include:

Fair Wear Foundation

- a plan to investigate the complaint fully and decide on activities to be initiated;
- a decision on who will perform these activities and who else should be involved;
- a set time frame and means of reporting and/or
- identification of the costs and who pays for them.

The party against whom the complaint is made will also be informed, unless FWF and the member company decide otherwise during consultations in order to protect the complainant. After a full investigation of the complaint, FWF will issue a decision on whether the complaint is justified and immediately inform the complainant, the member company and the factory concerned.

Time Limits When a complaint is received, the Contact Person or the FWF informs the complainant within no more than six days whether the complaint is admissible under the mechanism. When FWF contacts a member company to discuss the complaint, there should be a meeting within a week, absent which FWF may decide on further steps on its own.

Outcomes

Range of Outcomes The outcomes are broadly defined as “corrective actions,” which may include payment of salaries, less overtime work and/or promises of improvements in work conditions. The member company, with help from FWF and in consultation with complainants, designs the plan and has to follow up on the agreed improvements. FWF oversees the implementation of the agreed corrective action plan.

Appeal No appeal is possible on the admissibility of a complaint. If a complainant is not satisfied with the outcome of the procedure, he/she can file another complaint. In practice, however, the complainant is closely involved in the process, and as such dissatisfaction is unlikely. In situations of strong disagreement, both the member company and FWF can appeal the conduct or outcome of a complaint to the FWF’s Executive Board, which consults the FWF’s Committee of Experts, and has the ultimate say.

Enforcement

FWF can ask the member company to decrease orders from the factory to put pressure on the management. The member company can terminate the relationship with the factory, but FWF urges companies to do everything possible to maintain the economic relationship and the associated leverage. However, in cases where all efforts are fruitless and a member company decides to pull out, FWF will report that the member company’s discontinuation is not a “cut & run” policy (i.e. the member company did enough to turn the situation for the better rather than pull out immediately). If, according to FWF, a member company does not undertake sufficient efforts, then FWF can cancel its membership.

Transparency

During the initial phases nothing is made public, but those involved have a right to be informed of progress. A report of the process and details of a settlement are made public through the website and newsletter.

Links & Sources

- FWF Website en.fairwear.nl
- FWF Complaint procedure en.fairwear.nl/file.php?id=637

International Council of Toy Industries

ICTI CARE Foundation Hotline

- REGION ■ **World (predominantly China)**
- COMPLAINTS ■ **None as yet; mechanism newly established**
- ESTABLISHED ■ **2007**
- CORE PROCESS ■ **Investigation**

Background

The International Council of Toy Industries (ICTI) was established in 1974 as an association of toy trade associations from around the world. Its Code of Business Practices—developed in 1995, expanded in 1996, and subsequently revised and adopted by the membership in 2002—provides the basis of its CARE (Caring, Aware, Responsible, Ethical) Process. In 2004 the ICTI CARE Foundation was created to manage and oversee the ICTI CARE Process (ICP) as an independent organisation. Factory compliance with the Code is assessed by ICTI CARE Process-trained and -certified auditors and audit firms. Audits continue until a factory is judged to be in compliance and receives the Seal of Compliance. Under the ‘Date-Certain’ Program, toy brands and retailers commit to a certain date by which they will only contract products manufactured by factories that either have an ICTI Seal of Compliance or have completed the first audit and agreed to a Corrective Action Plan to address any violations identified. The hotline complaints mechanism was launched in October 2007 and is in an initial trial period in 35 factories in China.

Standards

The Code of Conduct covers specific labour standards, workplace standards and a compliance process. Certain of its standards relate to International Labour Organization Conventions, with explicit references to those on Minimum Age and the Worst Forms of Child Labour. Other standards such as working hours, freedom of association and wages are pegged to domestic law. Complaints to the hotline can also fall outside this field and relate to more personal concerns.

Access

Education and Information

A summary of the labour and workplace standards, together with the hotline phone number is distributed on a pocket/badge-sized card to all workers in the factories covered by the mechanism. ICP plans to develop short videos to raise awareness among workers of their rights, which are due to include reference to the above-mentioned card and the hotline.

Admissibility Criteria and Limitations

Any worker can bring a complaint with regard to any concern, from factory management to work safety, and from food quality to dorm conditions. If a complaint relates to a breach of rights or other elements of the Code, ICP will encourage the complainant to get colleagues to call who can corroborate the situation (except where it is clearly an issue related to a single individual, such as sexual harassment).

Parallel Grievance Processes

Where ICP finds that a complaint is under consideration by another mechanism, they may still pursue any corrective action they deem necessary in line with ICP’s standards.

International Council of Toy Industries

Non-Retaliation ICP seeks to protect the identity of complainants, including where the complaint is linked to a single individual and does not impact the wider workforce.

Agents

Administration Currently the hotline is run by ICP. In the future it may seek to run the hotline in partnership with others.

Other Participants Participants can include factory management, ICP staff and freely elected worker representatives. After the pilot stage of the project, additional/other parties may be asked to support the mechanism.

Process

Description Based on the complaints received, ICP staff in China conduct their own investigations through contacts with workers outside the factory in question and using local NGO sources. They then take the results of their investigation to the factory management, register that they have evidence of a breach and seek the management's suggestions for a Corrective Action Plan.

Time Limits Where an urgent situation is identified it is followed up as quickly as possible by the ICP team in China, but there is no predetermined time limit.

Outcomes

Range of Outcomes The outcome of the process should be remediation of the breach in any appropriate form for an individual or a group.

Appeal If the findings identify critical violations, the factory is given the opportunity to comment on what happened and what action has already been taken or will be taken to rectify the situation.

Enforcement

A factory found to be in breach of the ICP is placed on probation for one year, if they accept a probationary agreement. If the factory fails to remedy the cause of the breach in that period, they are decertified. Brands and retailers carrying the ICTI Seal of Commitment (currently 298) cannot place any new orders with factories that have been decertified, or they risk losing their ICTI Seal of Commitment and will be removed from the relevant website list.

Transparency

Factories on probation are listed on the ICP Website. Factories that lose the Seal of Compliance are removed from the database available on the website. ICTI notifies known business partners of decertified factories about terminations.

Links & Sources

- ICTI Homepage www.toy-icti.org
- ICTI CARE Process www.icti-care.org/index.html

Voluntary Principles on Security and Human Rights

Participation Criteria

- REGION ■ World
- COMPLAINTS ■ One to date⁸
- ESTABLISHED ■ 2007
- CORE PROCESS ■ Negotiation; Adjudication

Background

The Voluntary Principles on Security and Human Rights (“Voluntary Principles” or “VPs”) were established to engage businesses, governments and NGOs in a constructive dialogue on security and human rights issues in the extractive industries. They were drafted in 2000 in a tripartite forum of governments, businesses and NGOs, facilitated by the governments of the United Kingdom and the United States. Since then the governments of Norway and the Netherlands, many major companies in the extractive industry from the four countries and a number of leading NGOs have become participants in the initiative. At the 2007 plenary meeting, formal Participation Criteria were adopted, including a procedure for when one party has concerns about whether any other party in the initiative has met the Participation Criteria (i.e. when one party wants to complain about another party). The process is relatively new and various elements of the mechanism will have to develop and be formalised over time.

Standards

Source of Standards

The Voluntary Principles refer explicitly to human rights standards as laid out in the Universal Declaration of Human Rights and international humanitarian law. The principles also reference the United Nations (UN) Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The Participants (i.e. parties to the initiative) have agreed that the Voluntary Principles do not create legally-binding standards and that information obtained through the Voluntary Principles forum shall not be used in any legal or administrative proceedings.

The Participation Criteria lay out a set of Principles which each party has to subscribe to in order to become and remain a Participant. These criteria include promotion, implementation and communication of the Voluntary Principles, and annual reporting and attendance at meetings.

Particular Rights

The Voluntary Principles do not single out specific rights, although the focus of the initiative is on security and fundamental freedoms.

Access

Education and Information

The Participation Criteria are published on the website of the Voluntary Principles. There is no further education or information program by the initiative itself.

Admissibility Criteria and Limitations

Concerns can be raised when the Participant believes that another Participant has not met the Participation Criteria or when a Participant has shown a sustained lack of effort to implement the

⁸ Before the adoption of the Participation Criteria parties also made complaints, but there was no formal process to facilitate their resolution.

Voluntary Principles on Security and Human Rights

Voluntary Principles. This includes one company against another, a government against a company, a company against an NGO, an NGO against a company, etc.

The Steering Committee requires that any concern that is to be taken up under this procedure must aim at strengthening individual and collective efforts to implement or assist in implementing the Voluntary Principles through constructive engagement.

Parallel Grievance Processes The process could potentially proceed when under review by a legal or non-legal mechanism, but this has not been tested in an actual case. If there is a situation involving imminent or ongoing litigation, a Participant may not be deemed inactive if it does not engage with the other Participant.

Resource Assistance There is no resource assistance to the complainant. However, part of the process costs are taken up by the Secretariat and the Steering Committee by contributing time and other non-monetary resources.

Non-Retaliation Retaliation has not been an issue so far within the framework of the Voluntary Principles.

Agents

Administration If initial dialogue between the parties to a complaint fails, the dispute may be taken up by the Steering Committee upon the request of one or both of the parties. The Steering Committee was established in January 2003 and functions as representative of the Plenary (i.e. the annual meeting of all Participants). The Steering Committee meets on average every one or two months, and it has flexibility to meet more often if circumstances so require. Among other tasks, it plans the Plenary meetings, and receives information from current and prospective Participants. It consists of a selection of two Participants from each of the three categories: governments, companies and NGOs. Membership of the Steering Committee rotates annually, and member categories choose their two representatives among themselves.

The Steering Committee directs the Secretariat, which chairs the meetings. The Secretariat function is shared between the International Business Leaders Forum and Business for Social Responsibility. These two parties are neutral facilitators and do not have any decision-making powers.

Other Participants Only parties that are Participants in the Voluntary Principles and organisations with observer status can take part in the complaint process.

Process

Description A Participant who wants to raise concerns about another Participant must first try to resolve the issue through good faith direct dialogue. If that fails, the party may submit its concern to the Steering Committee. If the Steering Committee agrees unanimously that the concerns raised are based on reliable information and that the Voluntary Principles process will be strengthened by further consultations, the Steering Committee refers the case to the Secretariat within 60 days of receipt of the complaint.

The Secretariat facilitates formal consultations between the interested Participants. It may do this by asking for more information from both parties and recommending that the parties consult with each other before moving on to other types of process.

In no more than six months, the Participants involved in these consultations may present the matter to the annual or special Plenary for its consideration. The Secretariat briefs the Plenary by giving a short verbal and/or written report about the status and progress of the process.

Voluntary Principles on Security and Human Rights

The Plenary decides what, if any, further action is appropriate in line with the goal of deepening the Voluntary Principles. Any recommendation of the Plenary (other than expulsion, which requires a unanimous decision), is taken by a supermajority (66%) of government Participants, a simple majority (51%) of NGO Participants and a simple majority (51%) of company Participants represented at the Plenary session. Each Participant has one vote.

Outcomes

The Plenary decides what, if any, further action is appropriate. Since the mechanism is relatively new there are no historical examples available.

Enforcement

A party to a complaint can request the Steering Committee to conduct a status review of implementation and to consider any issues arising from the implementation of a recommendation.

If a Participant categorically fails to implement the recommendations of the Plenary within a reasonable period as defined by that Plenary, its status is designated “inactive.”⁹ Decisions to expel a Participant must be taken by consensus, excluding the Participant raising the concerns and the Participant about whom the concerns are raised. In the event that concerns are raised about more than one Participant, the decisions with respect to each Participant will be reached separately.

Transparency

This process is mostly meant to be a confidential dialogue following the Chatham House Rule (i.e. information can be used but may not be attributed to its source). Information derived from this process cannot be used in legal or administrative proceedings. However, this approach does not preclude any Participant from criticising the conduct of any other Participant, publicly or privately, subject to the requirements of confidentiality of the Voluntary Principles process.

Participants are required to report annually to the Plenary and to the public at large about the efforts undertaken to implement or assist in implementing the Voluntary Principles. The initiative is currently developing criteria and guidelines for these reports.

Links & Sources

- VPs Homepage www.voluntaryprinciples.org
- VPs Participation Criteria www.voluntaryprinciples.org/Participants/participation-criteria.php
- Press Release: Adoption of Participation criteria www.voluntaryprinciples.org/news/200705_VP_Participation.pdf

⁹ Inactive means temporarily being unable to exercise one’s rights as a Participant.

Worker Rights Consortium

WRC Investigative Protocols

- REGION ■ **World**
- COMPLAINTS ■ **Average of 50 per year**
- ESTABLISHED ■ **2000**
- CORE PROCESS ■ **Investigation**

Background

The Worker Rights Consortium (WRC) is a non-profit organisation created by college and university administrations, students and labour rights experts. The WRC's purpose is to assist in the enforcement of manufacturing Codes of Conduct adopted by colleges and universities. These Codes are designed to ensure that factories producing clothing and other goods bearing college and university names respect the basic rights of workers. There are more than 100 colleges and universities affiliated with the WRC. Working with local NGOs, the WRC conducts training for workers at collegiate apparel factories to inform them of their rights under college and university Codes of Conduct, including their right to lodge a confidential complaint if they believe there are violations in their workplace. This effort is designed to make it possible for workers to bring legitimate complaints about violations to the attention of trusted NGOs and, through them, to the WRC.

Standards

Source of Standards

The WRC Model Code of Conduct is a non-legal standard. However, it is mandatory that member colleges and universities have a Code of Conduct identical, or aligned, to the WRC Code. Members must require that their licensees and suppliers abide by their Code. The Model Code consists of a tailored set of standards, which are based on core International Labour Organization Conventions.

Particular Rights

The Code includes the following labour rights issues: wages and benefits, working hours, overtime compensation, child labour, forced labour, health and safety, discrimination, harassment and abuse, freedom of association and collective bargaining and women's rights.

Access

Education and Information

The WRC's main raison d'être is to act as a compliance mechanism through a combination of monitoring and investigating working conditions in the factories supplying its member colleges and universities. Its existence and work is publicised through the dissemination of its reports and the results of particular cases. Workers and their representatives are made aware of the complaint mechanism through a program of outreach to, and on-going communication with, trade unions and worker-allied NGOs in apparel-exporting countries.

Admissibility Criteria and Limitations

The WRC considers complaints from both workers and interested third parties. However, it is generally only in a position to act on those brought against factories producing collegiate licensed goods or goods for other prominent apparel brands.

Complaints can be submitted by any means of communication but must set out the complaint in sufficiently specific terms to ensure the WRC can evaluate whether to proceed with an

Worker Rights Consortium

investigation. The WRC decides on a case by case basis whether to pursue an investigation based on a range of factors, including the severity and credibility of the allegation, the presence of active unions or civil society in the area and the likelihood that an investigation could lead to remediation and wider systemic change.

Parallel Grievance Processes WRC will not refrain from proceeding with an investigation because a dispute or complaint is under review by another organisation or mechanism. It is not uncommon for another monitoring organisation, particularly one working on behalf of an apparel brand, to conduct an investigation simultaneously, especially in cases where there has been publicity surrounding the allegations. Similarly, the allegations investigated by the WRC are frequently under review by government agencies or courts as it is common for workers to bring their complaints both to the WRC and the local government.

Resource Assistance The WRC protects the confidentiality of complainants and those who contribute to investigations unless they waive this right after receiving advice.

Agents

Administration The mechanism is run by the WRC, which works collaboratively with local experts in the conduct of an investigation.

Other Participants The WRC liaises directly with the complainants and seeks the constructive engagement of the factory, licensees and contractors. It works with local experts in the conduct of the investigation. The WRC does not have brand company members so these actors are not engaged in the investigation process. The process does not involve bringing the various parties together in dialogue.

Process

Description The primary process for the WRC is investigation. If the WRC accepts a case it builds an investigative team involving WRC staff together with local community representatives and experts who are independent of the factory and workers. It does not use commercial auditors. The team conducts off-site interviews with workers, as well as interviewing local managers, experts and labour officials.

Time Limits There are no time limits on any part of the process.

Outcomes

Range of Outcomes The investigation team issues a report, including both findings of compliance and good practice and any findings of violations. In the case of violations, it includes recommendations for remediation.

Appeal There is no provision for appeal, but the WRC continues to monitor conditions until remediation is completed and issues reports on the progress made.

Enforcement

The WRC does not have the power to impose sanctions on factories or buyers. Reports are shared with affiliate colleges and universities and are made public on the WRC's Website. Each individual college and university affected makes its own decision as to how to deal with any violations of the Code of Conduct by its licensees. The WRC explicitly aims to get licensees and suppliers to improve conditions rather than withdraw or close down.

Worker Rights Consortium

Transparency

All factory reports as well as reports on progress in implementing remediation plans are made public through WRC's Website.

Links & Sources

- WRC Homepage www.workersrights.org
- WRC investigative protocols www.workersrights.org/wrc_protocols.asp

DESCRIPTIONS

MULTI-INDUSTRY LEVEL

Ethical Trading Initiative

Alleged Code Violation Investigation Guidelines

- REGION ■ **World**
- COMPLAINTS ■ **Two to six per year¹⁰**
- ESTABLISHED ■ **2001**
- CORE PROCESS ■ **Investigation; Mediation/Conciliation**

Background

The Ethical Trading Initiative (ETI) is an alliance of UK-based companies, NGOs and trade union organisations working to promote and improve the implementation of corporate Codes of Practice which cover supply chain working conditions. Members work together to identify what constitutes “good practice” in Code implementation, which they then share and promote. Companies are encouraged to adopt the ETI Base Code and implement it in their supply chains. Full Code implementation is not a prerequisite for ETI members, but member companies must report annually on their progress. They must also take measures to apply the Code in their supply chains and to cease using a supplier who persistently commits serious breaches. Corporations, unions and NGOs are encouraged to cooperate in investigating and resolving violations of Codes of labour practice in workplaces supplying ETI corporate members. To assist such cooperation, ETI has prepared a set of guidelines for members to consider when they embark on the discussion and investigation of an alleged Code violation. The usage of this “Alleged Code Violation Investigation Guidelines” is voluntary.

Standards

Source of Standards The ETI Base Code is based on a tailored set of labour standards based in national and international labour standards. It is a non-legal mandatory Code that member companies are required either to adopt or to use as a basis to design their own equivalent standard.

Particular Rights The Base Code includes the following labour rights issues: forced labour, freedom of association and the right to collective bargaining, safe and hygienic working conditions, child labour, living wages, working hours, discrimination, regular employment and harsh and inhuman treatment.

Access

Education and Information The mechanism is promoted to ETI members and on the ETI Website. NGO and trade union members encourage their affiliates to use the mechanism if a complaint arises. However, the emphasis of the mechanism is for ETI members to use their relationships through ETI in order settle issues in the first instance. In the majority of cases a formal complaint will not be raised.

Admissibility Criteria and Limitations ETI Members (corporate, trade union, NGO) can bring complaints about a corporate member or one of its suppliers.

ETI’s Principles of Implementation require ETI member companies to ensure a confidential means for workers in their supply factories to complain against the factory if the company Code is not being observed.

¹⁰ Many complaints are dealt with directly between ETI members and are not included in this count.

Ethical Trading Initiative

A complaint against an ETI member must rise to the level of being (a) specific and very serious, requiring an instant response, or (b) specific and on-going, requiring prompt investigation. Complaints should include key information on the alleged breach, its scale, whether it is being pursued on other channels, whether the workers have identified a potential solution and the state of relations between the parties. They should also identify other relevant organisations and local complexities that could affect investigation and remediation. Copies of the complaint must be passed to the ETI Secretariat, which forwards them to the relevant Global Union Federation, so that it has the opportunity to participate in the process.

Parallel Grievance Processes

The mechanism can proceed when under consideration in other mechanisms.

Resource Assistance

The ETI guidelines propose that costs should be borne by the companies involved (including suppliers). Consultations between stakeholders on what process of investigation should be used can include agreement on resource implications.

Non-Retaliation

ETI Member Companies' own complaints mechanisms must provide for confidential reporting of complaints by workers in their supply factories. Where a complaint is raised by an ETI Member directly, agreement between the parties on how to proceed should include an agreement on any provisions for confidentiality.

Agents

Administration

The mechanism is primarily run by ETI members themselves. The ETI Secretariat keeps oversight and provides, where necessary, stewardship.

Other Participants

The process includes ETI Members (the company members whose suppliers are the subject of the complaint, the trade union and/or NGO members who have brought the complaint), the management of the supply factory or factories involved and any complainants who wish to be directly involved.

Process

Description

The primary process is one of investigation. Under the ETI's guidelines, the stakeholders (i.e. relevant ETI members) should aim to agree through consultation and cooperation how to address the complaint and set out this agreement in a memorandum of understanding (MOV). The MOV should include what methods will be used, the scope of the dispute, the timeframe for handling it, any provisions for confidentiality and resource implications. The ETI company should then proceed to the investigation using competent investigators – internal or external – to ascertain the facts, *inter alia* through off-site interviews with employees of the supplier where appropriate.

If the parties cannot come to agreement either on the mode of investigating a complaint or on the remediation plan, the ETI itself may become directly involved as a facilitator of dialogue or as mediator to try to resolve the situation. The ETI Chair may take that role personally, particularly in instances involving multiple brands or suppliers or entrenched positions. Alternatively, the ETI may use external mediators and take an observer or advisory role.

Time Limits

There are no set time limits, but the guidelines stress speed of action as far as possible.

Outcomes

Range of Outcomes

The investigation should lead to a written report detailing the process and the findings, which should be shared with all concerned parties. Where a Code breach is confirmed, ETI members are advised to negotiate a remediation plan with the supplier, which should then be shared with the employees, the source of the complaint, the ETI members involved and the Global Union Federation.

Ethical Trading Initiative

Appeal

There is no appeal either on substance or process in the mechanism.

Enforcement

The guidelines propose that the ETI member company should monitor the supplier's compliance with the remediation plan. ETI member companies are required to cease using a supplier that persistently commits serious Code breaches.

It is also understood that failure to resolve the action may result in NGOs (or other groups raising the complaint) engaging in campaigning activity against the brands concerned.

Transparency

There is neither formal process to report progress actively nor a final report outside the stakeholders who have raised the issue. ETI practice has been to issue a short statement at the conclusion of the process and such statements appear for a time on the ETI Website.

Links & Sources

- ETI Homepage www.ethicaltrade.org
- ETI Alleged Code Violation Investigation Guidelines www.ethicaltrade.org/Z/lib/2001/11/codeviolguid/index.shtml

Social Accountability International

Social Accountability Accreditation Services

- REGION ■ World
- COMPLAINTS ■ Total of 20 since inception
- ESTABLISHED ■ 1999
- CORE PROCESS ■ Investigation

Background

Social Accountability International (SAI) is an international, multi-stakeholder NGO based in the United States. Its mission is to promote human rights for workers around the world. In 1997, SAI launched SA8000 (Social Accountability 8000) – a voluntary standard for workplaces, based on International Labour Organization (ILO) and United Nations (UN) Conventions – which is currently used by businesses and governments around the world. Today, SA8000-certified facilities are located in 57 countries and across 71 industries. In 2007 the Social Accountability Accreditation Services (SAAS) became the independent but affiliated agency to accredit and monitor SA8000 facilities. Besides its complaints and appeals process for workers and their representatives to contest SA8000 certifications, there are separate complaints and appeals procedures related to the accreditation of Certification Bodies and decisions made by SAI and SAAS. In addition, there is a separate complaints procedure regarding facilities which are not SA8000 certified, but which are suppliers of companies in SAI's Corporate Program.

Standards

Source of Standards The SA8000 is a non-legal standard, mandatory for certified companies that have and wish to retain SA8000 certification. It is not mandatory for certified and/or member companies to require that their suppliers or contractors are in compliance with SA8000, though they are encouraged to do so. SA8000 is a tailored set of labour rights standards that are grounded in the provisions of the core ILO Conventions and UN human rights instruments, plus associated management systems.

Particular Rights The Code refers to the following particular rights: child labour, forced labour, health and safety, freedom of association and collective bargaining, discrimination, disciplinary practices, working hours and remuneration.

Access

Education and Information Under the Code, there should be an elected SA8000 worker representative in each certified facility who can assist complainants. Contact details of the relevant certification body to which complaints can be made must be posted in the factory and available through the worker or management representatives. Management systems requirements oblige employers to ensure workers are aware of the standard and its coverage. They also require employers to engage with their wider stakeholders and report on complaints. SAI has conducted extensive worker training and worker-manager training as well as regional, multi-stakeholder workshops, including on the open complaints and appeals process to contest SA8000 certifications.

Admissibility Criteria and Limitations Any person can lodge a complaint about alleged breaches by a certified factory of the SA8000 standard or of local labour laws. Complaints must first be raised at the factory level, and then, if

Social Accountability International

unresolved, with the relevant certification body. If these processes prove unsatisfactory the complaint can then be taken to SAAS for review. Complaints must be in writing and include objective evidence of non-conformance with SA8000, such as witness testimony or documented violations.

Parallel Grievance Processes The three levels of factory, certification body and SAAS will not proceed on a complaint in parallel, but require it to pass from one level to the next if satisfaction is not achieved at the lower level. SAI does, however, track progress on complaints if they are lodged simultaneously with SAI and the Certification Body (which is common practice); where a Certification Body has not responded adequately or quickly enough, SAI has intervened to conduct additional investigations. The mechanism does not preclude that other grievance processes outside the SAI system might proceed in parallel.

Resource Assistance There is no resource assistance for complainants.

Non-Retaliation Certified SA8000 facilities must have a management representative with responsibility for ensuring workers can lodge complaints about non-compliance with the SA8000 standard confidentially. The elected SA8000 worker representative must protect the anonymity of those complainants who do not wish to be identified. Certification Bodies are required to protect the identity of the complainant and any witnesses unless they choose for it to be known.

Agents

Administration The process is run by the certified factory/farm/workplace, Certification Body or SAI, depending on the level or stage of the process. But the process as a whole is overseen by the SAI.

Other Participants This is primarily an investigatory process rather than a participatory process. The investigations may engage any relevant actors.

Process

Description Complaints at the level of the certified facility are generally channelled through the facility's complaint process. The facility's management has flexibility in how it structures its own system in response. Most complaints come in through trade unions or NGOs. If a complaint is taken up to the Certification Body, that body must review the complaint to assess its relevance to SA8000 standards and the evidentiary basis. It may then proceed to an investigation, which may include an unscheduled audit of the facility in question. If an issue rises to the level of the SAAS, it too may undertake an investigation.

Time Limits At the facility level, the management must respond to a complaint within a reasonable time period decided by the management representative. Certification Bodies are generally expected to respond within two to six months, but there are frequently multiple rounds of investigation.

Outcomes

Range of Outcomes Where a facility's management identifies a breach of SA8000 standards, its response must include a root cause analysis and remediation, as well as action to prevent a recurrence. At the level of the Certification Body, the Body is required to report to the complainant on its conclusions, with a copy to the SAAS. If major breaches of the SA8000 standard are found, a remediation plan is identified and its implementation monitored. If the necessary corrective and preventive action is not taken, then SAAS must ensure that the certification body suspends or withdraws the facility's accreditation.

Appeal Any interested party can appeal an SAAS decision within 30 days. If the Director of Accreditation considers it justified, he/she informs the appellant and takes action to address the shortfall. If

Social Accountability International

he/she considers it unjustified, it is passed to the SAAS Accreditation Review Panel and the appellant is informed of this further review. If the Review Panel accepts the appeal, an investigation is begun and the appellant informed of its outcome. Otherwise no further action is taken.

Enforcement

There is no enforcement mechanism external to the SAI system. If the employer does not remediate substantiated complaints, certification is suspended and eventually terminated.

Transparency

The fact that a complaint against a SA8000-certified company or organisation has been registered with the SAI is posted on their website. Once the process is complete, a summary of the basis of the complaint, the actions taken (including an indication of the groups involved) and the final outcome are posted on the SAI Website.

Links & Sources

- SAI Homepage www.sa-intl.org
- SAAS Homepage www.saasaccreditation.org/index.htm
- Complaints and appeals process www.saasaccreditation.org/complaints.htm

DESCRIPTIONS

NATIONAL LEVEL

India: National Human Rights Commission

Complaint Procedure

- REGION ■ India
- COMPLAINTS ■ 74,444¹¹
- ESTABLISHED ■ 1993
- CORE PROCESS ■ Investigation; Adjudication

Background

The National Human Rights Commission (NHRC) of India was established by the Protection of Human Rights Act of 1993 with the stated aim of providing for the better protection of human rights within India. One of its functions is to receive and handle complaints regarding compliance by the Indian Government and its agents with their human rights obligations under national and international law. It can also receive complaints against companies in limited circumstances, notably where those companies provide public services or in cases of alleged exploitation of child workers by a private employer. The INHRC's other functions include visiting prisons and other state institutions; making recommendations on how to improve the observance of human rights; research on, and awareness-raising of, human rights; and intervening in court proceedings involving alleged violations of human rights, with the approval of the court. State Human Rights Commissions were also formed under the Protection of Human Rights Act, but these are not included in this description.

Standards

In terms of the Protection of Human Rights Act, adopted in 1993 (the "Act"), "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Indian Constitution or embodied in the International Covenants and enforceable by courts in India. "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Access

Education and Information

The Commission has a website with extensive information, including annual reports, newsletters, announcements and other reports. It also organises and publicises a number of workshops, seminars and lectures. There is a special phone line for complaints.

Admissibility Criteria and Limitations

Any Indian citizen who believes a public servant has violated his/her human rights, abetted a violation of his/her human rights or been negligent in preventing a violation of his/her human rights, can lodge a complaint with the Commission, as can anyone acting on his/her behalf.

Complaints of the following nature are not entertained by the Commission:

- in regard to events which happened more than one year before the complaint is made;
- with regard to matters which are *sub judice*;
- which are vague, anonymous or pseudonymous or

¹¹ For the year 2005-2006. This number contains *all* complaints received, whether against government or business and regardless of whether they were deemed admissible.

India: National Human Rights Commission

- which are of frivolous nature.

Parallel Grievance Processes The Commission cannot inquire into any matter that is pending before a State Human Rights Commission or any other Commission duly constituted under any law currently in force.

Resource Assistance The Commission does not charge fees, but there is no assistance to complainants.

Non-Retaliation The process only exceptionally provides for confidentiality (e.g. in instances involving rape victims, victims of child sexual abuse and complainants infected/affected by HIV/AIDS).

Agents

Administration The Commission is headed by a former Supreme Court Justice and comprised of judges and experts in human rights. They are appointed by the President on the basis of recommendations of a Committee comprised of the Prime Minister as the Chairperson, the Speaker of Lok Sabha (Indian Lower House), the Home Minister, the leaders of the opposition in the Lok Sabha and Rajya Sabha (Indian Upper House) and the Deputy Chairman of the Rajya Sabha.

The Commission has its own investigating staff for investigations into complaints of human rights violations, headed by a Director-General of Police.

Other Participants Under the Act, it is open to the Commission to use the services of any officer or investigation agency of the Central Government or any State Government. In a number of cases, the Commission has involved NGOs in its investigation work.

Process

Description Depending on the gravity of the alleged violation, cases are considered and decided either by a single member or Division Bench or by three or more members of the Commission. There is no overlap between the person screening the case for admissibility the person investigating the case, and the person(s) reaching the decision.

Once a case is established as admissible, the Commission will inquire into its substance. It may request that the Government or authorities of the region where the alleged violation took place conduct an investigation and report to the Commission. On receipt of such report, the Commission may decide to launch its own, further investigation, under which process it has all the powers of a civil court (e.g. summoning witnesses and examining them under oath, requisitioning public records and entering premises to seize documents where it has reason to believe they relate to the complaint). It can also call for information or a report from the Central Government or any State Government.

Time Limits When the Commission sends a copy of its report to the concerned Government, that authority has one month, or more if the Commission allows, to send its comments, including actions (to be) taken, back to the Commission.

Outcomes

Range of Outcomes The Commission may reach a number of conclusions if it finds that a violation has occurred. These can include recommendations to the relevant Government or authorities requesting, for example, that it initiate prosecution, provide immediate interim relief to the victim, or provide or secure compensation and remediation for victims (e.g. unpaid wages, or the provision of cooperative land or property so former bonded labourers can earn a living). In several instances individual complaints have led the Commission to identify generic issues raised by a violation of rights, and enabled it to secure a systemic improvement beyond the immediate case.

India: National Human Rights Commission

Enforcement

Decisions are not legally-binding and the Commission does not have a mandate to enforce their implementation. It can call for a compliance report from the authorities concerned and take follow-up action with them.

Transparency

The Commission sends a copy of its inquiry report and recommendations to the concerned Government or authority of the region where the company is operating. They may comment within one month. The Commission publishes the report with any such comments.

Links & Sources

- National Human Rights Commission Homepage nhrc.nic.in

Kenya: National Commission on Human Rights

Complaints and Investigations Programme

REGION	■ Kenya
COMPLAINTS	■ 2,274 ¹²
ESTABLISHED	■ 2002
CORE PROCESS	■ Mediation/Conciliation; Arbitration; Investigation; Adjudication

Background

The Kenya National Commission on Human Rights (KNCHR) was established by an Act of Parliament in 2002.¹³ It consists of nine Commissioners, including one Chair. Its functions include the investigation of complaints regarding violations of any human rights, visiting prisons to assess conditions, informing and educating the public on human rights, making recommendations to Parliament on measures to promote human rights and cooperating with other institutions for the purpose of promoting and protecting human rights. The Complaints and Investigations Programme receives complaints of alleged violations of human rights, investigates them and advises the Commission on possible options for redress. It can receive complaints that relate to corporate activities as well as those of the government or government agents. The Commission has the power of a court.

Standards

Source of Standards The Commission was established by the Kenya National Commission on Human Rights Act, 2002. This act references Kenya's Constitution and the international treaties to which Kenya is a signatory.

Particular Rights Any human rights violation can be addressed to the Commission. Complaints directed at corporations can include, *inter alia*, discrimination on grounds such as race, class, gender and complaints about a denial of rights recognised in national law or the international treaties that Kenya has ratified.

Access

Education and Information The Commission has a website with extensive information and publications. It has advocacy and education programmes on the work of the Commission.

Admissibility Criteria and Limitations The Commission can receive complaints from any individual, private or public organisations that alleges the violation of any human right. Complaints can be lodged by victims themselves or on their behalf.

Complaints which cannot be admitted include those:

- falling outside the National Commission's mandate and admissibility criteria such as land disputes;
- labour matters, for example, non-payment of employees' terminal dues by employers or alleged unfair/wrongful dismissals. (In such instances, the complainants should exhaust the

¹² For the year 2006-2007. This number contains *all* complaints received, whether against government or business and regardless of whether they were deemed admissible.

¹³ The Kenya National Commission on Human Rights Act, 2002.

Kenya: National Commission on Human Rights

appropriate redress mechanism available to them, for example via Trade Unions, the Labour Department, the Industrial Court, the Teachers Service Commission, the Commissioner of Police and the Public Service Commission) and

- complaints of a criminal nature that require the action of police officers.

Parallel Grievance Processes

If the complaint is already being inquired into, or will best be handled by another competent body or organisation, for example, the Kenya Anti-Corruption Commission, the Advocates Complaints Commission or the Rent Tribunal, then the Commission will not admit it.

In addition, any matter which is pending before courts of law or other judicial tribunals cannot be looked into by the Commission. If a case has taken unreasonably long, the Commission may enquire into this, but will not assess its merits.

Resource Assistance

In the lodging or determination of a complaint, the Commission cannot charge fees. It equally cannot provide legal aid/representation to complainants.

Non-Retaliation

The Commission provides for anonymous complaints or confidential information, as long as they contain sufficient information to investigate.

Agents

Administration

The Commission is made up of nine individuals appointed by the President and National Assembly. They must be citizens of Kenya, “person[s] of high moral character and proven integrity and [have] knowledge and experience in matters relating to human rights.”¹⁴ The Chairperson must also be qualified to be a Judge of the High Court. A person cannot be a Commissioner if he/she is a Member of Parliament, local official or an executive of a political party.

Other Participants

In principle, anyone can partake in the various processes of the Commission. For specific details see the process descriptions below.

Process¹⁵

Description

Upon receipt of the complaint, the Legal Services Department assesses whether the complaint is admissible. If a complaint is inadmissible, the Legal Services Department has to notify the complainant within 21 days. When the Commission admits a complaint, it will first ask the party against whom the complaint is made to respond, for which they have 14 days. The complainant will be given the opportunity to review the response and provide one of his/her own. The Commission may also make its own preliminary investigations. If the complaint is not resolved at this level, the Legal Services Department makes another review to assess whether to initiate further investigations, which can include asking for documents, summoning witnesses and/or making site visits.

Subsequently, the Legal Services Department can advise the Commission to:

- refer the complaint to conciliation;
- refer the complaint to a hearing panel;
- commence an inquiry or public hearing or
- file a suit in the High Court.

¹⁴ The Kenya National Commission on Human Rights Act, 2002, p. 4.

¹⁵ Quotes in this part of the description stem from The Kenya National Commission on Human Rights (Complaints Procedures) Regulations, 2005, which is part of The Kenya National Commission on Human Rights Act, 2002.

Kenya: National Commission on Human Rights

Conciliation

The Legal Services Department advises the parties in writing that it believes the dispute might be best resolved through conciliation. If the parties both agree, a mutually-agreed date for a conciliation meeting is determined. The Legal Services Department has to issue a conciliation notice, after which a Panel will be formed of at least one Commissioner, a member of the Legal Services Department and, where deemed necessary, an expert. During the meeting, the panel members may use any conciliation procedure they deem fit, from mediation to arbitration. If parties come to an agreement, they sign a conciliation agreement, which has legally-binding force.

Complaints Hearing Panel

When the Legal Services Department advises that the Commission establish a hearing panel, the Commissioner or a designate will form a panel that consists of a presiding commissioner, a legal counsel and other members of the Legal Services Department. The Panel will invite members within 14 days to appear at the hearing, and a letter by the parties suffices to indicate they will join. If during the hearing the respondent (i.e. the “accused” party) admits the complaint in its entirety, the panel makes the “appropriate orders” in favour of the complainant. Where the respondent does not admit the complaint or only partially so, the panel proceeds to hear evidence from the parties or their witnesses. This includes testimonies under oath and examination by the parties and the panel. Evidence can be in writing or oral, but the Panel can require witnesses to appear in person at any time. Within 30 days after the hearing, the Panel makes a decision based on a balance of probabilities and identifies any remedy.

Public Hearings

The Commission may resort to a public hearing on its own motion or on the basis of a complaint presented to it. In the latter instance, the Legal Services Department must be “satisfied” that the nature of a complaint:

- contains matters of broad public interest;
- involves an alleged violation of group rights or
- contains matters with policy implications.

A sub-committee is appointed by the Commission consisting of Commissioners, experts in the field of inquiry and several assistants. Its proceedings are public and any citizen with a grievance is given an opportunity to be heard. Institutions whose evidence is required are summoned to give both written and oral evidence. On completion, the Commission is empowered by law to recommend the prosecution of persons suspected of violating human rights or to recommend to the petitioners another judicial or non-judicial course for settling the complaint.

Time Limits If a complainant does not respond to a communication from the Commission within three months, the complaint is deemed to have lapsed.

Outcomes

Range of Outcomes The action the Commission takes to redress a complaint often depends on the nature of that complaint and the kind of redress the complainant sought. Some examples include:

- written apologies;
- publication of a report and

Kenya: National Commission on Human Rights

- monetary compensation (specifically in cases of refusal or delay by companies to pay dues to their dismissed employees).

Appeal

If a complaint is not admitted, the complainant then has 21 days to make an appeal, which will be considered by the Chairperson or a Commissioner designate within a deadline of 14 days. No further appeal on admissibility with the Commission is possible.

Following the proceedings of a Hearing Panel, complainants can appeal a decision by filing a case with a judicial body (i.e. High Court).

Enforcement

The Commission does not itself enforce the orders it makes, but Decisions of both the Hearing Panel and the Conciliation Panel are enforceable in the High Court of Kenya. However, given the amicable environment in which conciliation sessions are normally held, parties usually comply with the agreements reached at the end of conciliations of their own volition.

The Commission may follow up by phone or by writing with the complainant and respondent company, in order to review compliance with the outcomes of a conciliation process.

The Commission often conducts follow-up on-site investigations to assess whether its recommendations are being implemented by the concerned parties.

Transparency

The Commission is required to keep a record of all investigations and report on its findings and recommendations. A report on the human rights performance of the government is annually submitted to the President of the National Assembly. The reports of public hearings are also presented to the Government and may also be disseminated to the public. Furthermore, special reports on specific cases are published on the website.

Links & Sources

- KNCHR Homepage www.knchr.org
- KNCHR Act (browsable version) www.kenyalaw.org/kenyalaw/klr_home

New Zealand: Human Rights Commission

Dispute Resolution Process

- REGION ■ New Zealand
- COMPLAINTS ■ 1,300+¹⁶
- ESTABLISHED ■ 1993 (revised 2001)
- CORE PROCESS ■ Mediation/Conciliation

Background

The Human Rights Commission of New Zealand was established under the Human Rights Act (1993), which was amended in 2001. The Commission's primary functions are to: 1) advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society, and 2) encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society. It also provides a dispute resolution service for complaints of unlawful discrimination, including involving companies.

Standards

Source of Standards

The process is based on the Human Rights Act of 1993 and the Human Rights Amendment Act of 2001. The two Acts bind the Crown, businesses and corporations conducting operations within New Zealand. The Act identifies "prohibited grounds of discrimination" which include employment, industrial and professional associations, qualifying bodies and vocational training bodies, partnerships, access to places, vehicles and facilities, provision of goods and services, provision of land, housing and other accommodation, access to educational establishments and special areas of racial harassment, sexual harassment and racial disharmony.

New Zealand has signed all major United Nations Conventions on human rights, including the Universal Declaration of Human Rights and is guided by these principles and those held in the New Zealand Bill of Rights Act 1990.

Particular Rights

The Commission receives complaints and enquiries on a range of human rights issues. It has a statutory mandate to action those which relate to unlawful discrimination on the following grounds: Sex (including pregnancy), Marital status (including being in a civil union), Religious belief, Ethical belief, Colour, Race, Ethnic or national origins, Disability, Age, Political opinion, Employment status, Family status, Sexual orientation.

Access

Education and Information

There is an extensive website with information about the process. In addition, there is an "Infoline" to ask about the process or directly file a complaint. The Commission publishes a selection

¹⁶ In the year ending 30 June 2007, 5,796 complaints and enquiries were received. 1,665 were complaints of unlawful discrimination which entered the disputes resolution process. 1,322 of the unlawful discrimination complaints were in the private sector and employment across both public (government) and private sectors. 343 involved government agencies (excluding employment complaints).

New Zealand: Human Rights Commission

of its cases periodically to illustrate the process and range of matters it deals with, as well as numerous reports and guidelines on various prominent human rights issues.

Admissibility Criteria and Limitations Anyone can bring a complaint on any matter the complainant believes is a human rights matter. The complaint will progress through the dispute resolution process if there is an indication of unlawful discrimination in an area of public life, the scope of which (including exceptions) is set out in the Human Rights Act. All companies operating within New Zealand are covered by the Act.

Parallel Grievance Processes Employees may choose to complain to the Employment Relations Service or the Human Rights Commission and progress and mediate their complaint within either service, but cannot take proceedings with both. For all other complaints, if there is another mechanism or avenue for right of appeal, the Commission may decline to take action and refer to the more appropriate agency. If a complaint concerns a judgment or other order of a court, the Commission must take no action on it.

Resource Assistance The services of the Commission are free, but there is no additional resource assistance. If the matter doesn't resolve within the Commission's dispute resolution service, the complainant can apply to the Office of Human Rights Proceedings for free representation at the Human Rights Review Tribunal.

Non-Retaliation Victimization—when a complainant is treated unfairly because he/she has filed a complaint with the Commission—is a ground for complaint under the Human Rights Act.

Agents

Administration The process is run by the Commission, through its Disputes Resolution Team, under the leadership of the Chief Mediator who has responsibility for the progress of complaints. The team consists of impartial mediators who are associate members of a professional body for mediators that has a Code of Ethics. The mediators, who do not act on behalf of any party to the dispute, receive the complaint, consider whether it comes within the scope of the Act and arrange mediation or another agreed dispute resolution process to aim to resolve the dispute.

Other Participants The process is flexible and informal allowing participation by a range of interested parties. Legal representation is unnecessary but parties may seek legal advice and/or bring legal representation. Advocates, union, government and other representatives and interested parties may all take part with the agreement of the parties.

Process

Description The first line of access is the information advisers, who receive a call for information or a direct complaint through the Infoline. If unlawful discrimination is alleged, the case is referred to the Disputes Resolution Team, assessed and assigned to a mediator. The mediator contacts all parties and works to affect a resolution which is practical and relevant to the parties. The mediator acts as an impartial third-party facilitator. Mediator assistance may include low-key provision of information and assistance to self-resolve the matter, intervention and mediation.

If the dispute is not resolved, the complainant has the option of taking the dispute to the Office of Human Rights Proceedings or Human Rights Review Tribunal.

Where a complaint falls outside the discrimination jurisdiction but still involves a human rights issue, for example access to justice, freedom of speech, refugee or systemic issues, the Commission provides information and makes referrals to a more appropriate agency. At its discretion it can also perform a range of other functions which include, amongst other things, making public statements,

New Zealand: Human Rights Commission

publishing guidelines, holding an Inquiry or appearing in court proceedings as a party or as intervener.

Time Limits There are no time limits but the process focuses on resolving complaints in as timely and effective manner as possible. In 2006-2007 the Commission managed to close 90% of complaints within three months of receipt.

Outcomes

Range of Outcomes

Settlements of disputes can include, but are not limited to, the following:

- apology;
- an agreement not to discriminate in future;
- undertaking an education or training programme;
- compensation for any hurt to feelings, damages and/or losses experienced by the person complaining;
- policy development or review;
- work reference, job offer, reinstatement;
- press release and/or
- donation to charity.

Appeal

If the complaint does not settle at the dispute resolution stage, or if the Commission has declined to take action on the complaint, the complainant has the option of taking a dispute to the Human Rights Review Tribunal. The Tribunal is independent of the Commission and is administered by the Ministry of Justice. The Tribunal hears the dispute from the beginning and makes a decision. It may award damages and order other remedies.

The complainant may also apply to the Director of the Office of Human Rights Proceedings for support in lodging the complaint with the Tribunal. The Office is independent of the Commission. It may attempt settlement on its own account or take the case to the Tribunal on behalf of the complainant.

Enforcement

Mediation agreements may, if the parties wish, be sanctioned as legally binding documents, enforceable through court proceedings. Generally the mediation agreements are signed by the parties as contractual arrangements. The Human Rights Review Tribunal has the power of a court and its decisions are legally binding.

Transparency

The dispute resolution process is private and confidential to those involved. Mediation is conducted on a “without prejudice” basis. This means that statements made as part of a mediation cannot be used for any other purpose. When a complainant decides to take the matter to court, name suppression may be applied for, but proceedings are generally open to the public.

Links & Sources

- Human Rights Commission of New Zealand www.hrc.co.nz/home

Cambodia: Labour Dispute System

Arbitration Council

- REGION ■ Cambodia
- COMPLAINTS ■ Total of 470 since inception¹⁷
- ESTABLISHED ■ 2003
- CORE PROCESS ■ Mediation/Conciliation; Arbitration

Background

The labour rights complaints process in Cambodia makes a distinction between individual and collective disputes. For individual disputes there is a conciliation process through the Ministry of Labour and Vocational Training (MOLVT), followed by the option to take the case to court if parties do not come to a settlement. The Arbitration Council is for collective disputes. It is an independent body whose function is to resolve collective labour disputes that could not be resolved by MOLVT conciliation. The Arbitration Council has a tripartite structure comprised of members nominated by unions, employer associations and the MOLVT. The Council currently has 30 members appointed annually by the Minister of Labour.

Standards

Source of Standards The standards are based on Cambodian Labour Law (1997) or an applicable Collective Bargaining Agreement between employers and workers groups, and as such focus particularly on labour rights.

Cambodia has ratified the eight International Labour Organization Core Conventions, although many of these ratifications took place after the labour law was adopted. It has not been amended to reflect the ratifications.

Particular Rights While the law has strong provisions with regard to freedom of association, collective bargaining and trade union rights, it is less robust on child labour and discrimination. Certain working conditions are very detailed (such as leave and dismissals) and others less so (such as Occupational Safety and Health).

Access

Education and Information There is ongoing outreach to inform unions and employers about the functions and services of the Arbitration Council.

Admissibility Criteria and Limitations In an individual case either party has the right to initiate the process. However, if one of the parties submits a complaint for conciliation, the other party is required to participate. A dispute can relate to the “interpretation or enforcement of the terms of a labour contract or apprenticeship contract, or the provisions of a collective agreement as well as regulations or laws in effect.”¹⁸

For collective disputes, the MOLVT is responsible for forwarding non-conciliated disputes to the Arbitration Council. The Arbitration Council will evaluate admissibility (i.e., whether the case meets the criteria of collective disputes laid out in the labour law).

¹⁷ Up to November 2007

¹⁸ Cambodian Labor Law, article 300

Cambodia: Labour Dispute System

The Arbitration Council can only hear two types of issues: issues specified in the Non-Conciliation Report and issues arising from events occurring after the Report that are a direct consequence of the dispute.

Parallel Grievance Processes Any other mechanisms where the dispute is being considered must be halted while the dispute goes through the Arbitration Council process. The law is clear about the order of dispute settlement: conciliation by the MOLVT, followed by arbitration at the Arbitration Council. During the collective dispute resolution process, the parties are not allowed to take any industrial action such as a strike or a lock-out; the Arbitration Council will refuse to hear a case if such action is underway. If a party objects to an Arbitration Council decision in the case of a rights dispute, the parties may seek resolution through the court. Alternatively, for both rights and interests disputes, the aggrieved party may choose industrial action.

Resource Assistance By law, conciliation and arbitration are free of charge. Representation is allowed at both processes and certain private lawyers will represent union clients pro bono or at reduced fees.

Non-Retaliation There are no specific measures in the law to protect complainants; however, the law does provide for broad union protections.

Individual Cases

Agents

Administration In the process of individual conciliation a representative from the Ministry of Labour functions as a go-between. He/she has a role of giving advice and recommending solutions. The Conciliator does not have the power to impose a solution on the parties.

Other Participants The two parties and their representatives or assistants can participate in the process.

Process

Description Throughout the conciliation process, the designated Conciliator (from the Labour Inspectorate) will try to help the parties resolve their dispute by agreement. To this effect, the Labour Inspectorate will set a hearing to take place within three weeks of receipt of the complaint. The parties are required to provide information requested by the Conciliator and to attend the meetings called by the Conciliator. Regardless of whether the conciliation is successful, the Conciliator must write and sign a report on the conciliation. Each party also signs the report and receives a certified copy. The report is then submitted to the Minister.

Outcomes

Range of Outcomes There are no specified outcomes; it depends on what the parties agree.

Appeal If the parties cannot reach an agreement through conciliation, either party can file a complaint with the court within two months. The parties can choose to try a different dispute resolution process before they go to court. However, if no complaint is filed in the court within two months, the right to sue lapses.

Enforcement

The law states that an agreement made before the Labour Inspector is enforceable by law, but it does not specify the mechanism for enforcement.

Cambodia: Labour Dispute System

Transparency

The law does not specify whether agreements or non-conciliation reports may be made public or must be kept private.

Collective Cases

Agents

Administration Officials from the MOLVT are responsible for the conciliation process that always precedes arbitration. The Arbitration Council is comprised of members nominated by unions, employer associations and the MOLVT. It has at least 15 members (currently 30) that the Minister appoints for a one-year term. An arbitration panel consists of three members of the Arbitration Council, one chosen by each of the parties and the third by the two arbitrators so selected. If there is no agreement, the Secretariat chooses an arbitrator by lots.

The Arbitration Council is managed by an independent entity, the Arbitration Council Foundation (ACF). Arbitrators comprise three of the five ACF Directors on its Board.

Other Participants The following groups can be part of the process: workers, worker representatives, trade unions and employers. If the process goes to arbitration, the parties may be represented by lawyers or anyone else whom they authorise in writing.

Process

Description Complainants in a collective dispute (i.e. involving one or more employers and a group of workers) must go first to conciliation through the Labour Ministry, which is mandatory on the parties. If the conciliation fails, the Conciliator submits a Non-Conciliation Report to the Minister of Labour, noting the unresolved issues. The dispute must then go to an arbitration procedure as set out either in an applicable Collective Bargaining Agreement or in Cambodia's Labour Law, or to another procedure agreed by the parties. Disputes that go to arbitration are heard by a three-person panel of the Arbitration Council.

The panel can only examine issues specified in the 'non-conciliation report' and issues arising after that report that flow directly from the same dispute. The panel can decide both what are described as "rights issues" (i.e. issues related to rights set out in laws, regulations, contracts or collective bargaining agreements) and "interests issues" (i.e. issues that relate to desired future benefits or outcomes not required by law/contracts/agreements, etc.). The panel conducts a hearing, at which the parties may provide documentation and the panel can require the production of relevant documents, call on the assistance of experts and examine witnesses who the parties can also question. Documents provided by one party or obtained by the panel must be passed to all parties. The arbitration panel can at any point move from the hearing back into conciliation mode to help the parties reach their own settlement.

Time Limits A Conciliator must be appointed by the Labour Ministry within 48 hours of a dispute being submitted, and the conciliation process has a deadline of 15 days unless the parties agree to an extension. If the dispute goes to arbitration, the arbitration must be completed within 15 days of the Arbitration Council receiving the case, unless both parties agree to an extension. Any objection to an arbitration award must be submitted to the Secretariat of the Arbitration Council within eight days.

Cambodia: Labour Dispute System

Outcomes

Range of Outcomes If the dispute is settled at the stage of conciliation, the parties sign a written record of the agreement which is certified by the Conciliator and is then binding on the parties, including workers they legally represent. If conciliation fails, a Non-Conciliation Report is submitted by the Conciliator to the Minister of Labour noting the unresolved issues. The process must then go to arbitration or another procedure agreed by the parties.

If the Arbitration Panel moves into conciliation and agreement is reached, this may be issued as a “consent order” by the Arbitration Council. Otherwise, the arbitration panel has wide discretion regarding the remedies upon which it can decide. These may include reinstatement of terminated workers, orders for workers to cease strikes, issuing a collective bargaining agreement, disciplinary procedures and compensation to workers. The decision must include the panel’s reasoning and must be adopted by consensus or a two-thirds majority.

Appeal If a party objects to an award in a rights dispute, they may take the issue to court. If the objection is with regard to an interests-based dispute, the courts have no power to hear it and the parties must seek their own solutions. In both types of dispute, when the process is over, possibilities include non-violent action such as legal strikes and lock-outs.

Enforcement

An arbitration award is enforceable on the parties through the courts unless a party submits an opposition to the Secretariat of the CAC within eight days.

In cases involving interests-based disputes, the award has the status of a collective bargaining agreement between the parties and remains valid for at least one year unless the parties agree to a replacement in the interim.

Transparency

The arbitration hearing is confidential unless the parties agree to allow observers. Decisions of the Arbitration Council are made public through the Arbitration Council Website within four days of being published and issued to the parties. Decisions must include the legal basis (including jurisprudence) and reasoning for the award.

Links & Sources

- Arbitration Council Homepage www.arbitrationcouncil.org/eng_index.htm
- Text of Labour Law www.arbitrationcouncil.org/pdf_files/laws/LL_1997_e.htm
- Better Factories Cambodia (with guide to the Labour Law) www.betterfactories.org

South Africa: Labour Dispute System

Commission for Conciliation, Mediation and Arbitration

REGION	■ South Africa
COMPLAINTS	■ 123,472 ¹⁹
ESTABLISHED	■ 1995
CORE PROCESS	■ Mediation/Conciliation; Arbitration

Background

The Commission for Conciliation, Mediation and Arbitration (CCMA) is the body in South Africa that is charged with resolving disputes in labour relations. Its establishment after the end of apartheid was aimed at designing a labour relations model based on cooperation, industrial peace and social justice. It is comprised of representatives of the three social partners: workers, business and government.

Standards

Source of Standards All South African law is governed by a Bill of Rights outlined in Chapter 2 of the Constitution. Section 23 makes provision for fair labour practices. The Labour Relations Act gives legislative effect to this section when it comes to labour relations, of which dispute resolution mechanisms for labour disputes are one aspect. This is the principle source of the standards for the labour complaints and grievances received. There is also other relevant legislation, such as the Basic Conditions of Employment Act, Occupational Health and Safety Act, Employment Equity Act and Skills Development Act.

Particular Rights Section 23 of the Constitution outlines the right to fair labour practices, including organisational rights, right to strike, collective bargaining, etc. The Labour Relations Act also gives effect to other sections of the Bill of Rights, such as the right to dignity, just administration, etc. In addition, complaints can pertain (but are not limited) to: sexual harassment, dismissals, strikes, HIV/AIDS, pregnancy, disability, employment conditions, employment equity, health and safety and occupational injury.

Access

Education and Information The CCMA has a website and issues newsletters and annual reports. The most significant entry point for complaints is the call centre, which received almost 170,000 calls in the year 2006-2007.

Admissibility Criteria and Limitations Both employee and employer can lodge a dispute with the CCMA in the event of disputes over dismissal, unfair labour practices, wages and working conditions, workplace changes, organisational issues or discrimination.

Disputes cannot be referred to the CCMA where:

- an independent contractor is involved;
- the case does not deal with an issue as described in the law;

¹⁹ For the year 2006-2007. This number contains *all* complaints received, whether against government or business and regardless of whether they were deemed admissible.

South Africa: Labour Dispute System

- a bargaining council or statutory council exists for that sector (the bargaining council has similar authority delegated to it by law, and hears the case of the parties) or
- a private agreement exists for resolving disputes (although the CCMA does have inherent jurisdiction if these mechanisms are frustrated by either party).

Parallel Grievance Processes

The CCMA is publicly funded and does not charge fees except in the event of abuse of the system or for consultation work outside the core process. The Commissioner has authority under the Labour Relations Act to run the process as the CCMA deems fit, and, by practice, they accommodate less sophisticated parties (for example in terms of literacy and education) in the way they manage the case. The CCMA does not provide resource assistance to parties. They can provide advice, through the telephone and desk advisory systems, on process and jurisdictional issues.

Non-Retaliation

The laws protect complainants, who, in the overwhelming majority of cases, are employees.

Agents

Administration

The mechanism is independent from the Government. It is run by the Governing Body, which consists of three representatives of each of the three parties of the National Economic Development & Labour Council, the body where organised labour, organised business and the Government come together to discuss economic and social policy. The actual processes are run by Commissioners appointed by the Governing Body. Senior Commissioners, organised by province, monitor the process and assist in the allocation of cases. Once a Commissioner is vested with a matter, no other party or person may interfere with the discretion of that Commissioner, except for a higher court of law, such as the Labour Court.

Other Participants

During **conciliation** only the parties and trade union or employers' organisation representatives can attend. In an **arbitration** hearing the party in dispute may appear in person or be represented by a legal practitioner, a director or employee of the party or any member, office-bearer or official of the party's registered trade union or registered employers' organisation. Lawyers are not normally allowed to represent parties in arbitrations over dismissal disputes. They can be used though if the Commissioner and the parties consent, or if the Commissioner decides that it is unreasonable to expect a party to deal with the dispute without legal representation.

Process²⁰

Description

As a first step, a complainant must complete a case referral form and send a copy to both the other party and to the CCMA. The CCMA will then organise a hearing, usually in the form of conciliation between the parties. If an agreement acceptable to both parties is not reached, the complainant may refer the matter to arbitration, or the Labour Court, depending on the jurisdiction of the dispute. Most are referred to arbitration, with the Labour Court adjudicating specifically collective retrenchments and discrimination cases. The following processes are available:

- **Pre-dismissal Arbitration** (i.e. when an employee wants to dismiss a worker, and seeks approval for it) is a final and binding arbitration at disciplinary hearing stage, and is only subject to review at the Labour Court;
- **Conciliation** in which the Commissioner tries to resolve a dispute by agreement;
- **Arbitration** in which the parties can both make their case and the Commissioner makes a binding decision;

²⁰ The quotes in this and the next section ("Outcomes") are taken from the process description of the CCMA website.

South Africa: Labour Dispute System

- **Con-Arb** is conciliation and, if that fails, arbitration on the same day and is compulsory in cases of probation and
- **Facilitation** for when a dispute has risen between an employer and a group of employees. This may be used in retrenchment disputes.

Time Limits

The main time limits are for lodging a dismissal or unfair labour practice dispute. All limits are from the date on which the dispute arose:

- unfair dismissal: 30 days;
- unfair labour practice: 90 days and
- discrimination cases: six months.

An application for arbitration after a conciliation process has failed should be made within three months; and within 14 days of an arbitration hearing the Commissioner will make a decision. The period to apply for cancellation or annulment of a contract following arbitration is 14 days. If these deadlines have passed, a party can apply for a late referral (called a “condonation”), which can be granted at the discretion of the Commissioner.

Outcomes

Range of Outcomes

In the conciliation phase, the outcome is mutually agreed upon. In arbitration, the Commissioner can grant an award, which can include: rebuff or upholding of dismissal, payment of lost salary, dismissal of application on procedural or substantive grounds, or, in the case of an unfair labour practice some means of correcting such unfairness. The Commission is limited to awarding 12 months compensation for an unfair dismissal, and the Labour Court can award up to 24 months compensation for unfair dismissal over which they have jurisdiction.

Appeal

When conciliation fails, a referral to arbitration can be made. The arbitration award is final and binding, and is only subject to very limited review, which is not an appeal. In general, reviews only occur in the case of alleged misconduct of a Commissioner or where the Commissioner did not “apply their mind” (the award was not reasonable or justifiable). A party can only successfully apply for a reversal of a decision (a “Rescission”) if the award or ruling was granted as a result of a mistake common to the parties, where one of the parties failed to attend the process and did so for good reason, or where the award contains an ambiguity or an obvious error or omission (the award may be rescinded or changed only to the extent of that ambiguity, error or omission). The case can also be taken to the Labour Court, but an award will not easily be set aside based on subjective issues.

Enforcement

The Labour Court can make an award an order of court and the CCMA Director can certify an award therefore giving it the status of a judgment.

Transparency

The arbitration awards are public documents and the CCMA has to report accurately on its cases.

Links & Sources

- CCMA Homepage

www.ccma.org.za

United Kingdom: Labour Dispute System

Advisory, Conciliation and Arbitration Service

- REGION ■ United Kingdom
- COMPLAINTS ■ Individual: 100,000+; Collective: approximately 1000²¹
- ESTABLISHED ■ 1975
- CORE PROCESS ■ Mediation/Conciliation; Arbitration

Background

The Advisory, Conciliation and Arbitration Service (ACAS) is a government-created and -funded service to improve labour relations. It provides information, advice and training, but its main role is to offer conciliation in case of disputes, of which a partial aim is to avoid further judicial costs. It is independent of government and is governed by a Council made up of leading figures from business, unions, independent sectors and academics. It is organised through 11 regional centres throughout the United Kingdom and a national office in London. ACAS has two separate statutory conciliation roles: one relating to individual labour disputes and one to collective labour disputes. In addition it provides a range of other services including fee-based training and consultancy support, a free helpline on employment rights issues and publications on employment rights and good practice in employment. ACAS also offers a separate, fee-based mediation service. This is not governed by a labour rights statute and can be used to try to resolve any dispute between individuals in the workplace.

Standards

All of the complaints dealt with under ACAS's individual conciliation role relate to labour rights standards, which were primarily derived from the Employment Protection Act of 1975. Furthermore, labour rights are included in a large body of additional employment legislation.

Access

Education and Information

Education and information efforts include an extensive website, various brochures, DVDs explaining the service, media campaigns and an employment rights helpline. In practice, the main way that individual complainants find out about the opportunity for individual conciliation is via a letter and leaflet sent to them after they have submitted their legal claim.

Admissibility Criteria and Limitations

The statutory individual conciliation services of ACAS can only be drawn on where there is an actual or potential Employment Tribunal case. UK employment legislation places a range of requirements on potential claimants for their claim to be admissible (and so to be eligible to be heard by an Employment Tribunal). Depending on the statute concerned, these relate to issues such as length of service with the employer employment status and length of time since the alleged breach of employment rights took place. In addition, under current law there are requirements to have gone through an internal procedure prior to submitting a claim. The Employment Tribunal Service, which is separate from ACAS, may rule out a claim at various stages on the basis that some or all the necessary criteria have not been met. At this point the entitlement to conciliation also ends.

²¹ For the year 2006-2007. This number contains *all* complaints received, whether against (local) government or business and regardless of whether they were deemed admissible.

United Kingdom: Labour Dispute System

Resource Assistance There is no resource assistance, but the services of ACAS are free.

Agents

Administration The mechanism is run by ACAS, in particular by a number of ACAS conciliators. ACAS is a publicly funded body, but independent of government and of employer and trade union interests.

Other Participants Parties or their representatives can take part in the process. When a party designates a representative, the ACAS conciliator will deal with that person directly.

Process

Description **Individual conciliation** is offered free in all cases where an employee submits a claim (known as an ET1) against an employer under employment rights (labour) legislation. In limited circumstances, where there is a basis for an ET1 to be submitted, but where this has not yet happened, either party may call for ACAS intervention. As long as specified criteria are met, ACAS also has a statutory duty to provide conciliation in these cases.

In cases where ACAS is notified by the employment tribunal, ACAS contacts the parties and offers them the possibility to resolve the dispute with the help of their conciliators before the hearing at the tribunal. The process is free, voluntary and confidential. Parties can opt out at any stage. Statements made in the conciliation meetings cannot be used as evidence in the employment tribunal hearing.

In cases relating to unfair dismissal and the right to request flexible work, there is the potential, following conciliation, to proceed to arbitration. However this very rarely happens in practice.

ACAS also has a completely separate conciliation role in respect of **collective labour disputes** (i.e. those which could potentially result in withdrawal of labour or other forms of collective action). The majority of disputes that are conciliated relate to issues around pay and conditions in the workplace (i.e. are not usually about legally-determined rights). This free and voluntary service may be requested by either employer or employee representatives.

Time Limits Under current arrangements, the applicable employment law determines the time available for individual conciliation. This is seven weeks for the simplest cases and 13 weeks for the bulk of cases which relate to unfair dismissal. However, there is no limit for those cases which are typically most complex – predominantly those relating to discrimination at work.

Outcomes

Range of Outcomes One of the main tasks of ACAS is to assist the parties in exploring the strengths and weaknesses of their cases, and so the first outcome is a better assessment of the case of the involved parties. This can result in a number of follow-up steps: withdrawal of the complaint, settling the dispute privately, opting for arbitration (rarely used and only an option in some cases) or settling the case via ACAS conciliation.

If parties come to an agreement through conciliation, outcomes can include monetary and non-monetary compensation. The latter can include the employer making an apology, a promise that the issue in dispute will not happen again, the provision of references for future employment and maintaining confidentiality (usually applied to the employee as their part of the 'deal'). (Note: the Employment Tribunal can only award monetary compensation or potentially, reinstatement/reemployment. However, in practice it is rare for a tribunal to require an employer to take back a dismissed employee.)

United Kingdom: Labour Dispute System

Appeal Since the process is entirely voluntary, there is no appeal included. If the case is not settled (via ACAS or privately) or withdrawn, it will proceed to an Employment Tribunal which will find for either the employer or the employee and which may award compensation to the employee (and potentially costs against either party).

Enforcement

An **individual complaint** settled by agreement through ACAS is legally binding. Although agreements do not have to be in writing to be legally binding, the terms of the agreement will be recorded on an ACAS form to be signed by both sides as proof of the agreement.

Settlements reached during **collective conciliation** are not legally binding.

Transparency

The conciliation process is entirely confidential and as such there is no public notice unless both parties agree to it. However, the volume of individual conciliation activity is recorded by ACAS in its Annual Report and elsewhere.

Links & Sources

- ACAS Homepage www.acas.org.uk
- ACAS Conciliation Website www.acas.org.uk/index.aspx?articleid=356
- ACAS Conciliation video www.acas.org.uk/conciliationvideo/index.htm

DESCRIPTIONS

REGIONAL LEVEL

African Development Bank

Independent Review Mechanism

- REGION ■ Africa
- COMPLAINTS ■ One to date
- ESTABLISHED ■ June 2004 (began functioning in April 2006)
- CORE PROCESS ■ Investigation; Mediation/Conciliation; Adjudication

Background

The African Development Bank Group is a development bank established in 1964. Its mission is to promote economic and social development in Africa through loans, equity investments and technical assistance. It is a conglomeration of the African Development Bank, the African Development Fund and the Nigeria Trust Fund (NTF). It currently has 77 members: 53 countries in Africa and 24 American, European and Asian countries. The Independent Review Mechanism (IRM) was set up with the purpose of providing people adversely affected by a project financed by (any entity of) the Bank Group, including where the harm is caused by a contractor, with an independent mechanism through which they could request the Bank Group to comply with its own policies and procedures.

Standards

Source of Standards The Bank Group's policies and procedures are based on experience and best practice. The policies deal with issues raised in human rights and other international law. They are specific to the Bank Group, although they closely resemble standards of other regional development banks and the World Bank.

Particular Rights The standards upon which the Bank has based its procedures focus on specific rights, including: gender, involuntary resettlement, land tenure, land ownership and water rights. In its more impact-focused project preparation and assessment policies, AfDB has cross-cutting standards on poverty, environment (including national and cultural heritage), population (including resettlement and natural resources), health (including malnutrition), gender (all aspects) and participation (including the opportunity to organise).

Access

Education and Information The Bank has established a website for the mechanism and printed a brochure in English, French, Portuguese and Arabic, which is being distributed through the Bank's resident missions and local NGOs. The Bank is collaborating with national NGOs and conducting workshops together with NGOs in regional member countries in order to enhance awareness of the mechanism.

Admissibility Criteria and Limitations

Complaints can be brought by:

- any group of two or more people who believe that they have been, or are likely to be, adversely affected in a direct and material way by a Bank Group-financed project;
- organisations, associations, societies or other groupings of individuals and

African Development Bank

- duly appointed local representatives and in exceptional cases foreign representatives of aggrieved parties.

The complaint can only be brought against a member institution of the Bank Group that has failed to follow its own procedure resulting in a (foreseeable) material adverse affect. A complaint alleging direct harm to people caused by a contractor as a result of non-compliance with the Bank's policies and procedures (for example on environment and safeguards), could also be considered eligible. However, complaints should first have been addressed to the Bank's Management.

Complaints cannot pertain to: procurement, fraud and corruption; matters to be addressed to the Administrative Tribunal of the Bank, or before other judicial review; frivolous or malicious complaints; or complaints motivated by an intention to gain competitive advantage.

Parallel Grievance Processes

Requests that are subject to judicial review or similar bodies cannot be received. When deciding on whether a problem-solving exercise should be undertaken, the Director is also required to assess whether "the problem-solving exercise may duplicate, or interfere with, or may be impeded by, any other process pending before a court, arbitration tribunal or review body (such as an equivalent mechanism at another co-financier) in respect of the same matter or a matter closely related to the Request."²²

Resource Assistance

The Bank does not provide assistance beyond its awareness-raising work, given its concern to avoid possible conflicts of interest were they to provide financial assistance or representation to complainants.

Non-Retaliation

Confidentiality is maintained if considered feasible and agreed upon with the Requestors (i.e. complainants). Monitoring reports presented to the Board and the President should include findings of retaliation if so reported by complainants.

Eligibility Assessment

After receiving a Request (i.e. complaint), the Director assesses within 14 days whether the complaint is admissible, and decides whether to accept and register the Request. If the Director denies a Compliance Review, the Chair of the Roster of Experts will do a separate assessment on eligibility. If a Request contains a *bona fide* allegation of harm arising from a Bank Group financed operation, with sufficient required information, the Director shall make a determination on whether the Request should be registered for a problem-solving exercise and/or considered further for recommendation for a Compliance Review.

Once this determination is made, the Director registers the Request in the register of Requests; promptly notifies the Requestors (i.e. complainants), the Board and the President of the registration, the proposed remedial course of action and the reasons therefore; and transmits to the Board and/or the President a copy of the Request with the accompanying documentation. The President, the Board of Directors and the Bank's Management must provide their response to the complaints registered within 21 days.

A recommendation for a Compliance Review will generally ensue where the Director finds evidence that the Requestors are being, or are likely to be, harmed by a project due to a failure on the Bank's part to follow its own policies and procedures. It must be submitted within 30 days of registration of the Request.

²² IRM Operating Rules and Procedures (ORP), VI.a.34. e and f

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Problem-Solving Exercise

Agents

Administration The Mechanism is run by the Compliance Review and Mediation Unit (CRMU). The CRMU is headed by a Director assisted by a Principal Compliance Officer and secretarial services. The Director reports administratively to the President and functionally to the Board of Directors for projects approved by the Board and to the President for projects not yet approved by the Board.

Other Participants The CRMU Director invites all relevant parties, e.g. the Requestors, the Bank Group Management's representatives and other interested parties, including any companies involved, to take part in the exercise.

Process

Description The Problem-Solving Exercise is aimed at restoring an effective dialogue between parties. In order to achieve this, the Director invites relevant parties to participate. The Director can make use of a variety of techniques, including "independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting."²³

Within a maximum of three months after the start of the Problem-Solving Exercise, or by common consent of the parties, the Exercise should be declared successful or unsuccessful. If the process is unsuccessful, the Director writes a Report including "a description of the efforts made, the reasons for their failure and recommendations on steps the Bank Group could take to deal with the unresolved issue."²⁴

If the Exercise is successful, the Director issues a Problem-Solving Report within 30 days of its completion, describing the facts, the considerations on which the conclusions and recommendations are based, and the solution agreed. Subsequently, the Board decides whether to accept the proposals for remedial action and informs all parties of its decision. The CRMU will also monitor the implementation of the agreed remedial recommendation approved by the President or the Board.

Time Limits Any time period mentioned may be extended by the Director for as long as is strictly necessary to ensure full and proper investigation, assessment, review and initiative. Any such extension must be promptly notified to the Requestors and all interested persons. In considering whether any extension is required, the Director shall take into account, *inter alia*, the location of the Bank Group-financed project, the need for Bank staff to participate in the process, any time-sensitive issues relating to the Bank Group-financed project, the availability of Experts and the need for translation of communications.

Outcomes

Range of Outcomes The outcome follows the recommendation of the Director. Any remedial recommendations have to be approved by the President (if the project has not yet been approved by the Board) or the Board of Directors (if the project has been approved by the Board).

Appeal The outcome of the Problem-Solving Exercise is determined by mutual consent, removing any need for an appeal. The main objective of the Exercise is to restore the dialogue between the parties. However, if the dialogue is not restored then the Problem-solving Exercise is considered

²³ ORP VI, a, 37.

²⁴ ORP VI, b, 41.

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unsuccessful by common consent of the parties. The Director will declare the exercise unsuccessful and submit a Report with recommendations to the President or the Board of Directors, which will, in turn, accept or decline the Director's recommendations. The Director may recommend (as applicable) to undertake a Compliance Review.

Enforcement

The CRMU will monitor the implementation of the solution and present Monitoring Reports to the Board and the President.

Transparency

Once the request is registered, a Chronological Progress Report and a Notice of Registration are published on the IRM Website. The Problem-Solving Report is provided to all the participants, to the Board and the President. A summary of the decision of the President and the Board is published on the Bank Group's Website, subject to the Bank's Disclosure of Information Policy.

Compliance Review

Agents²⁵

Administration

For the authorised Compliance Reviews two Experts are selected to participate in Compliance Review Panels together with the Director of the CRMU. The Roster of Experts is comprised of three external experts, who are appointed by the Board of Directors for a five-year, non-renewable term.

Other Participants

If needed, additional experts can be hired for technical issues regarding the Requestor's claims.

Process

Description

The Compliance Review recommendation must include draft terms of reference with scope, timeframe, budget estimate and identification of the two experts, who, together with the Director form the Panel, shall carry out the review. The Panel may take any action that it thinks is appropriate in accordance with the agreed terms of reference and time frame, such as obtaining oral and written information, visiting the sites and hiring external consultants.

The decisions of the panel are taken by simple majority and the Director only votes if there is a deadlock in the Panel. Within 30 days of completion of the review, the Panel issues a Report that includes: a summary of the review process, an overview of the findings, possible recommendations, such as remedial changes to systems or procedures, remedial changes in scope or implementation of the project and monitoring activities.

The Report is sent for consideration and decision to the Bank's President, copying the Board (if the project has not yet been approved) or only to the Board (if it has).

Time Limits

Any time period mentioned may be extended by the Director for as long as is strictly necessary to ensure full and proper investigation, assessment, review and initiative.²⁶

²⁵ For the general administration of the mechanism, see description under "Agents" in the description of the "Problem-Solving Exercise."

²⁶ For further details about time limits, see description of time limits under "Process" in the description of the "Problem-Solving Exercise."

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Outcomes

Range of Outcomes The recommendation by a Review Panel cannot go beyond what is expressly contemplated in a relevant Bank Group policy. Besides this policy, the possible outcomes of Compliance Review are:

- changes to the Bank's systems or procedures;
- changes in the scope or implementation of the project and
- changes in the monitoring of the project.

Appeal After the Compliance Review and the President's or the Board's decisions on the recommendations of the Review Panel, there is no appeal process. The Requestor can submit a new Request only if new evidence is brought forward or circumstances change.

Enforcement

If the panel recommends remedial changes, the Director (or another person, as decided by the Board) monitors its implementation.

Transparency

Once the request is registered, a Notice of Registration and a Chronological Progress Report are published on the IRM Website. The decision of the Board and Compliance Review Report are also published on the website, in accordance with the Bank Group's Disclosure of Information Policy.

Links & Sources

- | | |
|---|--|
| ■ African Development Bank Group Homepage | www.afdb.org |
| ■ Independent Recourse Mechanism Website | www.afdb.org/irm |

Asian Development Bank

Accountability Mechanism

- REGION ■ Asian and Pacific Countries
- COMPLAINTS ■ Five since 2004²⁷
- ESTABLISHED ■ 1995 (renewed in 2003)
- CORE PROCESS ■ Mediation/Conciliation; Adjudication

Background

The Asian Development Bank (ADB) is a regional development bank established in 1966 to promote economic and social development through loans and technical assistance. It is a multilateral institution owned by 67 member states, 48 from the region and 19 from other parts of the globe. The accountability mechanism has existed since 1995, but was thoroughly reviewed in 2003. The new mechanism consists of a consultation phase (potentially leading to conciliation or mediation) and a compliance review and is aimed at responding to the complaints of people affected by projects financed wholly or partially by the ADB, and at enhancing its development effectiveness and project quality.

Standards

Source of Standards ADB's policies and procedures are mandatory for ADB and binding on its clients. The procedures and policies are approved by the ADB Board, and are partially grounded in human rights principles. Many of the operating procedures mirror those of the World Bank and other regional development banks.

Particular Rights The ADB is particularly focused on poverty reduction. Its procedures touch on a variety of rights-related issues. The three main elements are: environment (partially as an intervention to reduce poverty); involuntary resettlement (including land, housing, infrastructure and other economic and social issues); and indigenous peoples. Thematically there is a focus on gender in development. Throughout its Operations Manual, there is also recognition of the importance of ethnicity, race, caste, age and cultural heritage.

Access

Education and Information The education and information programs include orientation briefings, training sessions and workshops for a wide-variety of stakeholders, including ADB staff, academics and local NGOs. In addition much of the information is available via the ADB Website.

Admissibility Criteria and Limitations Only a group of affected people (two or more) or their local representative can file a complaint. In special circumstances a non-local representative can be eligible if a capable representative cannot be found locally.

Complaints can only pertain to ADB's actions or omissions in the course of formulating, processing or implementing ADB-assisted projects. This includes private sector operations that have received clearance by the ADB's management before the accountability mechanism was installed.

²⁷ This number reflects the cases that passed the eligibility assessment and actually entered the consultation phase. The total number of complaints received was 12. Since the new mechanism has been in place there have been two complaints (both in 2004) filed for compliance review of which one was found eligible.

Asian Development Bank

No complaints can be received on procurement decisions; nor can matters that are within the jurisdiction of ADB's Appeals Committee²⁸ or ADB's Administrative Tribunal²⁹ or relate to ADB personnel matters.

Non-Retaliation The identity of the complainant can be kept confidential by request. However, anonymous complaints are not accepted.

Consultation Phase

Agents

Administration The process is administered by the Office of the Special Project Facilitator (SPF). The SPF is appointed for three years and this term is renewable. The SPF may not be anyone who has worked in the Operations Department (OD) within the five previous years.

Other Participants To aid the monitoring process, all stakeholders and the public may submit information to the SPF regarding the status of implementation of the agreed outcome of the consultation phase.

Process

Description When a complaint is sent in (step 1) and the receipt acknowledged (step 2), the SPF first assesses whether the complaint is eligible under its mandate (step 3). If found eligible, the SPF prepares a Review and Assessment Report (RAR) – for which it can make site visits and meet with complainants as well as the host government and any other relevant people – and makes a recommendation on whether and how to proceed (step 4).

At this point the complainant is given the option to carry on with the consultation phase or file for a compliance review (step 5). If the latter is chosen, the SPF closes the case, except if there is an application for parallel processes. If the complainant wishes to continue the consultation phase, the SPF includes comments by the complainant and the OD on its RAR, and sends it to the ADB's President asking for approval to carry on the process (step 6).

If a continuation of the process is approved, the SPF will implement a tailored plan of action, in consultation with all stakeholders (step 7). This process can include: continuing the consultative dialogue, creating a forum for resolution through "good offices"³⁰ or mediation. During the implementation in the course of this process, the SPF may conclude that it is no longer purposeful and report back to the President, recommending a different course of action. Any Party can walk away from the process at any point (step 8).

Outcomes

Range of Outcomes The range of potential remedies is broad. Some samples based on outcomes of the process in the past (mainly from prior to its revision in 2003) include: extension of the project completion date, full compensation for affected persons, assessment of environmental and social impacts and independent monitoring and evaluation.

²⁸ An individual or firm can ask the (Sanction) Appeals Committee to review a sanction issue.

²⁹ Individual staff members of the ADB who feel their contractual rights have been violated can apply to this tribunal for review and potential compensation.

³⁰ "Good offices" means using the prestige and symbolic weight of one's (institutional) position.

Asian Development Bank

During the consultation phase, the complainant can file for a compliance review if dissatisfied with the outcome or process.

Enforcement

The parties can agree to progress reports and monitoring as a means to support the enforcement of outcomes.

Transparency

Information about the complaints and their outcomes can be made public (and can generally be found on the website) but only after a final decision is reached. Final agreement can also be kept confidential if the parties agree. Media interviews are prohibited during the consultation phase.

Compliance Review

Agents

Administration The compliance review process is run by the Compliance Review Panel, consisting of three members: two from a regional country and one from a non-regional country. Their terms are for five years and non-renewable. Panel members cannot have been ADB staff within the previous three years and are ineligible to work for ADB after their term.

Other Participants The “requester” (ADB’s term for a complainant in this specific process) is given the opportunity to formally respond to the Panel’s draft report.

Process

Description At each step during the consultation phase the requester can file for compliance review following a nine-step process. Within seven days of the receipt of the request (step 1), it will be registered and acknowledged (step 2). Within 14 days an eligibility report will be sent to the Board (step 3), which makes a decision within 21 days on whether to follow the recommendation of the Panel, of which the requester is then notified within seven days (step 4).

If a recommendation to proceed with a compliance review is approved, the Panel has to clear the terms of reference of the review with the Board Compliance Review Committee (BCRC) within 14 days, after which it will start its review (for which there is no time limit). At its completion, the Panel writes a draft report (step 6), and asks for responses by the ADB’s Management and the requester (step 7). Within 14 days of receipt of those responses, the Panel will make its final report to the Board, including findings and recommendations (step 8). Within 21 days of the receipt of the Report, the Board makes a decision on the recommendations and notifies the requester within seven days of its decision (step 9).

During this process, the Panel consults all stakeholders, reviews documentation and make site visits if there is no objection by the host country.

Outcomes

Range of Outcomes The Panel can recommend changes in the implementation of projects in order to bring them into compliance with the ADB’s policies and procedures. They can also propose remedial actions to mitigate harm.

Appeal The compliance review is itself an appeal possibility for the consultation phase.

Asian Development Bank

Enforcement

The Panel monitors the outcome and reports annually to the ADB's Board on the implementation of remedial actions.

Transparency

Information is made public after each step of the process (mostly through the website). The Panel can issue its own press releases, but is mandated to maintain a low profile when making site visits. Media interviews by Panel Members are not allowed during any part of the review process.

Links & Sources

- Asian Development Bank Homepage www.adb.org
- Consultation Phase Website www.adb.org/SPF
- Compliance Review Panel www.compliance.adb.org

European Bank for Reconstruction and Development

Independent Recourse Mechanism

- REGION ■ Central/Eastern Europe and Central Asia
- COMPLAINTS ■ One to two per year³¹
- ESTABLISHED ■ 2003 (began functioning in 2004)
- CORE PROCESS ■ Mediation/Conciliation; Investigation; Adjudication

Background

The European Bank for Reconstruction and Development (EBRD) was established in 1991 as communism came to an end in Central and Eastern Europe and Central Asia. Its aim was to help the new governments of the former Soviet states nurture a new private sector in a democratic environment. The EBRD is the largest single investor in the region and mobilises significant foreign direct investment beyond its own financing. It is owned by 61 countries and two intergovernmental institutions. Despite its public sector shareholders, it invests mainly in private enterprises, usually together with commercial partners. The Independent Recourse Mechanism (IRM) gives local groups that may be directly and adversely affected by a EBRD Project a means of raising complaints or grievances with the EBRD, independently from banking operations.

Standards

Source of Standards The complaint has to be a violation of the Bank's Environmental Policy or Project-specific provisions of its Public Information Policy. In part these cross-reference the International Finance Corporation Safeguard Policies.

Particular Rights The Environmental Policy is broadly interpreted to include worker protection issues and community issues, such as cultural property, involuntary resettlement and impacts on indigenous peoples.

Access

Information Information on the mechanism is available through EBRD's Website.

Admissibility Criteria and Limitations Only groups affected by an EBRD-financed Project can file a Complaint. They must be a minimum of two complainants (called an "Affected Group") and must choose one of them to act as their authorised representative. An external representative is allowed if evidence is provided that the affected individuals have so agreed. The representative must be familiar with the area and fluent in the native language of the requesters.

A Registered Complaint shall be eligible for further processing if:

- the Complaint relates to a Project, subject to either of the following conditions:
 - the EBRD must have provided a clear indication of its interest in financing the Project;

³¹ Between July 2004 and October 2005, seven complaints were received of which two were found eligible for registration. Between November 2005 and November 2006, two complaints were received, of which one was found eligible for registration.

European Bank for Reconstruction and Development

- the EBRD must maintain a financial interest in the Project;
- the Complaint must have been filed within 12 months after the date of the completion of the Project (in physical or financing terms, according to the Project);
- the Registered Complaint is from an Affected Group and there is *prima facie* evidence that the Project has, or is likely to have, a direct adverse and material effect on the Group's common interest;
- the Affected Group has initiated good faith efforts to resolve the issue with the EBRD and other Relevant Parties and there is no reasonable prospect of resolving the issue through the continuation of such efforts.

A Complaint is not eligible for IRM processing to the extent that:

- it is frivolous or malicious;
- its primary purpose is to seek competitive advantage;
- it relates to procurement matters (in which case it is redirected to the proper office);
- it relates to an allegation of fraud or corruption (in which case it is redirected to the proper office);
- it relates to Article 1 of the Agreement Establishing the EBRD, the Portfolio Ratio Policy or any other specified policy as may be identified by the Board from time to time;
- it relates to the adequacy or suitability of EBRD policies or
- it relates to matters upon which an Eligibility Assessment Report has already been approved by the Board or the President, unless there is new evidence or new circumstances not known at the time of the previous review.

Parallel Grievance Processes

When the Chief Compliance Officer (CCO) is deciding whether a Problem-Solving Initiative is warranted, he/she takes into consideration whether the complaint is under review in another mechanism. When the complaint is under review by another international financial institution, the EBRD and IRM Officers will work together with that institution to resolve the issue.

Resource Assistance

There is no resource assistance for the Affected Group.

Non-Retaliation

The Affected Group can request that its identity be kept confidential and the Complaint should include reasons why this should be granted. However, confidentiality is not automatically guaranteed. The CCO will ultimately determine whether or not the information is kept confidential.

Agents

Administration

The IRM is administered by the Office of the CCO and is independent from the EBRD's banking operations. The CCO is responsible for the overall, day-to-day operations and external relations of the IRM such as establishing and maintaining the IRM Website and register; preparing administrative procedures and guidelines; receiving and registering any Complaints to the IRM and maintaining a documentary record in respect of each Complaint.

Persons to be selected to conduct a Problem-Solving Initiative may be an Expert or such other person as the CCO considers appropriate. The CCO himself or herself may conduct a Problem-Solving Initiative. The appointment of the Problem-Solving Facilitator is approved by the President upon the recommendation of the CCO.

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Other Participants Companies, the Affected Group, and other relevant parties can all be involved, especially when being asked for a response to allegations made. The initiative for involving parties in the process lies with CCO.

Eligibility Assessment

Process

Description The CCO must determine whether or not a Complaint is **manifestly ineligible**. If it is, he/she must, within five business days of receipt of the Complaint, send out a written notice to the Affected Group that the Complaint may not be registered, indicating the reason(s) for non-registration. If the Complaint is not manifestly ineligible, the CCO registers it and notifies the Affected Group and any Relevant Party. Upon registration of a Complaint, the CCO designates one of the Experts to assist in making an Eligibility Assessment of the Registered Complaint and the two of them work jointly as Eligibility Assessors.

The Eligibility Assessors make an **Eligibility Assessment** of the Registered Complaint within 30 business days of receipt of the Complaint or 25 business days of the acceptance of appointment by the Eligibility Assessment Expert, whichever is longer. Within this period, if the Eligibility Assessors decide to recommend that the Complaint be declared ineligible, the Affected Group is informed of the reasons and has 10 days to respond or comment on the recommendation.

If the Complaint is considered eligible, the next step will be recommendations for a compliance review, a Problem-Solving Initiative, both, or neither. To determine whether the Complaint is eligible for a **Compliance Review**, the Assessors focus in particular on whether there may have been a material violation of a relevant EBRD policy. Whilst usually conducted through a desk review, this process may involve other steps such as soliciting oral or written information from the Parties or retaining additional expertise.

If the Eligibility Assessors decide to recommend that a Compliance Review is *not* warranted, the Affected Group has 10 business days to provide comments for inclusion in the Assessors' **Eligibility Assessment Report**. This time limit may be included in, or added to, the original timeframe for the Assessment.

The Eligibility Assessment Report shall:

- include a copy of the original Complaint;
- summarise the relevant facts, the respective positions of any Relevant Parties, steps taken to conduct the Eligibility Assessment;
- recommend to declare the Complaint either:
 - ineligible and therefore, dismiss the Complaint. In this case, the Eligibility Assessment Report includes any comments received from the Affected Group or any Relevant Party;
 - eligible, but not warranting a Compliance Review, in which case the Eligibility Assessment Report shall include any comments received from the Affected Group or any Relevant Party or

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- eligible and warranting a Compliance Review, in which case the recommendation shall include Terms of Reference for the Review and identify an Expert to conduct it.

If the Eligibility Assessors do not reach consensus on the contents of the Eligibility Assessment Report, each Assessor records his/her views on the points of divergence. The Report is submitted for a decision:

- to the President, with a copy to the Board for information, if the relevant EBRD Operation does not have, or does not require, Board approval or
- to the President for transmittal to the Board, if the relevant EBRD Operation has been approved by the Board.

The Board or the President may approve or reject the Report's recommendation(s) or remit it for reassessment in some regard and for a new recommendation.

Assessments and decisions on a Compliance Review are without prejudice to the ability of the CCO to recommend a **Problem-Solving Initiative** once a Complaint has been declared eligible, taking into consideration:

- whether the Problem-Solving Initiative may assist in addressing undue, incidental effects of Project conditionalities;
- whether the Problem-Solving Initiative is likely to have a positive result;
- whether one or more Problem-Solving Initiative(s) (e.g. fact-finding, mediation, conciliation, dialogue facilitation, investigation, reporting) are more appropriate and whether the Affected Group and Relevant Parties are amenable to such Initiatives;
- whether the EBRD has sufficient leverage to influence change;
- whether the conduct of a Problem-solving Initiative may interfere with the conduct of a Compliance Review, if any;
- whether the Problem-Solving Initiative may duplicate, or interfere with, or may be impeded by, any other process pending before a court, arbitration tribunal or review body (such as an equivalent mechanism at another co-financier) in respect of the same matter or a matter closely related to the Complaint.

The CCO prepares a **Problem-Solving Initiative Report** within 45 business days of the receipt of the Complaint, recommending whether to conduct a Problem-Solving Initiative; explaining the recommendations; including comments from the Affected Group and any Relevant Party; including Terms of Reference for the Initiative; and identifying a person or group as the Problem-Solving Facilitator.

All Problem-Solving Initiative Reports are submitted for the President's consideration and decision. Subject to the protection of confidential information, they are made promptly available to the Affected Group and any Relevant Party. A summary of the Problem-Solving Initiative Report and the decision are published on the Independent Resource Mechanism (IRM) Website.

If the EBRD Operation is due for Board approval, the President's decision, together with the Problem-Solving Initiative Report, are attached to the relevant Board Operation Report when distributed. If the EBRD Operation does not require Board Approval or has been approved by the Board, the decision and Problem-Solving Initiative Report are distributed to the Board for information.

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Compliance Review

Process

Description If the recommendation for a Compliance Review is approved, an Expert conducts the Review using any of the following methods:

- desk review of all paperwork;
- request for additional information in writing or face-to-face from the group/authorised representative/Relevant Party;
- site visits and
- any other action as may be required to complete the Compliance Review within the required time frame.

Upon completion of the investigations, the Compliance Review Expert reports his/her findings and recommendations in a Compliance Review Report, which includes a summary of the relevant facts, the respective positions of any Relevant Party and the steps taken to conduct the Compliance Review, and sets out the Expert's findings as to whether any EBRD action, or failure to act, in respect of a Bank Operation have involved material violations of EBRD policies.

The Compliance Review Expert submits the Report for decision:

- to the President, with a copy to the Board for information, if the relevant EBRD Operation does not have, or does not require, Board approval and
- to the President for transmittal to the Board, if the relevant EBRD Operation has been approved by the Board.

The Board or the President decides whether or not to accept the findings and recommendations in the Compliance Review Report.

Time Limits There is no statutory time limit, but the Terms of Reference decided upon in the eligibility phase should indicate a time frame for the Compliance Review to be completed. Furthermore, any time period referred to in the procedure may be extended by the CCO for as long as is strictly necessary to ensure full and proper investigation, assessment, review and initiative. Any such extension is notified to the Affected Group and all Relevant Parties.

Outcomes

Range of Outcomes If the Compliance Review Report concludes that any EBRD action, or failure to act, in respect of a Bank Operation has involved one or more material violations of policies, the Compliance Review Expert may recommend:

- any remedial changes to systems or procedures within the EBRD to avoid a recurrence of such or similar violations;
- any remedial changes in the scope or implementation of the Bank Operation, subject to consideration of any restrictions or arrangements to which the Bank or any other Relevant Party has already committed in existing Project-related agreements and/or
- any steps to be taken to monitor the implementation of the changes.

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The Compliance Review Report may not recommend the award of compensation or any other benefits to Affected Groups beyond that which may be expressly contemplated in a relevant Bank Policy.

Appeal There is no provision for appeal either on process or outcome.

Enforcement

The CCO (unless the Board or the President decide otherwise) is in charge of monitoring proposed changes. He/she reports on implementation to the President or the Board, as the case may be, as often as required and in any event not less than once a year. Any Report to the President is copied to the Board.

Transparency

The Relevant Parties are kept informed of progress throughout the process. Copies of the Report and the Board's and President's decisions are made available to the Affected Group and other Relevant Parties, subject to protecting commercially sensitive information and group members' identities if confidentiality has been requested. Summaries of the decision and the various Reports are published on the IRM Website.

Problem-Solving Initiative

Process

Description The Problem-Solving Initiative may involve fact-finding, mediation, conciliation, dialogue facilitation, investigation and/or reporting. Its aim is to restore an effective dialogue between the Affected Group and any Relevant Party with a view to resolving the underlying issue(s), without seeking to attribute blame to any Party.

Once the Problem-Solving Initiative is completed, its findings and/or results are set out in a Problem-Solving Completion Report, which is prepared by the CCO and/or the Problem-Solving Facilitator (as provided for in the Terms of Reference), and submitted to the President. The Report is also made available to the Board. If the EBRD Operation is subject to Board approval but has not been approved by the Board at the time of submission, the Problem-Solving Completion Report is attached to the relevant Board Operation Report when submitted. If the EBRD Operation does not require Board Approval or has been approved by the Board at the time of the President's decision, the Report is distributed separately to the Board for information.

Time Limits There is no statutory time limit, but the Terms of Reference decided upon in the eligibility phase should indicate a time frame for the Problem-Solving Initiative to be completed.

Outcomes

Range of Outcomes The Problem-Solving Initiative aims to restore dialogue, but there is no further predetermined set of outcomes. It may result in whatever changes to the Project the Parties agree on. Some initiatives need the cooperation of third parties, which may include government or local authorities, the project sponsor or other investors. As the IRM cannot compel third parties to cooperate, the IRM may not be able to resolve every problem satisfactorily. Due to the relative newness of the mechanism there are not many examples of outcomes in practice.

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Appeal When a Problem-Solving Initiative is not recommended to the Board or President by the Eligibility Assessors, the Relevant Party and Affected Group have the opportunity to provide their comments on that recommendation.

Enforcement

Where a Problem-Solving Initiative involves monitoring of ongoing activities, the CCO may, while retaining overall responsibility, delegate such monitoring to another person or persons, such as an Expert, a consultant, a local governmental or nongovernmental organisation, civil society group, industry body or other international financial institution.

Transparency

Subject to approval by the parties to the Problem-Solving Initiative and to the provisions of the Public Information Policy, the Problem-Solving Completion Report is published on the IRM Website. If the parties to the Problem-Solving Initiative do not agree to make the report public, the CCO includes a summary of the processes followed during the Problem-Solving Initiative, as well as the general outcome, in the Register.

Links & Sources

- | | |
|--|--|
| ■ EBRD Homepage | www.ebrd.org |
| ■ Independent Recourse Mechanism Website | www.ebrd.com/about/integrity/irm/index.htm |
| ■ Guide to the IRM | www.ebrd.com/about/policies/irm/irm.pdf |

Inter-American Development Bank

Independent Investigation Mechanism

- REGION ■ Latin America and the Caribbean
- COMPLAINTS ■ Five since inception
- ESTABLISHED ■ 1994
- CORE PROCESS ■ Investigation; Adjudication

Background

The Inter-American Development Bank (IDB) was established in 1959 as a multilateral finance institution for the development of Latin America and the Caribbean. Its loans and grants help finance sustainable economic and social development projects and support strategies to reduce poverty, expand growth, increase trade, investment and regional integration, and promote private sector development and the modernisation of states. The Independent Investigation Mechanism (IIM) affords people whose lives stand to be affected by projects financed by the IDB a means to ensure that due diligence has been exercised by the IDB in the design, analysis and negotiation of those projects, many of which are implemented in whole or part by companies. The IIM permits accredited representatives of affected populations to file Requests for Investigation aimed at determining whether the IDB has followed its own operational policies during the preparation and implementation of Projects. Since 2004, key enhancements to the IDB's existing IIM have been under discussion were made available for public consultation in 2005. The review process is ongoing.

Standards

Source of Standards The IIM relates to the IDB's established operational policies and procedures (or norms formally adopted for the execution of those policies) in cases where material adverse effects have or might reasonably be expected to occur as a result of the failure of the IDB to follow the policy.

Particular Rights IDB policies that fall within its IIM include the environment and safeguards compliance policy, the indigenous peoples policy and involuntary resettlement policy, as well as a range of policies in economic and social sectors, such as energy, information technology and women in development.

Access

Information Information about policies, procedures and cases are available through the IIM's Website.

Admissibility Criteria and Limitations Affected Parties must in all cases first endeavour to present their concerns regarding a given project to the Management of the IDB for a fair exchange of views and to permit redress of their grievances prior to moving forward. If this fails, the IIM will accept Requests (i.e. Complaints) from a community of persons such as an organisation, association, society or other group of individuals. If a Request for investigation is submitted by a representative of an Affected Party, he/she must present written evidence of this representational status.

The provisions of the policy are applicable to all proposed IDB operations – investment loans, sector loans, private-sector operations and guarantees and technical assistance.

The following are excluded from the IIM:

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- actions that are the responsibility of others;
- procurement matters;
- Requests that are filed after 95% of the loans have been disbursed;
- actions that do not consist of IDB-supported operations and
- Requests that relate to matters previously considered, barring new evidence or circumstances.

Parallel Grievance Processes The IIM can proceed when the same matter is under consideration in other venues outside the IDB, such as litigation in a court or arbitration.

Resource Assistance There is no resource assistance for Complainants, but there are no costs associated with bringing a Complaint.

Non-Retaliation Instances of retaliation against Complainants can be brought to the IDB's Office of Institutional Integrity.

Agents

Administration The IIM is run by a Coordinator, who acts as administrator of investigations once they are underway. The Coordinator is appointed by the IDB President and reports to the Board of Executive Directors through the Secretary of the Bank.

The IIM also consists of a Roster of Investigators comprised of 15 individuals of no fewer than 10 different nationalities from IDB member countries, representing a broad range of technical expertise and skills. Appointment to the Roster is for a five-year, non-renewable term. An Investigator cannot be a staff member of the IDB for two years prior to or following termination of membership on the Roster.

Other Participants This is a fact-finding mechanism and as such there is no formal rule on who can be part of the process and who cannot. Normally the Investigators would consult with a number of Parties involved in the Complaint, including Affected Parties, local NGOs, personnel of companies involved in the Projects, IDB staff and experts.

Process

Description The Coordinator first acknowledges receipt of the Request. He/she evaluates the Request in consultation with the Legal Department to assure that the Request is a matter admissible under the Mechanism IIM and that the Requesting Party is eligible to make the Request. If the Request meets the requirements, the Coordinator requests the President to appoint a consultant from the Roster to evaluate it. If the consultant concludes that the Request is frivolous, the Bank's IDB's Management is not asked to prepare a response. If he/she concludes that the request is technically admissible and appears to merit consideration, the IDB's Management is asked to prepare a response within 30 calendar days.

The consultant reviews the Management's response and any additional information he/she deems necessary, and, based on this analysis, prepares his/her recommendation. At a meeting called by the President, the Board determines whether an investigation should be conducted. If an investigation is authorised, the Coordinator contacts members of the Roster whose qualifications match the subject matter of the operation to be investigated to ascertain their availability. The list of available members is submitted to the President who nominates a proposed slate of three individuals for Board approval and suggests a Chair for the Investigative Panel. The Coordinator drafts Terms of

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Reference for the investigation and forwards these to the Board. The Board appoints the members of the Panel, names the individual to serve as its Chair and approves the terms of reference for the investigation. The Coordinator provides administrative support to the Panel.

Each Panel decides how to conduct its investigation. The various investigation processes to date have included visits to the project site; meetings with the Affected Parties, borrowers, Board of Directors members representing the borrowing/recipient country and other stakeholders; review of IDB documents; interviews with IDB staff; engagement of technical consultants and discussions among the Panel.

Following its investigation, the Panel submits its findings to the Board and to the President. Management prepares a response to the Panel Report and submits it to the Board within 30 days. The Board considers the Panel Report and Management's Response and determines any corrective action. Management reports to the Board on implementation of corrective measures. Finally, the Board reviews/approves the corrective measures implemented by Management.

Time Limits The Panel's Report and Management's response should be published within 90 days of the date the Board reviewed the Report.

Outcomes

Range of Outcomes The outcome is framed as a corrective or preventive action. This may include review of IDB policies and the development of recommendations as to best practices. In addition, the recommendations can include increased efforts to address the impacts of IDB-funded Projects such as resolving relocation issues, improving information flows to local populations, establishing Project-level grievance mechanisms, supporting local authorities and enhancing supervision of the Project.

Appeal Requests cannot be reintroduced unless substantial new evidence surrounding the case is presented.

Enforcement

The Executive Board has the statutory authority within the IDB's organisation, and Management is obliged to follow its decisions.

Transparency

At all stages the Requesting Party is notified of the decisions and progress of the Request. The principal reports associated with the conduct of an investigation are made available to the public through the IDB's Public Information Center, its website and the relevant Country Offices in Latin America and the Caribbean.

Links & Sources

- IDB Homepage www.iadb.org
- IIM Website www.iadb.org/aboutus/III/independent_invest/independent_invest.cfm

DESCRIPTIONS

INTERNATIONAL LEVEL

Global Union Federations/Transnational Corporations

International Framework Agreements

REGION	■ World
COMPLAINTS	■ N/A ³²
ESTABLISHED	■ First agreement: 1988
CORE PROCESS	■ Mediation/Conciliation; Negotiation

Background

International (or Global) Framework Agreements³³ (IFAs) are negotiated agreements at the international level between Transnational Corporations (TNCs) and Global Union Federations (GUFs). The agreements aim to establish an ongoing relationship between the parties and ensure that signatory companies respect the same standards for all their workers. The unique element of the agreements is that they apply to all countries in which the company operates, regardless of whether the workers are organised or not. A recent survey study counted 59 such agreements as of October 2007.³⁴ This mapping is an aggregated overview of the existing agreements, partially based on this study.

Standards

Source of Standards

The source of the standards is principally the Core Labour Standards of the International Labour Organization (ILO). In addition there may be cross-references to the Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the Global Compact, Rio Declaration, Universal Declaration of Human Rights and/or the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The agreements are not legally enforceable.

Particular Rights

The IFAs focus mostly on particular rights related to workers, including wages and compensation, discrimination in the work place, working hours, health and safety, continuing training, freedom of association, decent working conditions, discrimination against workers' representatives, etc. Other standards relate to the environment, business ethics, respect for stakeholders, enhancement of professional skills, respect for diversity and promotion of good relationships with local communities.

Access

Education and Information

A large majority of the agreements include a clause requiring that they be published in the workplace and disseminated among workers, often in their local language. This responsibility falls mainly to the companies, though in about half of the agreements they share it jointly with the trade union.

Admissibility Criteria and Limitations

Complaints can be brought by a party to the agreement, a worker for the company or any subsidiaries/suppliers/contractors covered by the agreement, or a representative on their behalf.

³² There is no public record of the number of complaints addressed through the processes provided under the IFAs.

³³ International Framework Agreement (IFA) and Global Framework Agreement (GFA) are terms used interchangeably for the type of mechanism discussed here. In this document the former term is used for consistency.

³⁴ Yann Wyss. International Framework Agreements: beyond self-regulation for companies in the area of human rights? (forthcoming). To be published on the Business & Human Rights Web Site: www.business-humanrights.org.

Global Union Federations/Transnational Corporations

The complaints should relate to a violation of the principles laid out in the agreement, and address one of the parties, which can include the trade union.

Parallel Grievance Processes Most IFAs do not state whether the dispute resolution process can proceed when under review of another body.

Resource Assistance There is no mention of resource assistance in the IFAs, but unionised workers can channel Complaints via their local union representatives.

Non-Retaliation There is no mention of non-retaliation measures in any of the IFAs.

Agents

Administration Although a significant number of the IFAs do not mention implementation at all, a little over half designate a specific person or persons who is/are responsible. These individuals are sometimes at the local level and sometimes at the headquarters level of the TNC or the union. In some cases the company carries sole responsibility, in others it is shared by a joint group of company and worker/union representatives.

Other Participants Generally, workers, their representatives and the company can take part in the process. Most agreements are framed rather broadly and do not exclude the involvement of third parties on a case-by-case basis, though it is unclear whether this has actually happened in practice.

Process

Description There are very few descriptions of how IFAs have worked in practice. Generally, there is no specific process of how the complaint should be dealt with, but some IFAs indicate which party or parties should resolve the dispute (see more under “Admissibility Criteria and Limitations” and “Agents”).

Among the existing agreements, roughly three categories can be distinguished regarding how the complaints mechanisms proceed:

1. When either party becomes aware of a Complaint over interpretation or implementation of the IFA, they notify the other party and the two agree to consult in order to seek a resolution.
2. A worker can lodge a Complaint to a designated body consisting of GUF and TNC representatives and the parties agree to work together in order to resolve any dispute or disagreement related to interpretation or implementation of the particular agreement.
3. A worker can lodge a complaint directly with the company or one of its representatives, who will then investigate the alleged breach.

In some instances these steps are combined (e.g. if the issue is not resolved following an initial investigation by the company, the matter is elevated to a joint committee of the GUF and TNC).

Time Limits There is no mention of time limits in the agreements.

Outcomes

Range of Outcomes The few examples available indicate that where there is agreement that there has been some breach of the IFA, outcomes generally involve the TNC’s management bringing its leverage to bear to achieve remediation (e.g. by requesting an investigation and compliance with the IFA by a subsidiary, pressuring a supplier to comply with the IFA, etc.).

Global Union Federations/Transnational Corporations

Appeal Raising the Complaint to the level of the GUF and the TNC corporate headquarters is the last stage provided for in a process that is generally designed to begin at the local company/union level.

Enforcement

There is no provision for enforcement beyond the influence of the company's Management.

Transparency

The IFAs generally do not address transparency of the Complaints procedures to the public.

Links & Sources

- Link to a number of IFAs www.icftu.org/displaydocument.asp?Index=991216332&Language=EN
- International Metalworkers' Federation International Framework Agreements Website (includes samples) www.imfmetal.org/main/index.cfm?n=47&l=2&c=7787
- Gibb, Euan (2005), International Framework Agreements: Increasing the Effectiveness of Core Labour Standards, Global Labour Institute. www.global-labour.org/euan_gibb.htm

International Labour Organization

Interpretative Procedure of the Tripartite Declaration Concerning Multinational Enterprises and Social Policy

- REGION ■ World
- COMPLAINTS ■ Five since inception
- ESTABLISHED ■ 1981
- CORE PROCESS ■ Adjudication

Background

The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (“MNE Declaration”) and its voluntary principles are intended to guide multinationals, governments, employers’ and workers’ organisations in adopting social policies, and to inspire good practices by both multinational and national enterprises. The MNE Declaration was negotiated between workers’ and employers’ organisations and governments in 1977, revised in 2000 to include the Fundamental Principles and Rights at Work and, more recently in 2006, to update references to other instruments of the International Labour Organization (ILO). The purpose of the Interpretative Procedure is to resolve a disagreement on the MNE Declaration’s meaning arising from an “actual situation.”³⁵ In practice, this amounts to a form of complaints procedure.

Standards

Source of Standards The ILO’s MNE Declaration is based on certain of the ILO’s own International Labour Conventions and builds on the ILO’s Declaration on Fundamental Principles and Rights at Work.

Particular Rights The principles are broadly defined as guidelines to Multinational Enterprises (MNEs), governments, and employers’ and workers’ organisations in such areas as employment, training, conditions of work and life and industrial relations.

Access

Education and Information There are a number of promotional activities for the MNE Declaration, such as symposia in various parts of the world and research and cooperative projects (such as with the Global Compact). The ILO also carries out projects on Corporate Social Responsibility as well as surveys held among Member Countries. Much of the data from these Projects and Reports of promotional activities are published on the ILO Website. There is no specific promotional program for the interpretation procedure, although it has its own place on the MNE Declaration’s Website.

Admissibility Criteria and Limitations A request for interpretation must meet certain criteria to be admissible:

- the Request arises from an actual situation (i.e. an actual dispute as opposed to a theoretical case);
- two or more Parties to whom the MNE Declaration is directed (an employers’ or workers’ organisation, a government, an MNE) disagree on the meaning of specific provisions of the MNE Declaration;

³⁵ This is the term used in the description of the procedure.

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- the Requester is one of the following:
 - a government of a Member State of the ILO;
 - a national organisation of employers or workers' representatives at national and/or sectoral level;
 - an international organisation of employers or workers on behalf of a representative national affiliate and
- the government concerned has declined to submit the request to the ILO Office, or three months have elapsed since the requesting organisation addressed the government and the government has not stated its intention.

The procedure cannot be invoked in the following cases:

- in respect of national law and practice;
- in respect of International Labour Conventions and Recommendations and
- in respect of matters falling under the freedom of association procedure of the ILO.

Parallel Grievance Processes

The dispute can proceed in parallel with other processes. The interpretation procedure is wholly independent of all national procedures concerning any given dispute. There is no requirement for Parties to the MNE Declaration to exhaust local remedies before pursuing an interpretation of the MNE Declaration.

Resource Assistance

Assistance and advice with regard to the submission of Requests for interpretation can be obtained from the International Labour Office.

Agents

Administration

The main body in the process is the Subcommittee on Multinational Enterprises, which functions under the Governing Body of the ILO. The Subcommittee is administratively assisted by the ILO Office (Secretariat of the ILO). The Governing Body becomes involved if the Subcommittee cannot decide on admissibility of the Complaint.

Other Participants

No Party other than those described above can take part in the process. However, all appropriate sources of information can be invoked, including government, employers' and workers' sources in the country concerned.

Process

Description

When the ILO Office receives a request for interpretation of provisions of the MNE Declaration, it notifies the Parties concerned. Subsequently, the admissibility of the Request is examined by the Officers of the Governing Body Subcommittee on Multinational Enterprises. If unanimous, a decision of the Officers on admissibility is made. If not unanimous, the admissibility of the Request is referred to the full Committee of the Governing Body for decision.

If the Request is deemed admissible, the Office prepares a draft reply regarding the interpretation of the MNE Declaration, in consultation with the Officers of the Subcommittee on Multinational Enterprises. If approved by the Subcommittee on Multinational Enterprises, the reply is referred to the Governing Body for decision. If there is no approval by the Subcommittee, no interpretation is issued. A reply approved by the Governing Body is forwarded to the Parties concerned.

International Labour Organization

Time Limits There is no set time period; however, the Subcommittee Officers may ask the Office to indicate a period within which the information should be provided.

Outcomes

Range of Outcomes The outcome is a ruling which states whether conduct in an actual situation is appropriate or sufficient as laid out or intended in the MNE Declaration.

Appeal There is no process of appeal.

Enforcement

Since this is an interpretation procedure, there is no mechanism within the ILO's framework to enforce outcomes.

Transparency

A formal reply to a request is published in the Official Bulletin and the electronic ILOLEX³⁶ of the International Labour Office.

Links & Sources

- ILO Homepage www.ilo.org
- ILO Multinational Enterprises Programme (includes text of MNE Declaration) www.ilo.org/public/english/employment/multi/index.htm

³⁶ ILOLEX is a trilingual database containing ILO Conventions and Recommendations, ratification information, comments of the Committee of Experts and the Committee on Freedom of Association, representations, complaints, interpretations, General Surveys and numerous related documents.

Organisation for Economic Co-operation and Development

National Contact Points

- REGION ■ OECD countries³⁷ and 10 Non-OECD countries³⁸
- COMPLAINTS ■ Total of 19 across all NCPs since inception
- ESTABLISHED ■ 1976 (revised in 2000)
- CORE PROCESS ■ Investigation; Mediation/Conciliation

Background

The Organisation for Economic Co-operation and Development (OECD) groups 30 member countries that are committed to democratic government and the market economy. It provides sources of data, publishes economic, social and other forecasts; and publishes extensively in the fields of economics and public policy. In 1976, the OECD adopted the Guidelines for Multinational Enterprises (“Guidelines”), a set of voluntary recommendations addressed by governments to multinational enterprises operating in or from adhering countries. In the 2000 review process of the OECD Council, governments committed to setting up National Contact Points (NCPs) to promote the Guidelines, handle enquiries and Complaints (known as “Specific Instances”), and act as a forum for discussion in all matters relating to the Guidelines. Governments have flexibility in the exact form of their NCP and how it operates. This description is based on the procedural guidance for NCPs and related commentary.

Standards

Source of Standards The Guidelines are framed as recommendations from governments to multinational enterprises. Observance of these recommendations is non-binding for multinational enterprises. However, in the 2000 Council Decision, governments made a binding commitment to implement the Guidelines.

Particular Rights The standards include a broad exhortation to companies to “respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments,”³⁹ as well as specific, tailored standards on labour rights, privacy and consultation with, and protection of, communities affected by the environmental, health and safety policies of the company and by their implementation.

Access

Education and Information A core part of the NCPs’ role is to promote the Guidelines. A corollary of that process is often the promotion of the complaints mechanism that accompanies them. Promotional activities of NCPs have included outreach to companies and business associations, newsletters, press articles and other promotion through the media, conferences involving NGOs, business and others, the dissemination of promotional materials and mailings, the development of websites, training and information for

³⁷ OECD Member countries are: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

³⁸ The Non-OECD countries that are adhering to the Guidelines are: Argentina, Brazil, Chile, Egypt, Estonia, Israel, Lithuania, Latvia, Romania and Slovenia.

³⁹ The OECD Guidelines for Multinational Enterprises, section II, article 2 (2000).

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government staff, including at the country's overseas embassies and promotion through overseas development agencies.

Admissibility Criteria and Limitations

Trade unions and NGOs can submit a Complaint against a multinational enterprise headquartered in a Member State or one of the 10 non-OECD states that have adhered to the Guidelines. In a few cases, Complaints have been raised by other companies.

The Complaint must relate to a claim of non-compliance with the Guidelines. The system covers all the entities within the multinational enterprise (parent companies and/or local entities). The Guidelines acknowledge that Small and Medium Enterprises (SMEs) may not have the same capacities as larger enterprises, but that the governments involved encourage them to observe the Guidelines to the fullest extent possible. Complaints can be and have been brought against SMEs.

Complaints must be submitted to the NCP of the state where the grievance occurred or of the home state of the MNE in question.

Resource Assistance

No resource assistance is available, but the NCP takes on the task (and therefore direct costs) of conciliation and may seek additional information about the Complaint (most often through diplomatic networks).

Non-Retaliation

In a few cases, threats of retaliation or participants' perception that such a threat exists have influenced the specific instance procedure. In one case, threats or the perception of threats made it impossible for the mediation to be conducted. In another, the local union members who felt threatened decided to raise the Complaint through their international labour union federation, rather than bringing it directly themselves. In other cases, threats or perceived threats influenced how the parties to the specific instance handled information disclosure.

Agents

Administration

The NCP is designated in the procedural guidelines as a senior government official or office. In an increasing number of cases, the grievance process involves other stakeholders as well. The lead government individual is rarely a trained mediator, though he/she may use external mediators if deemed appropriate and useful.

Structures of the NCPs vary by state. At the end of 2007, 20 involved single government departments; seven involved multiple government departments; one involved government and business; nine involved government, business and trade unions; and two involved government, business, trade unions and NGOs. In most instances the non-government members are part of multi-stakeholder panels or councils, with oversight of the NCP or an advisory function. In the case of the Netherlands, the multi-stakeholder Council actually runs the Complaint process.

Other Participants

The direct Complainants and the company that is the object of the Complaint are the accepted participants, although companies cannot be required to engage with the NCP when a Complaint is raised. It is frequently the case that NGOs take up a Complaint on behalf of individuals or communities impacted by a corporation's activities. They may or may not have been endorsed to act in that capacity by the individuals concerned. International trade union federations also frequently handle Complaints on behalf of their members.

Process

Description

The NCP makes an initial assessment of whether the Complaint appears to be *bona fide*, taking into account the identity and interests of the Complainant, the materiality and substantiation of the Complaint, the relevance of applicable law and procedures, precedents in other domestic or

Organisation for Economic Co-operation and Development

international proceedings and whether the consideration of the issue would contribute to the purposes and effectiveness of the Guidelines. The NCP must explain any decision to reject a complaint.

NCPs have some flexibility on how to handle complaints. They must offer their good offices to help the Parties resolve the issue, including, as appropriate and if the Parties agree, by facilitating access to consensual, non-adversarial means of resolution, such as conciliation or mediation. If no agreement is reached following these efforts, the NCP issues a statement of its view of whether there is a breach of the Guidelines, and may make recommendations.

Time Limits There is no time limit on the process defined in the procedural guidelines for NCPs. A few individual NCPs do have policies on time limits (e.g. Australia) and some give indications for how long individual Complaints should take.

Outcomes

Range of Outcomes Possible outcomes from a conciliation process include remediation or compensation where agreed by the Parties. Where no agreement has been reached between the Parties to the Complaint, the NCP issues a statement which describes its view of whether there is a breach of the Guidelines and may make recommendations.

Appeal There is no formal appeals process under the Guidelines, but OECD member states or OECD business or trade union advisory bodies (BIAC and TUAC) can request the OECD Investment Committee's views on whether an NCP has correctly interpreted the Guidelines' text and implementation procedures. Neither NGOs nor other interested Parties may make such a request.

Enforcement

There is no formal enforcement mechanism. The NCP can monitor the outcome if it wishes and the Parties agree.

Transparency

According to the procedural guidance to NCPs, the dispute resolution process should normally be confidential while its outcome should normally be public (unless preserving confidentiality is in the "best interests of effective implementation of the Guidelines"⁴⁰). If there is no agreement, the Parties can publicly raise the issues in dispute, but must maintain confidentiality of information and views provided by the other Party during the proceedings, unless they agree otherwise.

Links & Sources

- OECD Homepage www.oecd.org
- Guidelines Homepage www.oecd.org/daf/investment/guidelines
- Guidelines key documents www.oecd.org/dataoecd/56/36/1922428.pdf

⁴⁰ The OECD Guidelines for Multinational Enterprises (2000). Procedural Guidance, section I-C, article 4b.

United Nations Global Compact

Integrity Measures

- REGION ■ World
- COMPLAINTS ■ 56 since inception⁴¹
- ESTABLISHED ■ 2004
- CORE PROCESS ■ Information Facilitation

Background

The Global Compact is a United Nations (UN) initiative to encourage businesses worldwide to adopt sustainable and socially responsible policies and practices. Established in 2000, it centres around 10 principles that companies commit to support and work towards, and on which they submit annual progress reports. It is a voluntary initiative with dual objectives: first, making the 10 principles a common standard in business activities around the world; second, catalysing multi-stakeholder activities in support of UN goals. Over 3,500 companies had signed up to the Global Compact by mid-2007. In 2005, the Global Compact adopted a set of integrity measures, including a procedure for initiating dialogue around allegations of systematic and egregious abuse of the principles. The procedure aims primarily to generate a response from a company for a person who has raised a concern rather than being a fully-fledged complaint process aimed at achieving remediation.

Standards

Source of Standards

The “Ten Principles” of the Global Compact, to which participating companies commit to align their operations and strategies, are derived from: The Universal Declaration of Human Rights, The International Labour Organization's Declaration on Fundamental Principles and Rights at Work, The Rio Declaration on Environment and Development and The United Nations Convention Against Corruption.

Particular Rights

The two human rights principles are broad. They state that businesses should:

1. “support and respect the protection of internationally proclaimed human rights;”⁴² and
2. “make sure that they are not complicit in human rights abuses.”⁴³

The four labour rights principles reflect International Labour Organization (ILO) standards on freedom of association, the right to collective bargaining, forced and compulsory labour, child labour and non discrimination.

Access

Education and Information

The UN Global Compact Office maintains a website with numerous publications that explain what is expected of companies. The Global Compact also holds workshops and other events around the world, and encourages local events in its national networks.

⁴¹ Up to November 2007.

⁴² United Nations Global Compact Ten Principles. Principle One.

⁴³ Ibid. Principle Two.

United Nations Global Compact

<i>Admissibility Criteria and Limitations</i>	Any individual, group or organisation can make an allegation of systematic and egregious abuse of the Global Compact's overall aims and principles. The Global Compact Office will exclude any <i>prima facie</i> frivolous matters.
<i>Parallel Grievance Processes</i>	The mechanism is not meant to interfere in or substitute for legal and regulatory proceedings in any jurisdiction.
<i>Resource Assistance</i>	There is no resource assistance to those that raise matters under the integrity measures.
<i>Non-Retaliation</i>	People who raise matters under the integrity measures are asked for their permission before the matter raised is forwarded to the company for its reply.

Agents

<i>Administration</i>	The mechanism is run by the Global Compact Office (GCO), which is the UN entity that supports the Global Compact initiative.
<i>Other Participants</i>	The process involves the person or the organisation that raises the matter and the company concerned.

Process

Description Where a matter has been raised under the Integrity Measures, the GCO first forwards it to the company involved for comments and feedback on any actions being taken to address it. It also is able to offer guidance and assistance in support of remediation in line with the Principles. The GCO may also, under its sole discretion, take one or more of the following steps:

1. Use its own good offices to encourage resolution of the matter;
2. Ask the relevant country/regional Global Compact network, or other Global Compact participant organisation, to assist with resolution;
3. Refer the matter to one or more of the UN entities that are the guardians of the Global Compact principles for advice, assistance or action;
4. Share with the parties information about the specific instance procedures of the OECD Guidelines for Multinational Enterprises and, in the case of matters relating to the labour principles, the interpretation procedure under the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and
5. Refer the matter to the Global Compact Board, drawing in particular on the expertise and recommendations of its business members.

Time Limits The company has to respond within three months of first being contacted by the Global Compact.

Outcomes

Range of Outcomes The focus of the process is on initiating dialogue especially where other efforts to obtain the company's response have failed. The main outcome is a response from the company concerned. To date, all companies have responded within the required timeframe.

If the continued listing of the participating company on the Global Compact Website is considered to be detrimental to the reputation and integrity of the organisation, the Global Compact Office reserves the right to remove that company from the list of participants and to so indicate on their website.

United Nations Global Compact

Enforcement

Failure to engage in dialogue on the matter can result in the Global Compact Office designating the company "inactive," (i.e. no longer a full Global Compact participant) and this will only be reversed after the company has addressed the matter adequately.

Transparency

No entity involved in the process should make any public statements regarding the matter until it is resolved. The goal of the process is to initiate dialogue between the company and the person raising the concern, especially where other efforts to obtain a company response have failed.

Links & Sources

- Global Compact Homepage www.unglobalcompact.org
- The Ten Principles www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html
- Integrity Measures Website www.unglobalcompact.org/AboutTheGC/integrity.html

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Compliance Advisor/Ombudsman

- REGION ■ World
- COMPLAINTS ■ Average of five to six per year
- ESTABLISHED ■ 1999
- CORE PROCESS ■ Mediation/Conciliation; Investigation; Adjudication

Background

The Office of the Compliance Advisor/Ombudsman (CAO) aims to enhance the development impact and sustainability of projects of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), which are both member agencies of the World Bank Group. The IFC provides loans, equity, structured finance and risk management products and advisory services to build the private sector in developing countries, while it is MIGA's mission to promote foreign direct investment into developing countries. Besides overseeing reviews of the IFC's and/or MIGA's compliance with their own social and environmental policies and standards and providing advice to the President and Management, the CAO assists IFC and MIGA in addressing Complaints through the role of the Ombudsman.

Standards

Source of Standards The IFC's Social & Environmental Policy and performance standards are mandatory for the IFC and contractually binding on their clients. The performance standards are tailored for IFC projects and were revised in 2006 by the IFC following public consultations. Those seeking financing guarantees from MIGA are similarly bound by its Environmental and Social Review Procedures and Safeguard Policies. MIGA's Board approved revised Social and Environmental Policy and Performance Standards – based on the IFC's model – in 2007.

Particular Rights The Ombuds function can respond to claims of any social or environmental impact, including any human rights abuse. Typical rights issues are labour rights and rights related to community health, safety and security, land acquisition and involuntary resettlement, indigenous peoples and cultural heritage. The compliance function is limited to assessing compliance specifically with the IFC's and MIGA's own policies and standards.

Access

Education and Information Information about the CAO and its work is available via its website. The CAO publishes its Operational Guidelines in the eight official languages of the World Bank Group (WBG). In addition to open sessions for civil society during the WBG's annual meetings, the CAO routinely organises outreach events in developing countries, as well as Europe. The CAO supports the work of the Center for International Environmental Law (CIEL) and other NGOs in disseminating information about the mechanism. There is currently no requirement from the IFC that its clients notify affected communities about access to the CAO.

Admissibility Criteria and Limitations Complaints are admitted if judged to be genuine, substantive, specific and within the CAO's mandate to address environmental and social impacts of IFC/MIGA investments. Any individual, group, community, entity or other party affected or potentially affected by the social and

World Bank Group (1)

environmental impacts of IFC/MIGA projects can submit a Complaint, as can anyone acting with explicit authority on their behalf. A Complainant from outside the country where the project is located has to lodge any Complaint jointly with a local entity. Complaints have to relate to the planning, implementation or impact of an IFC-funded project and address either IFC or MIGA decisions or the actions of one of their clients.

Parallel Grievance Processes Filing a Complaint does not preclude action via other mechanisms. The CAO can create a channel for alternative dispute resolution even where Parties are in a legal dispute so long as both Parties wish to explore this option.

Resource Assistance The CAO can provide resources as appropriate to ensure effective participation of key stakeholders in its processes and covers the costs associated with its dispute resolution process, including fact-finding and mediation.

Non-Retaliation The CAO has established systems to protect the confidentiality of the Complainant, if so requested. The CAO can also operate as an intermediary for the Complainant or can appoint an intermediary if this is appropriate.

Agents

Administration The CAO is a Vice President in the World Bank Group with a reporting line to the President of the Board of the WBG. The Ombudsman's office performs the assessment of the dispute and prepares suggestions on appropriate processes, including oversight of compliance audits as necessary. Mediation or conciliation can be performed by the Ombudsman or by a third-party specialist.

Other Participants The Complainants and/or their representatives can take part in the process and are at liberty to include any other stakeholder who may be critical to assisting the Parties to reach resolution of the concern raised.

Process

Description The Ombudsman assesses the Complaint and its context, including the stakeholders, their views and incentives to reach resolution and what processes might be most useful to them. The review process can include research in IFC files, meetings with stakeholders, site visits and public meetings in the project area. The Ombudsman puts suggestions to the principal Parties on how to proceed. Complainants can accept or reject these suggestions.

Based on this process, the Ombudsman can either work with the stakeholders to agree a clear process to address the complaint through collaboration, or conclude that collaborative resolution is not possible and pass the issues to the CAO's Compliance function.

Collaborative processes can include various problem-solving tools including, if the Parties consent, conciliation and mediation. They may also involve processes of fact-finding investigation leading to recommendations by the Ombudsman for remediation, if deemed appropriate.

If no resolution between the Parties is reached through collaboration, the case is passed to the Compliance function of the CAO, and that decision is reported publicly. When receiving a Complaint from the Ombudsman function, the Compliance function audits the project based on the issues raised in the Complaint, but looking specifically at whether it meets the IFC's/MIGA's own policies, standards, guidelines, procedures and conditionality.

Time Limits The initial assessment phase has a time limit of 120 days which may be reduced or increased with the consent of the Parties. The time-table for the problem-solving process is agreed on a case-by-case basis with the Parties.

World Bank Group (1)

Outcomes

Range of Outcomes Any mutually-agreed outcome is possible under the Ombuds function. Where possible, agreements include provisions to make them binding on the Parties and provide for implementation, review and monitoring within set timelines. The CAO cannot support agreements that are coercive, contrary to IFC or MIGA policies, to domestic law of the Parties or to international law.

The Compliance process results in findings relating to IFC and MIGA regarding due process in applying their standards and policies. These findings require a response from the institution(s) which is cleared by the President. Both are then made public.

Appeal The Parties may write to the Board or President of the WBG if they wish to appeal any decision taken by the CAO.

Enforcement

The Ombudsman encourages parties to establish systems – within the resolution process – for mutual enforcement and agreed recourse in the event of non-adherence. The CAO monitors whether agreements or recommendations have been implemented.

The Ombudsman reports to the World Bank President. The President and the Board of Directors have the power to decide whether to cease their support for a project in the event the Ombudsman finds there is persistent non-compliance with IFC/MIGA standards.

Transparency

The CAO has explicit requirements for public disclosure in its Operational Guidelines which articulate a presumption towards disclosure. The CAO makes public its eligibility screening, assessment reports, reports on agreements reached, reports on monitoring and follow up and decisions to refer an issue to the Compliance function.

Material submitted on a confidential basis is not released without the consent of the Party that submitted it. Confidentiality is provided for during a conciliation and mediation process, including the confidentiality of information provided by the stakeholders. In cases where the Ombudsman transfers a Complaint to the Compliance function of the CAO, confidential information received under the Ombudsman role is treated as privileged and not shared with the Compliance function unless permission to do so is granted by the Parties.

Links & Sources

- IFC Homepage www.ifc.org
- MIGA Homepage www.miga.org
- CAO Homepage www.cao-ombudsman.org

World Bank Group (2)

Inspection Panel

- REGION ■ World
- COMPLAINTS ■ Average of three to four per year⁴⁴
- ESTABLISHED ■ 1994
- CORE PROCESS ■ Investigation; Adjudication

Background

The World Bank Group (“World Bank”) is a consortium of global development institutions that share the goal of poverty reduction and the improvement of living standards around the world. The Bank has a membership of 185 countries, represented by the Board of Directors (“Executive Board”). The Bank further consists of the World Bank’s Management, headed by the President, and the Board of Governors, which is made up of member countries’ ministers, and has ultimate responsibility. The Inspection Panel (“Panel”) is an independent, fact-finding body that reports directly to the World Bank’s Board of Directors. Its purpose is to address the concerns of the people who may be affected by World Bank Projects, many of which are implemented in whole or part by companies, and to ensure that the World Bank adheres to its operational policies and procedures. The Panel may only receive Complaints relating to the International Development Association (IDA) or the International Bank for Reconstruction and Development (IBRD), which are jointly referred to as the “Bank.”⁴⁵

Standards

The sources of standards are the World Bank’s own policies and procedures. These policy standards are tailored for the World Bank itself. While framed rather broadly, some policies have an (indirect) reference to human rights, including those on environment, resettlement, poverty and habitats.

Access

Education and Information

The website, brochures and Annual Report are the primary forms of outreach. Other important forms include meetings with civil society organisations (such as town hall meetings), international conferences and lectures in academic settings (such as brown bag lunches).

Admissibility Criteria and Limitations

Complaints (“Requests”) can only be filed when the World Bank has allegedly violated its own policies and/or procedures. Only affected Parties (minimum of two people), their representatives or an Executive Director of the World Bank can file a Request for Inspection. Suppliers or tenderers of World Bank-funded projects cannot file a Request where it relates to procurement, but can file Requests as project-affected people. Requests cannot be filed against actual or potential borrowers.

The Complainants (“Requesters”) must also assert that the subject matter has already been brought to Management’s attention and that Management has not responded adequately; that the loan has not already been closed or substantially disbursed (up to 95% of the loan/credit amount);

⁴⁴ Range is one to six per year; total since 1994 is 52 as of 22 January 2008.

⁴⁵ The Panel does not deal with complaints related to the Bank Group institutions of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). These are dealt with by the Compliance Advisor/Ombudsman (CAO).

World Bank Group (2)

that there is, or is a likelihood of, harm caused by the actions or omissions of the Bank; and that the Panel has not already made a recommendation on the subject matter (or the Request must assert that new evidence or circumstances have surfaced).

Parallel Grievance Processes If the same project is under consideration in another mechanism, the Panel's investigation proceeds as long as the Panel's recommendation to investigate a Project is approved by the Board of Directors. In a few instances, projects have been simultaneously reviewed by the Inspection Panel and other bodies of the World Bank Group.⁴⁶

Resource Assistance No formal resource assistance exists. However, if a Request lacks an essential element related to its eligibility, the Panel will contact the Requester to ask for any relevant missing information.

Non-Retaliation The Requesters may ask the Panel to keep their names confidential. If the Requesters so ask, no one has access to the list of their names, including Bank staff and Government officials.

Agents

Administration The Panel is composed of three Panel members who are nominated by the President of the World Bank and appointed by the Board of Directors for a five-year term. The Panel is supported by a small secretariat whose members are formally employed by the World Bank, but who are responsible to the Panel. The Executive Secretary of the Panel runs the day-to-day operations, while the Chairperson and the other two Panellists have overall decision-making authority concerning Requests for Inspection.

Other Participants Any member of the public can submit information to the Panel. The Panel informs the Requester(s) about any decision made by the Executive Board.

Process

Description The mechanism has a registration process at the initial stage. Upon receipt of a Request, and on the basis of the information contained therein, the Chairperson of the Panel shall register the Request (for further processing), ask for additional information or find the Request outside the Panel's mandate.

When the Request is registered, Management has 21 days to respond to the claims made. Upon receiving the information from Management the Panel has 21 days to submit to the Executive Board a recommendation on whether to investigate the Request or not. If the eligibility criteria are met, the Board approves an investigation on a non-objection basis, which means that a meeting will be held to decide on eligibility only where one or more Directors object to the Request. In such cases the Board may still overrule the objection so that the investigation can proceed.

Generally, the Panel makes two field visits: one during the eligibility assessment, and one during the investigation phase. During the investigation phase, the Panel also hires several expert consultants depending on the issues raised in the Request, confidentially interviews Bank staff and reviews relevant Bank files. The Panel meets during the field visit with project-affected people, officials from the project-implementing entity and government officials.

Time Limits Once approved, the Panel's investigation usually takes months or in some cases more than a year. At conclusion, it sends its findings to Management which has six weeks to respond with an action plan to address the Complaints. The Executive Board considers the plan, and makes a decision

⁴⁶ For example, the Inspection Panel and other IFI accountability mechanisms have had simultaneous investigations in some cases: with the CAO in the case of the first Bujagali investigation; the Inter-American Development Bank's investigation in the Yacyreta case; or, more recently, the African Development Bank's in the case of the second (current) Bujagali investigation.

World Bank Group (2)

on the recommended actions, which is then immediately made public. These terms are in practice not always met.

Outcomes

Range of Outcomes There are three stages at which decisions are made. First, if the Panel finds the Request ineligible, there is no further action. Second, if the Panel rules the Request eligible, but the Executive Board does not approve further investigation, there is also no further action. Third, if the Request is deemed eligible and the investigation approved, the investigation proceeds and the Panel releases a report of its findings as to whether Management has complied with Bank policies and whether any instances of non-compliance contribute to harm or potential harm. Based on the Panel's findings, Management must give recommendations, usually in the form of an Action Plan. Such Action Plans have historically included: review, enhancement and improved monitoring of the Bank's strategies; the creation of monitoring panels and grievance mechanisms; income restoration and relocation settlements; improvement of outreach and communications programs; an increase in the Bank's capacity for resettlement and social services; and updating policy guidelines.

Appeal There is no formal appeal process in the two phases of the mechanism. The Inspectional Panel is a fact-finding body and as such cannot receive appeals.

Enforcement

The Bank's Management is by statute required to follow the Executive Board's decisions. Thus, if the Action Plan is approved by the Executive Board, Management has to implement it.

The Panel is not involved in any monitoring activities, which are beyond its usual remit. However, the Panel has on occasion been asked to report to the Board on progress in the implementation of the Action Plan or to follow-up with Management on specific activities.

Transparency

Once the Executive Board has decided on eligibility, the Request, the Panel's recommendation and the Board's decisions are made publicly available. If a Request is investigated, the Requester is informed by the Bank of its decision, after which all reports, recommendations and decisions are made public. When the investigation is completed, the Panel releases the report of its findings, which addresses whether Management has complied with Bank policies and whether any instances of non-compliance contribute to harm or potential harm.

Links & Sources

- World Bank Homepage www.worldbank.org
- Inspection Panel Homepage www.worldbank.org/inspectionpanel

About This Publication

The Authors

Caroline Rees is a Research Fellow with the Mossavar-Rahmani Center for Business and Government at Harvard University's John F. Kennedy School of Government. She is working in the field of corporate accountability and human rights and leads a project focused on the analysis and development of mechanisms designed to resolve complaints and disputes. She is currently on leave from the British Foreign and Commonwealth Office. Most recently she was posted at the UK's Mission to the United Nations in Geneva, where she led the UK's human rights negotiating team. In 2005 she chaired the UN negotiations that created the mandate of the Special Representative of the Secretary-General for business and human rights. Her prior foreign service career covers Iran, Slovakia, the UN Security Council and the European Union enlargement process. She has a BA Hons from Oxford University and an MA from The Fletcher School, Tufts University.

David Vermijs is Research Fellow with the Mossavar-Rahmani Center for Business and Government at Harvard University's John F. Kennedy School of Government. His current research is focused on business and human rights, and international and comparative political economy. In June 2007 he graduated from the Master in Public Policy Program at the Harvard Kennedy School, concentrating on international relations, and business and government policy. Before coming to Harvard, he earned a BA degree in business communications (in Spanish) from Radboud University in the Netherlands, while founding and leading a national student organisation. Set in the framework of the United Nations, the organisation's mission is to create a platform for excellent students from different universities and study backgrounds to combine their ambitions with ideals in the context of public decision-making.

The Corporate Social Responsibility Initiative

Under the direction of John Ruggie (Faculty Chair) and Jane Nelson (Director), the Corporate Social Responsibility Initiative at the Harvard Kennedy School is a multi-disciplinary and multi-stakeholder program that seeks to study and enhance the public contributions of private enterprise. It explores the intersection of corporate responsibility, corporate governance and public policy, with a focus on the role of business in addressing global development issues. The Initiative undertakes research, education and outreach activities that aim to bridge theory and practice, build leadership skills and support constructive dialogue and collaboration among different sectors. It was founded in 2004 with the support of Walter H. Shorenstein, Chevron Corporation, The Coca-Cola Company and General Motors and is now also supported by Abbott Laboratories, Cisco Systems, Inc., InBev, InterContinental Hotels Group, Microsoft Corporation, Pfizer, Shell Exploration and Production and the United Nations Industrial Development Organization.

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