



HARVARD Kennedy School

*Corporate Social
Responsibility Initiative*



Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned

**A project conducted by the Corporate Social Responsibility Initiative on behalf of
The Special Representative of the UN Secretary-General for Business and Human Rights**

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Summary

This report sets out key lessons learned from a pilot project conducted in 2009-2010 to test the practical applicability of a set of principles for effective non-judicial grievance mechanisms that address complaints or disputes involving businesses and their stakeholders. The principles were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises and set out in his reports to the Human Rights Council in 2008 (A/HRC/8/5) and 2009 (A/HRC/11/13).

The project was conducted on behalf of the Special Representative to help refine these principles in advance of their incorporation into a wider set of Guiding principles on business and human rights (A/HRC/17/31), which the Special Representative will present to the Human Rights Council in June 2011. The project focused on operational-level grievance mechanisms – that is, mechanisms developed by companies with/for stakeholders affected by their operations. The companies involved in the four main pilots to design or revise grievance mechanisms in line with the Special Representative’s principles were Carbones del Cerrejón, a coal mine in Colombia; Esquel Group, a Hong Kong-based garment company, working with its wholly-owned supplier in Viet Nam; Sakhalin Energy Investment Corporation, an oil and gas company in the Russian Federation; and Tesco Stores Ltd, a United Kingdom-based multinational supermarket chain, working with suppliers in South Africa. An adjunct project with Hewlett-Packard and two of its suppliers in China retrospectively analyzed their collaborative efforts to enhance suppliers’ grievance mechanisms and reviewed them in light of the Special Representative’s principles.

The purpose of the pilot project was to test the benefits of grievance mechanisms that are aligned with the Special Representative’s principles, and to learn lessons about how the principles could be further refined to reflect operational realities and enable their practical application. The extensive time spent in the process of designing or revising the grievance mechanisms meant that there was little time to monitor their operation in practice. Any such review will require further work in future. However, substantial lessons were gained from the processes undertaken. Those that are of most general relevance are summarized in this overarching report, while more specific and detailed learning is reflected in the individual reports of each project, which are attached in Annexes A to E.

Section I of this report expands on the background and purpose of the project, defines what is meant by “operational-level grievance mechanisms,” and sets out the principles that were tested. Section II describes the methodology for the four main pilots (the separate methodology of the adjunct project is described in that specific report at Annex E). Section III reflects cross-cutting lessons learned, setting them out under each principle in turn, and concluding with an explanation of how the principle was adjusted to reflect the learning (adjustments were limited to the extent that they had to be applicable, not only to operational-level mechanisms, but also to other kinds of non-judicial mechanisms covered by the principles). Section IV offers a brief conclusion, and sets out the principles as revised.

I. Introduction

A. Project background

In his work as Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie has set out a range of guiding principles designed to help prevent and address any human rights harms that business enterprises may cause or contribute to, or which may be linked via a business relationship to their operations, products and services.¹ The guiding principles underline that where such human rights harms nevertheless occur, those affected must have access to effective remedy. Effective judicial systems must be at the core of any such system of remedy, yet they are not always available, accessible, appropriate, or the desired avenue of those impacted. Non-judicial grievance mechanisms therefore provide an important complement and supplement for such situations.

In his 2008 report to the Human Rights Council (A/HRC/8/5), and following extensive research and consultation, the Special Representative set out six criteria or principles (para. 92) that should underpin any non-judicial grievance mechanism: legitimacy, accessibility, predictability, equitability, rights-compatibility and transparency. For mechanisms at the operational level – that is, at the level where business enterprises interface with the individuals or groups they may impact (affected stakeholders) –, he added the principle that these should operate through direct or mediated dialogue (para. 95), rather than through unilateral decisions (quasi-adjudication) on the part of the company.

As noted, these principles are applicable to any non-judicial grievance mechanism. They have been taken up already by a number of organizations in reviewing or developing their own mechanisms. The Special Representative decided to pilot their application specifically with regard to operational-level mechanisms.² This decision reflects a number of factors:

- (a) Numerous existing standards that companies commit to meet already require that those companies have operational-level grievance mechanisms in place.³ Clarity is needed on what makes such grievance mechanisms meaningful in practice;
- (b) Operational-level grievance mechanisms face particular challenges given that companies themselves are closely involved in their design and administration, which can make the mechanisms vulnerable to critiques of being biased or illegitimate sources of remedy for harms. Robust criteria for effectiveness are important in addressing this risk;
- (c) The corporate responsibility to respect human rights set out in the guiding principles requires that business enterprises should establish or participate in effective, operational-level grievance mechanisms for affected stakeholders. Enterprises need clarity on how to achieve this in a manageable and sustainable way.

¹ See Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31), 21 March 2011.

² For example, the principles have been drawn on in the review process of the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development, with regard to the role of OECD National Contact Points in handling complaints; they are reflected in the

ISO 26000 standard on corporate social responsibility; and they have been referred to by various companies, international, industry and multi-stakeholder organizations that are developing their own grievance mechanisms.

³ These include the Performance Standards of the International Finance Corporation, which are mirrored in the Equator Principles followed by 70 financial institutions; the ISO 14000 standard; and initiatives such as Social Accountability

International, the Fair Labor Association and Ethical Trading Initiative. The International Council on Mining and Metals has also developed guidance for its members on the development of grievance mechanisms.

In light of these particular needs, the Special Representative decided to pilot the grievance mechanism principles with companies and their stakeholders at the operational level, in order to test their practical applicability in a range of contexts.

In March 2009, the International Organisation of Employers (IOE), International Chamber of Commerce (ICC) and the Business and Industry Advisory Committee (BIAC) to the OECD announced their readiness to collaborate with the Special Representative on this project. Four companies volunteered to take part in the full pilot project:

- (a) Carbones del Cerrejón Ltd. in Colombia – a coal mining joint venture of Anglo American, BHP Billiton and Xstrata Coal;
- (b) Esquel Group in Hong Kong – piloting a mechanism at its apparel facility in Viet Nam;
- (c) Sakhalin Energy Investment Corporation in the Russian Federation – an oil and gas joint venture of Gazprom, Royal Dutch Shell, Mitsui & Co. Ltd. and Mitsubishi Corporation;
- (d) Tesco Stores Ltd. – a major United Kingdom supermarket working with a group of its fruit suppliers in South Africa;

These four pilot projects involved collaboration with the companies and, through them, with their local stakeholders to design or amend grievance procedures in line with the principles. The purpose of the pilots was twofold:

- (a) To test the benefits that mechanisms aligned with the principles can have as a means of remedy for impacted stakeholders, and as a means of risk management and accountability for companies;
- (b) To learn how the principles can be further refined to reflect operational realities and enable their practical application by companies.

In addition, an adjunct project was conducted in collaboration with the technology company Hewlett-Packard (HP) to review its recent efforts to help two of its suppliers in China enhance their grievance procedures for workers. This project involved a research team of students and faculty from the Harvard Negotiation and Mediation Clinical Program at Harvard Law School. It aimed to review the suppliers' grievance mechanisms; consider how adjustments made to them in collaboration with HP relate to the principles; and draw lessons for HP, the suppliers and the principles themselves.

B. What are operational-level grievance mechanisms?

As noted, operational-level grievance mechanisms are those that operate at the interface between a business enterprise and its affected stakeholders. They are therefore directly accessible to those who may be impacted. Typically, they are administered by the business enterprise either alone or in collaboration with others, including the affected stakeholders or their legitimate representatives. They may also be provided through recourse to a mutually acceptable external expert or body, such as an externally administered hotline. They can engage the company directly in assessing the issues and seeking remediation of any harm. They do not require that those bringing a complaint first access other means of recourse, and they must not preclude access to State-based judicial or non-judicial mechanisms.

Operational-level grievance mechanisms perform two key functions regarding the corporate responsibility to respect human rights:

- (a) First, they support the identification of adverse human rights impacts as a part of an enterprise's ongoing human rights due diligence.⁴ They do so by providing a channel for those directly impacted by the company's operations to raise concerns when they believe they are being or will

- be harmed. By analyzing trends and patterns in complaints, companies can also identify systemic problems and adapt their practices accordingly;
- (b) Second, these mechanisms make it possible for grievances, once identified, to be addressed, and for harms to be remediated early and directly by the company, whether alone or in collaboration with others involved, thereby preventing harms from compounding, and grievances from escalating.

Such mechanisms need not require that a complaint or grievance amount to an alleged human rights abuse before it can be raised. Rather, they aim to identify any legitimate concerns of those who may be adversely impacted. If these concerns are not identified and addressed, they may over time escalate into more major disputes and human rights abuses.

It is also important to note that while operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, they cannot, and should not, be used to substitute for either. Equally important, they should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, or to preclude access to judicial or non-judicial grievance mechanisms.

Box A: Principles tested in the pilot project

The seven principles being piloted consist of the six principles for all non-judicial grievance mechanisms, first set out in the Special Representative's report to the Human Rights Council in 2008 (A/HRC/8/5, para. 92), plus the additional principle for operational-level grievance mechanisms specified in his 2009 report (A/HRC/11/13, para. 99). Taken together, they specify that operational-level grievance mechanisms should be:

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| <p>A Legitimate: having a clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process;</p> <p>B Accessible: being publicized to those who may wish to access it and providing adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal;</p> <p>C Predictable: providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome;</p> <p>D Equitable: ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms;</p> | <p>E Rights-compatible: ensuring that its outcomes and remedies accord with internationally recognized human rights standards;</p> <p>F Transparent: providing sufficient transparency of process and outcome to meet the public interest concerns at stake and presuming transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes;</p> <p>G Based on dialogue and engagement: focusing on processes of direct and/or mediated dialogue to seek agreed solutions, and leaving adjudication to independent third-party mechanisms, whether judicial or non-judicial.</p> |
|---|---|

⁴The Special Representative has articulated the process of "human rights due diligence" as a key process that business enterprises need to have in place in order to know and show that they are meeting their responsibility to respect human rights. Human rights due diligence was reflected

in the Protect, Respect and Remedy Framework that the Human Rights Council unanimously welcomed in 2008. It is further elaborated in the Guiding Principles for Business and Human Rights that the Special Representative submitted to the United Nations Human Rights Council in March

2011 (document A/HRC/17/31). Identifying and assessing the adverse impacts with which a business enterprise may be involved is the first step in human rights due diligence.

II. Project methodology

For each of the main pilots, a project facilitator was appointed to work with the participating companies and liaise with the project director.⁵ The participating companies agreed:

- (a) To participate in full collaboration toward the project's objectives of devising and testing a grievance mechanism in line with the principles;
- (b) To share with the facilitator and project director, on a confidential basis, all information necessary to understand existing grievance-handling mechanisms or processes, and relevant systems and data;
- (c) To take the lead in design of the grievance mechanism, building on their existing systems and experience.

The project facilitators acted as advisers and coaches in the process of devising the new or revised grievance mechanisms, monitoring their performance and responding to developments in the course of the pilot projects. They undertook three visits to each of the pilots and liaised with the companies regularly between visits. The project director provided support and oversight. She visited each pilot site once with the facilitator in order to assist the learning processes and draw out comparative lessons across the four pilots.

In order to have fuller background and guidance on which to draw, the project used the Guidance Tool for Rights-Compatible Grievance Mechanisms developed by the Corporate Social Responsibility (CSR) Initiative at the Harvard Kennedy School, which also resulted from the research conducted on behalf of the Special Representative's mandate. For more on the relationship between the Special Representative's grievance mechanism principles and the guidance tool, see box B below.

At the first site visit, the project facilitator and the participating company representatives worked through the Special Representative's principles together with the guidance tool to build a shared view of the objectives in piloting the principles and to assess where the challenges would lie. Initial exchanges also explored the company's existing systems and processes for handling grievances, any relevant baseline data, past experience with disputes, relevant stakeholder groups and the conflict/dispute environment. There was an early discussion with relevant staff from each project about the grievance mechanism principles. In light of these exchanges, the participating companies identified how they wished to take forward the process of aligning their grievance procedures with the principles. Subsequent visits and exchanges focused on discussing the progress, challenges and learning, with the project team providing support and advice.

⁵ The project director was Caroline Rees of the Corporate Social Responsibility at Harvard Kennedy School. The facilitator for the pilots with Sakhalin Energy Investment Corporation and Carbones del Cerrejón was Luc Zandvliet, formerly with CDA Collaborative Learning Projects and now Triple R Alliance. The facilitator for the pilots with Esquel Group and Tesco was Doug Cahn of The

Cahn Group. The adjunct project was led by Stephan Sonnenberg, Clinical Instructor and Lecturer in Law at the Harvard Negotiation and Mediation Clinical Program. The separate methodology for this adjunct project, which was a retrospective review of processes that had been completed, is described at the start of the report at Annex E.

Box B: Relationship between the Special Representative's grievance mechanism principles and the Guidance Tool for Rights-Compatible Grievance Mechanisms

The Guidance Tool for Rights-Compatible Grievance Mechanisms focuses exclusively on operational-level grievance mechanisms. The principles it sets out are broadly the same as those put forward by the Special Representative, as they resulted from the same research processes. They vary only to the extent that they were developed with this focus in mind and did not need to address other forms of non-judicial mechanism. In the context of the pilot projects, they provided the participants with additional guidance points for thinking through how to implement the Special Representative's principles in practice.

There are two substantive differences between the guidance tool and the Special Representative's principles, which are highlighted here as they are relevant to the conduct and outcomes of this pilot work.

The first is that the guidance tool does not include a principle on rights-compatibility since the entire tool is framed in terms of designing rights-compatible grievance mechanisms; that is, mechanisms that can provide processes and outcomes that are in line with human rights standards. The pilot projects were not in a position to assess the rights-compatibility of individual outcomes from the grievance mechanisms developed.

However, discussions of other principles frequently reviewed their role in ensuring that the mechanisms should (a) be capable of delivering rights-compatible outcomes; and (b) provide processes that reflect rights-based principles such as inclusion, participation, non-discrimination, transparency, accountability and attention to vulnerable groups.

The second substantive distinction is that the guidance tool contains a principle that operational-level grievance mechanisms should be a source of continuous learning. This specifies that the effectiveness of a mechanism should be measured, and cumulative lessons from complaints should be reviewed, in order to identify systemic changes needed to either company practices or the workings of the grievance mechanism itself. The principles set out by the Special Representative do not include this provision. One of the points of learning was just how important this element is in the context of operational-level grievance mechanisms. Given its applicability to other forms of non-judicial grievance mechanism, it is reflected in the revised version of the principles (or effectiveness criteria) included in the Guiding Principles on Business and Human Rights.

The pilots were conducted first and foremost in collaboration with the participant companies. Discussions of how they were involving local stakeholders in the mechanism design or review processes were a constant feature of the collaboration; however, the project team did not directly engage those stakeholders other than:

- (a) During visits, with those stakeholders formally involved in the process; and
- (b) Through ad hoc conversations with wider stakeholders, where this was possible and offered a good chance of getting open and honest feedback (language, cultural and other barriers were considered in making this assessment).

When third parties requested information about the pilots, the project team directed them towards the participant companies and the local stakeholders who were formally involved, given the importance of their ownership of the processes.

The project had initially envisaged a period of monitoring and evaluation once the aligned or new mechanisms were in place. In practice, the design process, including the need for extensive engagement with both external and internal stakeholders, delayed the launch of the mechanisms in three of the four pilots and therefore limited the extent to which they could be monitored and evaluated in practice. However, the work done revealed extensive learning about the design process in widely varied situations, which is set out in the individual pilot reports together with any findings that did emerge from the early stages of their implementation.

The annexes to this report contain individual reports on each of the four main pilots and on the adjunct project with HP and its suppliers. These reports were written by the project facilitators and the HP project team respectively. The reports were written by the project facilitators and the HP project team respectively. They were sent to the participating companies for fact-checking only. Their aim is not to rate the work done by the participating companies nor the resulting grievance mechanisms, but to set out the mutual learning gained from the process; that is, learning for the participating companies, which will also be relevant for many other companies seeking to implement the principles in their own operations, and learning for the Special Representative's mandate. The learning for the Special Representative's mandate is set out in this overarching report and is reflected directly in the revision of the grievance mechanism principles themselves.

The terms of reference for the projects were set out in memoranda of understanding between the CSR Initiative and the companies involved, reflecting also the independent role of the facilitators. Basic costs of the facilitators' time and expenses in the four main pilots were covered by the companies involved. The CSR Initiative covered the costs of its own involvement, including site visits. HP contributed towards the project costs of both the Harvard Negotiation and Mediation Clinical Project and the CSR Initiative in the adjunct project involving its suppliers.

III. Lessons learned

This section of the report draws together some of the key lessons learned from all the pilots in terms of the Special Representative's principles for non-judicial grievance mechanisms. The lessons are organized under the various principles. Each begins by restating the principle that was being tested. This is followed by an overview of some of the key learning points that emerged from across the various pilots with regard to that principle. Given the inter-relatedness of the principles themselves, some learning points are inevitably relevant to more than one principle. The closing box summarizes the lessons that have led to specific revisions to the principle, and then sets out the principle, as revised.

The reports of the four main pilots, authored by the project team facilitators, are attached in Annexes A to D as follows:

Annex A: Carbones del Cerrejón, Colombia

Annex B: Esquel Group Vietnam, Vietnam

Annex C: Sakhalin Energy Investment Corporation, Russia

Annex D: Tesco Stores and fruit suppliers, South Africa

A report of the mini-project conducted by students at Harvard Law School's Negotiation and Mediation Clinical Program regarding two of HP's suppliers in China is attached in Annex E.

A. Legitimacy

Principle tested

An operational-level grievance mechanism should be:

Legitimate: having a clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.

The summary of the legitimacy principle focuses on formal governance as the means to ensure a fair and accountable process. In non-judicial grievance mechanisms administered by agencies of a State or industry or multi-stakeholder organizations, formal accountability structures of this kind are essential. In the context of operational-level grievance mechanisms, such structures may also play an important role. For instance, there are formal provisions for the accountability of Sakhalin Energy's mechanism to the company's investors.

At the same time, for a smaller company, like Esquel Garment Vietnam (EGV), the opportunities for upwards accountability structures independent of the EGV management are more constrained. EGV provided for oversight through the involvement of a senior manager from its Hong Kong corporate office and a representative of the State-endorsed trade union (a member of EGV's management), but clearly, the independence of both could be open to challenge.

Experience from the pilots underlined that while upwards accountability for an operational-level grievance mechanism could provide formal legitimacy and important incentives to ensure that the

mechanism worked effectively, the ultimate test was whether its intended end-users trusted it enough to use it. In other words, the perception of its legitimacy among those users was the more essential factor.

Tesco worked with local stakeholders in the Western Cape (supplier and exporter organizations, NGOs and trade unions) to create an Oversight Stakeholder Body (OSB) that oversaw the design of the grievance mechanisms for participating farms. If this remains in place, it will provide for some upwards accountability for the mechanisms as they are applied at the farm level. Its broad membership also holds opportunities to reassure the workers for whom the mechanisms are intended that they are worth using.

The OSB therefore provided a way for Tesco and its local stakeholders to build the actual and the perceived legitimacy of the mechanisms that were developed. It also held challenges. Some of the farms approached to participate in the project declined due to distrust of the union and NGO involvement. It is hoped that with time, positive results from those farms that did participate will be seen by those who did not and will build their confidence in joining this particular endeavour.

Other pilots tried different approaches to building perceived legitimacy of the mechanism among affected stakeholders. At Sakhalin Energy, surveys suggested that the main challenge for the perceived legitimacy of the mechanism was among indigenous populations rather than the main communities, where trust appeared to be high. The company therefore focused on developing, together with indigenous leaders, distinct structures tailored to provide appropriate processes to address grievances related to the Sakhalin Indigenous Minorities Development Plan.

Cerrejón held multiple discussions with internal and external stakeholders to try to ensure that the procedures they developed would be seen as legitimate and trustworthy. Recognizing that the perception of legitimacy is built over time, Cerrejón also planned for other ways of involving affected stakeholders in the conduct of the mechanism. For instance, the company provided for joint fact-finding during the first investigation phase after a grievance is raised, in which the aggrieved person joins the investigator during his or her first visit.

In the adjunct project involving suppliers to HP, the review team highlighted the extent to which one of the suppliers has both involved workers in the design and implementation of the system and welcomed support from outside actors – including HP, a local NGO focused on the rights of women workers, and subsequently the lead facilitator; the latter was invited back to help HP strengthen its consensus-building approaches.

Summary of learning

Trust among intended users of a mechanism is of paramount importance if the mechanism is to achieve legitimacy. Formal and independent oversight structures may well play a role in achieving this trust in operational-level grievance mechanisms, just as they typically do in other non-judicial mechanisms. But other factors – including other effectiveness criteria discussed in this report, not least, transparency, dialogue and engagement – may be equally, or more, important. Understanding what engenders trust, and building that trust, requires engagement with the affected stakeholders. Involving them in the design or review of the mechanism or in providing feedback on its performance can be particularly important for the perceived legitimacy of mechanisms of this kind.

Therefore, the focus of this principle has shifted towards the objective of achieving trust – or perceived

legitimacy – rather than suggesting that formal, independent oversight is always a necessary and sufficient means to gain legitimacy. Nevertheless, the provision of accountability – internal and, where appropriate, external – for the mechanism’s performance remains important and relates also to other principles, including predictability and transparency.

Revised principle

An operational-level grievance mechanism should be:

Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes.

B. Accessibility

Principle tested

An operational-level grievance mechanism should be:

Accessible: being publicized to those who may wish to access it and providing adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.

Operational-level grievance mechanisms often have the advantage of being close to those whose grievances they are designed to address. In these cases, it is typically easier to ensure that the intended user groups are aware of the mechanism than in the case of more remote mechanisms, for instance those run by a government agency or international organization.⁶

In practice, challenges remain. For Cerrejón, the communities affected by its operations are not just around its mine but also along the 150-km railroad it owns between the mine and the port. There are around 25,000 individuals in nearly 250 affected communities. Although the Grievance Office now has five full-time staff members, the ratio of staff to community members is still challenging. However, the company has developed multiple access points for contractors, employees and communities to raise complaints by phone, email or in person. Its main innovation has been to train Cerrejón staff who are in constant contact with communities to receive complaints. Cerrejón has engaged Wayu’u advisors who can communicate with indigenous communities in their own language, and the company’s new processes for social engagement with communities along the

⁶ The concept of closeness as used here does not simply indicate physical proximity, though that may be the case, in particular with regard to employees or communities around a company’s operations. It refers more generally to a relative

ease of direct interaction between the administrators of the mechanism and the affected stakeholder groups for whose use it is intended. This could be the case, for example, where an information and communications technology

company has the ability to use the same technologies it provides to users in order to receive and respond to many of their concerns or complaints.

railroad will provide further access points for the mechanism. These measures in part respond to a wish on the part of the indigenous Wayu'u communities to have access points to the mechanism in the community rather than at a Cerrejón-associated facility, and their preference for in-person communication over other means.

There are also many communities along the 800-km length of Sakhalin Energy's pipeline, which runs along most of the island. The company had already put in place extensive measures to publicize its grievance mechanism at the start of the project. These included community liaison officers, flyers, billboard advertisements and community librarians trained to receive complaints, among others. Despite all these efforts, the project team found that many people in its communities did not know of the mechanism when asked on the street, even when interviewed under an enormous poster advertising the mechanism in the town square. However, these individuals also expressed no concerns about what to do if they had a complaint – they would either go to the company or to the local authorities. By contrast, separate work to monitor the success of the Sakhalin Indigenous Minorities Development Plan showed that although many indigenous individuals did have concerns, they were both unaware of the mechanism and lacked channels they trusted through which to register their complaints. The company therefore focused on addressing those issues of accessibility in cooperation with representatives of indigenous communities.

The pilots highlighted the fact that people are unlikely to retain knowledge provided to them about a grievance mechanism when they have no grievances. It is rather dry information and seems of little relevance in their busy lives. Making sure that individuals can find the information at the time a grievance arises is most important. The human resources department at Sakhalin Energy has information on the company intranet about its employee grievance mechanism and periodically makes it part of the pop-up on the login page for employees each morning. The community relations team explains recourse options to complainants if no agreed solution can be found.

At Sakhalin Energy and Cerrejón, there are various ways in which individuals can access the grievance mechanisms, including community liaison officers or roving grievance officers. At EGV – a much smaller enterprise – management had also made efforts to broaden the range of avenues of access. While workers indicated in a survey that the favoured person to whom to take complaints was often their immediate supervisor, the management is adding monthly Open Talk sessions with groups of workers and is opening a notice board specifically for grievances by the bicycle parking area, outside the factory – an area where workers typically spend their leisure time. At one of the HP supply factories involved in the adjunct project, the use of a counsellor as a trusted individual that workers could go to with problems, including grievances, about the workplace, seemed to be working well. The other HP supplier is now putting a similar system in place, but had also developed a hotline process as part of its collaboration with HP. While a local NGO initially ran the hotline, it has now been handed over to a mix of workers and managers and has become a centrepiece of the factory's revised grievance process.

In the case of the three Tesco pilot farms, providing trusted avenues was particularly challenging for very small operations. There were fewer possible intermediaries if a worker had a complaint against the manager himself. On one participant farm with fewer than 50 permanent workers and no union, workers have now elected representatives to serve as communication channels for grievances. To help them in this role, they will receive special training on conflict resolution, on legal requirements regarding labour rights, and on basic organizational skills, such as how to run a meeting. This is being funded by Tesco.

A particular challenge for EGV lies in the fact that it pays workers on a piece-rate system and therefore needs to avoid workers risking the loss of wages if they take time out to access the grievance mechanism or engage in dialogue with the management as part of the grievance handling process. The management is aware of the issue and its importance in ensuring that workers are not deterred from accessing the mechanism.

One issue for a number of pilots was the distinction between grievance mechanisms for employees, contractors' workers and community members. Sakhalin Energy's initial focus was on its community mechanism, which is also available to contractors' workers. Yet in the course of the pilot, the human resources department joined the project, recognizing the importance of ensuring the same quality of mechanism to all groups, even if the processes were different. For Tesco and its stakeholders, the focus was on the farm labour force. This raised two questions: first, it was much easier to ensure that permanent employees knew about a grievance mechanism and trusted it, than to provide the same for seasonal and migrant workers; second, some permanent employees live on the farms where they work, such that work issues and community issues often become entangled. There was discussion of how to handle community issues as well, particularly when they had implications for the workplace, but without crossing important boundaries. Initial discussions focused on the role that external mediators and training for all parties in conflict resolution could play in this regard.

Summary of learning

There is a distinction between a mechanism being publicized and being known, albeit the former is necessary to the latter. Ensuring that publicity is targeted in part at those moments when grievances are most likely to arise helps ensure that the information gets to individuals when they are most likely to be looking for it.

The pilots confirmed the importance of hearing from a mechanism's intended user groups about what kind of access points they are most likely to use, and recognizing that these may vary between indigenous and non-indigenous communities, men and women, permanent and migrant workers and so on. It can be important to

look creatively at different access points, which need not be highly formal or onerous to be effective.

Revised principle

An operational-level grievance mechanism should be:
Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.

[Note: the commentary to this principle retains the list of barriers previously included in the principle itself, to give clarity on the kind of barriers that require attention.]

C. Predictability

Principle tested

An operational-level grievance mechanism should be:

Predictable: providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.

Providing predictable procedures for a grievance mechanism is easier in principle than in practice. Vietnamese law provides for strict timelines for the handling of grievances and for their escalation through to the courts. However, it was only when EGV organized the data on how the company had actually performed against the timelines that it realized it had typically been missing the targets by quite a large margin. Once this was clear, steps to address the shortfall could be taken, and the performance in meeting deadlines improved dramatically. This also showed the importance of tracking the mechanism's performance to enable continuous learning and improving.

Sakhalin Energy already had in place a sophisticated database for the handling of community grievances that created a certain automaticity in how they proceeded through the system. Once a grievance is registered, the department responsible for the subject of the complaint is identified and the name of an individual responsible for investigating it is entered. If he or she has not responded by the designated deadline, the system automatically sends a notification to the senior management. This creates interesting incentives for all departments not only to keep to the timelines, but also to understand that the handling of grievances is something that the management takes seriously. It avoids grievances being pigeon-holed as something that the external relations department has to resolve, and makes them the responsibility of the department whose activities allegedly lie at the source of the grievance. In this way, it mirrors the approach that leading companies apply to health and safety issues, such that avoiding and addressing grievances becomes everybody's responsibility.

A particular challenge for Cerrejón was to marry the requirements of an investigation with the cultural traditions of the Wayu'u indigenous communities in handling disputes. In Wayu'u traditions, an aggrieved party claims immediate compensation, traditionally in the form of goats, but increasingly often in cash. The matter is transacted through an intermediary, and once the compensation is agreed upon and delivered, the matter is considered to be resolved. This approach clashes with the assumption of the company and wider Colombian society that there should be independent investigations to look at the physical evidence and reach conclusions, which can take weeks to complete. The challenge for Cerrejón has been to find a balance between the two approaches, combining clear and reasonably limited time frames that allow for appropriate investigation with interim updates to aggrieved parties, in order to help reduce frustrations at perceived delays.

For a number of participant companies, the question arose as to when a grievance needs to be entered into a formal mechanism and when it can be handled informally and immediately. There can clearly be disadvantages to over-formalizing the resolution of simple issues, including unnecessary bureaucracy and delayed solutions. There can also be disadvantages to de-formalizing processes to the extent that there is no accountability for the appropriateness of solutions, and no ability to identify patterns of repeat complaints and address any systemic problems they reflect.

Sakhalin Energy’s human resources department had recently moved to a more informal process to address concerns through dialogue before employees decided whether they wanted to file a formal grievance. Discussions revolved around whether they could retain this flexibility – and the benefits of better solutions that it seemed to be delivering for everyone – while still keeping track of any patterns or trends in the issues being raised. Ultimately, the department decided to start tracking potential grievances, defined as those cases where employees reached out to the human resources department for support but without logging a formal grievance. Doing so highlighted that the volume of such cases was higher than expected. By analysing patterns in the issues raised, the department has been able to put some new preventative measures in place.

With a number of companies, there were discussions about the importance of good communications between those dealing with day-to-day minor complaints – be it line managers or community liaison officers. This could help ensure that the lessons to be drawn from the small issues were not lost. Managers at EGV acknowledged that apparently “non-serious” complaints could actually be indicative of widespread or serious issues, and that ways were needed to capture them as well.

Summary of learning

There are challenges to achieving the right balance between formalization and flexibility in a grievance mechanism. Feedback from the groups using the mechanism will likely be important in testing whether the right balance is being struck. Having time frames and adhering to them can be extremely important in building trust that a mechanism will deliver. Where more time is needed than the time frame provides, the key is to communicate this and give as much explanation as possible. When complaints disappear into a black hole, frustrations and grievances can increase, regardless of how rigorous the investigations

going on behind the scenes may be. (This relates also to the principle on transparency.)

The revised principle reflects that timeframes are indicative rather than absolute.

Revised principle
An operational-level grievance mechanism should be:
Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.

D. Equitability

Principle tested

An operational-level grievance mechanism should be:
Equitable: ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.

Initially, for most pilot companies, the idea of ensuring access to sources of information, advice and expertise for complainants was a challenge conceptually, and therefore difficult to justify internally as a financial proposition. However, affected stakeholders are often at a considerable disadvantage dealing with a company in terms of the expertise they have available to them on issues, such as their rights, scientific data, and other relevant information. If individuals accept the outcome of a grievance process because they are ignorant of key information, that outcome is unlikely to be sustainable and may lead to even greater grievances and protest in the future. At the same time, the proposition is not that the company must itself fund extensive advisory services; indeed, those

services may be seen as compromised if it were to do so in situations where relationships are somewhat distrustful. The ideal is that the providers of advice, training or expertise to affected stakeholders should be respected and trusted by the company as well as by the beneficiaries.

For Sakhalin Energy, the strength and credibility of the regional Labour Department meant that it could be a legitimate source of advice to employees or contractors' workers on their labour rights. The Tesco pilot conducted a needs analysis which identified key areas where training would be necessary, including on the respective rights and obligations of workers and managers, the grievance mechanism itself, disciplinary procedures and conflict management. Conflict management training was provided to workers and managers, and it received universally positive feedback and calls for others to have the same opportunity. In the case of Cerrejón, the company is exploring the possibility of funding independent, expert support to complainants if issues cannot be readily resolved.

With EGV, there were discussions of the role that the (State-sanctioned) trade union should be able to play in ensuring that workers know about their rights, and of the challenges posed by the lack of credible external actors that can do the same, in part due to the weakness of civil society. The ongoing work of Better Work Vietnam (an initiative of the International Labour Organization and the International Finance Corporation to improve compliance with labour standards in Viet Nam's garment sector) will hopefully enable progress in this regard, as it builds the capacity of representation through specially created Performance Improvement Consultative Committees.

Meanwhile, in the HP project, it was apparent that while labour rights training for workers by independent NGOs could be one legitimate approach, it required an understanding of whether the training would be repeated and sustained among the workforce. With a worker turnover percentage frequently in double digits, the benefits of one-off training on rights can be quickly reduced or even lost. The review team in that project has suggested that written information for workers on their rights or "train the trainers" approaches that leave training capacity within the factory could be useful additional or alternative approaches.

Feedback from some of the stakeholder groups for which the pilot mechanisms were intended reflected the importance of being treated with respect in the process of addressing grievances. This was distinct from the question of specific outcomes. A number of the mechanisms have practices in place, or plan to do so, to seek views from those who use the mechanisms on their experience of the process as well as the results.

Summary of learning

This can be one of the most challenging principles for companies, particularly where they have to make an internal case for the allocation of resources to support assistance to complainants. To many within a company, this seems counterintuitive; however, experience suggests that it can be fundamentally important in achieving sustainable solutions to problems. It helps ensure that the company has informed counterparts with which to engage and prevents a situation where a complainant may later believe he or she has been duped into agreeing to an inadequate outcome, thereby renewing and even escalating the grievance.

The providers of this external assistance may include NGOs, academic institutions or state or statutory agencies, and funding from companies themselves may or may not be necessary. It is ideal when the sources of advice and expertise to affected

stakeholders are not only trusted by those stakeholders but also respected by the company. Where this is achieved, the benefits can be striking.

The revised principle reflects the reality that it is not always in the gift of the company to ensure absolutely that aggrieved parties have reasonable access to this kind of resource. However, companies should recognize that fair, informed and respectful conversations can only be had where such access is available, and should therefore seek to ensure this as far as they reasonably can.

Revised principle

An operational-level grievance mechanism should be:

Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.

E. Rights-compatibility

Principle tested

An operational-level grievance mechanism should be:

Rights-compatible: ensuring that its outcomes and remedies accord with internationally recognized human rights standards.

As noted in section II, box B above, it was not possible within the constraints of this pilot to assess whether the outcomes of individual grievance-handling processes were compatible with human rights standards. This reflected both the fact that most companies were only reaching the implementation stage at the end of the pilot period, and the reality that making the project team privy to individual grievances, grievance processes and outcomes would have required a different type of engagement.

That said, a great deal of the work through the pilot projects was aimed at putting the necessary procedural provisions in place to enable and ensure rights-compatible outcomes to individual grievances. These included extensive discussions about how to engage affected stakeholder groups in providing input into the design or revision of the grievance mechanisms and feedback on their performance; how to ensure the mechanisms' accessibility to all affected stakeholder groups, including those that might otherwise be culturally marginalized or excluded; and how to enable aggrieved parties to engage on an equitable basis in the mechanisms, including provisions for the confidentiality of complainants where requested.

At Cerrejón, prior to the pilot project, grievances were being received by a relatively new human rights office. As it became increasingly well known outside the company, the office soon became a conduit for many complaints, including those that did not raise human rights issues. The effect

within the company was that many departments became anxious, since any complaint handled under the rubric of human rights implied serious consequences.

In order to enable departments across the company to recognize the value of the new grievance mechanism developed through this pilot, and to engage with it constructively, it was important initially to separate it from purely human rights issues. The new mechanism comes under the Social Standards and International Engagement Department. While issues that come to it may indeed reflect human rights concerns, they do not necessarily do so and, in fact, can capture any manner of complaint. Indeed, the mechanism aims ideally to identify problems before they arise to the level of human rights impacts. Confidence-building within the company, in the interim, has enabled the team handling grievances to work better with other departments in getting grievances addressed, whatever the issues are.

Summary of learning	
<p>This principle remains pivotal to the effectiveness of these grievance mechanisms. In practice, many of the issues raised through the mechanisms are not presented in terms of human rights and do not represent allegations of human rights abuse. However, it is by addressing them seriously, and in line with all the other principles, that a company can help ensure that they are sustainably resolved and do not escalate,</p>	<p>leading potentially to serious human rights impacts. The principle is unchanged.</p> <p>Revised principle An operational-level grievance mechanism should be: Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights.</p>

F. Transparency

Principle tested
<p>An operational-level grievance mechanism should be: Transparent: providing sufficient transparency of process and outcome to meet the public interest concerns at stake and presuming transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.</p>

A number of questions arose among participant companies as to how this principle was different from the predictability principle. The focus of predictability is on general knowledge of how the mechanism will work, should one choose to use it. In the case of transparency, there are two issues in play: first, the provision of information to aggrieved parties about how their complaint is being handled; and second, the provision of information to affected stakeholder groups more widely, and sometimes to other stakeholders, about how well the mechanism is working.

At the same time, the provision of confidentiality can be essential to protect an individual from retaliation. It is also important in enabling dialogue between the company and complainants in an atmosphere of sufficient mutual confidence for real interests to be raised and options for solutions discussed. It can also be inappropriate to provide transparency about the specific detail of some outcomes; for instance, where doing so can lead to the identification of complainants who wish to remain anonymous, or when revealing levels of financial compensation would compromise individuals and legitimate processes.

The primary issue here is transparency to the aggrieved individual. Cerrejón’s mechanism provides for meetings with a complainant to explain investigation processes, it involves complainants in the investigation, and it provides for meetings to discuss proposed solutions and seek agreement. Sakhalin Energy’s mechanism provides for similar processes, with grievance officers and community liaison officers engaging directly and often extensively with complainants over time.

EGV recognizes the importance for its mechanism of transparency about outcomes to the wider workforce, as a means to building trust that the mechanism is effective and that workers should use it if they have a concern. The company posts information about actions taken in response to grievances on notice boards in and around the factory. In the Tesco pilot, the template for the farm-level grievance mechanisms, as agreed by the Oversight Stakeholder Body, states that complainants should be allowed confidentiality if they request it, but that everyone should be able to see that the mechanism is working. While the detail of how this works at the farm level will only be worked out in the implementation phase, the balance aimed for is promising.

Some issues clearly go beyond the concern of a particular complainant or group of complainants. For Cerrejón, one example is the issue of goats being killed by trains on their railroad. Having moved away from a policy of compensation some years ago, when goats were found tied to the railroad tracks on a number of occasions, the company has responded to a pattern of more recent complaints by identifying the need for a more systemic and sustainable policy. The new policy is still being developed with a view to ensuring it is culturally appropriate and may include in-kind compensation. It will be combined with dialogue with communities on how they will seek to avoid goats getting onto the railroad tracks (and provide incentives for doing so). A couple of specific complaints on this issue have therefore provided the impulse for identifying an outcome that could be acceptable not just to the complainants, but to communities in general, and which will therefore be widely publicized.

Summary of learning	
<p>The first priority must be transparency to the aggrieved individual or group about how the complaint is being handled as well as any proposed solutions. Beyond this, the wise company will recognize that the more information it can provide about outcomes – even if anonymized and generalized – the more it can demonstrate that the mechanism is working, effective and can be trusted. While legitimate considerations may limit the provision of transparency in some cases, where public interests are at stake it is particularly</p>	<p>important that outcomes be made public in an appropriate form.</p> <p>Revised principle An operational-level grievance mechanism should be: Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake.</p>

G. Dialogue and engagement

Principle tested

An operational-level grievance mechanism should be:

Based on dialogue and engagement: focusing on processes of direct and/or mediated dialogue to seek agreed solutions, and leaving adjudication to independent third-party mechanisms, whether judicial or non-judicial.

It is natural and right that, as part of a grievance mechanism's process, the company should conduct investigations into complaints it receives and arrive at its own view of what should be done. However, this principle requires that the company distinguish between proposing a solution to a grievance and decreeing unilaterally that this must be the outcome. While in some cases such unilateral decisions might be accepted or even welcomed by a complainant, where this is not the case, the perception that the company is acting as both "accused" and "judge" compromises trust in the specific grievance handling process and potentially in the mechanism as a whole.

Where a company conducts its own investigation, its results should be discussed with the complainant. Where a complainant disagrees with the investigation results or a proposed outcome to a complaint, there should be room for dialogue in an effort to reach agreement, including, where appropriate, through facilitated discussions (such as mediation). And if no agreed outcome can be reached between the company and complainant, it should be clear where either or both parties can turn for further recourse, including any community-based conflict resolution mechanisms or non-judicial mechanisms, as well as adjudication through relevant courts or tribunals.

All of the pilot project mechanisms provide for dialogue with complainants as part of the process, albeit some more so than others. In the case of the HP suppliers in the adjunct project, the fact that the counselor, in one case, and the worker-run hotline, in the other, are the main points of access to the two mechanisms appears to have helped make dialogue and engagement the default approach to addressing complaints.

Some of the pilot mechanisms provide a means to check whether there is a shared understanding with complainants on what has been discussed or agreed. Sakhalin Energy provides for complainants to fill in a form either confirming that certain outcomes have been agreed or noting their concerns. Cerrejón provides a record of conversations for complainants to sign if the complainants agree that the records are accurate.

There were various discussions in the course of the pilots about providing clarity on what the appropriate points of recourse would be if the grievance mechanisms did not lead to agreed solutions and a complainant wished to take the matter further.

For EGV, Vietnamese law provides for the escalation of unresolved grievances from the factory level through the provincial trade union to the Labour Conciliation Council to the Courts. At Sakhalin Energy, the judicial system was seen as the next point of recourse, although the mechanism provided for mediation where the company considered there to be legitimate grounds for a lawsuit. There were discussions about widening the availability of mediation, given that it could help address real grievances or conflicts that may not be grounds for a lawsuit and that it did not bind parties unless they reached agreement.

For the Tesco pilots, the ultimate recourse under the law is to the Commission for Conciliation, Mediation and Arbitration of South Africa (CCMA). However, the Oversight Stakeholder Body's members all agreed that it would be preferable to have an interim point of recourse before going to the CCMA. They are exploring the possibility of having recourse to mediation through the Africa Centre for Dispute Settlement at the University of Stellenbosch as a first default before the CCMA.

The foregoing discussion focuses on dialogue in the process of handling individual grievances. The pilot projects individually and collectively underlined the equal importance of engagement with affected stakeholder groups in the design or review of grievance mechanisms. As the comments under other principles indicate, this is essential in order to know how these groups would wish to register their grievances; what modes of handling grievances they consider culturally appropriate; whether they trust a mechanism enough to use it and what would make them do so; what levels of knowledge and understanding of their rights and other relevant issues they have; and what kinds of support they may need to engage in the mechanism on a fair basis.

The remarks on other principles in this report and in the reports on the individual pilots also indicate the various ways in which the pilot projects sought this kind of engagement with stakeholders. It was not always easy, and those leading the engagement often had to work to win the support of others within the company to whom the benefits were less apparent.

There was considerable discussion during the development of the Tesco pilot as to whether, and to what extent, it is necessary to have good stakeholder engagement before a grievance mechanism can be built and succeed. In practice, the company's engagement with local stakeholders – suppliers, unions and NGOs – through the Oversight Stakeholder Body became a first and important means of building relations. Even though the discussions in the pilot had to focus on the grievance mechanism itself, it became an entry point for dialogue with regional stakeholders that may hold wider potential.

At Cerrejón as well, the grievance mechanism promised to be the first systematized means for the company to engage with local communities. The risk in this case was that it might end up being the primary means of engagement; the company's wider consultations with communities had previously been limited to particular problems, though its engagement with international stakeholders had been considerable. The company's welcome decision to undertake systematized engagement with all communities is therefore significant. It should help, over time, to ensure that a balance is struck between general engagement on the one hand and the handling of specific grievances on the other, avoiding too great a burden being placed on the grievance mechanism alone.

Sakhalin Energy already had processes in place to get feedback from those who had used the community grievance mechanism about its performance. Discussions focused on the question of whether those who were not using the mechanism would have a different perspective. A survey of indigenous peoples showed that they did, in fact, have a less positive view, and the company was able to start addressing that issue.

For EGV, involving workers' perspectives in the review and redesign of the grievance mechanism was a particular challenge since the State-recognized union representative is herself part of management. EGV also conducts exit interviews with workers leaving the factory. The challenge is that the incentive for such workers to be open about their reasons for leaving is often limited. EGV has therefore looked for other ways to get additional feedback. For instance, Esquel Group was able to

benefit from its membership in the Fair Labor Association (FLA), and the FLA’s employment of a Viet Nam representative around the start of the pilot, in order to use its independent processes for surveying workers’ perceptions of the existing grievance mechanism. EGV plans to conduct periodic surveys in future to test workers’ perceptions over time.

Summary of learning

The pilots reinforce the importance of operational-level mechanisms focusing on dialogue in the search for solutions to grievances and avoiding the fact or appearance of unilateral decisions by the company itself. The crucial distinction for a company is between the legitimate process of arriving at an informed view of what it considers the optimal response or solution to a grievance, and taking the position that that will and must be the end of the matter.

The pilots also underlined that this principle should be widened to reflect the parallel importance of engaging stakeholder groups in the design or review of the grievance mechanism. While some aspects of design will rightly be internal to the company (such as the allocation of staff responsibilities or the management of complaints logs), stakeholder perspectives are important to its public-facing aspects, such as the choice of access points, modes of dispute resolution and transparency provisions. Where initial trust levels are low, this involvement of affected stakeholders will likely have a particular influence over whether they trust the mechanism enough to use it, and therefore whether it achieves legitimacy in their eyes.

Revised principle
An operational-level grievance mechanism should be:
Based on dialogue and engagement: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances. [Note: the commentary to this principle retains the specific point that where adjudication is needed, it should be provided by a legitimate, independent third-party mechanism.]

H. Continuous learning

Although the Special Representative’s principles did not mention continuous learning, the CSR Initiative’s guidance tool specific to the operational-level grievance mechanism included a principle on this issue. It was therefore part of the discussions with participant companies.

Discussions under previous principles have reflected learning about the importance of getting feedback from affected stakeholder groups on a mechanism’s performance. Other measures of performance were also significant. For EGV, it was only in assessing systematically whether the company was meeting the timeframes for addressing grievances that it realised how far these were being missed. EGV were then able to address the problems and improve performance.

For Sakhalin Energy, the dramatic drop-off in registered community grievances seemed to be readily explained by the shift from the construction phase of the project to the operational phase. That said, the evidence was lacking to support this interpretation of the numbers. Once more research was done as part of the pilot project, it appeared that indeed this shift was a major reason for the drop-off, but also that indigenous peoples were not aware of or choosing to use the mechanism for their grievances. The company was then able to address that specific problem and work with indigenous community representatives to design a related but separate mechanism that the community felt was appropriate to its needs.

For the Tesco pilots, the lengthy time needed for the design phase, given that it was a greenfield mechanism, meant that implementation was only about to begin as the pilots ended. The metrics for success of the mechanisms may vary depending on whether it is the perspective of the farm management and workers or the perspective of Tesco. If the mechanisms are successful for the former, then they undoubtedly represent an asset to Tesco as well. But the pilots represent only three farms in a region where Tesco sources from 600. For Tesco, the metrics of success will include the extent to which other farms see the advantage of adopting similar mechanisms. This will be key to making the model scalable more widely in order to cover more workers in Tesco's supply chain. While there were some discussions during the pilot about the challenges and opportunities for scaling this kind of grievance mechanism, further experience and exploration is required to test these out.

The review team looking at the grievance mechanisms at the two HP suppliers noted the strong learning culture at one of them in particular. Managers ask departing employees to share ideas for how the factory might improve, and monthly lunch meetings with both existing and outgoing employees are used for a similar purpose with regard to improving the grievance procedures. This was judged to be one significant factor in the relative sophistication of their grievance mechanism.

Summary of learning

Some pilots had identified key performance indicators by the end of the pilot period, while others were in the process of doing so. Three key points emerged: First, a reduction in the number of grievances was only meaningful if other indicators showed that this reduction was due to stakeholders having fewer grievances and not due to a lack of trust in, or access to, the mechanism. Indeed, an increase in registered grievances, at least initially, was seen as a positive sign that people trusted it and chose to use it over other means of expressing their concerns.

Second, it was clear that feedback from the intended user groups was extremely valuable in interpreting numerical indicators and needed to include both individuals who had used the mechanism and some who had not, including groups or populations who might feel excluded, such as indigenous peoples and women. Taken together, this feedback helped the companies understand how to meet the Special

Representative's principles in a manner tailored to their own operations and operating context.

Third, in a couple of instances, tracking the performance of the mechanism already brought to light certain learning that suggested a need to adjust wider company policies and procedures.

In light of this learning and its significance to the effectiveness of grievance mechanisms over time, the Special Representative has decided to add a new principle that is applicable both to operational-level and to other non-judicial grievance mechanisms.

New principle

An operational-level grievance mechanism should be:
A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

IV. Conclusion

The range of sectors (oil and gas, mining, garment manufacturing, food, electronics), geographical and political contexts (Russian Federation, Colombia, Viet Nam, South Africa, China) and the scale of companies (major transnationals, factory with around 3,400 workers, supply farm with less than 50) in which these pilot projects took place was extremely valuable in ensuring that the Special Representative's principles for non-judicial grievance mechanisms were well tested. Clearly, there are other contexts in which the principles could also usefully be tested, including pharmaceutical and ICT companies, and there are still lessons to be gained from how the mechanisms in this pilot work in practice in the months and years to come.

However, the pilot projects have generated valuable learning. They repeatedly confirmed the value and importance of the overarching concepts represented in the principles themselves. They also added some clarifications and nuances to how those principles should be understood and applied in practice, regardless of the situation. Most of those points of learning are reflected in the revised one-sentence summaries that follow the principles, as set out at the end of each section above and summarized below. Where they are not, it is because they cannot reasonably be applied to all of the other kinds of non-judicial grievance mechanism to which these principles are designed to be applicable. Additional points of learning that were relevant to the context of individual pilots but did not suggest any general amendments to the principles are reflected in the reports on the individual pilots.

The Special Representative and the project team are indebted to the participant companies for their commitment to this project and to its twin objectives of helping them make their own grievance processes more effective and generating learning on how the Special Representative's principles can be improved to reflect practical realities. This commitment was apparent throughout the pilot process from all those involved. The CEOs and/or senior management of each company were personally involved at key stages and lent their full support. This top-level commitment was of fundamental importance to the successes that were achieved. The individuals leading the collaboration on behalf of the companies contributed insight, energy and a readiness to think openly and creatively in meeting the challenges that arose and in capitalizing on the opportunities.

All of the pilots demonstrated the considerable time and effort needed to reach out to external stakeholders in building an effective grievance mechanism. They also showed that significant outreach is needed within the company to ensure that those responsible for a whole range of relevant business functions understand and embrace the mechanism's relevance and significance to their own work and to the company's success over time. The support and engagement of senior management and relevant internal departments is crucial for a grievance mechanism to meet its objectives; so is the allocation of resources for its administration proportionate to the range and complexity of the stakeholder relationships involved and the type of issues with which the mechanism is likely to have to deal.

For all of the participant companies, the pilot process was only the start of a longer process. The project team looks forward to seeing how their efforts, and those of their stakeholders in these projects, develop in the future.

Box C: Principles for effective grievance mechanisms, as revised following the pilot project

- A Legitimacy:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- B Accessibility:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- C Predictability:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- D Equitability:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- E Transparency:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- F Rights-compatibility:** ensuring that outcomes and remedies accord with internationally-recognized human rights;
- G Dialogue and engagement:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances;
- H Continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

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Carbones del Cerrejón, Guajira Department, Colombia

Pilot Project to Test Principles of Effective Grievance Mechanisms

by Luc Zandvliet,
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I. INTRODUCTORY BACKGROUND

Carbones del Cerrejón (referred to as Cerrejón in this report) is an integrated coal mining and transportation company in La Guajira, the northernmost province in Colombia. It comprises a large open pit mine, a 150 kilometer railroad and a deep sea port. It employs 5,200 people directly and 6,000 indirectly through contractors. The company is the largest private exporter and the largest tax payer in Colombia.

Cerrejón is an independently managed joint venture owned in three equal parts by BHP Billiton, Anglo American and Xstrata Coal.

Operations are situated in one of the poorest regions of Colombia, where there is minimal presence of the State. There is some presence of illegal armed groups who benefit from close proximity to the Venezuelan border. 44% of the population of the province is made up of the indigenous population, the Wayu'u.

The footprint of Cerrejón is expansive, with 245 local communities along the railroad alone, the majority of which are Wayu'u. The operation has been in existence for more than 30 years, and has a strong engineering tradition with an emphasis on technological superiority. Company management acknowledges that, historically, there has been reluctance within the organisation to be seen as succumbing to outside pressure. The underlying assumption was that such an approach would open the door for more demands and escalate problems for the company. The prevalent risk management strategy was to avoid risk by limiting any systematic community engagement, by

sparsely providing information to aggrieved people and by taking a legalistic approach in case of disagreements.

Over time, some unaddressed complaints escalated into disputes. In the absence of finding a receptive ear within the company, NGOs intervened on behalf of impacted communities, bringing complaints to the National Contact Point⁷ in the home state of one of the shareholding companies and to the UN Global Compact.

In response, Cerrejón established a Human Rights office. Although this office was originally set up to deal with the implementation of the Voluntary Principles on Security and Human Rights⁸, in the absence of a formal grievance mechanism, the office started to present itself as a "new office with a new voice" and soon became the de facto go-to office for grievances. Many grievances were phrased in human rights language, in part because people feared their grievances would not receive attention otherwise. The Human Rights office accepted a broad range of grievances in the absence of an official mandate and a formalized approach. Thus, the legitimacy of the Human Rights office was questioned by other internal departments, which led to the call for the development of a uniform grievance mechanism with a clear mandate, homogeneous rules, and based on a process to first gain formal buy-in from internal and external stakeholders. Against this background, the CEO of Cerrejón requested the development of a formal grievance mechanism, which coincided with the start of the pilot project.

⁷ National Contact Points are offices established by the government in States that have signed up to the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development. (OECD) They can receive complaints about companies headquartered or operating in their states, where those companies are alleged to have breached the OECD Guidelines.

⁸ The Voluntary Principles on Security and Human Rights are a set of non-binding principles developed in 2000 to address the issue of balancing safety needs while respecting human rights and fundamental freedoms. The Principles provide guidance for companies on identifying human rights and security risks, as well as engaging and collaborating with state and private security forces. The Principles were developed through multi-stakeholder participation from governments, the extractive industry and Non Government Organisations (NGOs).

Phased approach

At the start of Cerrejón’s participation in the pilot project, the company had no formal access point for accepting grievances, no formal or uniform processes for filing grievances, no system for investigating and tracking complaints and no clarity on internal roles and responsibilities. Various departments within the company had their own methods for dealing with specific grievances:

- Resettlement-related grievances were addressed through a “grievance investigation committee” consisting of a representative of a) the company; b) the community; c) the municipality and d) the government Ombudsman’s office.
- Labour-related cases were investigated by the Human Capital department or, as a stage-two recourse mechanism, by the Human Rights office.
- Some well-intentioned heads of departments responded themselves to grievances after being told informally about them. For example, the head of the environmental department organised mine tours for 500 stakeholders to address public concerns about Cerrejón’s environmental impacts.
- Parallel to the various informal procedures, Cerrejón also used a Third Party Review process to address issues related to the resettlement of one specific community (Tabaco).

Despite these efforts, feedback from both indigenous and non-indigenous communities during the start of the pilot project confirmed that the average community member did not have access to any general grievance mechanism. Even one of Cerrejón’s most senior operational managers noted, *“I have been looking for three months for a mechanism that I can refer to when I encounter people that claim that we did something wrong ten years ago. That system isn’t there, and it should be.”*

Internal Pushback

The instruction of the CEO of Cerrejón to develop a formal, centralised grievance mechanism did not mean that everybody in the organisation embraced the idea of a uniform procedure right from the onset. Initial internal resistance was primarily related to a perceived loss of control from other departments that already used their own grievance mechanism. Some claimed, *“We already have a mechanism and it works well.”* In addition, some managers in the company expressed a concern that a formal community grievance mechanism would leave the company more vulnerable to opportunistic behaviour by unions, claim seekers and others who would be hard to satisfy and who could use the mechanism as a means to further their own interests.

On the other side, many managers felt that the prospect of a uniform, professionally managed and effective grievance mechanism was appealing. The opportunity to unify criteria, to have a database that allowed for tracking the status of grievances, and to have the prospect of improving relations with local communities were all seen as positive.

Phases in the development of the Grievance Mechanism

The development of the grievance mechanism took a phased approach, as set out below.

At the end of the pilot project (December 2010), Cerrejón had three grievance procedures:

- I. The community grievance procedure housed in the Complaints Office. The Office is part of the Social Standards and International Engagement Department.
- II. An employee related grievance procedure, which is owned by the Human Capital Department.
- III. A procedure specifically related to resettlement issues.

Although the overarching grievance handling policy had yet to be signed off by senior management during the last visit to Cerrejón, all indications were that grievances of any kind would first be channelled through the Complaints Office, which would enter the grievance into the database system and delegate the investigation process to the appropriate department(s).

PHASE	ACTIVITY
I	<ul style="list-style-type: none"> • Hiring of Project Manager in charge of the development of the grievance mechanism. Together with the Supervisor of the Complaints Office and the Manager of the Social Standards and International Engagement Department, this group is referred to in this document as the “Complaints team.” • Project design
II	<ul style="list-style-type: none"> • Baseline documentation to capture and acknowledge efforts thus far (“as is”), a gap analysis and terms of reference for the design team • Internal consultations with selected individuals to create initial buy-in • First round of consultations with selected external stakeholders
III	<ul style="list-style-type: none"> • Development of the mechanism (from “as is” to “should be”) • Development of the software for the database system
IV	<ul style="list-style-type: none"> • Training + Pilot/ test drive the system for 4 months
V	<ul style="list-style-type: none"> • Second round of external community consultations • Development of external resources element • Presentation of the grievance mechanism to the technical departments within Cerrejón • Workshops for contractors
VI	<ul style="list-style-type: none"> • Launching of the mechanism and information campaign

II. PROGRESS AND LEARNING BY PRINCIPLE

As part of Cerrejón’s participation in the pilot project, three visits were conducted in Colombia over the course of 18 months (August 2009–December 2010) while maintaining regular and ongoing communications in between visits. The following is an overview of the main observations gathered during these visits. It takes each one of the SRSG’s Principles in turn and, as relevant, identifies:

1. The strengths identified in the pilot process when Cerrejón tested the Principles in practice, based on feedback from Cerrejón staff;
2. The challenges Cerrejón experienced when testing the Principles in practice, the issues considered in addressing them and the approaches ultimately adopted;
3. The broader learning relevant to the testing of the SRSG’s Principles.

Legitimate: Having a clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.

Strengths

In building legitimacy for the mechanism, Cerrejón took a staged approach starting with internal stakeholders first. To deal with internal concerns, the Cerrejón complaints team took a number of steps.

- The company used the existing internal change management system to increase internal legitimacy for development of the grievance mechanism. The effort was labeled a “project,” which elevated it to the status of an officially endorsed change process. Part of this official

change process was that Cerrejón hired a Project Manager trained in the Cerrejón project methodology. External consultants documented the baseline grievance handling situation to acknowledge past efforts and assuage fears that the new mechanism would not take into consideration the good and effective aspects of the grievance handling approach used in the past.

- Although the human rights concepts remained strong, human rights language was initially avoided. Instead, language related to the grievance mechanism was linked to impact and risk mitigation, early warning, professionalization, etc.
 - In order not to single out any particular department, the mechanism combined all community, contractor and employees grievances into one new procedure, all following the same database with a shared complaint access point: the Complaints Office.
 - Language mattered. To accommodate internal and external concerns, Cerrejón changed the name Grievance Office into Complaints Office. It also replaced the word “investigation,” which was seen as being too much associated with serious criminal issues, with “information gathering process.”
 - The positioning of the Complaints office under the Social Standards and International Engagement Department provided the grievance mechanism with a “neutral” home and avoided the perception that the mechanism had a bias toward specific departments.
- To gain legitimacy for its community grievance mechanism on a local level, the company hired a local NGO (Partners Colombia) to consult various communities about the mechanism. Feedback from

these sessions revealed the importance of broader stakeholder engagement to gain legitimacy. Feedback included comments such as *“This is the first time in 13 years that I see someone from the company”* and *“I do not care about the grievance mechanism, but I am very interested to learn how we can build trust between each other.”*

Over the course of the pilot project, a governance structure emerged. Initially, the Complaints Office itself was able to determine the remedy proposed to the aggrieved party. This led to questions regarding delegated authority to the Office, as only managers of certain ranks are able to make decisions within the Cerrejón hierarchy. As a result, the company decided on a three-tiered system to respond to grievances, which depends on the complexity and risk level of the case. Cerrejón defines risk as risk to human rights and risk to people, as opposed to risk to the company, in the assumption that both are related.

The Management Response Committee provides responses to the majority of grievances (85% of the grievances accepted in the first eight months of 2010 were ranked as medium or medium-high) and thus will establish compensation precedents. The committee will consist of:

- The Vice-President of Social Sustainability and Public Affairs
- A representative of the Vice President of Finance
- The Manager of Social Standards and International Engagement
- The Manager of the Legal Department
- The Coordinator of Social Standards
- The Supervisor of the Complaints Office
- The Manager of the investigated department
- The Manager of the department that is

LEVEL 1: COMPLAINTS OFFICE

- Provides responses to cases ranked as low risk

LEVEL 2: MANAGEMENT RESPONSE COMMITTEE

- Provides responses to cases ranked as medium or medium-high AND that do not exceed limits in financial compensation or in complexity

LEVEL 3: TOP MANAGEMENT RESPONSE TEAM

- Provides responses to cases ranked as medium or high risk OR to cases that have been referred by the Management Response Committee

investigating the case (medium and medium-high cases are never investigated by the associated department itself)

Challenges, issues considered and approaches adopted to address these challenges

Cerrejón decided not to develop the grievance mechanism as a joint exercise with external stakeholders. The company was concerned, based on what it saw as adversarial tactics of some stakeholder groups, that a joint process would be used by such groups for agendas unrelated to the grievance mechanism. There is also a concern that joint development of a grievance mechanism would lead to a focus on the “right” of complainants to have unlimited access to third parties of any kind and at any time, which would undermine the good intentions by which the discussion would be started.

Cerrejón management was also of the opinion that the presence of an oversight body would not guarantee legitimacy of the grievance mechanism, as it would be difficult to find people who both had legitimacy amongst the local population, and, at the same time, were capable of fulfilling a board level position. Instead, the company put the focus on enabling stakeholder participation in the design process and hopes that the grievance mechanism gains legitimacy from that participation combined with effective implementation of the resulting procedure. In addition, joint fact-finding during the initial investigation of a complaint, whereby the aggrieved person joins the Cerrejón investigator, should contribute to the legitimacy of the investigation process.

There are plans to conduct a “Customer Satisfaction Survey” once the mechanism is fully functional. Shareholder audits already look at the grievance mechanism, although mainly from a process perspective.

Key learning

Key learning from Cerrejón’s participation in the pilot project was the importance of gaining internal legitimacy for the grievance mechanism, even when it concerns grievances from external stakeholders. In the case of Cerrejón, the development of the grievance mechanism required an equal amount of internal consultation and engagement with company staff as it did external consultation and engagement with communities. Obviously, the reasons for involving internal and external stakeholders are different, although both aim to overcome distrust in, and fear of, the mechanism.

Another lesson learned is that involvement of internal stakeholders to ensure legitimacy of the mechanism was not only important during the design phase of the grievance mechanism, but equally important during the testing phase. In order for managers to feel that they were centrally involved in defining responses to complaints, the Complaints Office met with each department concerned with the resolution of a case to ensure that it had a chance to provide its input. Only when the Complaints Office knew that internal alignment was achieved would the proposed resolution be brought to the management team for approval.

Accessible: Being publicized to those who may wish to access it and providing adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.

Strengths

Cerrejón accepts grievances through a variety of channels, including by phone, email or through any Cerrejón staff encounter with community members. All staff members working with communities have the possibility to log a complaint into the system, which is then forwarded to the

Grievance Officer for processing. If a staff member does not want to log a grievance officially, he or she calls the grievance officer to alert her to the existence of a complaint.

There are plans to increase access points to the mechanism by hiring Cerrejón officers who proactively visit all project-impacted communities on a regular basis to accept grievances. This is in part because the Wayu’u want to have access points in the community rather than at a Cerrejón-associated facility. Also, the Wayu’u have expressed a preference for in-person communication. Additionally, Cerrejón aims to place complaints mailboxes at central locations such as the Cerrejón Foundation and in the various Municipality Offices. These mailboxes are also accessible for depositing labour-related grievances.

Partner Colombia (a local NGO) has been hired to develop leaflets to help explain the grievance mechanism and to develop other dissemination approaches.

Challenges, issues considered and approaches adopted to address these challenges

At the start of the pilot project, Cerrejón had one officer, with no means of dedicated transportation, responsible for engagement with 250 communities along the 150km long railroad. Acknowledging the need to be accessible, the company committed to triple the size of the Social Management Unit and it will hire additional analysts for the purpose of engagement. It is expected this will allow the company to address issues and concerns more proactively, and before they get submitted as complaints.

Key learning

Key learning from the Cerrejón experience is the challenge of publicizing the grievance mechanism, and of providing access points to people who traditionally convey information person to person and

who live spread out over a vast geographical area. This highlights the importance of integrating the grievance mechanism into the wider engagement efforts of the company and to make use of all available avenues to increase accessibility of the mechanism.

Predictable: Providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.

Strengths

Cerrejón has put a lot of emphasis on the development of a clear and predictable procedure. After grievances are logged in the system, they are subsequently assessed by the Grievance Analyst and the Manager of the Social Standards and International Engagement Department for the risk posed to aggrieved people or communities (low/medium/medium-high/high). Based on this classification, investigators are assigned. For low-risk cases, investigators from the department to which the grievance pertains are assigned. For grievances assessed as medium, medium-high and high risk, investigators from *other* departments are assigned to prevent potential conflicts of interest. All cases involving allegations of human rights abuses or involving security forces are delegated directly to the Coordinator of Voluntary Principles, who is part of the Department of Social Standards and International Engagement.

The mechanism allows for a three week period between the logging of a grievance in the database and reaching an agreement on a plan of action for redress. Each plan of action includes a timeline, roles and responsibilities and estimated costs. The grievance officer monitors the plan and closes the case after effective implementation of agreed actions.

As for the labour-related grievances,

the complaints process is regulated and involves the union. For example, in the case of disciplinary action taken by the company's disciplinary committee, the company issues a written statement. If the employee does not agree with a disciplinary action, a meeting is called that involves the line managers, representatives of the union and a representative of the Human Capital Department. Based on this discussion, the company can alter its decision. All of this happens outside the formal grievance mechanism. If the aggrieved person and the union are still dissatisfied, they can log a formal grievance which then enters the formal grievance mechanism.

Challenges, issues considered and approaches adopted to address these challenges

Cerrejón faces an ongoing challenge to align indigenous and administrative ways to resolve conflict. One element is the importance of timelines. Several Wayu'u people noted that in their culture, addressing conflict happens "quickly and in a positive manner" since communities live in a constant state of conflict as long as an issue is not resolved. A member of one of the communities visited told the Cerrejón analyst not to visit again until he could come back with a positive answer. The community member noted, "We meet with Cerrejón, we file a grievance, and then we talk too much and see no action from the company."

It is expected that once the grievance response committee starts meeting on a regular basis and authority levels of the various response committees are clear, response times will decrease, which will increase predictability of the process.

Key learning

Key learning from Cerrejón's participation in the pilot project with regard to predictability has been the need to clarify expectations in a context of different indigenous and non-indigenous notions of timelines related to grievance handling.

During the implementation of the grievance mechanism, the challenge for Cerrejón will be to find a balance between acting in a respectful manner toward the traditional way of handling disputes and providing the time necessary for appropriate investigation according to company standards and Colombian law.

Equitable: Ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.

Strengths

Responses from communities with regard to perceived equitability have varied during the various site visits. In one indigenous community, when asked if the community felt it was able to negotiate with the company on an equal powerbase, the answer was overwhelmingly positive. One community member said, "Cerrejón is not a monster to be afraid of. We will exhaust all means of communication towards a constructive dialogue." However, feedback from workshops with Latino communities revealed a perception of serious power imbalance in the relationship between Cerrejón and communities.

Acknowledging these sentiments, Cerrejón invited international experts to a workshop to discuss ideas regarding the role of third parties in the grievance handling process. The company decided on a series of options that complainants would be able to access, depending on the type of third-party expertise required:

- At any point in time, any person would be able to access third-party expertise related to clarification of rights or technical questions. Cerrejón is contemplating retaining a neutral institution, such as a university, to provide answers to the wide range of questions asked by complainants.
- As a matter of principle and where possible, an initial investigation would

be open to joint fact-finding with the aggrieved party. Access to third-party expertise would not be available at this point because it is a stage when grievances can often be addressed amicably without the involvement of third parties.

- If the aggrieved person wishes to challenge the outcome of the first investigation and provide the company with new evidence, he or she can request a second investigation conducted by a person higher in the Cerrejón organisation or, alternatively, under certain conditions, s/he can have access to third-party subject matter expertise on the interpretation of standards or evidence (e.g., has a cow been hit by a train or not, or are dust levels above agreed standards?). This option does not yet allow for alternative dispute resolution, but is intended to ensure factual accuracy of the investigation.
- If parties cannot come to an agreement over the interpretation of the expertise provided by the third party, Cerrejón and the aggrieved person could involve a third party in alternative dispute resolution, primarily focused on the facilitation of an engagement process between the company and the aggrieved party.

The identification of the third party can, in theory, be initiated by either the company or the aggrieved person, but needs to be approved by both parties and under the following conditions:

- a. A clear commitment to the process of seeking a solution by both parties.
- b. The grievance needs to be categorized by Cerrejón as a “medium-high or high risk” case.
- c. Third-party involvement will be assessed on a case-by-case basis.
- d. The demand for third-party expertise needs to be “reasonable” in that it is likely to lead to a resolution of the grievance based on the expertise provided.

At the end of the pilot project, the company was still having internal debates with regard to the possible consequences of third-party involvement and the option had not yet been announced to the users of the grievance mechanism.

With regard to resettlement, the company already has offered third-party negotiation support for communities that will be resettled. Out of five communities, two have accepted support from the NGO Indepaz. Indepaz’s involvement as witnesses to the process and as community advisors has reportedly led to increased trust between the company and affected communities.

Challenges, issues considered and approaches adopted in addressing these challenges

Despite the fact that the company has already allocated funding for third-party involvement, many in the company still feel reluctant about the idea of allowing for external parties to be involved in the grievance resolution process. The proposed strategy for handling this concern has been to take a staged approach, by first rolling out the grievance mechanism and then observing how it is being used. The assumption is that when internal stakeholders gradually develop more trust in the system, internal resistance to including third parties in the process will likely decrease.

Key learning

Key learning from Cerrejón’s participation in the pilot project includes the challenge of determining the triggers for third-party involvement in the grievance resolution process. After all, if complainants know that a higher-risk exposure would facilitate access to third-party expertise, this would provide an incentive for the complainant to ensure the complaint would be perceived as more risky.

Another lesson learned is that when people feel they have no access to remedy

in a way they perceive as fair and equitable, it increases the risk that they resort to actions that affect the production process. For years the most important grievance of the indigenous communities (animals being hit by the train) was not open for redress because the Cerrejón practise was not to compensate for killed animals (following a spate of incidents when it appeared that animals had been tied to the track). Lacking an official company grievance procedure and not knowing how to access the Colombian judicial system, indigenous people said they saw no other option to gain corporate attention but to block the railroad. The company is now reviewing its approach and consulting communities on sustainable approaches to what is a shared problem.

Rights-Compatible: Ensuring that its outcomes and remedies accord with internationally recognized human rights standards.

Cerrejón has made great efforts to ensure that the design of the grievance mechanism as well as its outcomes are in line with human rights standards. One example mentioned earlier is that any allegation of a violation of human rights is investigated by a specialist within the company, independent of the department that is associated with the grievance.

Cerrejón operates from the presumption that in order to be fair, people’s lack of knowledge should not be an obstacle to ensure their rights are respected. The company provides regular training to communities to inform them about their rights or, alternatively, points them to where they can get more information about their rights. For example, when an indigenous woman wanted to launch a police investigation against the staff of a contractor, the company provided her with company transportation and access to investigators to ensure that she faced no obstacles in claiming her rights.

Participation of Cerrejón in the pilot project posed an interesting point with regard to what rights – or whose rights – count. Indigenous communities have long claimed that Cerrejón systematically violates indigenous laws by refusing to compensate for animals hit by the train. Further, the communities expect that all mediation should be handled through the indigenous *Palabrero*;⁹ “If you come to our territory, we expect you to live by our rules.” This poses a challenge for Cerrejón to find ways of handling grievances in a manner that satisfies both internationally-recognized human rights and specific laws and additional rights accepted within these communities. Addressing this dilemma requires an intimate knowledge of the Wayu’u culture, which is why the company has started to work more closely with advisors from the indigenous communities themselves.

Transparent: Providing sufficient transparency of process and outcome to meet the public interest concerns at stake and presuming transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.

Strengths

At the end of the pilot project, Cerrejón was still in the process of discussing how it will report grievance-related information, as well as exactly what it will report, to external stakeholders. The current thinking is that the company will be transparent about process but will not provide overall transparency on outcomes with regard to financial compensation paid or if transparency on outcomes puts people at risk.

Prior to the development of the current grievance mechanism, Cerrejón would respond to complaints by simply announcing its decision in legal-style

letters. As part of the development of the new grievance mechanism, training of managers has focused on taking a more engaging approach (“pick up the phone rather than send letters”) to be able to better explain to people the rationale for proposed company solutions.

Challenges, issues considered and approaches adopted in addressing these challenges

Cerrejón tried to capitalise on a broader consultation effort with communities related to a possible expansion of the mine to also present the grievance mechanism to local stakeholders. However, the presentation occurred at a moment when the mechanism had not yet been officially signed off and internal roles and responsibilities had yet to be fully defined. As a result, as people started to lodge grievances, staff members working with communities were not able to commit to a follow-up visit to keep the aggrieved parties informed. The inability of the analysts to provide a response to the question “When will you come back?” affected Cerrejón’s credibility in conveying messages or in seeking solutions. With the formal approval of the grievance mechanism by Cerrejón management, and the clarity on roles and responsibilities that this will bring, this issue should be addressed.

Key learning

Key learning from Cerrejón’s participation in the pilot project with regard to the transparency principle includes the reality that the roll-out of a grievance mechanism typically raises expectations that need to be dealt with. A simple yet significant lesson is the importance of first putting in place key elements, such as roles and responsibilities to address complaints, before launching the grievance mechanism and raising expectations.

Based on Dialogue and Engagement: Focusing on the processes of direct and/or mediated dialogue to seek agreed solutions, and leaving adjudication to independent third-party mechanisms, whether judicial or non-judicial.

Strengths

In response to the need for finding resolutions based on engagement and dialogue, Cerrejón conducts all first investigations on a participatory basis and through joint fact-finding. Obviously, this encourages company staff to engage with the complainant as a matter of routine during the investigation process.

As mentioned earlier, if the outcome of the first investigation does not satisfy the complainant and he or she has additional evidence that was not included in the first round of investigation, a recourse option is available. In that case, Cerrejón will conduct another investigation, possibly led by a higher-level manager in the company.

There are efforts underway, funded by international donors, to train community members in Alternative Dispute Resolution (ADR). So-called “conciliators” receive training organized by the Justice Department in Bogotá. Short of making decisions, such conciliators could be used to participate in decisions and ask additional questions to parties to bring out underlying issues and increase dialogue. Cerrejón has plans to look into the option to use such conciliators in the grievance handling process.

General and ongoing engagement with indigenous peoples has been limited. Few people in the company feel they have the knowledge to engage in a culturally appropriate manner. This poses a challenge in addressing questions such as where to meet, what engagement protocol to follow, who to engage with (and whom not), what words to use and avoid, and who to use as interpreter or as a link to the community. Cerrejón is currently contemplat-

⁹ A Palabrero is a Wayu’u spokesperson who is the only person that communicates with an opposing Wayu’u clan in times of conflict or dispute.

ing these questions and has contracted several indigenous advisors for this purpose.

Challenges, issues considered and approaches adopted in addressing these challenges

Initially, Cerrejón trained over 100 people from the various internal departments in grievance investigation approaches. The role of the investigators was to lead the investigation. Given that the investigator did not always have the technical skills to conduct an investigation, he or she could call on subject matter experts as and when required.

One of the challenges that Cerrejón faced using this decentralized model was that some investigators sometimes felt uneasy speaking to aggrieved parties. Some considered a discussion with aggrieved people as a last resort rather than as a first step. As one investigator stated, *“Why should I speak with people if I already know the answer to my questions?”* Investigators were subsequently trained in investigative skills, in showing empathy to aggrieved parties, and in keeping Cerrejón’s long-term community objectives in mind when handling grievances. These were all relatively new concepts to company staff.

When Cerrejón noted that investigators were sometimes lacking the empathy or the rigor required to investigate a case, it decided that a decentralised investigation approach had shortcomings. At the end of the pilot period, the Complaints Office moved to a hybrid system whereby the Complaints office provides more direct oversight in the investigation process of the medium and medium-high complaints. As mentioned earlier, the department associated with the grievance only leads the investigation process in low-level risk cases.

At the same time, the Complaints Office saw that if its own, independent investigators work and live at the mine – meaning that other staff are also their neighbours and

friends – it is harder for the investigators to conduct objective investigations involving those individuals. Similar to the Internal Control Office, one idea is to ensure that Grievance Officers live in Bogotá and travel to the mine during weekdays to minimize this potential conflict of interests.

With regard to engagement about the proposed outcomes to grievances, the company used to ask aggrieved people to sign a grievance investigation outcome letter. Many people refused to sign the letter, which meant that Cerrejón was not able to demonstrate it had engaged in a dialogue. In response, Cerrejón changed its approach. The Complaints Office now verbally presents the outcome of the investigation and discusses next steps with the complainant. This provides the aggrieved party with the opportunity to acknowledge the investigation process and results without necessarily agreeing with the investigation outcome. The discussion is recorded in minutes (on a blank piece of paper rather than on paper with the Cerrejón letterhead, in order to avoid any semblance of an official agreement), suggesting ways forward, aspects on which parties agree or disagree, etc. Minutes of this meeting are signed by both parties and constitute the record. This process is found particularly useful when the solution to a grievance involves multiple meetings as it allows for reaching an agreement taking incremental steps.

Key learning

Key learning from Cerrejón’s participation in the pilot project with regard to the dialogue and engagement is that a grievance mechanism can never be a substitute for genuine stakeholder engagement. Rather, it needs to be a complementary tool. No matter how well designed, and no matter how many resources are allocated to it, the grievance mechanism will not accomplish its objective or be perceived as a legitimate accountability mechanism if it operates in

isolation. Recognizing the need to complement the grievance mechanism with broader efforts to reach out to stakeholders, the company is stepping up efforts to have more genuine and ongoing engagement.

A source of continuous learning

Strengths

The development of the grievance mechanism has provided a venue for ongoing problems to be formally addressed. For more than a decade, a main irritant for indigenous people in their relationship with Cerrejón has been the company’s practice not to compensate for any animals hit by the train transporting coal from the mine to the port. Although this issue was well-known, it had previously not been formally brought to the attention of management. When the first official grievance was logged related to animals being hit, Cerrejón management committed to review the no-compensation approach, which was a significant decision.

Key performance indicators (KPIs) to measure the effectiveness of the mechanism in practice are yet to be determined as part of the development process of the grievance mechanism. This is an opportunity for Cerrejón to identify KPIs in collaboration with both staff and external stakeholders. Consultation with external stakeholders about the grievance process will allow Cerrejón to better understand how it can demonstrate that it knows *and* is able to show that the mechanism is perceived as legitimate, accessible, transparent, and more.

To ensure that the company learns from experiences, the Complaints Office plans to present grievance-related data on a monthly basis to the Operational Review Committee, which consists of all heads of department. This data would include reporting on the outstanding cases (and why they are outstanding) and the number of delayed information-gathering responses

by departments and other data, which would encourage managers to follow the standard operating procedure diligently.

At the same time, there are plans to link complaints-related process indicators to personal performance indicators for senior managers. These process indicators would measure if their department cooperated in the information-gathering process, kept timelines, and other such measures.

Challenges, issues considered and approaches adopted in addressing these challenges

As more grievances are received by the company and patterns are analysed, there is an opportunity, and indeed a need, for the company to conduct a root cause analysis of the various grievances, especially those that obstruct the production process. The existence of the grievance mechanism, in combination with the increase in resources dedicated to engagement, offers the company the opportunity to move from a focus on addressing manifestations of conflict to an approach focused on the prevention of conflict.

III. FINAL OBSERVATIONS

The participation of Cerrejón in the pilot project provided a number of overarching observations that will also be applicable to other companies.

1. Cerrejón offers some good lessons with regard to “retrofitting” the effectiveness principles into existing grievance mechanisms. The company still uses three distinctly different systems that each has its own protocol and investigation process. The Human Capital Department and the Resettlement Group wish to continue to conduct their own investigations where it concerns employee or resettlement related grievances. Cerrejón dealt with these various interests through the use of the centralised database system, which is maintained by the “official”

Complaints Office. Thus, the Complaints Office provides a service to the two other mechanisms by enabling them to track progress and provide a record related to “their” grievances. At the same time, the use of a centralised database system ensures better alignment of procedures and standardisation of the grievance resolution approach. The database has become a management tool by which the Supervisor of the Complaints Office can monitor performance of all three mechanisms and can independently verify if a case has been addressed satisfactorily.

2. The Cerrejón experience showed that when retrofitting or adapting a grievance mechanism in an existing operation, engagement with *internal* stakeholders is equally important as with external stakeholders. The well-designed, phased approach to developing the grievance mechanism helped the company overcome its hesitancy to engage more broadly with local stakeholders. In other words, in the process of developing the new grievance mechanism, the Complaints team assisted in the transformation from a fairly closed and defensive corporate culture towards a more open, engaging and accountable way of working.
3. A grievance mechanism provides a company with the opportunity to address legacy issues it otherwise would not be able to. At Cerrejón, the mechanism identified a number of issues and complaints that used to get lost in the system and caused frustration among both communities and employees. Management was simply not aware of some issues. Rather than seeing these as “problems,” the grievance mechanism provided Cerrejón with an opportunity to close out these legacy issues in a systematic and orderly manner and to demonstrate that the “New Cerrejón Way” is indeed a departure from the “old” way of

operating. The management commitment to review the no-compensation approach for animals hit by the train is a promising example in this respect

IV. CONCLUSION

The development of a new grievance mechanism within Cerrejón conveniently coincided with the start of the pilot project to test the SRS’s principles of effective grievance mechanisms. It has been impressive to observe the efforts that Cerrejón made to develop the mechanism in a manner acceptable to both internal as well as external stakeholder interests. The Cerrejón case showed that the development of a policy or procedure is relatively easy compared to efforts to implement the policy and to obtain both internal and external buy-in. The pilot project benefitted considerably from Cerrejón’s participation and from its efforts to test each of the effectiveness principles without preconceived notions. The Complaints team was creative in its application of options and very strategic in the process of building the mechanism step by step. When needed, the team was flexible enough to change course, learning valuable lessons in the process. We would like to thank Cerrejón, and the Complaints team in particular, for its hospitality, its dedication to the grievance mechanism and for its passion for building stronger relationships with the communities that should ultimately benefit from the grievance mechanism.

Esquel Garments Vietnam (EGV)

Pilot Project to Test Principles of Effective Grievance Mechanisms

by Doug Cahn,
The Cahn Group, LLC

I. SUMMARY FINDINGS

The primary stakeholders for the design and oversight of the grievance mechanism were defined by EGV to be factory management and its employees, with Esquel Group corporate-level staff serving an oversight and support function.

Focusing at the factory level positively reflects the factory's acceptance of the obligation to maintain a high-quality work environment, since it is at the factory where routine interactions between employees and management take place.

The many components of a grievance mechanism that is consistent with the Principles for Effective Grievance Mechanisms were viewed as complex for application in a factory setting where broad community impacts are limited. Ways to simplify processes without compromising the legitimacy and effectiveness of the grievance mechanism will be important learning as further experience is gained.

Recognizing that each of the Principles is to be fully applied, when the company is constrained in its ability to implement one or more of the Principles, it faces the burden of identifying creative alternatives. For instance, where national law restricts expressions of employees' interests by requiring trade unions that are not independent of management, finding ways to strengthen the legitimacy of the grievance mechanism will require innovation and creativity.

It may be difficult to achieve employees' trust in a grievance mechanism in a short period of time. In these cases, implementation of an effective grievance mechanism should be viewed as a work in process, with trust increasing among the workforce as employees gain more knowledge of the grievance process and see beneficial outcomes.

When the governance of a grievance mechanism is inward-facing at the factory level, as is the case with EGV, special effort will be required to "know and show" that

the mechanism is governed in a manner that protects the interests of all parties. One method for addressing legitimacy in these circumstances may be to add rigorous process steps which the company can point to as good-faith efforts, to avoid the perception that the management is using the grievance mechanism in its sole discretion. More transparency than usual may also be helpful.

Grievance mechanisms in Vietnam will benefit from modifications as the legal framework in the country is adapted to further conform to International Labour Organization Covenants in the future.

Key performance indicators were viewed as helpful from the EGV perspective in measuring the success of the grievance mechanism, including the number of grievances filed, the number of outcomes accepted by complainants, results of employee surveys, and the number of trainings conducted. While additional time will be necessary to fully test these indicators (and others under consideration), all point to the value of continuous learning.

II. INTRODUCTORY BACKGROUND

Esquel Group (Esquel) is a privately held apparel company based in Hong Kong, with 47,000 employees globally and an annual turnover in 2009 of US\$800 million. Esquel Garment Vietnam (EGV) is a garment manufacturing facility that is owned and operated by Esquel and is located in the Vietnam Singapore Industrial Park (VSIP) in Binh Dong Province, Vietnam, 25 kilometers north of Ho Chi Minh City. The factory has a workforce of approximately 3,400.

Using cotton from Esquel farms and yarn and fabric supplied by Esquel's other facilities in China, EGV performs all basic garment factory functions, including cutting, sewing, embroidery, quality control, packing, and shipping. The result is the manufacture of knit shirts for customers that include Nike, The Tommy

Hilfiger Group, Carole Hochman, and Banana Republic.

The EGV workforce is comprised of 85 percent women. Employees live in nearby housing and commute to the factory by bicycle or motorbike. The turnover rate of employees is 6 percent per month, which is generally lower than the industry norm.

Esquel's Corporate Social Responsibility (CSR) department has representatives in each of its facilities, including EGV. The Esquel CSR department provides support and oversight to the factory-level management team.

Vietnam has a vibrant and growing manufacturing base, located primarily in the environs of Ho Chi Minh City and surrounding provinces, including Binh Dong Province. Notably, the International Labour Organization (ILO) conventions 87 and 98 related to Freedom of Association are not fully protected under Vietnamese law.¹⁰ Factories are required to establish a branch of the government-sanctioned trade union, the Vietnam General Confederation of Labour, within six months after initiation of business. As a matter of common practice, trade union representatives are nominated by management and ratified through some form of employee endorsement. The Summer 2009 Party Congress decided that labour and management should be separate in order to avoid a conflict of interest, although this decision has not been codified and implemented.

As discussed in the meetings with labour experts consulted during the pilot project (see section 3.1: Legitimate), parallel means for providing worker representation are not considered an option for empowering independent representatives of employees

in Vietnam today. However, there are examples, such as Better Work Vietnam, that support capacity building of existing unions at the factory level in order to expand the knowledge and awareness of union representatives to: a) understand the grievance mechanism process provided by law and b) improve union representatives' ability to engage in dialogue with managers.

Due primarily to employee concerns over the rate of inflation, wildcat strikes became a frequent occurrence in 2008, reaching approximately 800 countrywide. Strikes have continued since then, although less frequently. After an attempt by the government to address the strikes through labour law reform, draft legislation failed to receive broad support within the business and labour communities. One view expressed by a leading observer is that the draft law was perceived as providing too much power to upper levels of the trade union, as distinct from factory, zone, and provincial levels.¹¹

In July 2010, a two-day work stoppage by 142 employees in the embroidery room (or four percent of embroiderers) and 298 employees in the cutting room (or 9% of cutters) took place at EGV. Employees demanded an increase in piece rate and expressed concerns about canteen food and night-shift work. The work stoppage ended after the factory provided employees with an eight percent increase in piece rate, an increase in the attendance allowance from 80,000 to 200,000 VND, night-shift meal price increases from 8,000 to 10,400 VND, and a reduction in night-shift work from two days per week to one day per week, among other enhancements.

While EGV General Manager Kent Teh

felt that the strike was inevitable due to the external pressure from area strike organizers, he also believed that the risk of long-term employee slowdowns or strikes is reduced when effective grievance mechanisms are in place.

Few non-governmental organisations advocate for labour rights in Vietnam, leading to a paucity of external stakeholders with which to engage and to limits on the resources available to support implementation of the grievance mechanism at EGV.

At the onset of the pilot project, a well-established grievance committee at EGV was comprised of representatives from the factory-level human resources department, the trade union, and the corporate social responsibility department (which had observer status only). In accordance with Vietnamese law, the chair of the grievance committee rotated every six months from the management to the trade union representative. The chair of the trade union was a member of management staff.

EGV has a three-year collective bargaining agreement (CBA) that was signed in April 2009. It is common practice in Vietnam for a CBA, where it exists, to restate legal obligations as opposed to reflecting negotiated agreements between management and independent representatives of employees.

EGV's business is expanding. At the same time, EGV continues to face challenges recruiting employees. This is a widespread problem in the region due to changing expectations of the labour force, including the fact that employees typically do not wish to engage in overnight shift work.

Thanks are due to the EGV factory and Esquel corporate staff that guided EGV's

¹⁰ The Fair Labor Association notes in its compliance benchmarks, as follows: "Vietnam has not ratified ILO Conventions 87 or 98. Under Vietnamese law, all unions are required to affiliate with the single trade union, the Vietnam General Confederation of Labour (VGCL), which is affiliated with the Communist Party. With respect to such union monopolies, the ILO

Committee on Freedom of Association has stated that "the rights of workers to establish organizations of their own choosing implies . . . the effective possibility of forming . . . [trade unions] independent both of those which exist already and of any political party." Vietnam's legal framework is therefore not compatible with the ILO Principles on Freedom of Association..."

¹¹ Legislative labour law reform was postponed in 2009. Once legislation is approved, a decree is issued and guidelines for implementation are developed.

participation in the pilot project, including Kent Teh, EGV General Manager, and his team, and Tammy Rodriguez, Esquel Director of Corporate Responsibility, and her team.

Timeline of pilot project

- Fair Labor Association survey (SCOPE/SCAT) to determine management and employees’ perspectives of the existing grievance procedure, July 2009;¹²
- Initial visit by project facilitator to EGV to outline the Effectiveness Principles and Guidance Tool with Esquel and EGV management and conduct initial planning, August 2009;
- Initial draft created of revised grievance mechanism, Winter 2010;
- Initial communications with workforce to

enhance awareness of grievance mechanism, Winter 2010;

- Additional comments/feedback obtained from VSIP-level trade union on the revised grievance mechanism policies and procedures, June 2010;
- Two surveys of employees’ attitudes conducted, June 2010;
- One-on-one survey of employees’ attitudes conducted following the open survey, July 2010;
- Revised version of policies and procedures adopted by EGV, July 2010;
- Revised policy translated into Vietnamese, July 2010;
- Revised policy posted on notice boards, July 2010;
- Policy training and awareness raising scheduled for supervisors/executives, July 2010;

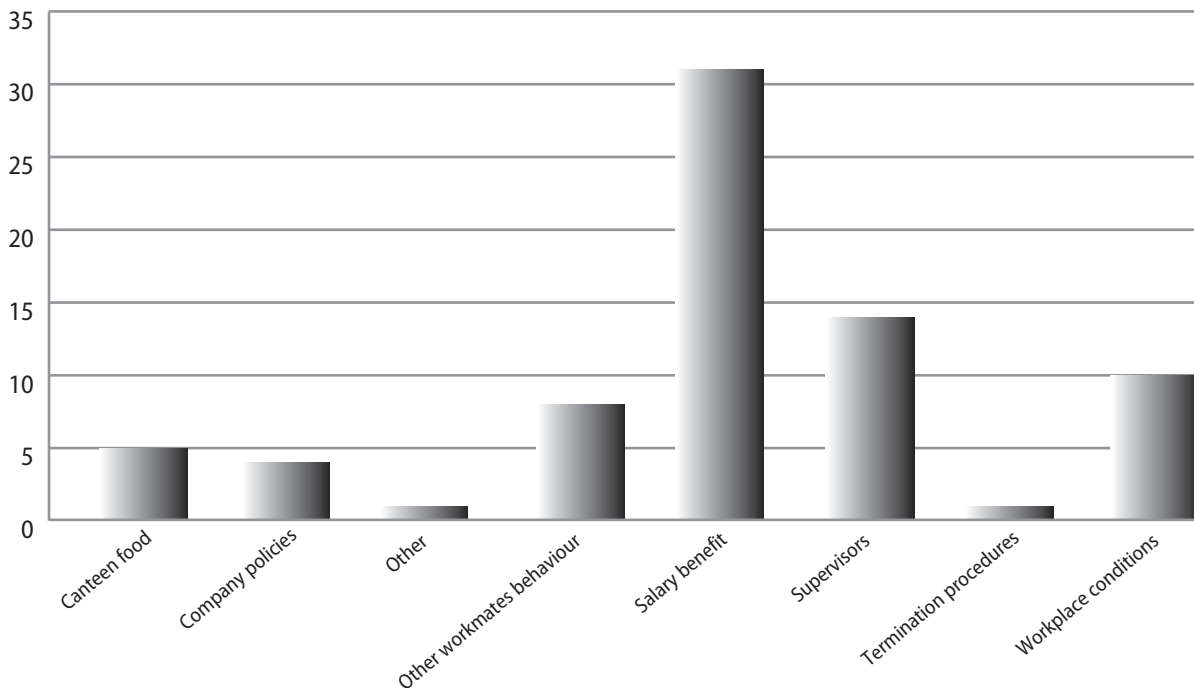
- Internet and other research conducted to find out about availability of external resources to support implementation; list of available resources and their pros and cons developed, July 2010;
- Over 2,500 employees trained, including new hires and over 250 supervisors, on the grievance mechanism, Fall 2010; and
- Supervisors trained on conflict resolution, Fall 2010.

A total of 74 grievances, both written and verbal, have been filed from January – October 2010, as noted in Figure 1.

A mapping of the process steps of the revised grievance mechanism is reflected in Figure 2.

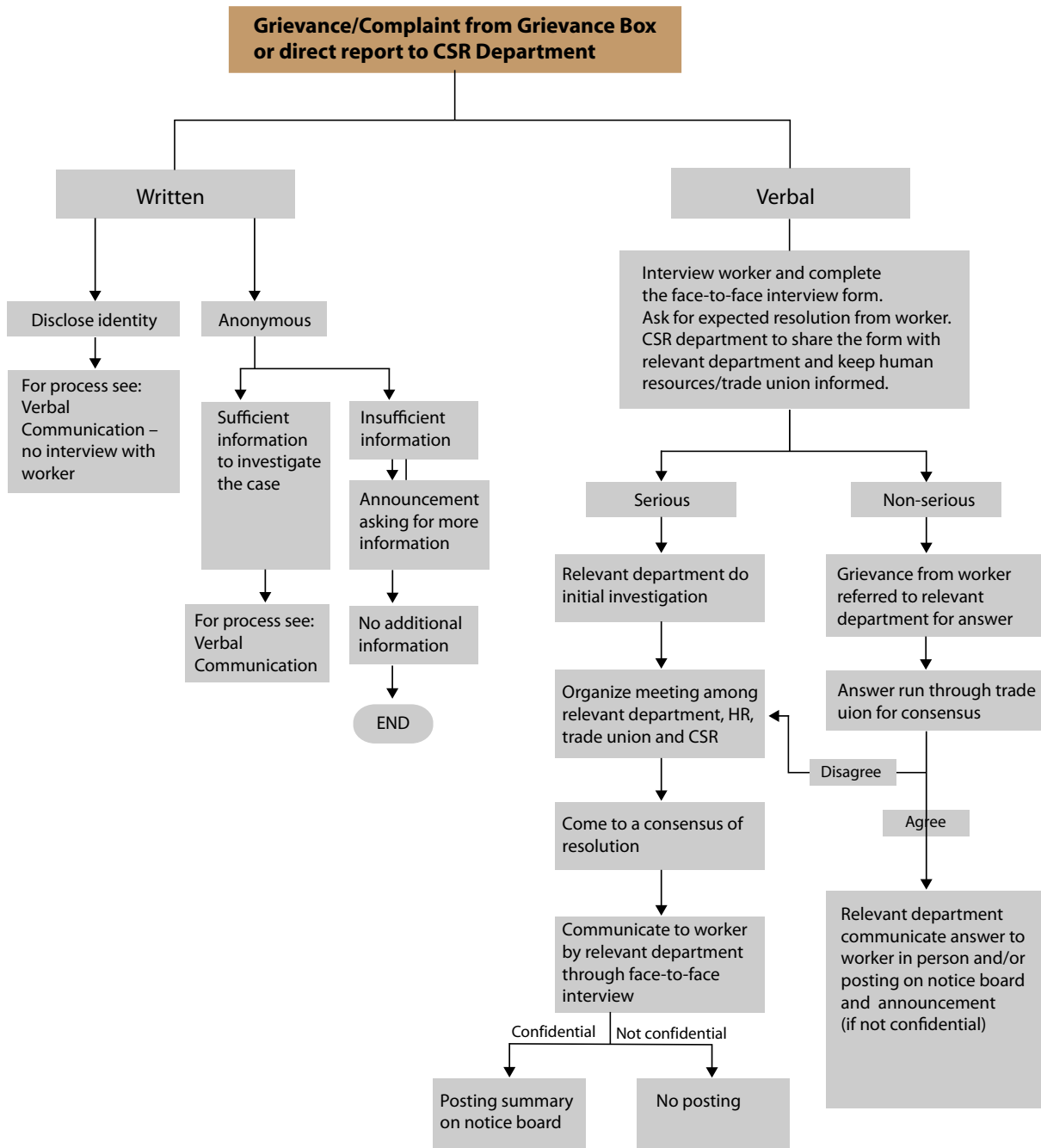
Figure 1. Summary of Grievances by Issue, January-October, 2010 (Source: Esquel)

Types of grievances received in 2010 Total 74



¹² For a definition of the FLA SCOPE process, see: http://www.fairlabor.org/what_we_do_fla_3.0_c2.html.

Figure 2. Mapping of Revised Grievance Mechanism



III. PROGRESS AND LEARNING BY PRINCIPLE

Legitimate: Having a clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.

Esquel sought to embed the grievance mechanism at the factory level, placing accountability for the resolution of grievances where employees and management directly interact. In so doing, EGV promoted the resolution of grievances through informal means (i.e., routine interactions between employees and supervisors) and formal means (i.e., use of the grievance mechanism) in the workplace.

The primary stakeholders for the design and oversight of the grievance mechanism were defined by Esquel as EGV management and its employees, with Esquel corporate-level staff serving an oversight and support function.¹³ This decision was made in large part because of Esquel's desire to focus the mechanism at the factory level, as noted above. The company expressed concern that it would not be practical to involve the company's buyers as external parties, citing the fact that EGV has multiple buyers.¹⁴ Nor would it be possible to involve the upper-level trade union in the factory-based process, as EGV management found a paucity of local resources that could credibly perform this function. Additionally, in an environment of widespread wildcat strikes, there was some general concern about the potential impact of external parties in stimulating labour unrest.

The Esquel corporate-level role as a part of the oversight function is not insignificant; the Esquel corporate-level CSR department

is charged with ensuring satisfactory CSR performance ratings in all Esquel business units. The oversight role of the Esquel corporate level is articulated in the policy adopted by the company:

"The grievance database will be shared with the corporate human resource and CSR directors every six months."

"The corporate team will review the grievances and the settlement details in the interest of providing input to make the system more effective (if necessary) and will discuss with the company operation management on any necessary action plans (if any)."

The corporate oversight role in the grievance mechanism is consistent with its function to perform annual audits of the full range of labour conditions at each factory owned or operated by Esquel. In addition, dozens of external audits of EGV performed at the request of the company's buyers provide recommendations for continuous improvement in workplace conditions at EGV throughout the year. Nevertheless, this corporate oversight function is not likely to be understood or trusted by EGV employees, at least in the short run, and will not serve as a means for establishing the grievance mechanism's legitimacy in their eyes without significant investment in awareness and experience. Legitimacy will have to be supported by other sources of activity.

The grievance mechanism calls for a grievance committee to meet as needed to address grievances filed by complainants. The grievance committee has been expanded from two to four people.¹⁵ In keeping with legal requirements, management and employees must hold an equal number of seats on the committee. At the conclusion of the pilot project period, employees were represented on the grievance committee

by the chair of the EGV labor union. While the chair was elected to that position by her fellow union members, her job at the factory is production systems manager, a management position. This dual role of production manager and union representative poses the potential for marginalizing worker representation on the grievance committee. The second employee position was vacant at the time of the facilitator's last visit to the factory, with the accountability for filling the open seat delegated to the chair of the trade union. The EGV CSR and human resources managers represented management on the grievance committee.

At EGV, the workforce elects 11 representatives; the elected representatives then select the union officers, including the chair and vice chair. However, since candidates for trade union representative are typically nominated from employees with supervisory grades or management responsibilities and endorsed through an election process, union representatives cannot be counted on to fully represent the views of employees. It was under these circumstances that discussions took place during the pilot project on how the perspectives of employees could be brought into the design and governance of the grievance mechanism. Area trade union officials confirmed that it is not now possible for factory-level union representatives to be elected free of management influence. Taking steps to encourage or promote independent employee representation is commonly perceived to increase risk of labour unrest and/or to violate the law.

Overcoming limitations to legitimacy

During the pilot project, the company participated in a number of consultations

¹³ Buyers were not included in the design or oversight of the grievance mechanism.

¹⁴ If a buyer were a party to a grievance, then it is possible that a buyer could become involved in that

particular grievance process. One example would be if a grievance was filed about excessive overtime and it was determined that the cause of overtime was due to the buyer's actions.

¹⁵ Grievance Committee in this document refers to the labour conciliatory council specified in the Article 163 of the labour code in Vietnam.

with a variety of labour and industry officials to understand the context of industrial relations in Vietnam and to inform the pilot project. Among others, consultations took place with Dang Thang Van, Chairman of the Vietnam General Confederation of Labour for the Vietnam Singapore Industrial Park (VSIP); Nguyen Phung Trun, Vice Director, Labour Office, Binh Duong Province; and Nguyen Hong Ha, Deputy General Director, Vietnam Chamber of Commerce and Industry (VCCI).

Vo Anh Tham, Vice Chairman of the VSIP, was asked to provide specific feedback to the draft grievance mechanism. Mr. Tham offered two suggestions, which were subsequently incorporated in the revised grievance mechanism:

“The time it takes to resolve grievances should be lower than initially drafted, taking into account the possibility that a grievance will escalate from supervisor to department head to the HR department, and, ultimately, to the director.”

“The non-retaliation clause was not placed prominently and clearly enough in the text to emphasize its critical importance. The factory should also make an explicit commitment to train employees and supervisors on this aspect of the policy.”

With these two caveats, Mr. Tham gave his approval of the policy, adding to the legitimacy of the design process in ways that were possible.

Ba Lam Nguyen, Project Manager for the Fair Labor Association in Vietnam, was consulted to provide analysis of grievance mechanisms in the factory at the outset of the pilot project period. A number of service providers were also canvassed to solicit perspectives about the advisability and the capacity to implement external communication channels and to provide training and opinion survey research. Tara

Rangarajan, Programme Manager for Better Work Vietnam, also provided rich context for the pilot project.

Key Learning

Conducting a regular assessment of the grievance mechanism’s effectiveness using clear, key performance indicators and widespread communication of the results of the assessment within the company, including employees at EGV, can support the legitimacy and transparency Principles. Formalization of the review process could also mitigate any potential perception of familial, intra-company manipulation of the mechanism for the benefit of management, and drive continuous improvement.

One hopeful development is that the Esquel corporate CSR department can help set the expectation across the company’s supply chain that the filing of grievances is an opportunity to enhance the quality of management-employee relations, as opposed to being a source of embarrassment to be avoided. EGV General Manager Kent Teh embraced this positive perspective.

During the pilot period, EGV became a participant in Better Work Vietnam, an initiative of the ILO and the International Finance Corporation (IFC) to improve compliance with labour standards and promote competitiveness in Vietnam’s apparel sector. As part of the Better Work Vietnam programme, an advisor is designated to work directly with each factory. The advisor helps to develop a sustainable system for the factory to implement improvements through a Performance Improvement Consultative Committee (PICC) comprised of management and union representatives. As one useful model for enhancing the quality of employee representation, Better

Work Vietnam advisory services are conducted through the factory-led PICC. This committee is responsible for prioritizing the improvement activities of the factory and for leading the progress. Importantly, the goal for the PICCs is to encourage dialogue between the trade union and management.¹⁶

In this context, it may strengthen the grievance mechanism to formalize the role of trade union representatives, regardless of their lack of independence from management. The formalization of roles can lay the groundwork for more complete representation of employees’ interests in line with international norms, and to ensure that, when the time comes, a more independent, democratic trade union is permissible and established. Ensuring the inclusion of the trade union in all key decisions of the grievance mechanism is another way to strengthen the mechanism.¹⁷

When the governance of a grievance mechanism is inward-facing at the factory level, as is the case with EGV, it will be more difficult to “know and show” that the mechanism is truly governed in a manner that protects the interests of all parties to a grievance. One method for addressing legitimacy in these circumstances may be to add rigorous process steps that can help demonstrate that the management is not using the grievance mechanism at its sole discretion. More than usual transparency may also be helpful.

Another method for enhancing the legitimacy of the mechanism is to engage an external party to conduct a complainant evaluation following the closing of each case. These complainant satisfaction surveys could generate information to drive improvements as well. It is possible that complainants would not be candid in

¹⁶ As of the end of the pilot period, the PICC of ten had been formed with equal representation of managers and union members/employees.

¹⁷ Unrelated to EGV, there is a union-strengthening initiative underway in Vietnam in conjunction with the employee section of the ILO and Australian trade union movement.

their evaluation of the process and the outcome if their comments could be traced back to them. However, it would be possible to survey a group of complainants at the end of a fixed period of time, such as three months. In this way, the likelihood that an individual's comments could be traced, and thus retard candid responses, would be mitigated. Recognizing that an end-of-process evaluation has value acknowledges that the complainant's signature of agreement on the grievance form may not be fully reflective of his or her views. Again, the complainant may feel compelled to "agree" to a proposed resolution when management is present.

Accessible: Being publicized to those who may wish to access it and providing adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.

Access points for the grievance mechanism at EGV include face-to-face communications with supervisors, suggestion boxes, the human resource office, and the CSR office. Potential additional access points are monthly "Open Talk" sessions that are convened for randomly selected employees and a counsellor that EGV is considering

hiring to serve an ombudsman function on behalf of employees.

In Summer 2009, the Fair Labor Association (FLA) analyzed the attitudes of management and employees toward factory grievance mechanisms at EGV. An external service provider, Truong Doan Co., Ltd., conducted the survey of 200 employees in accordance with the FLA's SCOPE process and concluded that although awareness of the EGV grievance mechanism is high, it could be more accessible and credible to employees. Documentation, implementation, and training on grievances could be improved as well.

In 2010, as part of its effort to identify proper communication channels, EGV management conducted survey research at the factory to establish employee preferences for communications (see Figure 3).

The survey research was the result of a written questionnaire distributed to 3,300 employees; 1,014 responses were received. The results corroborated the FLA survey as follows. Employees have general familiarity with various communication channels in the factory. Employees are most likely to interact with supervisors during the course of their day-to-day work schedule. Thus, supervisors rated highest among channels that employees say they would use to

communicate a concern.

Staff conducted research into various hotline services available in Vietnam and concluded that the services are not successful because they are viewed by employees as too impersonal, and will not likely be used. Nonetheless, other access points are available.

In addition, one-hour training awareness sessions had been conducted for 239 employees as of October 2010. The sessions are ongoing and address the basis for the grievance mechanism and the way it functions in the factory. Training for supervisors is scheduled.

In management's view, the complexity of the Principles in the context of a garment factory, together with the risk of poor communication with employees about the purpose a grievance mechanism, require that the revised grievance mechanism is communicated in a clear and simple way. The scope for workforce misunderstanding is a concern for management.

Key Learning

The factory's monthly "Open Talk" sessions, during which groups of 20 randomly selected employees are convened to learn about issues relevant to them in the workplace, are a good opportunity to communicate about the grievance

Figure 3. Employee Preferences for Grievance Communication Channels at EGV, June 2010 Source: Esquel

Opens surveys were conducted to evaluate worker feedback regarding who the workers trust most in terms of grievance channels.

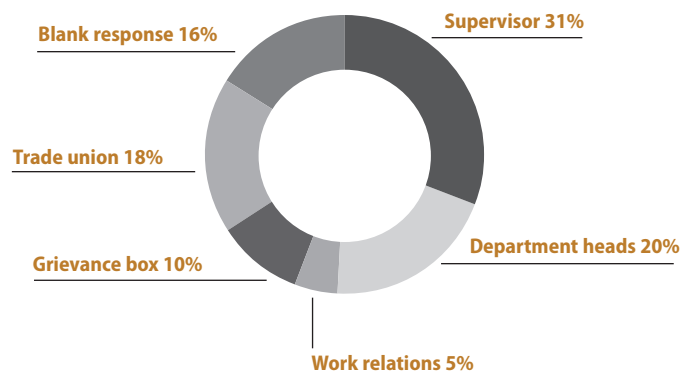
Survey Form:

At our homes or at our work, where people are involved we are bound to have conflicts and problems. If you have a grievance at our factory where would you feel comfortable going to? Please mark your choice in the paper given (mark A, B, C as order of preference):

1. Supervisor	4. Grievance box
2. Department heads	5. Trade union
3. Work relations	

Apart from these channels do you prefer to share your grievance with any other person? If so please tell us whom.

Please also write any additional ideas you have to make better relationship between the management and yourself.



mechanism and to solicit grievances that employees are comfortable communicating in this way. “Open Talk” sessions can also be used to report on grievances filed and responses taken by management. The availability and utilitarian value of the mechanism for employees, as well as its transparency, can be reinforced. Minutes of “Open Talk” sessions are kept and can be referred to as part of the Esquel’s corporate CSR department’s semi-annual review procedures.

A counsellor who can be routinely available to employees as a resource could be a potential access point as well. There are many examples of counsellors serving a valuable role for employees in factories. Esquel already has some experience with the use of counsellors in its other facilities. Since there can be many different roles that a counsellor could play in a factory, this needs further clarification. A counsellor could serve the very useful role of an access point, as a knowledgeable source of information about concerns facing employees, and/or as someone who could identify potential problems worth raising with management. A counsellor could also serve the useful role of accompanying a complainant to the meetings with management and the trade union, when requested by the complainant (see section 3.7: Dialogue and Engagement). Any counsellor would have to be fully versed in the need to protect the privacy and confidentiality of employees where appropriate.

Predictable: Providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.

The requirements for grievance mechanisms under Vietnam law provide for strict adherence to timeline and process at the factory level.¹⁸ The labour code also accounts for the escalation of grievances through the judicial process. Relevant sections of the EGV policy reflecting legal requirements are as follows:

- Step 1.** The employee raises his/her grievance to the immediate supervisor/superior.
- Step 2.** If the employee fails to obtain a satisfactory response from his/her immediate superior within three working days, he/she may refer the grievance to the section manager or section/department head. At this stage, the employee may, if he/she wishes, be accompanied by a representative of the trade union.
- Step 3.** If the employee still fails to obtain a satisfactory response within four working days of invoking Step 2, he/she may refer the grievance either directly or through the trade union, as he/she wishes, to the factory manager or human resource manager.
- Step 4.** If the employee still fails to obtain a satisfactory response within five working days of invoking Step 3, he/she may refer his/her grievance either directly or through the trade union, as he/she wishes, to the director of garment manufacturing. The director of garment manufacturing will try to resolve the matter within seven working days.

At all stages of the procedure, where a time limit is specified, the time may be extended by agreement between the management and the employee, or by the trade union if the employee has referred his/her grievance to the union.

Employees should raise a grievance as soon as it occurred, preferably within 14 working days from the date of its occurrence. An employee can raise a grievance either verbally or in writing. A person receiving the grievance should record the grievance in “Grievance Record Face-to-Face Communication” form and should be acknowledged by the aggrieved party. If the grievance is raised in writing, it should be annexed to the grievance record.¹⁹ Feedback should be provided to employees within three to seven days of receiving the grievance.

In addition to the legal requirements, EGV has created a formal documentation process for grievances filed, both written and verbal. Grievance tracking has begun by issue category and response time as well.

EGV management believes that processing and resolving grievances is a part of a supervisor’s responsibility and that proper handling of grievances allows the work unit to function effectively. EGV managers have observed that good decisions in handling and processing grievances can help create a positive working environment and keep management informed of employees’ concerns.

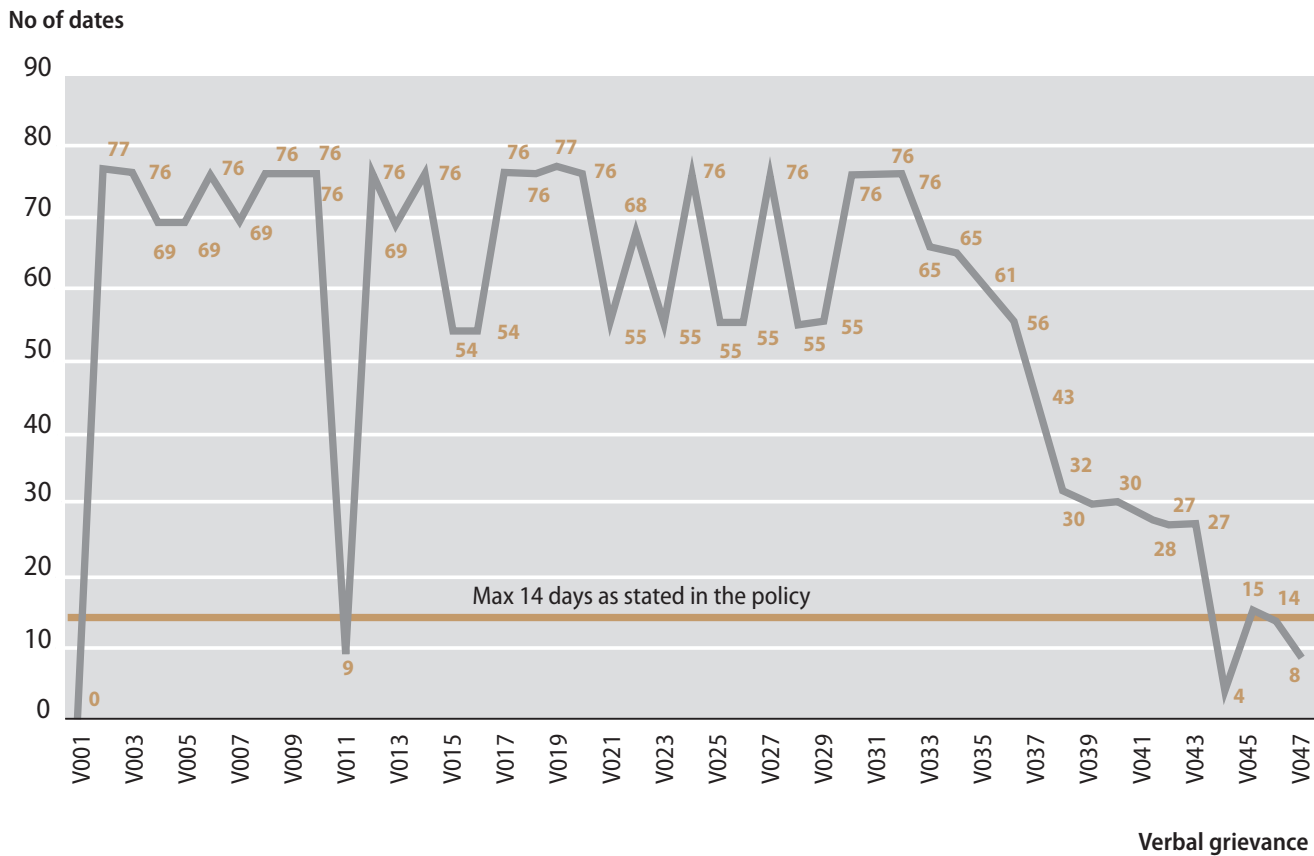
Key Learning

In terms of creating awareness for employees, the posting of actions taken in response to grievances on notice boards is widespread through the facility. Management is creating an additional notice board

¹⁸ Vietnamese Labour Code: 35-2002, Circular No. 22/2007/TT- Hanoi, October 23r, 2007, Decree No. 133/2007/ND-CP - Hanoi, August 8, 2007.

¹⁹ Source: EGV.

Figure 4. Response Time to Grievances Filed at EGV, January-October 2010 Source: EGV



specifically for grievances on the outside wall of the factory, near the cycle park, a convenient location for employees at a time when they are typically able to peruse a notice board.

Management recognizes that one area for improvement is the response time to complaints filed. The extent of the delays in responding was not fully appreciated until the data was organized, as represented in Figure 4.

Creating criteria for defining “serious” and “non-serious” categories was initially considered to be beneficial, with the proviso that the criteria and the classification of grievances would be reviewed by all parties (i.e., EGV human resources, the trade union, and Esquel’s corporate-level CSR department). Included in the “serious” category would be concerns about policies and procedures; included in the “non-serious” category would be requests that required the

dissemination of information. However, management is considering that the process of classification might marginalize “non-serious” complaints that could have serious implications for the factory. This view was stated as follows: “Even if the worker needs clarification on something, that means the worker was not clear of previous training given. Such cases give the [grievance committee] meeting the understanding that there could be even more workers who do not clearly understand the area of concern so should be considered seriously. We need to educate everyone who receives the grievance on how to inquire about the actual problem and how to deal with it appropriately, but not so specifically [focusing] on serious versus non-serious.”

There are many reasons why “non-serious” complaints may not be reflective of the employee’s complete concerns when first communicated. Particularly when

legitimacy and trust in the mechanism is at its early stages in the factory, employees may or may not feel safe to speak or write openly. Instead, the employee may test the grievance mechanism by submitting a complaint that is not fully reflective of his/her concerns in order to determine if the mechanism will be of benefit.

Similarly, there is value in treating every complaint seriously and not ignoring notes in suggestion boxes that may, on the surface, appear frivolous or unrelated to the employment relationship. The root cause of seemingly minor comments, or comments not directly related to the workplace, may indeed be of relevance to management after investigation.

As a practical matter, a standard meeting time of the grievance committee could be established to review submissions filed in order to ensure prompt responses.

Equitable: Ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.

Employees will have limited knowledge of legal rights and/or redress for violations of those rights before entering the Vietnamese garment factories. A majority of EGV employees have completed middle school, and just over half of the population has migrated to the area in order to work at the factory.

“Equitability” is a challenging Principle in an environment where there are few factory or community-level resources that are available and acceptable to EGV. There is not currently a robust list of trusted service providers, non-governmental organisations, or civil society actors that can provide needed support, such as a neutral source of information about rights for employees.

EGV is concerned about the use of accompanying parties by complainants, who may wish to pursue broader agendas or reflect interests outside the scope of the initial complaint. It is also the case that there are few organisations in Vietnam today that can be identified as having experience to play this role.

Key Learning

As a logistical matter, the factory will have to find ways for employees to engage in the grievance process without losing wages due to missed performance targets. Time away from production lines for engaging in grievance processes should not be deducted from wages. In a piece rate system, this will not be easy to do. In the absence of some protection against loss of wages, the motivation to use in-factory access points and to engage in dialogue will be diminished.

The search for trusted external resources that could serve as an independent source of information to employees and serve to accompany a complainant through the grievance process has not borne fruit to date, although the use of a counsellor is under consideration. The use of resources within the academic world could be a viable opportunity. In searching for external resources, knowledge of labour rights will be important.²⁰

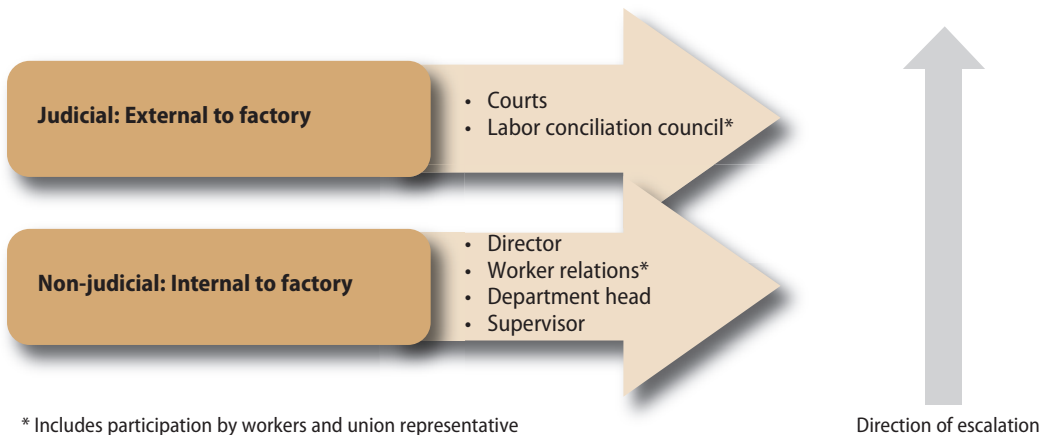
Rights-Compatible: Ensuring that its outcomes and remedies accord with internationally recognized human rights standards.

The revised policy and procedure can be seen in the context of judicial and non-judicial grievance procedures provided for under Vietnam law. Figure 5 below illustrates the escalation process and steps available to complainants. If an employee wishes to dispute a decision made by the company, such as disciplinary action/ termination, the case shall be specifically addressed to the grievance committee in keeping with Vietnam labour law.

If the employee is not satisfied with the decision of grievance committee, then the matter may be dealt with at the Provincial Trade Union, Labour Council or at People’s Court.

As noted earlier, Vietnam law places constraints on the independence of trade union representatives. The programmatic approach taken by Better Work Vietnam to build capacity of employee representatives over time can address this issue in the short term. Grievance mechanisms will require modification as the legal framework in Vietnam is adapted to further conform to ILO Covenants.

Figure 5. Escalation Process from Non-judicial to Judicial Grievance Mechanisms in Vietnam



²⁰ The assumption is that in a factory setting, where community impacts are relatively few, labour rights are viewed as a sufficiently broad scope to suffice for a rights-compatible approach.

Transparent: Providing sufficient transparency of process and outcome to meet the public interest concerns at stake and presuming transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.

The factory has a formal system of recording verbal and written grievances that are filed and of documenting the grievance process. Outcomes are recorded. EGV makes extensive use of notice boards for the purpose of providing information about actions taken in response to grievances filed. An additional notice board is being prepared exclusively for disclosure of the results of grievances.

In the revised grievance mechanism, all grievance records and letters are to be submitted to the EGV human resources and CSR departments upon resolution. The designated EGV human resources or CSR personnel will update the grievance database with all verbal and written grievances using the grievance submissions and grievance process records.

Grievance records are to be kept on file for two years. Meeting minutes of the grievance committee are recorded in a specific format as per the Vietnam law and are also maintained on file for two years.

Any grievances raised during the “Open Talk” sessions are also recorded in the grievance database by the designated EGV human resource or CSR staff.

In some cases, complainants are not currently informed of the outcomes of a grievance, particularly in cases where the complaint may in fact be something as simple as a request for information about a factory policy. The factory is considering the expansion of communications about outcomes to all complainants, regardless of the nature of the grievance, thus enhancing transparency and predictability.

Key Learning

Record keeping will be an important first step for the transparency of the grievance mechanism; sharing information with stakeholders will be another critical step and will also assist with measuring its effectiveness over time.

Based on Dialogue and Engagement: Focusing on the processes of direct and/or mediated dialogue to seek agreed solutions, and leaving adjudication to independent third-party mechanisms, whether judicial or non-judicial.

The grievance mechanism at EGV provides for dialogue in order to find solutions to grievances at several points in the established process. The training of supervisors on conflict resolution will provide them with competence to engage in conversations with employees about verbal grievances that arise on the shop floor. In cases in which serious grievances are raised, a meeting with the complainant and grievance committee is convened. In the case of written grievances, a similar meeting is called. The purpose of the meeting is to provide an opportunity for the complainant to engage in dialogue about the facts and the potential outcome of the grievance with the members of the grievance committee.

Retaining a counsellor trained in mediation skills could be an asset to both management and employees. A counsellor could help identify and resolve grievances through the informal verbal process as well as through the formal written grievance submission process.

As EGV looks for ways to continue to improve its processes, it will identify a separate room where private conversations can be held in order to be sensitive to the need for confidentiality. As well, the factory will look for other ways to express respect for confidentiality and to recognize the difficulty that some employees may have in coming forward to submit a grievance. For

instance, the factory could respond to all possible grievances with face-to-face communications as opposed to relying on notice boards for communication to employees.

IV. CONCLUDING OBSERVATIONS

The Principles proved to be a useful reference point throughout the period of the pilot project. Their breadth and scope provided a platform for EGV to examine existing policies and procedures, resulting in modifications to the grievance mechanism and numerous activities to inform employees of its availability.

Continuous learning is a key element of the process of implementing a grievance mechanism at EGV and throughout the parent company. Employee surveys help identify the ways in which employees will come to better trust management; those findings may well inform the ways that management communicates about the grievance mechanism (and meets other communication needs as well). The process of continuous improvement will cause the factory to modify policies and procedures over time. The continuous improvement process will be fully consistent with EGV’s mission to become one of the choice employers in the garment sector in Vietnam.

What is learned from the experience of designing and implementing the revised grievance mechanism will no doubt benefit the other facilities owned and operated by the Esquel Group.

Particularly in light of the wildcat strike that took place at the factory in July 2010, positive communications with employees is paramount to having a stable workforce. A well-functioning grievance mechanism is key to robust communication systems since it can serve as an early warning system for identifying concerns of workers.

The constraints of law and normative behavior regarding the independence of employee representatives required an increase in employee training and

awareness initiatives. Identifying and experimenting with innovative approaches will continue to be of benefit as the legal landscape in Vietnam changes. A phased-in or step-by-step approach to improve the quality of employee representation as permitted will be useful.

The requirements of implementing all of the Principles of Effective Grievance Mechanisms were viewed as complex by the management for a factory setting where grievances are typically limited to issues within the workplace. Ways to simplify a complex process without compromising the legitimacy of the grievance mechanism will require further experience.

Other ways that EGV intends to promote learning from the grievance mechanism are to share concerns raised on one production line with managers in other production lines. The semi-annual, corporate-level CSR review will be yet another opportunity to apply what is learned to improve management responsiveness to employees' needs and to increase the effectiveness of the grievance mechanism.

Key Performance Indicators (KPIs) can assess whether the grievance mechanism is working well. Initial KPIs for measuring the effectiveness of the grievance mechanism were identified and tested during the pilot project. The ten KPIs examined during the pilot period are listed below and can be roughly categorized as follows: 1) The KPI has high value as an indicator of the effectiveness of the grievance mechanism, 2) It is too soon to tell whether the KPI has high value as an indicator or not, and 3) External factors mitigate the KPI's value as a measure of the effectiveness of the mechanism. A listing of the ten KPIs examined during the pilot period are noted in the table below.

Key Performance Indicator	Category	Comment
1. Number of grievances filed.	High value.	This KPI works well to demonstrate the link between the awareness-raising activities and the utilization of the grievance mechanism. However, the fact that the number of grievances filed slowed after the initial spike in number is not necessarily the result of effective actions taken to resolve the concerns raised in the initial flurry of grievances. Further analysis would be necessary to make that claim.
2. Number of grievances pursued through other non-judicial mechanisms, NGOs, the media, or other third parties.	Too soon.	There have not yet been grievances that have escalated to other non-judicial mechanisms outside EGV. Due to a variety of external factors, this fact is not necessarily attributable to the effectiveness of the mechanism. Reviewing this KPI in a year may shed light on whether it can be a valuable measure.
3. Number of grievances receiving acknowledgement and a proposed course of action or interim update.	High value.	This is an effective measure of adherence to process. Since July, the factory has acknowledged 100 percent of complaints. However, the resolution timelines were in excess of the policy.
4. Number of registered grievances resolved through a mutually agreed outcome.	High value.	The factory can demonstrate an increase in the number of cases that are resolved through mutual agreement by tracking the number of cases in which employees' signatures are affixed to the report. However, an independent employee survey might be an additional data point for assessing the veracity of employees' attestations when made in the presence of management.
5. Number of grievances of the same or similar nature.	Too soon.	There has not been sufficient time to evaluate this KPI; the data pool is insufficient.
6. Number of times customers note problems in the grievance system when they conduct social compliance audits.	External factors mitigate value.	EGV has received 16 external audits from January – October 2010. None of the audits noted issues related to employee grievance mechanisms (although employee interviews did identify a number of grievances related to the employee grading system, meals in the canteen, work environment during night shift and piece rate calculation). However, the scope and quality of audits mitigate the effectiveness of this KPI. Routine social audits do not examine grievance mechanisms in depth.
7. Absenteeism, staff turnover and/or productivity.	Too soon.	At this point, it is too difficult to make direct correlations of this kind. The 2010 EGV Employee Satisfaction Survey results indicated better performance than 2009 in general. The FLA SCOPE/SCAT could be redone in order to create a complete assessment.
8. Feedback through direct employee surveys to measure the awareness of the mechanism's existence and whether or not it is perceived as credible, as well as employees' overall attitude toward the company.	High value.	When comparing the employee satisfaction surveys done in 2009 and 2010, there are increased comfort levels among workers to raise grievances. However, the employee satisfaction survey looked specifically at workers' views on what would be the best kind of access points. This was particularly helpful in the design of the mechanism.
9. Trainings are conducted according to the training plan.	Good.	Grievance policy related trainings were conducted as per the plan to cover 100% of employees and supervisors. Supervisor training has not yet taken place. The training plan is an important part of enabling an effective grievance mechanism and can be measured.
10. Work stoppages, strikes, labour unrest.	Too soon.	There has been no labour unrest since the July 2010 strike and the launch of the revised grievance mechanism. However, this would likely be a more informative KPI over the long term. Labour unrest can surely be influenced by a number of other factors. Note: The costs of incurring a strike are high; that risk could be significantly mitigated through grievance-handling mechanisms that were viewed by employees as legitimate and trusted. A KPI to measure risk abatement that includes the absence of strikes amongst other factors could be considered as well.

Sakhalin Energy Investment Corporation

Sakhalin, Russia

Pilot Project to Test Principles of Effective Grievance Mechanisms

by Luc Zandvliet,
CDA Collaborative Learning Projects

I. INTRODUCTORY BACKGROUND

Sakhalin Energy Investment Corporation Ltd. (referred to as Sakhalin Energy in this report) is the operator of the Sakhalin-2 Oil and Gas Project (“Sakhalin 2 Project” or “Project”). The project is located on, and just offshore from, Sakhalin Island in the Russian Far East. The project is a joint venture between Gazprom, Royal Dutch Shell, Mitsui & Co. Ltd, and the Mitsubishi Corporation.

The project has a large geographical footprint with over 800km of onshore oil and gas pipelines, an onshore processing facility, a liquefied natural gas (LNG) plant and an oil export terminal, in addition to three offshore platforms.

Part of the territory affected by Sakhalin 2 Project has never been an object of any major industrial development before. Furthermore, operations take place in an area of high ecological vulnerability.

During the peak of construction of Phase 2 (2006-2008), the Project employed around 25,000 workers, including both Russian and foreign contractors. The US\$6.7 billion project funding was received from a consortium of international finance institutions, which insisted on the presence of an effective community grievance mechanism as part of the company’s policies and practices and which still conducts audits that include the grievance mechanism on a periodic basis.

Over 220,000 people are considered to be from those communities which are/were directly and indirectly affected by the Project, out of a total population of an estimated 520,000 people. These Project-affected groups include indigenous communities.

During the period of the pilot project, Sakhalin Energy had a grievance mechanism consisting of three distinctly different grievance procedures (GP) that were all introduced in 2004 but which were combined into one as part of lender requirements in 2005. These included the following.

1. The community grievance procedure (or Community GP) deals with external stakeholder concerns as well as with grievances of (sub) contractor staff. The Social Performance Team (within the External Affairs department) manages the procedure. The grievance volume was slightly more than 150 claims per year during the peak of construction (2006) and has seen a steady decline toward 30 to 50 per year since.
2. The employee grievance procedure (HR Grievance Procedure or HR GP) is accessible to Sakhalin Energy employees only. The Employment and Relations (ER) Team (within the Human Resources department) manages the procedure. The volume of officially logged grievances is as low as less than five grievances per year in 2010, which at least in part reflects a deliberate strategy to address issues and concerns informally before they enter the official system.
3. The Whistle Blowing Procedure is primarily related to allegations of unethical behaviour, such as bribery and corruption by (contractor) staff. The Whistle Blowing Team (within the Audit department) manages this procedure. The Whistle Blowing Policy is an umbrella for all of Sakhalin Energy’s grievance procedures.

The application of the Principles being tested in this pilot pertained mainly to the company’s first two procedures, though the wider database system that tracks all incidents and grievances, including for the Whistle Blowing Procedure, was also the subject of discussion. All community as well as employee-related grievances are automatically copied to the whistleblowing team in order for it to assess grievances from an ethics perspective and, if deemed necessary, to address the case through the Whistle Blowing Procedure.

Sakhalin Energy became a participant in the pilot project for testing the UN SRS’G’s grievance principles at the point when the



company had just finalized construction and entered its operations phase. At that time, the various grievance mechanisms had already gained internal ownership and full management support and control.

In order to comply with commitments to its lenders, Sakhalin Energy has had to apply a high degree of rigor in the development of the community grievance procedure. Since its launch, the community grievance procedure in particular has been revised to include lessons learned and improve the process. Major revisions took place in 2006 and 2008.

II. PROGRESS AND LEARNING BY PRINCIPLE

As part of Sakhalin Energy's participation in the pilot project, three visits were conducted to Sakhalin Energy over the course of 18 months (August 2009-December 2010). Following is an overview of the main observations gathered during these visits. It takes each one of the SRSG's Principles in turn and, as relevant, identifies:

1. The strengths identified in the pilot process when Sakhalin Energy tested the principle in practice, based on feedback from company staff;
2. The challenges Sakhalin Energy experienced when testing the principle in practice, the issues considered in addressing the challenges, and the approaches ultimately adopted;
3. The broader learning relevant to the testing of the SRSG's Principles.

Legitimate: Having a clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.

Strengths

Internally, the three procedures (community grievances, employee related grievances and the whistle blowing procedure) have legitimacy through a combination of explicit management support backed up by a database system that both automates and escalates a grievance to the next level of authority when deadlines are not met or procedures are not followed. This system provides rigor to the procedure in that it avoids interpersonal power dynamics that could delay the solving of a case. As one member of staff put it, "Once a grievance enters the system, there is no way of stopping it until it is closed out according to our procedure."

The Sakhalin Energy Grievance Officer coordinates all community-related grievances and heads up the Grievance committee that has the authority to assign responsibility to investigate/address a case to the head of the department associated with the grievance, or to the contract holder in case a contractor is involved. The fact that refusing to accept such an assignment is not an option is evidence of the degree to which the GP has internal traction.

As part of the procedure, a case is resolved when the complainant signs off on a "Satisfaction Form," which is one of two Key Performance Indicators (KPIs); the other KPI measures whether grievances are resolved within a set timeframe.

The governance structure of the GP includes the active involvement of senior management. Missed deadlines and other non-compliance with the procedure are addressed in different leadership meetings in the presence of senior managers. In addition, the Business Integrity Committee includes the company's highest ranking

officers (including the CEO), and is the only organ that can officially close out grievances when the complainants have not responded to the investigation outcome within a certain period of time. The committee does so only after ascertaining that the internal procedure has been followed to the fullest extent.

External monitoring of the community grievance procedure occurs on a periodic basis by senior lenders and/or their consultant; the RAP (Resettlement Action Plan) and SIMDP (Sakhalin Indigenous Minorities Development Plan) related grievances are monitored by external experts through verification of documentation in the grievance tracking system and meetings with current and former complainants, potential complainants and community leaders. Such external monitoring provides additional legitimacy of the mechanism internally, as staff members observe that lenders find the grievance mechanism important enough to assess Sakhalin Energy's social performance. All external monitoring reports are publicly accessible via the company's website. In addition, the company verifies community feedback regarding the procedure during periodic workshops with librarians who help community members to file complaints in Sakhalin Energy's information centres.

With regard to external legitimacy, Sakhalin Energy has made use of perception surveys to verify who people trust to represent their interests and solve problems. The company has used the outcome of these surveys to work closely with local authorities, whom local people say they use as their first point of contact and are thus trusted bodies in the community.

Challenges, issues considered and approaches adopted to address these challenges

Sakhalin Energy has questioned the need for an independent external oversight committee as a prerequisite for the

grievance mechanisms to have legitimacy in the eyes of its users. The company points out that lending agencies and independent external monitors for the RAP and SIMDP apply regular audits that include the community grievance procedure.

Indications that users see the community grievance procedure as legitimate include the fact that communities occasionally reach out to the company to address issues that are, in theory, in the domain of the government, such as snow removal or road repair. One respondent stated, “We know this is not a company responsibility, but you are the only ones who listen to us.”

However, some challenges have arisen. Roughly half of the community grievances logged in 2009 had to be closed out by the Business Integrity Committee. In many instances, this was apparently because complainants could not be identified or contacted. In response, during the pilot project Sakhalin Energy started to increase its efforts to follow up with complainants who had refused to sign the form; company representatives explained the role of the form as well as the grounds of the company’s response in situations where the outcome of the grievance investigation was not the one expected or requested by the complainant. This approach has led to a significant increase in the number of signed satisfaction forms.

With regard to the employee grievance procedure, the HR department attributed the very low number of formal grievances to the ability of the department to address concerns in an early phase; that is, before reaching a level where employees would log a formal grievance. This raised the question whether the low number of grievances should be seen as a sign of

legitimacy of the grievance procedure or as a lack thereof. Although staff of both the External Affairs department (administering the community grievance procedure) and the Human Resources department (administering the employee grievance procedure) said that they *know* that both procedures are legitimate and trusted, the challenge was to also *show* this is the case. For example, how does Sakhalin Energy know, and how is it able to show, that people who do not use the grievance procedure (GP) do so because they have no need to use the procedure, rather than because they lack trust in the procedure?

To address the “know and show” question, the Human Resources department started to log “potential grievances” which are loosely defined as those in which an employee signals he or she has a problem and needs help from the HR department. Taking such an approach revealed potential grievances, and patterns in grievances, that would not have been detected previously, and also helped show that the procedure was trusted enough to be used even though many issues were not turning into formal grievances.

With regard to indigenous peoples, questions were raised about the accessibility of the community grievance procedure and how far it is trusted by indigenous peoples. An independent monitoring team on the Sakhalin Indigenous Minorities Development Plan (SIMDP), a Sakhalin Energy sponsored project aimed at generating benefits to the Island’s indigenous population, noted concerns expressed by indigenous peoples related to the distribution of benefits; these concerns were not reaching the community grievance procedure. To

address these concerns, the company offered to discuss setting up a separate grievance procedure to address issues related to SIMDP.²¹ The SIMDP 2 development working group²² decided to establish a separate SIMDP grievance procedure beginning January 1, 2011. This grievance procedure will deal solely with grievances and concerns related to the SIMDP. The new grievance procedure was discussed with, and approved by, indigenous communities during public consultations in all seven districts where indigenous peoples reside. These discussions included the procedure principles, governance structure, communication and accessibility. The procedure²³ was accepted at a special conference of indigenous communities and the discussion and approval process was documented on video and in minutes.

Key learning

Key learning from Sakhalin Energy’s participation in the pilot project with regard to the legitimacy principle includes:

- The need for companies to develop the means to know, as well as to show, that a grievance procedure has legitimacy in the eyes of its users as well as in the eyes of those that have not yet used it. Sakhalin Energy makes use of annual perception surveys that include questions asking if people know about the community procedure, how people feel about the company and what alternative venues they would use to ensure their grievances are addressed. Feedback from the surveys shows that people who used the procedure would do so again. In future perception surveys, Sakhalin Energy will also verify the

²¹ SIMDP 2 and the information about its development and approval can be found on SIMDP web-site - www.simdp.ru (Russian) and www.simdp.com (English).

²² SIMDP 2 development working group comprised representatives of the Regional Council of the Authorized Representatives of Indigenous Minorities of Sakhalin Oblast, Sakhalin Energy, the Sakhalin Oblast

Government, the Sakhalin Oblast Duma (elected legislative assembly) and Russian Association of Indigenous Peoples of the North, Siberia and the Far East - the umbrella organisation of Indigenous Peoples in Russia. Six of eight working group members were indigenous. The goal of the working group was to elaborate recommendations for the development of SIMDP 2 on the basis of experience and lessons learnt

from the first SIMD Plan, as well as the results of two rounds of IP consultations, held in all Sakhalin districts of traditional living of Sakhalin Indigenous Minorities.

²³ The procedure is publicly available in communities and on the SIMDP web-site <http://www.simdp.ru/?page=news&id=21>

opinions of those who have not yet used the procedure and might be less inclined to do so.

- Participation of Sakhalin Energy in the project led to consideration of more detailed testing of satisfaction levels in the handling of grievances. For example, the satisfaction form that the External Affairs department uses to close out a grievance does not specify if the “satisfaction” is with the outcome of the grievance or also with the process by which the grievance was handled. To better measure the various aspects of legitimacy, Sakhalin Energy is considering inserting two check boxes on satisfaction letters or outcome forms:
 - To express satisfaction with the outcome of the grievance
 - To express satisfaction with the process of the grievance procedure (acknowledgement, communications, etc.)
- According to the company, incorporation of the procedures into the corporate governance and management systems (including assurance and oversight), along with explicit support and ongoing commitment from company leadership, have been essential to ensure the grievance procedure has maintained its rigor and internal legitimacy over time.

Accessible: Being publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.

Strengths

Sakhalin Energy is making comprehensive efforts to publicize its grievance procedures. With regard to the community grievance procedure, the company uses an ongoing information campaign that includes leaflets in various languages for foreign contractor staff, public community meetings, bulletin boards at central

locations in main towns, plays, posters, newspaper announcements, meetings with authorities, induction modules for all (contractor) staff and other methods of communication. These dissemination venues were determined based on suggestions provided by users through a public survey and public meetings. In addition, targeted campaigns are used to reach particular project affected groups. For example, meetings were held with Project-affected land users and owners and a special note was developed to explain the procedure and how to file a grievance. At least twice a year, a company delegation visits Hokkaido (Japan’s most northern island) for a discussion with officials, fishermen and others to ensure that possible grievances and concerns from such stakeholders are known and addressed.

In terms of accessibility, the community grievance procedure has a range of access points: by mail and email; by phone, including a secure phone line; through a Community Liaison Officer (CLO); the Grievance Officer; through a company line manager; by a secure website; through the whistle blowing focal point; and through the company’s information centres in local libraries.

The shift from construction to the operations phase meant a reduction in the number of Community Liaison Officers (CLOs) employed to cover the project area and thus an increased geographical area for each remaining CLO. To compensate for this reduced accessibility to CLOs, the company established 23 “information centres” in existing community libraries and trained the librarians (who are government employees) to accept grievances from community members and/or support community members in filling out a grievance form. The librarians state that this increased responsibility has made their jobs more interesting. At the same time, the computers and Internet access provided to each library by the

company has increased the service level of each library to their community.

The HR department mentions the employee grievance procedure during induction modules for new employees and uses posters and leaflets in the various workplaces to raise awareness. One of the department’s other main tools is the use of an easily accessible and attractive intranet. During awareness campaigns, the GP has been part of a “pop-up” screen that appears when staff members log into their computers; additionally, all staff receive an email alerting them to the existence of the grievance procedure.

To facilitate access for employees working far away from the HR offices (such as on off-shore platforms), each asset or department within the company has designated “HR-in-the-business” staff who provide guidance to employees on how to access the grievance procedure, what steps to take, and more.

Challenges, issues considered and approaches adopted to address these challenges

Sakhalin Energy undertakes extensive efforts to publicize the community grievance procedure. The company verifies the effectiveness of these measures to adjust and to make improvements. Still, random questioning (e.g. via regular public opinion surveys that are carried out by specialized contractor) suggests that many people are unaware of the GP’s existence. At the same time, most people also stated that if they had a problem, they would find out where to go and not hesitate to raise issues of concern.

With regard to indigenous peoples, the external monitor of the Sakhalin Indigenous Minorities Development Plan (SIMDP) pointed out that indigenous peoples do not, from a cultural perspective, respond to a written form of dissemination but instead need verbal communication on a person-to-person basis. In response, Sakhalin Energy

conducted a public opinion survey specifically amongst indigenous communities, which showed a steady increase in community members' awareness. During the pilot, the SIMDP 2 development working group solicited further suggestions from indigenous communities about how to increase awareness among indigenous peoples and how to ensure accessibility. The company now distributes a booklet and a simple poster explaining the grievance procedure to indigenous peoples on a house-to-house basis so that a verbal explanation can be provided while handing out the booklet.

Key learning

Key learning from Sakhalin Energy's participation in the pilot project with regard to accessibility includes:

- There is a need for companies to develop means to know, and be able to show, that their grievance procedures are accessible. For example, the company needs to be able to ascertain that a decline in grievances reflects "success" rather than a lack in perceived access to, or legitimacy of, the procedure.
- Feedback from surveys shows the importance of using a specific means of communication for different population groups, e.g. indigenous or non-indigenous, or for those living in urban areas compared to those living in rural contexts. Sakhalin Energy uses different means of communication for each population group.

Predictable: Providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.

Strengths

Both the community grievance procedure and the employee grievance procedure follow set timelines with regard to *addressing* a grievance as well as with regard to *communication* with the aggrieved person. For example, the system includes mandatory grievance acknowledgment and status updates after a specified period of time.

The required steps and timelines have been agreed upon with lenders and are shared with the users of the procedures. Especially with regard to the community grievance procedure, timelines are rigorously tracked and enforced through the use of the database system.

All outcomes regarding grievances are documented in written form and mailed or emailed to complainants. This is followed by a phone call to verify that complainants received the outcome. Alternatively, the written outcome can be personally handed over by Community Liaison Officers.

Challenges, issues considered and approaches adopted to address these challenges

Each investigation outcome is followed by a CLO visit or a visit /call from the Grievance Officer to verify satisfaction of the complainant with an outcome. There is no option for non-legal recourse within the procedure if the complainant is dissatisfied with the outcome, except where the company and the complainant both agree there is a basis for mediation. In the event that the complainant is dissatisfied with the proposed outcome, during discussions with the complainant, company staff point out external recourse mechanisms such as bringing the case to court, to a public

prosecutor's office, to administrative offices for residents' complaints, or to the Labour Inspection department of the local administration. Such an approach is considered to be more personal compared to including a standard sentence in the satisfaction form pointing out to people that their use of the Sakhalin Energy procedure does not take away their right to seek alternative venues for recourse.

Hence, the challenge is to make sure that discussions about the recourse options available to aggrieved people not only take place but are also documented in a manner that allows Sakhalin Energy to demonstrate alignment with this aspect of the predictability principle. To address this challenge, the company has considered changes to the grievance leaflet that would make it more culturally appropriate as well as more clear in the context of the whole procedure. The message will be communicated that the statutory rights of the complainant to undertake legal proceedings remain unaffected by the procedure. As of March 2011, this message is included in the SIMDP Grievance Procedure.

Key learning

Key learning from Sakhalin Energy's participation in the pilot project with regard to the predictability principle includes:

- Predictability generally refers to clear and known procedures for each stage and clarity on types of processes and outcomes. There is an opportunity to also explicitly include the steps available to complainants if they do not agree (or remain unsatisfied) with the company's response to their grievance.

Equitable: Ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.

Strengths

The drive to address grievances in a satisfactory manner and have stakeholders sign off on the satisfaction letter means that the company makes considerable efforts to pursue a fair approach.

There are examples where Sakhalin Energy did not identify any technical fault on the part of the company, but nevertheless continued to address the issue, mostly due to social considerations.

Sakhalin Energy endeavours to raise the capacity of potential users of its procedures. Following an increase in the number of labour-related grievances from subcontractors, special information sessions were initiated (addressing key labour norms and issues for special attention in labour agreements/contracts) in addition to inductions. Indigenous communities receive training and information sessions on social projects and grievance procedures; Project-affected land users receive individual explanations on the compensation procedure, how to calculate their compensation and how to use the grievance procedure in case they are not satisfied.

In two cases where the company and stakeholders thought it would be useful to bring in expert resources, the company funded the associated costs. One case included an expert to facilitate a discussion with a group of concerned landowners; on another occasion, the company brought in a content expert to explain how company programmes for indigenous peoples should be seen in light of international standards.

As for the company employees, the HR department provides HR-in-the-business staff whose key role is to support staff in other departments with advice,

consultations, and guidance on how to access the employee grievance procedure.

Challenges, issues considered and approaches adopted in addressing these challenges

The Sakhalin Labour Office provides an avenue for employees to seek support in addressing labour related grievances.

The remaining challenge facing the company is how to make sure that users of the community grievance procedures have reasonable access to information, advice and expertise, and to demonstrate that users of the procedure feel they can engage with the company on equitable terms. For example, in one case, local stakeholders challenged the findings of the company's environmental monitoring consultant. As the consultant is the only contractor available on the island, Sakhalin Energy argued that bringing in another contractor would be more expensive and would also contradict fair tendering requirements.

Key learning

Key learning from Sakhalin Energy participation in the pilot project with regard to the equitability principle includes:

- The equitability principle is broadly supported by companies. However, its practical application requires an internal discussion of how far the company is prepared to go in proactively seeking to ensure that complainants have access to external expertise in a way that is integrated into the grievance procedure, and accessible when objective criteria are being met.

Rights-Compatible: Ensuring that its outcomes and remedies accord with internationally recognized human rights standards.

Rights compatibility was not explicitly discussed during the various site visits. Still, various examples show that Sakhalin Energy makes great efforts to ensure that the design of the grievance mechanism, as well as the outcomes of the grievance process, are in line with human rights standards.

The design of the grievance procedure includes a special provision for vulnerable people. The grievance database system highlights complainants identified as "vulnerable" and agreements with lenders require that the company reports specifically on grievances and complaints from these individuals.

Another example highlighting rights-compatibility is that the Sakhalin Indigenous Minority Development Plan (SIMDP) applies to the entire indigenous population on the island, rather than only those indigenous peoples living in communities directly along the pipeline. This approach is based on the acknowledgement that the project impact is such that it might affect the lifestyle of all indigenous peoples, either directly and indirectly. Periodic independent external verification of the SIMPD by an indigenous peoples expert provides further assurance that the programme upholds international standards.

Regarding workers rights, Russia has a strong Labour Office, which enjoys broad support, applies a rigorous approach and has a low tolerance for corporate shortcuts. Consistently and repeatedly, company staff mentioned the importance of adhering to the rules of the Labour Office.

Transparent: Providing sufficient transparency of process and outcome to meet the public interest concerns at stake and presuming transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.

Strengths

Besides providing an acknowledgement letter on receipt of a complaint, Sakhalin Energy provides updates to complainants about the status of a particular grievance, mainly through periodic contacts between the Community Liaison Officer /Grievance Officer and the individuals concerned. Aggrieved individuals can also contact the Community Liaison Officers themselves, as phone numbers of these company staff are freely given out and posted on written materials. When it involves community cases, feedback is provided during community meetings.

On an annual basis, the company publishes grievance-related data in its Public Consultation and Disclosure Report, which is available on the company's website.²⁴ The report provides information about the number and category of grievances received, the percentage of grievances resolved within the period stipulated in the community grievance procedure and the number of grievances that were solved through satisfaction forms signed by the complainant.

The Human Resources department has started to publish its log of "potential grievances" brought forward by employees on its intranet web site. "Tricky or difficult questions" that employees have asked the department are published as well. The department omits any names to maintain confidentiality of the potentially aggrieved party, but provides responses to the potential grievances in a way that is useful for other staff. The company has offered

the union access to the log.

There is evidence that the level of corporate accountability and transparency is used by local authorities as an example for other companies operating on Sakhalin to follow. Residents are voting former company/contractor employees from the Social Performance department (Community Liaison Officers) into public positions based on their record in applying the principles of transparency and accountability. The transparent nature of dealing with corporate grievances is a markedly new approach on the island and one that local residents say they appreciate.

Challenges, issues considered and approaches adopted in addressing these challenges

Sakhalin Energy operates in a context where confidentiality related to grievances has a long history and is, in some instances, enforced by law. As a rule, the outcome of collective community grievances related to public issues is made public by the company, whereas the outcome on individual grievances is kept confidential from the public unless requested otherwise by the concerned individual.

Against this background, discussions within the company during the pilot project revolved around the question of how the company would know, and be able to show, what local stakeholders and employees find an appropriate level of transparency, other than legal requirements regarding confidentiality.

One of the responses contemplated by Sakhalin Energy is to include this question in a next round of perception surveys.

Key learning

Key learning from Sakhalin Energy's participation in the pilot project with regard to the transparency principle includes:

- Experiences with Sakhalin Energy demonstrate that transparency regarding the status of grievances within the larger process is of utmost value to individuals. Feedback from complainants signals that they perceive that the company pursuing a transparent approach throughout the process demonstrates respect. This is likely one of the reasons why people who did not get a favorable outcome on their claim still decided to sign off on Satisfaction Forms.

Based on Dialogue and Engagement: Focusing on processes of direct and/or mediated dialogue to seek agreed solutions, and leaving adjudication to independent third-party mechanisms, whether judicial or non-judicial.

Strengths

As a standard element of the community grievance procedure, engagement around the outcome of the grievance investigation process takes place with all complainants, either by the CLO or the grievance officer. Such discussions aim to clarify the procedure, specify the complaints, go over potential options, and/or explain what is reasonable or possible to expect from the company. Sakhalin Energy's engagement around finding solutions to problems is a relatively unusual practice in the Sakhalin context and sometimes comes as a surprise to people. The objective to find satisfactory resolutions to identified problems, manifested in signed satisfaction forms where it concerns community grievances, is a main driver for using extensive dialogue. There are multiple examples where the consultation process has yielded solutions to the mutual satisfaction of both the company and the aggrieved party that would not have come about without dialogue and the dedication of company staff to address issues.

²⁴ http://www.sakhalinenergy.com/en/documents/PCD_Report_2010_Eng_FINAL_clean.pdf

Challenges, issues considered and approaches adopted in addressing these challenges

The community grievance procedure includes the option for mediation if certain basic criteria are met, such as evidence that material, physical and/or economic displacement is directly related to company activities and that damage from displacement is remediable, or evidence of disturbance/nuisance caused by Project activity. Both parties need to agree that mediation is a reasonable and justified means to address a grievance. The Land Acquisition Board and the Business Integrity Committee (BIC) are the only bodies that currently can approve formal mediation on behalf of the company.

Sakhalin Energy's efforts to satisfy complainants often go further than what is technically required and include the active search for options. The company is confident that if it reaches a final conclusion, it has genuinely done everything possible (within reason) to satisfy the complainant. In many cases, the company seeks the opinion of local administrators, who are a third party, in finding options for community-related grievances.

Hence, if the company cannot see any alternatives to the ones already proposed and when the legal team has concluded that the Sakhalin Energy position is robust, it is disinclined to use the mediation option. This limits the opportunity for exploring alternative options that one party alone may not recognize, which is the essence of mediation. There were discussions about widening the availability of mediation, given both that it could help address real grievances or conflicts that may not be grounds for a lawsuit and that it did not bind parties unless they reached agreement.

With regard to the employee grievance procedure, the Human Resources department used to announce its response in writing only and then closed the case.

More recently, the department decided to first announce its decision in writing to the concerned employee and then engage with the employee to verify satisfaction with the outcome. Encouraged by the results, a next step is to engage with employees to explain the reasons for the response rather than to only solicit feedback. Obviously, the last step would be to engage with the employee before the department provides its official response.

Key learning

Key learning from Sakhalin Energy's participation in the pilot project with regard to the dialogue and engagement principle includes:

- Face-to-face dialogue between trained CLOs and complainants is essential for distinguishing between complainants' positions (what they say they want) and their underlying interests, such as fears or concerns, of which their immediate complaint may be just a symptom. By focusing on addressing underlying interests, as Sakhalin Energy has done, the company has managed to come up with more satisfactory and more creative solutions than initially demanded by the aggrieved party.
- Sakhalin Energy uses a number of third parties in its grievance-handling process varying from local administrators, external technical experts, lender reviewers, external companies hired to conduct perception surveys, and others. Still, there is an opportunity to better explain to management and the users of the grievance mechanism the various ways by which third parties can be included in the resolution of grievances through alternative dispute resolution. Alternative dispute resolution can have various forms, such as facilitation, mediation, arbitration, and provision of expert advice. Each of these forms has different advantages and disadvantages. For example, although an independent "recourse committee" and mediation

both provide an opportunity for aggrieved parties to have their voice heard in case they do not agree with a company outcome, the recourse committee is a body that provides a check on the quality of a process or an outcome whereas mediation is a process over which both company and complainant retain "control" to the extent that nothing is agreed unless both agree to it.

- Sakhalin Energy also has the opportunity to disseminate the mediation option more widely to the users of the grievance procedure so that these users are aware of its existence and about the conditions under which this option can be activated.

A source of continuous learning

Strengths

The Social Performance department periodically conducts analysis of the issues raised through its grievance procedure, which leads to the flagging of action points. These are passed on to the Issues Manager, who subsequently meets with the various heads of departments to highlight actual or potential risks related to the action points.

To broaden the responsibility of Sakhalin Energy staff and contractors, Sakhalin Energy conducts awareness training for contracting staff, Sakhalin Energy contract holders and others who are tasked with overseeing contractor behaviour. Quarterly workshops with the librarians populating the Sakhalin Energy information centres are used by the Grievance Officer to provide updates and training on the grievance procedures to these public servants.

The Human Resources department plans to use the log of potential grievances and difficult questions as a source of continuous learning. The department aims to develop an additional Questions and Answers (Q&A) page on its website and to

use the potential grievances and other feedback from employees to develop short manuals for line managers on HR-related issues in an effort to put more emphasis on grievance prevention.

Challenges, issues considered and approaches adopted in addressing these challenges

The main Key Performance Indicators (KPIs) related to the community grievance procedure are related to the percentage of satisfaction forms signed and compliance with the time frame to resolve grievances. Agreements with international lending agencies on the modalities of the grievance procedure require that lenders need to approve any modifications to the procedure. Although Sakhalin Energy is satisfied with the KPIs that are currently applied and all other aspects of the grievance procedure, the need to get lender approval for changes to the procedure is a slightly cumbersome process and makes it necessary for any lessons learned to go through an additional step before they can be formally integrated into the grievance procedures.

Key learning

Key learning from Sakhalin Energy's participation in the pilot project with regard to the continuous learning principle includes:

- Although various good process and outcome KPIs exist, it is important to include the users of the grievance procedure in the discussion around indicators that best allow the company to "know and show" performance of the mechanism. One idea discussed during the pilot project was to use periodic surveys to gain more insight into user perceptions with regard to measuring "success."

III. FINAL OBSERVATIONS

The participation of Sakhalin Energy in the pilot project provided a number of overarching observations.

1. Sakhalin Energy's experience shows that the SRSG's Principles are robust and supported within the company. At the same time, the company's experiences in working with the Principles also showed the importance of, and scope for, companies finding their own path to meeting the Principles.
2. A key observation that emerged during the various visits is a need for the Principles to distinguish between two forms of dialogue and engagement with affected stakeholder groups. First, dialogue should take place in the process of seeking a resolution to a specific grievance. However, engagement should also evolve around gaining input to, and feedback about, the grievance-handling process in general. For example, Sakhalin Energy makes abundant efforts to engage with people to seek grievance-specific solutions, but there is also an opportunity to discuss with local stakeholders the functioning of the grievance process itself. Without this dialogue with stakeholders about the process, it is difficult to determine the effectiveness of the Principles: knowing the best way to publicize the GP, knowing the ways by which aggrieved people want to engage, knowing how the company can address perceived power imbalances, knowing if local people find the procedures predictable, and more. Sakhalin Energy's efforts to develop a grievance procedure specifically for the SIMDP is an example of how engagement and dialogue with indigenous peoples regarding the overall grievance-handling process led to a change in the process accepted by the end users.

3. This poses the question of how alignment with the SRSG's Principles should be measured. Discussions with regard to KPIs identified the need to develop indicators specifically linked to each of the Principles. At the same time, the development of standard KPIs per principle is difficult in light of the absence of a prescribed approach and the need for some flexibility. Therefore, it appears most appropriate as well as practical to discuss with the company how it is both able to know that its grievance procedure is aligned with the SRSG's Principles and to demonstrate that alignment. Using "know and show" questions related to the grievance mechanism allows the company to come up with its own indicators to answer these questions.

IV. CONCLUSION

The participation of Sakhalin Energy in the pilot project demonstrated the applicability of the SRSG's Principles in a corporate context where a grievance mechanism had already been fully developed and tested.

As the Sakhalin Energy grievance mechanism is among the more comprehensive and well-resourced in the industry, the project helped identifying opportunities for applying the Principles in practice and across multiple grievance procedures. At the same time, opportunities were identified to improve guidance regarding implementation of the Principles. Despite the existence of a well-functioning grievance mechanism, the company went through the effort to grapple with new questions and was willing to push the boundaries of its grievance procedures. For this, and its dedication to its stakeholders, we commend the Sakhalin Energy teams in charge of the various grievance procedures.

Tesco Fruit Supply Chain in South Africa

Pilot Project to Test Principles of Effective Grievance Mechanisms

by Doug Cahn,
The Cahn Group, LLC

I. SUMMARY FINDINGS

The Principles for Effective Grievance Mechanisms served as an informative, constructive, and comprehensive guidepost for the development of a grievance mechanism in the fruit sector in South Africa.

Major accomplishments during the pilot period included the creation of an Oversight Stakeholder Body (OSB), the design and adoption of a grievance mechanism consistent with the Principles, the selection of three pilot farms to test the Principles, the identification of service providers, and the delivery of initial training and assessments at the farm level.

The design of the grievance mechanism took more time than anticipated. Contributing factors included the need for OSB participants to align on their programmatic priorities, delays in securing the commitment of participating farms, and the amount of available time OSB participants had to devote to the initiative.

The diversity of the stakeholders serving on the OSB defined its legitimacy. According to one close observer, the project would have been “dead in the water” without this diverse participation.

Grievance mechanisms are only one form of communication that takes place between management and its workforce. In order for grievance mechanisms to be effective, managers must take steps to ensure that farm managers and the workforce understand what features of a grievance mechanism make it unique and distinct from other communication modalities. This is particularly important on farms where a variety of communication systems are already well developed.

When considering ways in which the South Africa pilot may be replicated within the agricultural sector, collaborative or collective models for pooled resources are

worth considering. This could bring together training capacity, advisory services for workers, and/or counselling resources. In reflecting on this option, it will be important to draw a distinction between a pool of resources and a system of control of one actor in the supply chain over another. Sequencing will also be important; if farms do not yet see a need, they may not wish to participate in pooled resources.

Long-term success that leads to broad scalability in the farm sector will have these characteristics:

- Strong local motivation, funding, oversight of implementation; Investments in an enabling environment;
- Evidence of the business case for grievance mechanisms at the farm and pack house level; and
- Broad stakeholder support in the fruit sector of South Africa.

Continuous learning will be critical to the evolving programme to embed the Principles into practice in a challenging environment. Using case studies to communicate the benefits of a rights-compatible approach to grievance mechanisms will help.

II. INTRODUCTORY BACKGROUND²⁵

Tesco Stores Ltd. is a UK-based retailer with group sales of £62.5 billion in 2009 and 4,811 stores worldwide. Like other retailers, Tesco purchases the products it sells from thousands of sources around the world and is guided in doing so by price, quality, time of delivery, and the ability of the supplier to meet the company’s ethical standards.

In South Africa, Tesco purchases four product categories of fruit that are primarily destined for the UK and Northern European markets. These categories are top fruit (primarily apples and pears), stone fruit (such as peaches), table grapes (as

²⁵ During the pilot period, Doug Cahn, Principal of The Cahn Group, LLC, a corporate responsibility consultancy, served as facilitator for the project, making three visits to South Africa during the pilot project. Caroline Rees, director of the Governance and

Accountability Program at the CSR Initiative at the Harvard Kennedy School, provided invaluable support throughout the pilot project, including a site visit to South Africa in September 2010.

Figure 1. Tesco South Africa Fruit Supply Chain



distinguished from wine grapes), and citrus.

In participating in the pilot project, Tesco extended its ethical trading commitments in South Africa with the hope of improving conditions for the farm workforce, engaging diverse South African stakeholders, reflecting consumer sensitivities, and promoting South African industry-wide responsibility for conditions of work.

The selling end of the fruit supply chain stage in the UK is preceded by five stages: importing (into the UK), shipping (from South Africa to the UK), exporting (from South Africa), packing, and growing. These stages are depicted in Figure 1.

Exporters are typically the “gate keepers” in the supply chain in that they are responsible for placing the orders for fruit purchases from as many as 600 farms across the Western Cape, consistent with Tesco’s business needs.

While these broad categories give insight into the functional roles in the Tesco fruit supply chain, diverse business relationships make it more complex than it might otherwise appear. For instance, while most farm owners pay a fee to pack houses that prepare their fruit for shipping, some farm owners also own and/or operate pack houses. Some pack houses will sell to exporters, but others will on occasion also export directly themselves. While most

exporters purchase fruit from independently owned and operated farms and pack houses, some exporters will also own farms that produce a part of the fruit they export.²⁶

While there is a labour component at each stage in the Tesco supply chain, for purposes of the pilot project, it is the labour associated with growing and packing that is the focus, inasmuch as this step in the supply chain is where the majority of labour is deployed.

Labour associated with shipping of fruit is not currently within the scope of the Tesco ethical supply chain focus. Labour in the UK that is associated with importing South African fruit is addressed by Tesco’s ethical trading programme but is not within the focus of the pilot project.

Employment Relationships

Adding to the complexity of the relationship between farm managers and their workforces in the fruit sector of the Western Cape of South Africa is the fact that four distinct relationships could be observed:²⁷

- Direct permanent: Workers are employed by a farm or pack house year-round. A relatively few workers fall into this category due to the fact that while there are year-round tasks to be accomplished

on a farm or pack house, the vast majority of labour is required during the harvesting season.

- Direct temporary: Workers are employed by a farm or pack house seasonally as needed. Temporary workers often migrate with their families and live in housing supplied and/or subsidized by farm owners.
- Indirect temporary: Workers are employed by a labour broker for temporary assignment. Workers in this category could be called upon to serve a particular task e.g., a half-dozen workers were retained by a labour broker to repair a break in the irrigation system. In other cases, during the peak harvest season, labour brokers are called upon to supply additional needed pickers and packers.
- Indirect temporary, leading to direct contract: In these cases, labour brokers act as recruiter but the employee contract is directly with a farm or pack house manager.

Situation Prior to Initiation of the Pilot

In 2008, prior to the initiation of the pilot project, Tesco identified four thematic priorities for its ethical trading programme for the South Africa fruit sector:

- 1) awareness of its code of conduct and

²⁶ The Tesco fruit supply chain in South Africa is not substantially different than the fruit supply chain for other buyers of South African fruit. Therefore, references to the Tesco South African supply chain could well apply to most buyers. However, one feature of Tesco that distinguishes it from other

buyers is that its purchases are the largest by volume of any single buyer of fruit in South Africa.

²⁷ Less than ten percent of the agricultural workforce is unionized, despite the fact that South Africa has a robust, independent trade union movement and trade unions are considered active stakeholders in

ethical trading discussions. Among the obstacles to the establishment of enterprise-level trade unions that exist in the agricultural sector are the seasonal, migratory, and low-wage nature of the workforce. Worker committees can be found on some farms and pack houses.

requirements for its implementation; 2) training on how to prepare for and implement all elements of the ethical trading programme, registering on the Supplier Ethical Data Exchange (Sedex) and completing a self-assessment questionnaire; 3) audits to assess the degree of compliance; and, 4) corrective actions based on the principle of continuous improvement. Grievance mechanisms per se were not among the four thematic priorities, although Tesco staff understood the likely benefits of effective grievance mechanisms to an ethical trading programme.

Front-running issues that were identified by the audits in South Africa were the need to improve communication between workers and managers; inappropriate hiring and other problematic employment practices by labour brokers; and poor health and safety protections.

The fruit supply chain in South Africa is characterized by complex challenges including a historical lack of engagement with and awareness of the broad ethical trade agenda; a strong demand for tailored, South Africa-specific solutions; oftentimes poor relations between farms and exporters on the one hand and civil society representatives on the other; and an increasing use of agency labour. For Tesco and its South African suppliers, there has also been considerable reputational exposure.

Timeline of Project

The design of the grievance mechanism took longer than initially anticipated due to the complex conversations that took place within the Oversight Stakeholder Body (OSB) over whether or not to focus its

engagement exclusively on the Principles for effective grievance mechanisms, and the difficulty of some members of the OSB to dedicate the time necessary to attend planning meetings. There were also delays in securing the commitment of farms to participate in the pilot project.

From August 2009 through the end of 2010, the key steps of the design phase of the project were:

- Establishment of the OSB (August 2009; Tesco et al);
- Selection of pilot farms (Spring 2010; Tesco);
- Assessment of communication systems on pilot farms (Spring 2010; Africa Now²⁸);
- Assessment of capacity-building needs on pilot farms (Spring/Summer 2010; Bill Thomson²⁹);
- Drafting of initial grievance mechanism and accompanying tool kit (Fall 2010; Bill Thomson and OSB);
- Identification of mediation resources (Summer/Fall 2010; Barney Jordaan³¹ and Bill Thomson);
- Training on communications and conflict resolution together with feedback from the workforce on the draft grievance mechanism (Fall 2010; Bill Thomson);
- Identification of communication channels and tool kit.³¹ Note that the communication channels are to be used by both management and workers to support a range of workplace communication needs, including grievances. The tool kit evolved out of the grievance work and will comprise policy documents necessary to improve workplace communication generally, including grievances (Fall 2010; Africa Now); and

- Formal adoption of grievance mechanism (Fall 2010; OSB). Implementation of the grievance mechanism is slated to begin in 2011.

Stakeholders

In engaging the company's South African partners in the pilot project, stakeholders were generally defined as any business, civil society/NGO, trade union, or government representative that had an interest in Tesco's South Africa business and its impacts on employees, workers, and communities.

The engagement of diverse stakeholders has a rich history in the region. In November 2002, the Wine Industry Ethical Trade Association (WIETA) was formally established to assist in the implementation of a pilot project of the Ethical Trading Initiative in the wine industry. As a non-profit, voluntary association with many different stakeholders committed to the promotion of ethical trade, WIETA provided a model for inclusivity for South African stakeholder engagement that included producers, retailers, trade unions, NGOs, and government. WIETA itself now plays an advisory role on the OSB for the grievance mechanisms pilot project.

A discussion of the role of diverse stakeholders in the pilot project can be found in Section 3.1.

Pilot Farm Site Selection

Tania Moodley, Tesco's Ethical Action Team Member based in South Africa, made 20 presentations in Spring 2010 to various fruit producers in the region of the Western Cape just outside of Stellenbosch for the purpose of soliciting participation in the pilot project. In some cases, the fact that civil society and

²⁸ Africa Now is an international development organisation tackling poverty in Africa by helping small-scale producers and promoting ethical trade.

²⁹ Bill Thomson is an Accredited Centre for Effective Dispute Resolution (CEDR) (UK) Mediator, a Commercial Mediator and Labour Arbitrator and

Mediator with TOKISO Dispute Settlement and the Africa Centre for Dispute Settlement (ACDS). He is also a Senior Commissioner at the Commission for Conciliation Mediation and Arbitration (CCMA) in South Africa.

³⁰ Prof. Barney Jordaan, head of the African Centre for

Dispute Resolution, is a community mediation expert.

³¹ The tool kit includes a statement of purpose, the grievance mechanism, description of grievance access (communication) process, description of disciplinary and appeals mechanisms, labour relations information, and forms for filing a grievance.

trade unions were participants on the OSB was viewed as unhelpful in garnering participation in the pilot project. Some enterprises already had processes in place or felt that there was too much risk to get into a dialogue with NGOs or trade unions where no prior dialogue existed.

Four producers volunteering for the pilot project were Monteith Trust Grabouw Farms (Monteith), Eikenhof, Kromko (Pty) Ltd., and Glenbrae. Monteith, a large farm that also supplies Tesco with top fruit and sells through Kromko direct to Tesco, later withdrew from the pilot citing a lack of time.

Eikenhof is a unionized enterprise with 38 permanent employees and 1,800 seasonal workers on two farms and a pack house during peak season. The Eikenhof farm supplies top fruit and is part of the Melssetter Group. The farm deploys a formal disciplinary process, has a low rate of turnover, has an open-door office policy, and sees transparency as critical to an effective workforce. Social workers are available to meet with employees/workers³² by appointment. Social workers report to management only the number of visits and the categories of issues raised by the workforce. The conflict resolution environment was acknowledged as an area where improvement will be useful. Support groups exist for alcoholism and HIV.

As a result of the survey conducted by Bill Thomson, management acknowledged that communication in general can be improved and recognized that constant vigilance is required. The farm is developing plans to modify its procedures to conform to the Principles for Effective Grievance Mechanisms.

Kromko is a large pack house that services 12 suppliers who are also shareholders on 24 hectares of land. Kromko provides Tesco with apples, pears, and stone fruit. The workforce reaches 200 permanent workers plus 1,100 – 1,200 temporary workers during peak season, the

majority of whom are women. Two unions represent approximately 60 percent of the Kromko workforce.

The employee/worker retention rate is 80 to 90 percent, with most labourers originating from the local community. Kromko's involvement in the local community is significant and includes support for schools and education. Kromko places a high value on training and has a large training centre to support its ongoing learning programme for employees/workers. Daily team meetings are used to provide an opportunity for management to dialogue with employees/workers and to reflect a management style of support for mission-directed work teams that encourage innovation at all levels. The pack house has established procedures for handling grievances. Management is developing plans to modify its procedures to conform to the Principles for Effective Grievance Mechanisms.

Kromko management expressed its support for inclusive stakeholder participation but acknowledged that it has a history of poor relations with some stakeholders. Kromko is developing formal ethical processes of its own for assessing producers to make sure they conform to ethical standards. In management's view, an effective grievance mechanism can serve as "insurance" to check that all is indeed well.

Glenbrae is a small farm of 36 hectares that is part of the Kromko group. With no grievance mechanism and few management systems in place, management's view is that it is critical to the sustainability of business operations to ensure a positive, working relationship between management, employees/workers, and the community in order to prevent disruptions and promote positive business outcomes. The farm has 32 permanent employees and ten temporary workers. The number of temporary workers will increase to 20

during the peak season. Permanent employees live on the farm along with their extended families, bringing the total number of residents on the farm to approximately 150. Management is resource challenged, acknowledging it has authority but lacks the tools to exercise that authority. "I just try and deal with things as they arise and reach amicable resolutions," says a member of management. There is no union on this farm.

Motivation for these enterprises to participate in the pilot project is the result of a combination of factors and dependent in part on the profile of the particular farm or pack house. Kromko and Eikenhof, the larger enterprises, cite their desire to improve their commercial relationship with Tesco (in terms of continued business, not increased business), their desire to honour their commitments to ethical trading, the perceived benefits from the knowledge contained in externally provided assessments, and the perceived benefits from training and/or other initiatives that may result from the pilot project. There was also a sense that the pilot project was an unforeseen opportunity to engage on ethical trading issues. Glenbrae's motivation to participate in the pilot project stems from its belief that new tools and resources are necessary for management to ensure a healthy, ongoing relationship with its workforce.

Each of the pilot farms is to be commended for their willingness to participate in the pilot project.

Process and Associated Training

The farm-level grievance mechanism as endorsed by the OSB is represented in Figure 2. Steps taken to create an enabling environment for its operation are also noted. The initial training and assessment costs associated with the pilot project have been borne by Tesco.

³² The term "employees" is used to describe the permanent labourers on farms and pack houses.

The term "workers" is used to describe labourers who are transitory, seasonal employees of third-party

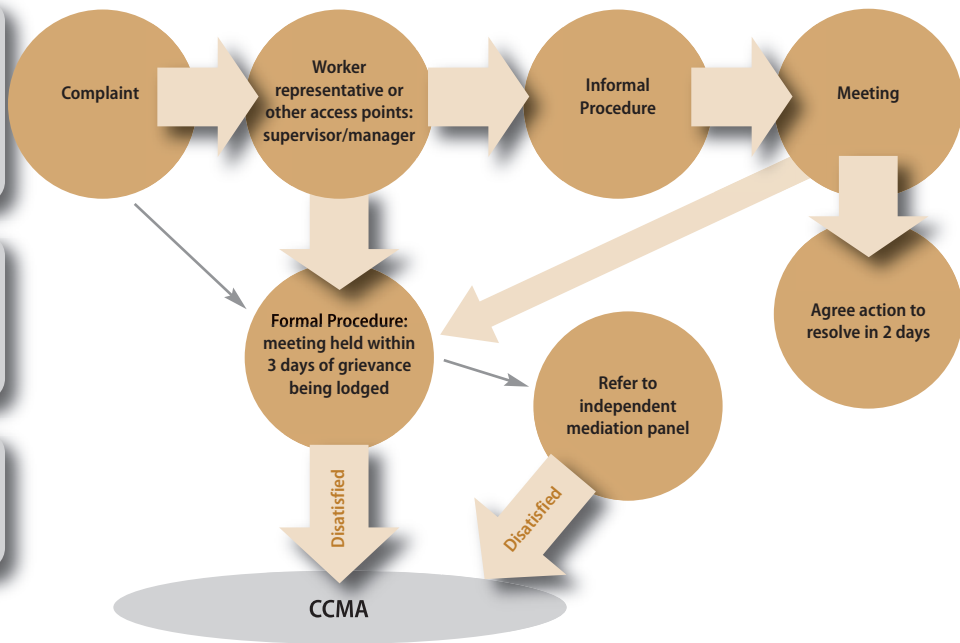
labour brokers, or otherwise not permanent employees.

Figure 2. Proposed process and associated training Source: Tesco Stores Limited

Step 1: Creating an enabling environment

- Training for workers**
 - DVD covering freedom of association, rights and responsibilities, how to use mechanism
 - Booklet covering same content
 - Africa Now training including on election of reps
- Training for reps**
 - Dispute resolution skills workshop for management and worker reps, including how to use mechanism
 - * Mediation skills training for elected reps
- Ongoing support**
 - Communication meetings
 - * Easy access to grievance forms
 - * Poster detailing use of mechanism
 - Ongoing evaluation of effectiveness

Step 2: Mechanism



III. PROGRESS AND LEARNING BY PRINCIPLE

In this section, the development of the grievance mechanism in the Tesco South Africa pilot project is explained in the context of the seven Principles for Effective Grievance Mechanisms as set forth in the 2008 submission of Professor John Ruggie, Special Representative to the Secretary General of the United Nations for Business and Human Rights (SRSG).

Wherever possible, note is made of a) the internal dynamics among the stakeholders that led to the particular shape of various provisions of the grievance mechanism, and b) the intended impact of the design of the mechanism on its implementation.

Legitimate: Having a clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process.

Creation of the Oversight Stakeholder Body (OSB)

Following an initial visit of Doug Cahn, project facilitator, to South Africa in August 2009, consensus was reached among stakeholders that the effective grievance mechanism pilot project would have value and should be selected as the focus of its work.

This decision was not taken lightly; stakeholders perceived there to be a number of needs facing the workforce in the agricultural sector in South Africa, a sector known historically for labour rights abuses. Trade union representatives to the stakeholder group argued for the need for unionization of farms as a key objective. Other stakeholders felt that grievance

mechanisms ought to be placed within the larger context of employer – workforce communication systems and that the pilot project ought not to be focused narrowly on a grievance mechanism. To do otherwise, they argued, would be to skew priorities identified by audits that had been conducted to assess compliance with the Ethical Trading Initiative’s base code and the broader objectives of many stakeholders invited to participate in the OSB’s deliberations.

Members of the OSB ultimately agreed to participate in the grievance mechanism pilot project in large part because it was viewed as a useful and credible path forward for engagement that had strong external backing. The OSB was formed at a time when Tesco had identified a need to re-engage with South African stakeholders. The pilot project therefore provided both Tesco and the local South African stakeholder community with a focus for engagement. In that sense, the formation

of the OSB was a serendipitous opportunity for the airing of diverse perspectives about social impacts in Tesco's South Africa supply chain, making it a both useful and challenging forum for the grievance mechanism's design.

The OSB was formed with representation from business: Colleen Chennells, Fruit SA, co-chair, and Christelle Marais, Colors; trade unions: Gafieldin Benjamin, Food and Allied Workers Union (FAWU), co-chair, Joey Cloete, Building Wood and Allied Workers Union of South Africa (BAWUSA), Wendy Pekeur, Sikhulu Sonke; civil society: Sandile Dolweni, Centre for Rural Legal Studies (CRLS) and Desmilene Minyi, Women on Farms Project (WFP); and government: Eben Saal or Danie Niemand, Department of Agriculture. Tesco, represented by Tania Moodley, facilitated the work of the oversight stakeholder body but did not claim a formal seat. Linda Lapparoni of WIETA, itself a multi-stakeholder body with a history of NGO and trade union engagement with the agricultural sector in South Africa, serves in an advisory role.

Farmers and employees/workers are not directly represented on the OSB.³³

Role of the Oversight Stakeholder Body

Terms of reference were drafted by Tesco and adopted by the OSB after a consultative process among the OSB participants at its inception in 2009. These terms give definition to the scope, roles and responsibilities, and governance structure of the OSB. They establish co-chairs to lead the OSB, one representing a business and one representing a trade union.

The terms of reference for the OSB were debated and adopted by the body as follows:

- Define proposed project outcomes;
- Assist with resolving strategic-level

issues and risks associated with the project;

- Oversee project progress in terms of achieving its outcomes and assist with reporting on the project to relevant bodies;
- Provide advice and guidance on issues facing the project;
- Engage third-party neutral experts to facilitate the project process;
- Design/develop an appropriate grievance mechanism and/or communication structure in line with the Principles for Effective Grievance Mechanisms put forward by John Ruggie;
- Develop criteria for identification of farms;
- Identify farms to participate in the pilot project;
- Identify training service providers to implement training requirements;
- Identify an appropriate service provider(s) to monitor and evaluate the project; and
- Determine the role of the OSB beyond the pilot to ensure sustainability.

With the design phase substantially complete and the implementation phase of the project beginning shortly, the role of the OSB will require further reflection and definition. In the implementation phase, one observer commented that the role of the OSB will be to "be in the back scenes and to let the pilot farms engage in the implementation." The OSB itself will have to determine an appropriate oversight role for monitoring and evaluating the project and for ensuring its sustainability.

Strengths Identified in the Pilot Design Process

The majority of the activity during the pilot period included the deliberations of the OSB, the selection of participating farms, and the delivery of initial assessments and training.

The creation of the OSB strongly supported the principle of legitimacy by providing a credible forum for the discussion and debate about the form and function of the grievance mechanism. The OSB also served the very useful role of providing a forum for debating the way that each of the other effectiveness criteria was to be imbedded in the grievance mechanism design. In that sense, the OSB played precisely the role that was contemplated in "Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders," published by the Corporate Social Responsibility Initiative at the Harvard Kennedy School in January 2008.

According to one participant, the work of the OSB has mended fences across the business and civil society/trade union divide, laying the foundation for useful dialogue on a range of issues beyond grievance mechanisms that had festered for years. Another participant stated that the formation of the OSB has provided an opportunity for business to demonstrate good faith and build bridges.

Other participants were less sanguine, citing the risk that difficult issues will pose major challenges as the OSB transitions into the implementation phase. According to this view, successful implementation of the grievance mechanism should be a catalyst for broad improvements in the conditions facing farm workers and their families.

As difficult as it has been for the OSB to perform its functions in a timely manner, the project would have been "dead in the water" without the participation of diverse stakeholders in the OSB, according to one close observer. The diversity of the stakeholders serving on the OSB defined its legitimacy.

³³ Tesco reports that farm managers are not represented directly on the OSB because of an objection raised by trade unions that felt that business would have been too heavily represented. However, Colors represented producers' interests since the company does own farms.

Role of Tesco

At its inception, stakeholders were invited by Tesco to participate in what later became known as the OSB. At the outset, the role of Tesco was to serve as the driving force, with the intention to diminish its role over time in favour of local ownership of the project. To date, Tesco has only been able to partially succeed in its strategy.

Despite its best efforts to reduce its direct involvement, Tesco continues to provide essential support for the project, including facilitating meetings and providing funding for the implementation of OSB decisions. During the critical formative months leading up to adoption of the grievance mechanism by the OSB, Tesco provided access to farms, funding for baseline and capacity-building assessments, and regular technical support. Tesco served as the de facto secretariat for the OSB as well. Tesco's Tania Moodley dedicated over half her time to the project during the design phase. Regular support and oversight was provided by Tesco staff at the company's headquarters outside London, led initially by Terry Babbs and then Giles Bolton, with strong support during part of the pilot project from Will Stephens.

Nonetheless, the role of Tesco has been primarily focused at the OSB level and not at the farm level, with the notable exception of Tesco's essential role in securing farms to participate in the pilot project.

Tesco will likely continue to find a need to support the project through its non-voting role at the OSB level. Securing funding mechanisms and including other buyers of South African fruit will be important next steps in building a grievance mechanism that can be replicated and sustained broadly throughout the fruit sector and potentially the South African agricultural sector more widely. As one participant put it, Tesco's role in the future is to shift from driver to cosponsor.

For the pilot to be successful in replicating and sustaining itself, the benefits to farms of adopting effective grievance mechanisms will have to be generated from the implementation of the grievance mechanism itself, and not because Tesco or other buyers impose it upon them. Creating case studies can be useful in communicating the benefits of the mechanism.

Challenges Identified in the Pilot Design Process/Mechanism

The absence of an enabling environment, defined as the adequate skills, experience, resources and institutional support structures to implement an effective grievance mechanism, weighed heavily on Tesco and the OSB in its deliberations. The need to identify qualified trainers was initially viewed as a constraint to establishing the necessary level of awareness (see also: 3.4 Equitable) and access to information (see also: 3.2 Accessible).

As noted previously, the focus on grievance mechanisms was not a foregone conclusion for stakeholders at the outset of the pilot project. Before agreement could be reached, Tesco and its South Africa stakeholders needed to re-open some of its communications that had been constrained in prior years.

The design of the grievance mechanism took much more time than anyone anticipated or planned for. In hindsight, many factors contributed to the delay. In addition to the reasons noted in Section 2.3, there were different approaches taken toward the OSB, with some participants viewing the agenda as a high priority while others viewed it as one means to a distant end with many other priorities in between. The different priority level given to the work of the OSB, along with cultural differences in operating styles, at times led to frustration and poor communication. Bill Thomson was retained to serve as facilitator for the OSB in large part to find

common ground amongst the OSB participants and to move the agenda forward.

As examples of the varying perspectives of participants on the OSB, some business representatives were frustrated by attempts of civil society/NGO representatives on the OSB to press for the disclosure of Tesco's full supplier list or to insist that any public report on the project include an opportunity for the stakeholders to provide comments about any aspect of Tesco's ethical trade programme in South Africa.

Some farms expressed the concern that trade union and NGO participants on the OSB were potential threats to growers with whom they may have had negative interactions in the past.

Civil society/NGO representatives expressed concern that the business interests might use the pilot project as a means of diverting attention away from the full range of ethical trading interests or that it might in some way be used to avoid trade unions' concerns about low levels of union affiliation in the sector.

Importantly, just as farms were not directly represented on the OSB (see: 3.1.1), workers were not directly represented on the OSB either. As a result, Bill Thomson was asked to return to pilot farms to ask managers and the workforce for any feedback to the draft grievance mechanism. It was recommended at that time that all documents related to the grievance mechanism be translated into languages understood by employees and the workforce. It was generally felt by the three pilot farms that this consultation also had the very positive effect of enhancing the legitimacy of the mechanism and beginning the process of raising awareness of it.

Going forward, the OSB will benefit from the strong exercise of its responsibilities. In cases where stakeholders have a lack of capacity to engage in the work of the OSB, then carefully crafted proxies that are

agreed upon by all members of the body will be useful in order to maximize its legitimacy and streamline decision making. Low levels of participation, in the absence of proxy systems that are agreed upon by all participants, could result in reducing trust within the body.

A process for worker evaluations of the grievance mechanism as it is implemented will strengthen the mechanism and further build trust by complainants and potential complainants.

It is not clear what the precise relationship will be between the farm-level grievance mechanisms and the OSB. This will require further reflection as the implementation phase begins.

Learnings

There is a widely-held view that sustainable solutions to issues facing the workforce in South Africa will require South African solutions. Broad-based local involvement can promote participation by multiple retailers by reducing the perception that an effective grievance mechanism is the purview of any one retailer (and thus inherently not as high a priority for other retailers). For the benefit of participating retailers, the advocacy community will be less likely to campaign against a retailer when local involvement is central to the implementation and oversight of the grievance mechanism.

From interviews with OSB and farm participants, it is worth noting that while the OSB gave strong legitimacy to the pilot project in the design phase, ongoing legitimacy will need to be measured by the benefits at the farm level, both for managers and the workforce. This highlights an important shift from the design phase to the implementation phase.

Accessible: Being publicized to those who may wish to access it and providing adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal.

Tesco and the OSB understood well the challenges of designing a grievance mechanism that would be accessible at the workforce level. Seasonal workers migrate from other regions of South Africa (and, from time to time, from neighboring countries as well), speak different languages, and may not read or write.³⁴

Where no communication channel currently exists, as is the case at Glenbrae, an independent access point will serve all parties well. Where communication channels, including channels promoted by trade unions, exist, it will be important to communicate how and when the grievance mechanism is designed to work.

The needs assessments on the farms conducted by Bill Thomson and studies of existing communication channels by Africa Now relied heavily on interviews with employees and the workforce. Similarly, when the draft grievance mechanism required input from employees and the workforce in Fall 2010, a workshop/interview approach was taken. In this way, perspectives of all parties were incorporated during the design phase, overcoming the high illiteracy rate amongst the workforce.

In communicating the grievance mechanism to farms, managers are instructed as follows:³⁵

- There should be meetings with new and existing employees and workers to explain the mechanism to them – what a grievance is, how to raise it, where to get the necessary forms, where to hand them in, who to give the forms to, and where to

go for information on how to use the mechanism;

- Copies of the mechanism should be put on all notice boards that are seen regularly by employees and workers, and copies should also be put up in workshops, change rooms and other areas where employees and workers gather; where employees and workers have access to email, copies of the mechanism should be sent to them by email; and
- All current employees and workers should be given a “hard copy” of the mechanism when it is introduced.

The adopted policy addresses the issue of fear of reprisal by stating: “No one may victimize or harass employees and workers who lodge grievances using the grievance mechanism. If an employee or worker believes they are being victimized or harassed, they may raise this with the senior manager overseeing the grievance mechanism. This manager should investigate the employee’s/worker’s claim at once. Employees and workers who victimize or harass other employees or workers must be disciplined. If the victimization or harassment is of a gross nature, they should be dismissed.”

In Fall 2010, Africa Now began working with managers and employees/workers at the three pilot farms to create independent communication channels, including access points for raising grievances. Access points that are trusted and easy to use will reinforce the principle of accessibility.

On farms with few existing formal communication channels, the election of employee representatives with clear portfolios is viewed as a major benefit. At the Glenbrae farm, for instance, the use of worker representatives had been tried in the past but did not succeed, according to management, because of the shortage of

³⁴Literacy rates are generally understood to be at approximately 50%.

³⁵Draft document describing the grievance mechanism for farm managers and employees/workers, December 2010. For the full text of the grievance mechanism as approved by the OSB, see Appendix A.

training and formal structures. A clear grievance mechanism with well-informed worker representatives who are tasked with identifying and submitting grievances can result in enhanced legitimacy in the eyes of the workforce.

Farms with established communication systems, such as Kromko and Eikenhof, will have the advantage of communicating about the existence of the grievance mechanisms through established channels. However, they may have the challenge of distinguishing the purpose and role of a communication system that is based on the Principles for Effective Grievance Mechanisms from other communication systems. An effective grievance mechanism will have a greater chance of success when all parties have a shared understanding of the different communications channels and systems available on the farms, including the appropriate role of the trade union channels.

All communications will need to be translated into the language of employees and workers i.e., Afrikaans and isiXhosa. Pictograms and other visual means of communicating about the access points will be critical. Training, as a means of building awareness and knowledge, is a time-intensive but valuable methodology.

Predictable: Providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome.

The OSB adopted a grievance mechanism that lays out clear process steps with time frames. It calls on farms to settle grievances as near to their point of origin as possible. A member of senior management should be given overall responsibility for the mechanism.

In discussing grievance mechanisms with pilot farms, it was useful to clearly articulate the distinction between disciplinary mechanisms, whereby management judges the appropriate behaviour of employees/workers, and grievance mechanisms consistent with the Effectiveness Principles, whereby employees/workers raise concerns with or about management. Disciplinary measures are initiated from the top down and grievance mechanisms are initiated from the bottom up. Both disciplinary mechanisms and grievance mechanisms are necessary and should coexist.

On receipt of a grievance from an employee/worker, the mechanism calls for the applicable supervisor/manager to investigate the matter within the time frames set in the mechanism and convene any necessary meetings in this regard.

During stage one, where the grievance is raised verbally with the immediate supervisor/ manager, the immediate supervisor/ manager must:

- Give the employee/worker an opportunity to freely express his/her concerns in confidence;
- Listen to the employee's/worker's grievance and attempt to identify the issues of concern; and
- Provide the employee/worker with a response regarding the grievance as quickly as possible.

The grievance mechanism calls on the parties to meet and seek to resolve the grievance within two working days of the grievance being raised by the employee/worker.

If no agreement between the parties is reached during stage one, then a second stage can then be initiated whereby a grievance is raised formally (on a Grievance Form or in another appropriate manner or format) by an employee/worker, with the next level of management.

- On receipt of the grievance form, the senior manager must schedule a formal grievance meeting as soon as reasonably possible;
- The employee/worker, and any other relevant parties, should be provided with written notice of the grievance meeting, preferably using the form Notice of Formal Grievance Meeting; and
- The employee/worker who lodged the grievance should be informed of his/her right to the assistance of a fellow employee or recognized trade union representative.

The nature of the grievance meeting will depend on the kind of the grievance raised by the employee/worker and may range from a discussion between the parties to a formal enquiry, where the relevant parties are allowed the opportunity to present their version and/or call relevant witnesses. The senior manager is then required to provide the employee who lodged the grievance with a written response that is then recorded in the space provided in the Grievance Form.

The grievance mechanism calls on the parties to meet and seek to resolve the grievance within three working days of the formal grievance being raised by the employee/worker.

Equitable: Ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.

A needs analysis was conducted with pilot farms to identify training and capacity needs for the effective management and resolution of conflict and disputes on the pilot farms. The site visits and resulting analysis were conducted between April and June 2010. By identifying the training and capacity needs of workers and employees, and by commissioning Bill Thomson to provide conflict-resolution training in Fall 2010 to a number of workers and employees, the process of ensuring the equitability on the grievance mechanism began in earnest during the design phase. The training was well received by all parties.

The analysis concluded that each of the pilot farms should have the following training:

- An induction session for seasonal workers to introduce them to the workplace, to explain workplace rules and regulations, and to brief them on the grievance and disciplinary policy and procedure;
- Grievance Procedure, Discipline Procedure and Appeal Procedure;
- Conflict Management Skills training; and
- Rights, duties and obligations of employers/managers and employees/workers.

To address the need for complainants to be able to get advice from neutral human rights experts, the Centre for Rural Legal Studies (CRLS) was identified as a resource and has indicated its willingness to play this role.

The Africa Centre for Dispute Settlement (ACDS) is very experienced in designing and implementing dispute systems as well

as how to manage them. It has a large pool of trained, experienced, and accredited mediators and trainers to help with mediation and resolution of disputes on farms and in communities. The grievance mechanism adopted by the OSB calls for information to be supplied to employees and workers about the availability of the ACDS in the event that the employee or worker feels that a neutral, independent person should assist to seeking resolution to the grievance. The mechanism also permits an employee or worker to have a representative of the employee or worker raise the matter on the employee's/worker's behalf.

The work of Africa Now to create communication channels that can be used to report grievances on the three pilot farms, in dialogue with management and the workforce, also serves to reinforce the equitability of the grievance mechanism.

The mechanism makes clear that a complainant need not necessarily have to sit down with the object of a complaint, since this may raise fears and become a deterrent to raising concerns. Instead, it allows the possibility for a worker/employee to air an issue on his/her own with the "access point" person or organisation before any decision is made about bringing the parties together.

Information about legal and other provisions that might have a bearing on a grievance can be for the benefit of all parties. One pilot farm owner noted that there is value in providing management with information about legal rights of employees, in addition to the more obvious need to provide such information to the workforce. Still others noted that trade unions and NGOs may well benefit from information about legal frameworks in South Africa. Particularly with small farms, such as Glenbrae, access to information will not be readily available or accessible.

Different approaches to involvement of the workforce in the grievance process are evolving from the three pilot sites. Glenbrae is focusing on elected worker representatives who will receive special training. The election of worker representatives at Glenbrae is seen by management as an opportunity to provide education and awareness training about conflict resolution, legal requirements, and basic organisational skills, such as how to run a meeting. Training of this nature, offered by highly respected independent resources such as Bill Thomson and Africa Now, serves to reinforce the equitability of the mechanism.³⁶

Approaches for involvement of the workforce at the other two pilot sites were still in formation at the time of this writing. At Kromko, plans are being considered for self-selection of workers who can routinely engage management in dialogue and bring issues into the grievance process. Already, management convenes regular meetings to listen to worker concerns. At Eikenof, management sees the distinction between the role of the union to play the primary role in addressing collective grievances and the role of grievance procedure meetings to address individual concerns. Social workers are available as a resource to this workforce as well.

Training on conflict management and communications is viewed as a great success by the pilot farms. Knowledge lowers barriers across lines of management and employees/workers. At Kromko, as was the case with the other pilot farms, all parties found the training to be of high value; it is expected to strengthen all communications within the pack house, not just communications related to grievances.

A mid-level mediation channel offered by the ACDS, between the farm-level mechanism and the Commission for

³⁶To date, two training sessions have been held at Glenbrae; one was dispute-resolution training conducted by Bill Thomson and the other was on basic organisational skills such as how to run a meeting conducted by Africa Now.

Conciliation, Mediation and Arbitration (CCMA) (see also: 3.5), will work particularly well in flat management structures by providing ready access for management and employees/workers on small farms. In these cases, a mid-level mediation channel can address issues of low capacity at the farm level to engage in dialogue in an equitable manner.

Where workers and their families live on farms and comprise communities, confidentiality will be a challenge. Use of trusted third parties who are not a part of the immediate community as a conduit for complaints may also be an avenue for addressing this issue.

Rights-Compatible: Ensuring that its outcomes and remedies accord with internationally recognized human rights standards.

The grievance mechanism adopted by the OSB designed its processes to be fully consistent with the South African Constitution and the resulting legislative and regulatory framework.³⁷ It was clear from the outset of the OSB's deliberations, consistent with Tesco's intentions, that the grievance mechanism would embed the rights-compatible approach within the context of the fully supportive legal framework in South Africa.

The CCMA is the legally authorized authority to address labour disputes by conciliating workplace disputes, arbitrating disputes that remain unresolved after conciliation, and facilitating the

establishment of workplace forums and statutory councils.³⁸ The OSB-approved grievance mechanism complements the CCMA by providing an effective tool at the farm level for engaging in dialogue to resolve disputes.

The communication and training that has taken place has begun the process of informing managers and employees/workers about the legal rights afforded to the workforce. This enhanced knowledge of the law, together with implementation with the other Principles, will help ensure a robust mechanism that is fully aligned with a rights-compatible approach.

Should an employee or worker believe that he or she is being victimized or harassed for using the grievance mechanism, he/she may raise this with the senior manager overseeing the grievance mechanism and this manager will investigate the employee's/worker's claim. Those who victimize or harass an employee or worker are to be disciplined and could ultimately be dismissed.

Transparent: Providing sufficient transparency of process and outcome to meet the public interest concerns at stake and presuming transparency wherever possible; non-State mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.

The draft communication about the grievance mechanism states: "Everyone should be able to see that the mechanism

is working. But at the same time, if the person making the complaint asks for it, they should be treated with confidentiality."

Respecting the confidentiality of complainants, therefore, is built into the design of the grievance mechanism, as is the value of transparency of the receipt of complaints and communication of key elements of their outcomes. Precisely how this will be done in the pilot farms is yet to be seen.

It is typically easier for enterprises to commit to communicating transparently to the complainant than it is to commit to communicating to all managers and employees/workers with an appropriate level of transparency. Nevertheless, managers may look for ways to relay to the wider workforce case examples or general changes made as a result of complaints received and resolved. Employees and workers learning of actions taken by management that are not specific to any particular case can still gain confidence in the integrity of the process and encourage broader use of the grievance mechanism.

An additional level of transparency that has yet to be refined is from the farm level to the OSB. The grievance mechanism does not currently address the issue of how information about outcomes will be used to meet any public interest concerns at stake.

Based on Dialogue and Engagement: Focusing on the processes of direct and/or mediated dialogue to seek agreed solutions, and leaving adjudication to

³⁷ The Constitution of the Republic of South Africa, Act 108 of 1996, Section 23(1) states: Everyone has the right to fair labour practices. See also, the Labour Relations Act, No 66 of 1995 as amended by Labour Relations Amendment Act, No 42 of 1996, Proclamation, No 66 of 1996, Labour Relations Amendment Act, No 127 of 1998 and the Labour Relations Amendment Act, No 12 of 2002. The Labour Relations Act (LRA), section 185 upholds the right not to be unfairly dismissed or to be subjected to unfair labour practices as follows: Every employee has the right not to be (a) unfairly dismissed; and (b) subjected to unfair labour practice. The Labour Relations Act (LRA) has set up mechanisms for

addressing disputes and grievances not resolved in the workplace. Through the Code of Good Practice – Dismissal (CoGP–D) the LRA emphasizes that agreements reached jointly between employers and workers in the workplace have priority. This Code does not take the place of such collective agreements (CoGP–D, 1(2)). In the Code the basis for relationships between employers and employees is that they treat each other with mutual respect. Both employment justice and efficient operation of business are considered very important. Therefore, while employers may demand that workers perform and conduct themselves well, employees must be protected from arbitrary action (CoGP–D 1(3)).

³⁸ CCMA is an independent body; it does not belong to and is not controlled by any political party, trade union, or business. While it offers mediation and arbitration services, it is primarily viewed by managers as a confrontational, time-intensive process. Further judicial reviews are possible under South Africa law via the labour court and then the constitutional court. The CCMA process takes about a month from beginning to end.

independent third-party mechanisms, whether judicial or non-judicial.

The ability of the parties to a grievance to engage in dialogue and engagement will in large part rest with the skills and experience of the parties and in their awareness of how and where to access the services they may need to support them. On recommendation of Bill Thomson, all managers, supervisors, and employees should be trained about the grievance mechanism. Two examples of such training resources that have been identified are the Managing Conflict in the Workplace course conducted by the CCMA and the Mediation Training Course conducted by the ACDS.

Underpinning much of the thinking that has led to the design of the grievance mechanism is the fact that the current body of knowledge, skills, and experience about how to engage in dialogue is low, due to historical labour-management tensions and exacerbated by low education levels of the workforce.

The OSB sought to overcome this obstacle by acknowledging that significant investment in the creation of an informed workplace through assessment, capacity building, and training is a necessary prerequisite for successful implementation. While it is not expected that the entire workforce will become sufficiently knowledgeable and experienced in how to engage in dialogue, trained worker representatives are expected to seed knowledge among the larger workforce and to identify problems to address with management through informal and formal means.

Employees and workers may approach the CCMA to conciliate workplace disputes and arbitrate disputes that remain unresolved after conciliation related to unfair dismissals and unfair labour practices. The CCMA is the ultimate third-party point of recourse, as established by the South African Labour Relations Act, 66 of 1995.

VI. CONCLUDING OBSERVATIONS

The Principles for Effective Grievance Mechanisms formed a useful, constructive, and comprehensive set of guideposts for the development of an effective grievance mechanism in the fruit sector in South Africa.

A grievance mechanism can create a ripple effect of positive benefits for employees/workers on broad workplace and community issues. However, it would be a mistake to ascribe to the grievance mechanism by itself the burden of resolving all labour and even societal issues. Rather, a grievance mechanism based on the Principles is a necessary process for the resolution of individual employee/worker concerns. That process can in turn lead to other positive outcomes that are not directly related.

A grievance mechanism supports better quality communications between the workforce and management and often leads to conflict avoidance. A robust communication system is seen as the backbone of the system in which the grievance mechanism rests. Care should be taken to ensure that the process steps that are critical to the success of an effective grievance mechanism are not diluted when grievance mechanisms are integrated into larger communication systems.

When considering how the South Africa pilot project may be replicated within the agricultural sector, collaborative or collective models for pooled resources may be worth considering. This could bring together training capacity, advisory services for workers, counselling and mediation resources, or some combination of the above. In reflecting on this approach, it will be important to draw a distinction between a pool of resources and the control of resources by one farm or pack house over another. In considering pooled resources, sequencing will be important. If farms do not see a need, they will not want to participate in pooled resources. In that case, pooled resources may be utilized at a

later stage.

In this agricultural supply chain, participation in the development of a grievance mechanism has been an opportunity for stakeholder engagement, yet different stakeholders may measure the grievance mechanism's success in different ways. Farm owners will look for increased trust between management and the workforce. NGOs and trade unions will focus on outcomes that are satisfactory to the workforce. While these perspectives are not mutually exclusive, they do require different methods of measurement.

One stakeholder took a distinctly long-term view of the benefits to introducing effective grievance mechanisms, citing that the many elements to successful implementation have a five to ten year horizon. Long-term success will likely include these characteristics:

- Strong local motivation, funding, oversight of implementation; Investments in an enabling environment;
- Evidence of the business case for grievance mechanisms at the farm and pack house level; and
- Broad stakeholder support in the fruit sector of South Africa.

As the implementation period begins, expectations of the grievance mechanism have evolved. Beginning with the view that the mechanism would primarily identify and solve grievances, several participants now expect to see the avoidance or prevention of conflict and the achievement of better solutions to problems that arise. One farm sees a higher quality workforce capable of making decisions that benefit management and the workforce through a more developed sense of shared value. Formal measures of success have not been concluded at the time of this writing, although most farms cited reduction in turnover and worker satisfaction surveys as key performance indicators. Robust indicators will be valuable in measuring the business benefits of implementation of the grievance mechanism and should include

input from employees and workers.

Continuous learning will be critical to the evolving programme to embed the Principles into practice in a challenging environment.

Forums for sharing and learning from the benefits of grievance mechanisms within the farm community will be enormously beneficial to create momentum, underscore the business case for the Principles, promote continuous learning, drive replicability and scalability, and pool resources to address the capacity issue facing small farms in particular.

One observer close to the project observed that the initiative can be viewed as a catalyst for transformational change in the relationship between farm owners and the labour force over time. The application of training, communication mechanisms, and dialogue is where the long-term benefit lies. In this view, the incentive for the full range of stakeholders to remain as active participants is high.

**Grievance Mechanism:
Grievance Procedure**

An employee who wishes to lodge a grievance should use the procedure below.

If a group of employees experience a problem that affects the whole group, they can also use the procedure below to lodge a 'group grievance'.

If there are not two levels of farm management, stages one and two should be handled together. This may be done informally or formally depending on what the parties decide, and depending on the type of dispute.

All grievance meetings, informal and formal should be recorded and a copy of the record should be given to the employee.

Stage 1: Informal Process

Discuss the grievance with immediate supervisor

Firstly the employee must talk to their immediate supervisor/ manager about the grievance.

The immediate supervisor/ manager must:

- Give the employee a chance to tell him/her freely and privately about their problem;
- Listen to the employee's grievance and try to identify the issues raised;
- Give the employee a decision about the grievance as quickly as possible.
- The manager/supervisor must write down what happened in the meeting, as well as what decisions have been taken. A copy of this record should be given to the employee.

The parties should meet and try to resolve the grievance within two (2) working days after the grievance was raised by the employee

Stage 2: Formal Process

Formal Grievance Meeting

If the employee is not be satisfied with the immediate supervisor's/manager's decision, the employee may lodge a formal grievance with the next level of management (see Grievance Form).

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Assessment of the Grievance Systems at Delta & Chicony

Analysis and Recommendations for Future Action

by Stephan Sonnenberg, Harvard Negotiation and Mediation Clinical Program with the assistance of Alonzo Emery, Alexis Chernak, Marisa Cruz and Sally Wagner Partin

I. INTRODUCTION

This report is the public document summarizing a year-long collaboration between a research team of students and faculty from the Harvard Negotiation and Mediation Clinical Program (HNMCP), Hewlett-Packard (HP), and the Corporate Social Responsibility Initiative (CSRI) at the Harvard Kennedy School of Government. The subject of the studies was the corporate grievance systems that had been set up at two of HP's supplier factories in Dongguan, China.

The purpose of this research is twofold: first – to compare the grievance mechanisms at each factory against a set of seven principles that were put forward in 2008 by Professor John Ruggie, Special Representative of the United Nations Secretary-General (SRSG) for Business and Human Rights, as criteria for determining the effectiveness of a given non-judicial grievance system.³⁹ The HNMCP research team used the SRSG's Principles as well as the more detailed twenty-four CSRI Guidance Points (representing the research from which the SRSG's Principles were drawn,⁴⁰) to describe and analyse the grievance systems it found in Dongguan. Subsequent to that analysis, we conclude with several recommendations for HP and the two supplier factories we visited on how to improve the quality of the two worker grievance systems we observed.

In addition, the HNMCP research effort also turned its analytical focus on the SRSG's Principles themselves. This collaboration is an adjunct to four "Grievance Mechanisms Pilot Projects" (Pilots) involving significant global corporations in different business sectors.

Each participating company agreed to work with CSRI to build or revise its grievance mechanisms in line with the SRSG's Principles, and using the CSRI guidance tool as additional guidance for this purpose. The purpose of these Pilots was to field test the SRSG's Principles, and identify learning both for the participants and for ways in which the Principles or the underlying guidance could be refined, elaborated upon, or otherwise improved. The HP project differed from the four main pilots in that the work to improve the effectiveness of the grievance systems at HP's supplier factories had already been completed. Thus, HNMCP's analysis was largely backward looking to assess the work that had been done and any learning in relation to the SRSG's Principles.

Organisation of this Document

Section I of this paper briefly introduces the project and describes our research methodology.

Section II uses the SRSG's Principles to analyze the worker grievance systems at Delta and Chicony, and also HP's role in improving those systems.

Section III then turns to a series of recommendations for the various stakeholder groups involved in the creation of the worker grievance systems at Delta and Chicony. The purpose of this section is twofold: initially, of course, to provide these stakeholder groups with concrete advice on how best to advance their objectives, but also to structure this advice in ways that might be applicable to similarly placed stakeholders in other contexts.

Section IV of the paper finally turns to look

³⁹ The seven principles proposed in Prof. Ruggie's 2008 Report to the UN Human Rights Council consist of six principles that should be true of any non-judicial grievance mechanisms (legitimacy, accessibility, predictability, equitability, rights-compatibility, transparency) as well as a seventh principle that should hold true for any company-level grievance system such as the ones we were researching (that the system be based on dialogue and engagement).

See John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, (Geneva: United Nations, 7 April 2008), A/HRC/8/5 at 24.

⁴⁰ See Corporate Social Responsibility Initiative. 2008. "Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders." Corporate Social Responsibility Initiative Working Paper No. 41. Cambridge, MA: John F. Kennedy School of Government, Harvard University, at 3.

back at the SRSG's Principles themselves and the related CSRI Guidance Points, with a brief discussion on how to make them incrementally more user-friendly for anyone interested in developing effective and rights-compatible grievance systems.

Methodology

This project involved a series of three field visits to Hong Kong and Dongguan to conduct primary research. The first took place in July of 2009, when Stephan Sonnenberg (Lecturer on Law at Harvard Law School and Clinical Fellow with HNMCP) conducted a preparatory field study to Dongguan and Hong Kong on behalf of HNMCP and CSRI. The visit was intended to lay the groundwork for the subsequent study. Following the recruitment of three HNMCP students, Marisa Cruz (HLS '11), Alexis Chernak (HLS '10), and Alonzo Emery (HLS '10) into the research team, Sonnenberg and the students spent a semester conducting background research in preparation for the second field trip, which took place in January of 2010. The bulk of the research informing this study was conducted during this visit to Dongguan. Sonnenberg, Emery, and a fourth HNMCP student, Sally Wagner-Partin (HLS '10) subsequently returned to Dongguan in May of 2010 to work with HP and Chicony to field test one of the recommendations presented in this report. This final stage of the project was not carried out under the auspices of the CSRI Pilot Project, and so it can only be described in line with our confidentiality agreements with HP and Chicony.

January 2010 Field Visit (Phase I study)

As mentioned above, the HNMCP research team carried out the bulk of its primary-source research in Hong Kong and Dongguan on January 5-12, 2010. The research team spent approximately three days investigating the details of the grievance systems at each factory, plus an extra few days in Hong Kong to speak with

HP and civil society representatives.

The formal research at each factory commenced with an opening meeting and an introduction to each factory's social & environmental responsibility / corporate social responsibility (SER/CSR) program and the staff in charge of these programs. Each visit also included a factory tour, allowing the research team both to visit dormitories, common areas, and work rooms as well as to see the grievance system infrastructure, such as letterboxes, hotline phones, and counseling services. Following these introductory tours, the research team commenced a series of focus group interviews and key interviews with employees from all levels of the factory hierarchies.

All interviews were conducted with the assistance of two interpreters. At Delta, we focused on the grievance mechanism in place at one of eight Dongguan factory units producing power-supply units for desktop computers. The team carried out twelve focus group interviews which varied in size from two to six workers (with an average of five workers per session). Chicony's operations in Dongguan are much more limited, and so we focused our research on workers involved in the manufacture of computer keyboards. At Chicony, we carried out eight focus group interviews which again varied in size from four to six workers (with an average of five workers per session).

Our research methodology was the same at both factories. Focus group participants were typically selected at random using the factory's ledger of employees. Once we had made our selections, a factory supervisor would go on to the factory floor to see whether the specific employees were present and able to leave their workplace without causing excessive disruption to the work flow on the production lines.

Our initial preference was for us to select the workers off the line ourselves, but intellectual property concerns as well as an established company policy disallowing

such access resulted in the modified methodology described above. To mitigate our concern that this offered no guarantees against possible interference by management with the selection process, we verified the identities of the workers, spent time to assure them of the confidentiality of anything they told us, and asked company management to make the calls to the factory line supervisors in our presence, thus at least partially verifying what was communicated to the workers about our research process. Nonetheless, as elaborated upon below, there are some obvious potential shortcomings in our methodology.

At both Delta and Chicony, we also interviewed targeted categories of employees. At Delta, we interviewed one group of workers who had gone through a training provided by a Hong-Kong based NGO called the Labour Education and Service Network (LESN), as well as a group of female interviewees who were interviewed by the two female researchers and a female interpreter. At Chicony we interviewed a group of worker hotline operators who had gone through a training provided by a second Hong-Kong based NGO called the Chinese Working Women Network (CWWN), a pair of line leaders, a pair of line supervisors, and one worker focus group consisting entirely of women who were interviewed by the two female researchers with a female interpreter.

Finally, the team interviewed key management or human resources (HR) employees with a particular mandate to manage the company grievance systems.

Limitations of our Study

While we are confident that the findings we present in this paper are representative of what we would have found using a more perfect methodology, we also need to acknowledge the methodological flaws that could have compromised the validity of our findings. The first limitation was a **linguistic** one: no one on the research

team was a native speaker of Mandarin and, as such, our understanding of the dynamics in each of the two factories was filtered through the voice and lens of our interpreters. Nevertheless, the accuracy of the interpretation was checked throughout the investigation by one member of the HNMCP research team who was proficient in Mandarin.

The second limitation to our investigation is **methodological**: our time at each factory was limited and our access to workers was organized by management who helped bring the workers off of the line and deliver them to the interview rooms. While we are well aware of expert reports suggesting that workers in China are routinely coached in anticipation of auditor interviews,⁴¹ we believe this not to have been a significant factor impacting this research. First of all, we were not acting as auditors. Thus, even if some workers may hypothetically have been told in advance not to discuss any problems that may or may not have occurred at the workplace, the nature of our questioning focused on something very different. Whereas an auditor might wish to find out about the details of specific grievances, our questioning focused more on *how* – in the abstract – such grievances would be resolved at each factory. This line of questioning allowed workers to discuss the grievance mechanism without discussing whether such grievances occurred or not. We also hope that our status as independent researchers and our confidentiality agreements with management allowed us to open up a slightly more transparent space for genuine research than would be the case in the context of an audit. However, we also need to be realistic in our estimate of how likely it is that any given worker would be able to distinguish our visits from those by other foreigners or

auditors, and that this dynamic may have impacted negatively the willingness of our interviewees to share openly their thoughts with us.

May 2010 Field Visit (Phase II study)

As described below in more detail (see page 25), one of our preliminary recommendations to HP (and other corporations in similar positions) is to co-sponsor **consensus-building efforts** with willing supplier factories involving internal and external stakeholders impacted by the factory's operations. The purpose of these consensus-building processes would be to jointly prioritize areas for improvement to the company's grievance system, and to agree to a concrete road map on how to design and implement systemic changes to address any priority shortcomings. In response to an enthusiastic response from Chicony's management and HP when we informally presented this recommendation at the conclusion of our January field visit, Chicony management, HP, and HNMCP decided to field test that recommendation at Chicony's Dongguan factory. Thus, while this follow-on project was initially outside the bounds of this report, we will touch briefly on the nature of the process and our preliminary impressions as to its potential usefulness. HNMCP prepared a more extensive, confidential report summarizing that effort, both substantively and procedurally, in May 2010.

II. FINDINGS

Although we investigated two factories, this study is *not a comparative study of those two factories*. A comparative analysis would prove inconclusive given that each factory is at a different stage in the development of their respective grievance mechanisms. Furthermore, neither of the two grievance systems was originally

designed with the SRSG's Principles in mind, thus a comparative analysis of how closely they embody those principles would be beside the point.

Rather, this section summarizes the worker grievance processes themselves, described in terms of the seven SRSG Principles. For each factory in which we conducted our research, we then turn to the contribution HP made in the development of the grievance systems at both Delta and Chicony factories, again broken down in terms of the SRSG's Principles.

Delta Factory's Grievance System Summary

Delta Electronics (<http://www.deltaww.com>) is a major Taiwanese electronics company. Founded in 1971, it is today the world's largest provider of switching power supplies and direct current (DC) brushless fans, as well as a major source for power management solutions, components, visual displays, industrial automation, networking products and renewable energy solutions.⁴² Delta operates several factories in Dongguan. This study focused on only one of those factories producing power supply equipment for HP and other electronics producers. That factory alone employs approximately 6000 workers.

When asked about their motivation to design and maintain their worker grievance process, our counterparts at Delta mentioned their Taiwan managers' wholehearted endorsement of corporate social responsibility as a trait that sets Delta apart from other electronics manufacturers. Indeed, Delta Electronics has received numerous awards commending it for its record in corporate social responsibility. In 2006, 2007 and 2008, GlobalViews Magazine (a Taiwan-based company that organizes the annual CSR survey of Taiwanese corporations) awarded Delta Electronics

⁴¹ See e.g., Alexandra Harney, *The China Price*, (New York, NY, Penguin Books: 2009) at 181-234.

⁴² See Delta website: About Delta – Global Operations, available at http://www.deltaww.com/about/about_operation.asp, accessed July 12, 2010.

with the Corporate Social Responsibility Award.

We also heard a more utilitarian justification for Delta's worker grievance system, namely that Delta's management viewed a healthy work environment as a key component of its *competitiveness* vis-à-vis other manufacturers in the Pearl River Delta region, in that it might reduce the very high worker turnover rates typical for factories in the region.

Delta's worker grievance system is fairly elaborate. The centerpiece of the system is its highly versatile Counselling Centre. While this center was not the only access point into the grievance system (grievances could also be communicated during monthly lunchtime meetings between selected workers and management, via dormitory representatives, anonymous suggestion boxes, emails, etc.) it is by far the most publicized and accessible way to bring a grievance into the system among the workers we interviewed, and thus the focus of what we describe as Delta's grievance mechanism.

The Counselling Centre is run by two counsellors who are specially trained to address the emotional needs of the workers. The significance of this function came up repeatedly during our field visits, especially in light of a series of highly publicized suicides that had started to occur at another prominent electronics factory in Dongguan at the time.⁴³ Delta's Counselling Centre is available to help workers with even the most mundane problems or concerns they might have, such as how best to send a parcel in the mail, or how best to set up a bank account in Dongguan. Workers can contact the Counselling Centre either in person or by calling the Centre. The Centre also receives peer referrals from friends, dorm representatives or dormitory roommates.⁴⁴

While the Counselling Centre is administratively part of Human Resources (HR), it also enjoys significant safeguards to ensure its independence from management, above all a professional culture of confidentiality among the social workers on staff. The Centre also promotes itself as a neutral access point to the grievance mechanism where workers can confidentially bring questions or complaints and discuss whether or not to file a formal complaint. On occasion, complaints made within production departments are also referred to the Counselling Centre if the supervisors of that department cannot themselves resolve the dispute. Indeed, functionally speaking, the Counselling Centre might easily be compared to an Ombudsman's office in all but name.

Comparison to the SRSB's Principles

The table below summarizes the comparative strengths and weaknesses of the worker grievance system at Delta Factory in Dongguan, broken down in terms of the seven SRSB Principles.

Delta's worker grievance system is truly sophisticated. While much of our focus was on the Counseling Center, and how the professionals working there handled the cases that came to them, those in Delta's HR department who were responsible for the system overall were quick to point out the other entry points into the system. These included monthly lunchtime meetings where management representatives could field concerns from a randomly assembled group of workers, a dormitory peer support and mentorship program that could also identify concerns and channel them to the Counseling Centre if needed, and specialized training for line managers to identify and respond to any discontent on the factory floor. For

this reason it ranks highly in terms of its accessibility: literally everyone we spoke to knew of the different ways one might contact management if there is a problem, and almost no one we spoke to found that there needed to be yet further access points.

Delta's grievance system is also an example of a true "learning organization," one where the grievance process taken as a whole also includes several feedback loops designed to fine tune the system to meet the needs of the organization even better as time progresses. This is noteworthy, because it creates a system that innovates independently of outside pressure for change (such as NGOs or clients pressing for better grievance processes), and even independently of workers mobilizing for change, since it actively seeks their input. For example, managers ask every departing employee to share with them areas where they felt the factory might improve, thus opening a valuable avenue for feedback not only about the factory per se, but also the effectiveness of the worker grievance process. The monthly lunch meetings also serve a similar purpose, and were initiated by management to involve not only outgoing employees but also those still engaged at the factory in the process of improving the worker grievance process. Thus Delta's current worker grievance process is the result of several rounds of innovation and improvement based in large part on this ongoing feedback. While this does not fall specifically into any of the SRSB's Principles as currently defined, it is an accomplishment of Delta's system that deserves to be highlighted.

⁴³ See David Barboza, "iPhone Maker in China is Under Fire After a Suicide," New York Times, July 26, 2009 and David Barboza, "After Suicides, Scrutiny of China's Grim Factories," New York times, June 6, 2010.

⁴⁴ The dorm units are formal groups made up of eight workers that live in the same dorm room (two groups of eight per dorm room) and are available as a support group. The big brothers and sisters are

assigned to each dorm group as mentors with experience within the factory.

SRSG Principle	Delta Management Efforts	
<p>The researchers have given their impression of the overall performance of Delta Factory with regard to each SRSG Principles using a 5-star system, with 5 stars being the highest possible score.</p>		
Legitimate	★★★	<p>The worker grievance system at Delta is clearly management driven. It is unclear how the system would handle a serious issue that might involve upper management as a party to a dispute.</p>
Accessible	★★★★★	<p>Delta has a highly accessible grievance system, with perhaps the sole area for improvement being that none of the access points can be considered fully independent entry points into the system.</p>
Predictable	★★★★	<p>In general, the grievance system at Delta is predictable, with the exception that workers have little understanding of the range of possible outcomes to their grievances.</p>
Equitable	★★★	<p>Those who run Delta’s worker grievance system are highly skilled in how they handle cases. The major area for improvement involves providing workers with access to independent human rights expertise to help them articulate their concerns.</p>
Rights Compatible	★★	<p>Other than trainings about labor rights (primarily during worker orientation), we are not aware of any provisions in the grievance process itself that ensure that outcomes of grievance processes at Delta are in line with human rights standards.</p>
Transparent	★★★★	<p>Delta is doing a fairly good job at being transparent internally with regards to its worker grievance system, with the sole exception that there is little ongoing communication with the complainant about how their case is proceeding until the case is resolved.</p>
Focused on Direct or Mediated Dialogue	★★★	<p>Given the conditions in other Chinese factories, Delta deserves immense praise when it comes to its grievance system, where <i>informally</i> the Counseling Center currently achieves much with regard to this principle. To improve its rating, Delta should focus on formalizing the already-existing support of mediated settlements, and guaranteeing the confidentiality of the complainants when they do enter into the system.</p>

Chicony Factory's Grievance System Summary

Chicony Electronics (<http://www.chicony.com.tw/>) is a Taiwanese-based electronics company. Founded in 1983, it is today known as one of the world's leading manufacturers of 'marketer input devices' such as keyboard and power supplies, but has also expanded its production to include digital imaging devices.⁴⁵ Chicony built its first factory in Dongguan in 1994, and expanded again in 1998.⁴⁶ Its factories in Dongguan are used primarily to construct keyboards. The Chicony compound in Dongguan employs approximately 5,400 workers.

Chicony's motivation for designing and maintaining a robust worker grievance process was perhaps initially driven more by outside third parties than in Delta's case. Chicony responded favorably to HP's request to partner in this project as part of a bid to maintain and improve its relationship with one of its key customers. It had also been under growing pressure from the All China Federation of Trade Unions (ACFTU) to unionize. The point should not be overstated: certainly Chicony's management also saw substantial benefits to the existence of a robust worker grievance process, and of course they did not have to respond favorably to HP's request. However, at its core this is an example of a design process initiated by outside pressure.

Chicony's **Social and Environmental Responsibility (SER)** team oversees the grievance mechanism. A worker at Chicony can access the mechanism in several ways. The access point that was at the heart of the HP-Chicony collaboration is Chicony's **worker hotline**. This hotline was implemented as a joint effort between the factory, the Chinese Working Women Network (CWWN) and HP in 2009. Other access points include email, direct contact

with the SER team, elected worker and dormitory representatives, a new⁴⁷ Counseling office and anonymous suggestion boxes. The worker hotline is quickly assuming the pivotal role at the center of the factory's grievance process as the go-to place for workers to get information and advice on what to do with their complaints.

After its creation, CWWN initially ran the hotline before handing it over to a specially trained cadre of elected worker representatives in 2009. In January 2010, three of these worker representatives were from the ranks of management, whereas seven were line workers. The "hotline" is actually a cell phone with a designated number that rotates among the ten hotline worker representatives. It is staffed at all times, but during the day the hotline representatives are themselves working their regular day jobs, such that any hotline calls must be returned during breaks or after work hours. Workers can call or text the hotline from their personal mobile phones or specially designated public phones located in one of several booths in the dormitories.

After receiving a phone call, the hotline operators launch an informal investigation by speaking with the various parties involved in the matter (unless the original complainant wished to bring a confidential complaint). If these conversations help to generate options for the resolution of the issue, the hotline operator typically reports back to the original caller within a week's time. If the solutions offered prove unsatisfactory, the hotline representative cannot force workers into accepting solution against their will, nor do they have independent decision-making authority. Thus, for example, the hotline representatives could never decide on their own to move workers from one production unit to another. In such a situation, the

hotline worker would have to raise the issue with Chicony's senior HR management, who told us that they would then meet with the worker and possibly the worker's immediate supervisors to discuss options, including the option of transferring the worker to another unit.

A brand-new feature of Chicony's grievance system that was just coming into existence during our time there was the **Counseling Office**. Workers could go directly to the Counseling Office with a problem, or be referred to the office by the hotline representatives. At the time of our research, very few workers even knew of the existence of this office, however management had plans to advertise its existence more widely once the staff had become fully trained.

Comparison to the SRSB's Principles

The table below summarizes the comparative strengths and weaknesses of the worker grievance system at Chicony Factory in Dongguan, broken down in terms of the SRSB's seven Principles.

The worker grievance process at Chicony is in a very different evolutionary stage than that at Delta, and so there are limits to the appropriateness of comparing the two. Whereas Chicony's worker grievance system at first glance appears less sophisticated than Delta's, it must also be kept in mind that Chicony Factory is much smaller than the three plants served by the grievance system we saw at Delta.

The system is notable for two significant reasons: (1) the degree to which workers were involved in the design and implementation of the system, and (2) the degree to which Chicony management welcomes the involvement and support of outside actors – including HP, CWWN, and most recently our own HNMCP research team – in its efforts to strengthen its grievance mechanism. Chicony's

⁴⁵ See Chicony website: About Chicony, available at <http://www.chicony.com.tw/aboutchicony.htm> (last accessed on September 2, 2009)

⁴⁶ See Chicony website, *supra*, note 7

⁴⁷ This office was in development at the time of our research (2009/2010) and only became operational during the spring of 2010.

SRSG Principle	Delta Management Efforts	
<p>The researchers have given their impression of the overall performance of Delta Factory with regard to each SRSG Principles using a 5-star system, with 5 stars being the highest possible score.</p>		
Legitimate	★★★	The worker grievance system at Delta is still largely management driven, although there have been some efforts to involve worker representatives in its day-to-day management and operation.
Accessible	★★★★	Chicony's grievance system is fairly accessible and publicized among its workers. The major area for improvement might be with regard to protecting a worker's identity if s/he wishes to bring a complaint anonymously, as those safeguards were not clear to us (or the workers we interviewed).
Predictable	★★★★	In general, the grievance system at Chicony is predictable, with the exception that workers have little understanding of the range of possible outcomes to their grievances.
Equitable	★★★	Those who run Chicony's worker hotline – while certainly very well intentioned and trained – did not strike us as exceptionally well versed in labor rights. Many of them were part of management, and thus structurally perhaps not the best placed to provide neutral advice on workers' rights. Furthermore, with the handover of the hotline from CWWN back to the company, the grievance system actually <i>lost</i> ground with regard to this principle during the time of our research.
Rights Compatible	★★	We are not aware of any provisions in the grievance process that ensure that outcomes of grievance processes at Chicony are in line with human rights standards, nor did we hear any workers tell us that they would take a case involving human rights or labor rights to the currently existing grievance process.
Transparent	★★★	Chicony is doing a fairly good job at being transparent internally with regard to its worker grievance system. Improvements could focus on developing an on-going communication strategy with the complainant during the course of the investigation, and also clarifying publicly some of the criteria for deciding whether or not to pursue a complaint.
Focused on Direct or Mediated Dialogue	★★★★	Chicony's hotline prioritizes mediation and dialogue, however since the process is still mostly ad-hoc, standards are largely dependent on the individual case worker's professionalism.

management is truly adopting a consultative stance in designing its worker grievance process, engaging not only with those with power or leverage over the company (HP and arguably the involved NGOs), but making also what we believed to be genuine efforts to solicit the input from the workers themselves.

It is also noteworthy that at the time we conducted our research management was

committed to establish the legitimacy and trustworthiness of its still nascent worker grievance system. While it seemed to us that many workers were still unsure about where to bring their complaints (or uncertain of what might happen to their complaints if they did lodge them), it was also apparent that those complaints that did trickle into the system were being handled promptly and with great care to

the individualized context of the complaint.

Ironically, the flexibility and responsiveness of this system may have had a lot to do with management's strong involvement in the process during this early stage. Thus, while for a more "mature" grievance process this might be a cause for some concern (in terms of the SRSG's Principle of *legitimacy*), in Chicony's case it was arguably quite beneficial. If, for

example, those in charge of the worker hotline faced an issue which they had not previously contemplated, their easy access to management and HR helped them address complainants' concerns efficiently, thus bolstering the reputation of the system overall. Similarly, if a particular complaint suggested an institutional change that only management could implement, the close relationship between the hotline representatives and management helped make those reforms happen quickly, thus again reinforcing the validity of the system in the eyes of its earliest beneficiaries.

Over time, one wonders whether this degree of direct or near-direct management involvement in the system is sustainable, especially once the system starts to generate a larger and more regular stream of worker complaints. Furthermore, as the SRSG's Principles clearly state, over time one would actually want to see some separation between management and the worker grievance process in order to eliminate the possibility that management could ever interfere unduly in the grievance process. However, the experience at Chicony suggests that having management involved intimately at an early stage of the worker grievance process might not always be a bad thing, particularly in situations (such as Chicony) where management itself seems determined to develop an effective system.

A final note on the rights-compatibility of the worker grievance process at Chicony: Perhaps as a result of this process having been largely initiated and driven by Chicony's desire to maintain a strong relationship with HP, it is our impression that the initial worker grievance design process was perhaps less oriented towards being "rights compatible" than "HP-compatible." Thus, realistically speaking, at

least part of the responsibility for ensuring a rights-compatible grievance processes remains with HP's Social and Environmental Program point persons, since initially at least, there will be no other empowered stakeholder advocating for a rights-compatible safeguard or provision involved in the design process.

HP's Role in the Development of Delta and Chicony Factories' Grievance Systems

The above sections highlighted the key features of the two grievance systems at Delta and Chicony factories. This section lays out the four primary levers HP has at its disposition when it promotes improvements in the grievance mechanisms of its supplier factories. The first two levers (**randomized auditing** and **industry standard setting**) fall outside the scope of our research. They also did not figure prominently in HP's efforts to engage with Delta and Chicony. At the same time, our research did reveal their *potential* utility as part of a comprehensive engagement strategy, and so we introduce them here as potential levers for change at HP's disposition, and discuss further (in the recommendations section), how they might be incorporated into HP's current CSR strategy.

HP did, however, make use of the third and fourth levers presented below (**Constructive Engagement with Factory Management** and **Collaboration with NGOs**). Of particular interest in this discussion might be why (according to our analysis above) HP's efforts proved more successful at Chicony than they did at Delta.

Randomized Auditing

Like most multinational corporations, HP engages in routine, randomized auditing of its supplier factories. While auditing was

not the subject of our research, and while HP's audits do not focus on the nature of the worker grievance systems in place at their supplier factories, we found that managers in the companies were *highly* sensitive to the auditing process and willing to go to great lengths to ensure that auditors walked away from a visit satisfied. Indeed, feedback suggested that any efforts to improve suppliers' grievance mechanisms should be asked about as part of HP's ongoing auditing strategy.

Furthermore, the auditing process as a whole has been derided in China as an elaborate cat-and-mouse game in which the CSR departments of the MNCs devise ever-more elaborate schemes to detect CSR violations at supplier factories, which are soon thwarted by an even more sophisticated cover-up strategy by evasive supplier factories.⁴⁸ Our hope, as we discuss below in the recommendations section of this report, is that through the process of *constructive* criticism and engagement, this traditional cat-and-mouse dynamic might be avoided to some degree.

Industry Standard-Setting

HP also contributes to several industry coalitions designed to self-regulate and monitor the industry. In 2004, HP participated in the formation of the **Electronics Industry Citizenship Coalition (EICC)**, and continues to play an active role in the governance of that organization. Many of HP's suppliers, including Chicony, have also joined the EICC and committed themselves to "progressively align [their] operations with the EICC code of conduct and to support and encourage its own first-tier suppliers to do the same."⁴⁹ In Delta's case, while it has not joined the organization, it has committed itself to embracing the EICC Code of Conduct as part of its internal training programme.⁵⁰

⁴⁸ See Harney, *supra* note 3.

⁴⁹ James Wei, Chicony Group, "EICC Compliance Declaration," March 10, 2010, available at <http://www.chicony.com.tw/employment/EICC%20Declaration.jpg> (accessed July 12, 2010).

⁵⁰ Delta Group CSR Report 2008, available at http://www.delta.com.tw/csr/csr_report.asp (accessed March 11, 2011), at 44.

The EICC came up repeatedly during our interviews, and it became clear to us that both Delta and Chicony took great pride in claiming their adherence to global industry norms such as the EICC code of conduct, presumably as a sign of their brands' integrity. Thus – while the topic of industry self-regulation was also beyond the scope of our research – it represents yet another opportunity for HP and other multinational corporations interested in positive improvements in worker grievance systems to push that agenda forward. At present, for example, the existence of a robust worker grievance process is not mentioned in the EICC Code of Conduct, but presumably the SRSG's Principles might easily be incorporated by reference into that code, thereby adding a further lever by which to spur action around the creation of robust, rights-compatible worker grievance systems in factories worldwide.

Constructive Engagement with Factory Management

HP's efforts to engage with its suppliers regarding its worker grievance systems involved an egalitarian and respectful relationship, defined primarily by a joint problem-solving approach towards issues of concern to the supplier company. The approach required HP's corporate social responsibility officers to understand the context in which the supplier factory was working, and subsequently to identify

resources to help advance a mutually agreeable action plan to improve the existing grievance process. In the case of Delta, this action plan never materialized, due primarily to HP's insistence on a systems innovation that Delta management did not feel was necessary. In Chicony's case, however, a much more collaborative joint brainstorming process resulted in a longer-term partnership, major grievance system innovations, and the prospect of follow-on projects.

HP's engagement turned the traditional power-dynamic between a supplier and a buyer on its head. Instead of the supply factory management playing host to the HP CSR representative, it was instead the HP representative who hosted the interactions, supporting the suppliers' efforts and encouraging them to consider moving even further.

HP's decision to devote significant financial and human resources to this engagement effort resulted in a much more trusting relationship with the management of the two supplier factories we visited, *especially* for Chicony. At several points during our engagement, our HP contact was able to smooth over disagreements and misunderstandings based solely on the trust that the managers of the supplier factory felt for him. HP's investment in these relationships undoubtedly also paved the way for our own research effort.

Collaboration with NGOs

Perhaps the most innovative aspect of HP's success lay in its willingness to collaborate with NGOs. In the case of Delta and Chicony, HP worked with three NGOs to make significant contributions to the development of the worker grievance mechanisms at both factories. This followed from an advocacy campaign launched by **Students & Scholars Against Corporate Misbehavior** (SACOM)⁵¹ (www.sacom.hk), which targeted HP and several other major computer companies over allegations of poor working conditions at supplier factories. It is striking that HP's response to the SACOM campaign was not one of self-defense and denial, but one of constructive engagement and joint problem-solving.

SACOM subsequently agreed to assist HP with the creation of a plan to enhance the grievance mechanisms in each factory, and subcontracted with two additional Hong Kong based NGOs **CWWN**⁵² (www.cwwn.org) and **LESN**⁵³ (www.lesnhk.org) to conduct worker training programs in each factory.

HP's strategy transformed what might otherwise have been a highly adversarial (and potentially costly) relationship between HP and the NGO community, and resulted in a better substantive outcome for workers in the supplier factories. Thus – although this move was by no means cost free – it should be recognized as a clear success for other companies to emulate,

⁵¹ SACOM was founded in 2005 as a student-led initiative to improve the labor rights of outsourced cleaning staff and security guards. Following initial successes, SACOM expanded its activities, and has since focused much of its research and advocacy efforts on the information technology sector operating in and around Hong Kong, and in particular on supply-chain issues. SACOM has published a series of reports on the issue, which can be found on its website. In 2007, SACOM signed an agreement with HP to carry out a two-year joint training project for workers at Delta and Chicony factories in Dongguan. The final report describing this partnership was produced in July 2009.

⁵² CWWN was formed in 1996, and focuses its energy on workers' rights promotion and education in the Pearl River Delta. CWWN's involvement with HP began in 2007, when it carried out needs assessments at both Delta and Chicony. It later focused its work on Chicony only, where during a half-year period it trained approximately 2700 workers, or half of the factory, on the Electronic Industry Citizenship Coalition (EICC) Code of Conduct, Corporate Social Responsibility efforts, Chinese labor law, and how to minimize occupational hazards at the workplace. CWWN next launched a second round of trainings, this time much more in-depth, for members of Chicony's newly-formed Worker Representative Committees. Chicony formed these WRCS in compliance with the 2008 Labor Contract Law, and gave them the task of facilitating HP & CWWN's CSR-engagement efforts. In consultation with the Worker

Representatives, CWWN embarked on the final phase of its efforts at Chicony, namely to create the Worker Hotline.

⁵³ LESN was formed in 2001. Its programming and advocacy focus is on labor issues in mainland China. LESN partnered with HP and SACOM to facilitate management and worker trainings at the Delta Electronics Factory. The first rounds of LESN's training efforts focused on understanding the perspectives of top- and mid-management with regards to worker grievances, and were largely successful in identifying some shortcomings and possible gaps in the way grievances were handled.

and not just in response to a negative advocacy campaign.

The table below summarizes the comparative strengths and weaknesses of HP’s efforts to engage with Delta management to improve the worker grievance system at its Dongguan factory, broken down in terms of the seven SRSR Principles.

As can be seen in the chart, HP’s efforts at Delta factory had only a temporary impact. First, Delta’s worker grievance system was already quite sophisticated even before HP began its engagement process. This means that the improvements HP could hope for at Delta factory were at best marginal, as the factory was not starting from scratch. Second, Delta’s worker grievance system is primarily the result of a management-driven design and review process, not some imposition by an

outside party. Understandably, therefore, Delta’s management felt a great deal of pride in its current system, as well as an attachment to its current configuration. For HP, this meant that its ideas for reform of the system (specifically HP’s efforts to promote a worker hotline at Delta) ran into stiffer resistance than it would have if Delta’s management had had less “ownership” over the system.

Finally, HP for some reason never managed to break the mold of a traditional auditing relationship with its Delta counterparts. This may have had something to do with Delta’s sophisticated procedure for hosting and responding to its customers’ auditors, through which Delta also approached HP’s effort to engage them about its worker grievance mechanism.

At the same time, HP’s efforts to engage with Delta can also be considered a success

in a more narrow sense. Delta did agree to carry out a series of human rights and worker rights trainings among its workers, allowing an NGO access to its workers and to the factory. Thus from HP’s point of view, the engagement effort may well have reduced its vulnerability to criticism as well as having some positive impacts through the worker rights trainings.

SRSR Principle	HP SER Program Efforts at Delta	
<i>The researchers have given their impression of the overall performance of Delta Factory with regard to each SRSR Principles using a 5-star system, with 5 stars being the highest possible score.</i>		
Legitimate	N.A.	HP’s engagement with Delta did little to change management’s interrelationship with the worker grievance mechanism.
Accessible	★★★	As mentioned above, Delta already had a highly accessible grievance mechanism. However, HP’s efforts at least temporarily introduced an independent NGO into the factory landscape, thereby potentially creating a truly independent access point to the mechanism. The downside was that the NGO did not manage to establish itself as a permanent fixture at Delta, and so this benefit eroded with the end of the project.
Predictable	★	HP’s engagement did not make mention of Delta’s worker grievance system, thus missing the opportunity to improve worker knowledge of outcomes they might achieve using that mechanism.
Equitable	★★★	The HP-sponsored worker rights trainings contributed greatly to the workers’ awareness of the rights they enjoyed at Delta. The only downside was the temporary nature of these trainings.
Rights Compatible	★★★★	As noted above, temporarily at least, the HP-sponsored worker rights trainings were the only source of information about worker rights that Delta workers had following their mandatory orientation training.
Transparent	N.A.	HP’s efforts did not improve the transparency of Delta’s worker grievance system.
Focused on Direct or Mediated Dialogue	N.A.	HP’s efforts did not improve the primacy of direct or mediated dialogue in Delta’s worker grievance system.

The Impact of HP’s Engagement Efforts on Chicony’s Worker Grievance System

The table below summarizes the comparative strengths and weaknesses of HP’s efforts to engage with Chicony management to improve the worker grievance system at its Dongguan factory, broken down in terms of the seven SRSB Principles.

In contrast to Delta, HP’s efforts to engage with Chicony bore both short-term and longer-term fruit, and can therefore be considered a success. In some ways, this had to do more with the differences

between Delta and Chicony than any major difference in HP’s efforts. Whereas Delta already had a fairly established worker grievance system, the system at Chicony was rudimentary at best. And whereas Delta’s management had itself been driving the development and refinement of its worker grievance process, at Chicony, HP and the All China Federation of Trade Unions (ACFTU) were at least partly pressuring the factory management into action. Finally, Chicony was willing to allow HP into a genuine joint problem-solving effort, relaxing its guard in ways it might

not have had it still believed its relationship with HP followed the traditional auditor-supplier script.

That said, HP’s engagement with Chicony bore fruit in unexpected ways. Together with their NGO implementing partners CWWN and SACOM, HP worked collaboratively with Chicony’s management team to jointly develop a worker hotline. Thus, in addition to bringing the NGO representatives into the process of engaging with Chicony; and in addition to providing valuable human rights training to workers at Chicony, HP also contributed to the creation

SRSB Principle	HP SER Program Efforts at Chicony	
<i>The researchers have given their impression of the overall performance of Delta Factory with regard to each SRSB Principles using a 5-star system, with 5 stars being the highest possible score.</i>		
Legitimate	★★★★	HP’s engagement with Chicony fundamentally changed the way management thought about its grievance mechanism. In fact, in many ways this may be the effort’s largest success. The only shortcoming was that HP allied itself so closely with management during the design process that it may have gotten “captured” by management’s interests, thus missing opportunities to validate the concerns of workers and other participating stakeholders to make even more substantial progress towards the establishment of a genuinely rights-compatible grievance process.
Accessible	★★★★	HP’s efforts to engage with Chicony’s management to improve its worker grievance system resulted in a new access point to the system, which is today the core of that system. The only way to improve on this achievement would be to have insisted that an independent entity (such as CWWN) continue playing a role.
Predictable	★★★★	As noted above, HP’s efforts fundamentally changed the way that Chicony’s management thought about its worker grievance system. It led to the establishment of a defined “cadre” of managers with a clear responsibility for ensuring the integrity of the system.
Equitable	★★★★	The HP-sponsored worker rights trainings contributed greatly to the workers’ awareness of the rights they enjoyed at Chicony. The only downside was the temporary nature of these trainings, in particular given the high rate of worker turnover.
Rights Compatible	★★★★	As noted above, temporarily at least, the HP-sponsored worker rights trainings were the only source of information about worker rights that Chicony workers had following their mandatory orientation training.
Transparent	★★	One problem identified during our research was that HP, CWWN, and Chicony all failed to clarify the difference between HP, CWWN and management, something that may have made it less likely for workers to confide in CWWN or HP during the hotline design process.
Focused on Direct or Mediated Dialogue	★★★★★	Again, before HP’s engagement efforts, there was no worker hotline. Thus, by virtue of that accomplishment and the highly mediative nature of that hotline, HP’s efforts contributed a great deal towards this principle.

of a sustainable institution to address worker complaints and thereby hopefully contribute lastingly to an improved working environment at Chicony. It also yielded a request for a follow-on project by Chicony's management, which HP again helped to fund. Thus, HP's efforts catalyzed substantial and lasting reform at Chicony.

HP's Mode of Engagement with Supplier Factories

The following three key lessons emerged from HP's efforts at Delta and Chicony:

1. In response to allegations of CSR failings, **ask for help in resolving the problems identified**, rather than resorting to a 'delay, deny & defend' response;
2. When seeking to engage with suppliers, **engage them in a joint problem-solving strategy**, attempting to find solutions that work given *their* organizational and institutional context;
3. **Incentivize the collaborative engagement process** so that those suppliers who share HP's commitment to the establishment of robust, rights-compatible worker grievance processes can self-identify and qualify for further and more substantial technical assistance from HP.

HP's engagement efforts at Delta and Chicony certainly provide an example of the first principle, in that both projects managed to engage NGOs as collaborative partners. With regard to the second principle, however, it seems that only in Chicony's case did HP's SER representatives recognize the operational and logistical constraints of the company sufficiently to engage in genuine problem solving about improving the system.

Presumably, this had something to do with Chicony's greater receptiveness to HP's ideas about the development of a worker hotline. However, it also may be the case that Delta's management automatically felt put on the defensive to be approached by HP with a request for a specific worker grievance process innovation that it felt it

did not actually need. Finally, with regard to the third point, HP's process vis-à-vis both Delta and Chicony demonstrated the wisdom of thinking hard about incentives from a supplier's point of view. In Delta's case, once it became clear that the company was interested in only minor worker rights training efforts, HP funded those efforts and ultimately ended the project. But in Chicony's case – where it became clear that management was extremely willing to engage collaboratively – HP was able to respond with both human and financial resources to assist the process moving forward.

III. RECOMMENDATIONS

What follows is a series of recommendations or best practices that stand out for us after having completed our research with HP, Delta and Chicony. The recommendations are sorted in terms of the stakeholder groups for which the recommendation might be the most relevant, and described in generic ways so that similarly placed actors in different contexts might also find them relevant.

Recommendations for HP (and other brand retailers) with regard to the SRSG's Principles

1. Continue a sophisticated auditing system, and expand it to look also at worker grievance systems

Social auditing is and will remain an important part of any brand company's engagement with its suppliers. As well as providing for the assessment of compliance with standards, it can act as a leverage point, or incentive, for suppliers to collaborate in problem-solving and capacity-building processes. It would be useful to consider how questions about the effectiveness and "rights-compatibility" of the grievance mechanisms operating at the various supplier factories might be incorporated within audits. The SRSG's Principles serve as a comprehensive and powerful lingua franca

that can be used in this auditing relationship, allowing HP auditors to **know** what to look for when determining if a worker grievance process is robust and rights-compatible, and its supplier factories to **show** convincingly if and when they are – in fact – making progress.

2. Continue to promote adherence to Corporate Codes of Conduct

As noted above, HP's contribution to the EICC represented another means to incentivize supplier factories to bring their operations into compliance with industry standards. This trend of proactive industry self-regulation should continue, given the strong market-based incentives suppliers have to meet those standards.

3a. Continue to devote resources to engage in relationship building with supplier counterparts

As noted above, HP invested significant resources into building a relationship with its suppliers. Few companies with extensive supply chains can afford to spend a year or more working closely with each of their hundreds or thousands of individual suppliers. However, a CSR engagement program stripped of any capacity to patiently build trust between suppliers and the buyer will likely end up resorting to the same power dynamics typical of an auditing arrangement, where the buyer forces new practices onto its grudgingly-compliant suppliers, with the result that any changes are at best haltingly accepted and at worst entirely cosmetic. Given the degree to which MNCs wishing to influence their suppliers' grievance procedures intend to influence the very core of another (independent) company's management strategy, building a trusting and relationship is an essential component of any successful engagement strategy.

3b. Incentivize those suppliers that want to self-identify and engage further

Multinational corporations such as HP

might also think of creative incentive schemes to incentivize suppliers to self-identify if they are willing to engage in the type of groundbreaking engagement process around worker grievance system highlighted in this case study. HP, for example, created an award that was given to both Chicony and Delta at the conclusion of this project. While almost cost-free from HP's perspective, the trophies quickly found their ways into the boardrooms of both Delta and Chicony, and news of the award was quickly added to both companies' respective websites. Even more significantly, however, in Chicony's case the first engagement process led to Chicony management later approaching their HP-SER counterpart and asking him to help fund a complete overhaul of its overall worker grievance process.

Some creative thinking about what incentivizes supplier factories would undoubtedly result in more 'smart' options on how to increase the eagerness of suppliers to engage with HP in improving their worker grievance systems. For example, HP's informal practice of awarding both Delta and Chicony a plaque in acknowledgement of their efforts in this project might be formalized into an annual "SER achievement award" given to the supplier company most responsive to HP worker grievance process capacity building efforts.

4a. Continue to involve NGOs in collaborative efforts to engage with suppliers – and not just in response to NGO advocacy campaigns

This case study also shows the wisdom of HP's decision to include civil society actors in its supply chain engagement strategy. NGOs often have resources and insights to contribute towards an engagement strategy that a company such as HP acting alone could never muster. NGOs, for example, might have contacts with workers and labor representatives that management and consumers could not

develop. NGOs are also often perceived by workers as more independent or unbiased than a corporate, profit-driven entity, and are thus less likely to encounter skeptical responses among workers or donors.

However there is also another aspect of HP's strategy of engagement with the NGO community. It is generally much easier to criticize the performance of a person or organization than to step into their shoes and provide constructive advice on how to do the same task better. By inviting the NGOs into a collaborative partnership, HP was able to re-direct the NGOs' well-developed ability to point out inadequacies into a more forward-looking, problem-solving direction. Any such effort will likely fail if it amounts to an effort to coopt an NGO, as against work with them in partnership. But done right and with good faith, it can be to the advantage of all involved and result in a much more durable outcome.

4b. Carefully vet (or capacity-build) those NGOs before partnering with them

The reality in China (and many other parts of the world) is that civil society is often still at a fledgling stage, given the particular political environment in which they operate.⁵⁰ Consequently HP and other companies like it must conduct a thorough review of potential NGO partners before agreeing to collaborate. A partner NGO that lacks sophistication or a sufficient understanding of the work being done can often do more harm than good by raising expectations and failing to deliver the hoped-for results. Thus, a longer-term priority for HP and funders interested in promoting this kind of collaboration between industry and civil society might be to support capacity-building for local NGOs that are interested, focusing in particular on their competence in facilitating collaborative, non-adversarial organizational change processes. Depending on the degree to which HP wishes to engage broadly along its supply

chain in worker grievance reform efforts, it might be worth a sustained initial capacity building investment to support suitable longer-term NGO partners.

5. Conduct a preliminary analysis of the pre-existing grievance system before designing a new institutional innovation

Though this point may sound simplistic, this case study demonstrates the importance of analyzing a worker grievance system before diving into the redesign phase. In this case, HP worked with two supplier factories: the first – Delta – with a pre-existing and highly sophisticated worker grievance system, and another – Chicony – with a much more rudimentary system. However, in contracting with SACOM and the two implementing NGOs, HP adopted the same approach, coupling training with efforts to form worker representation committees and a worker hotline. At Chicony, this turned out to be a good idea; one that would address real gaps on the ground and bring genuine benefits for its workers. But at Delta, the feedback we heard from management indicated that HP and the NGOs were steering their efforts in the wrong direction, and that replacing or supplementing the already strong counseling center with a duplicative worker hotline would have been wasteful and needlessly confusing to the workers. Given the strength and apparent success of the Counseling Center there, this critique would appear to have merit.

To be clear, Delta's worker grievance system was not perfect, and our analysis revealed shortcomings as well as strengths. However, a thorough preliminary analysis would have pointed out those weaknesses to HP and its partner NGOs. This might have allowed HP to advocate for more relevant and necessary reforms during the engagement period. In the alternative, HP could also have come to the conclusion that its resources should

better be devoted to another supplier factory with more pressing needs than Delta, thus allowing both HP and the NGO to maximize the total social impact of their efforts.

6. Consider more cost-effective ways to ensure the rights-compatibility of the grievance process

From our perspective, the biggest unanswered question with regard to the SMSG's Principles is how to ensure that a corporate grievance system is rights-compatible. At least initially, HP's efforts to provide worker rights trainings at both Chicony and Delta may have contributed towards that objective, however in light of the very high worker turnover rates in Dongguan and the large numbers of workers to be trained, it appeared that one-time training efforts were not a cost-effective way of promoting rights awareness among workers at supplier factories. Thus, recognizing that an ongoing training funded by HP may be prohibitively expensive, we recommend finding other, more sustainable ways to promote the rights-compatibility of worker grievance processes. Some possible ideas might include:

- Being more forceful about **NGOs or other outside actors serving as at least one possible access point into a grievance process**; even if only for informational purposes. At both Chicony and Delta, for example, HP might have pushed harder for CWWN / LESN to maintain a more permanent role as a potential access point into the respective systems.
- Creating other outside resources for workers to consult, perhaps guaranteed as part of a supplier contract with HP. One might imagine, for example, an independently **HP-administered website, toll-free hotline or chat account** where workers from any HP supplier factory might go to find information about their rights under

national and international law, and where they might also complain anonymously if they feel that their rights have been violated in some way. HP could forward those notices to the managements of the concerned factory and follow up about any responses taken, posting those updates back on the same HP-administered website. Such a website might also, for example, be administered by the EICC or some other industry-wide regulatory group.

- HP, along with the factories and third party NGOs, might devote their energies to **develop customized rights awareness materials** describing the rights workers enjoy as well as the formal and informal grievance mechanisms workers should know about both inside and outside of the factory. In cases where the internal grievance system is either non-existent, informal, or not yet sufficiently formalized, such a 'codification' effort might serve a twofold purpose: (1) it might spur action to design a grievance process, and (2) it would bring greater clarity to the workers at that facility on what they should do if they have a complaint. The final product of such efforts could be in any format; from a written pamphlet to audio-visual materials for use as part of a new worker orientation session, and could be handed over to the supplier factory for use internally.
- Another option to make the impact of a training effort more durable would be to incorporate a **"train-the-trainer"** component as part of the engagement effort. In this way, specially trained individuals within the factory could be appointed to carry out a series of rights trainings for the workforce at the supplier factories *independent of* ongoing support from the buyer. Regardless of what shape these efforts might take, HP's inclination to supplement its engagement efforts with its suppliers on worker grievance processes with training

on worker rights and human rights should be commended. Even the most well-designed worker grievance process is unlikely to achieve rights-compatible outcomes if the workers who ultimately use the system are poorly educated about the rights they have.

7. Emphasize dialogue and consensus building not only in the resolution of individual complaints, but also in the design of the actual process

In the case of Delta, it seems that the NGOs and HP wanted to overhaul the grievance mechanism and create a worker hotline similar to the one developed at Chicony. For the reasons described above, these efforts did not meet with success. We believe that a more inclusive approach based on dialogue and collaborative needs-identification would have proven to be more successful. A consensus-based approach might have allowed the various stakeholders – workers, HPs CSR specialists, management and NGOs – to prioritize jointly those issues most in need of attention, and subsequently work as a team to find practicable solutions.

When we raised the idea of consensus building with Chicony's HR team, they decided to explore the idea further, and invited us back to Dongguan for our third field visit (see above, page 4). This final visit resulted in Chicony management identifying two priority areas where it needed to direct further attention with regard to its worker grievance process, and clarified with other assembled stakeholders a process by which it would address those issues.

In moving forward, therefore, HP should consider identifying potential partner NGOs or other independent third parties with the capacity to serve as facilitators and consensus builders, and study the potential adoption of consensus-building engagement efforts as an additional component of its supply chain engagement efforts.

Recommendations for Chicony & Delta (and other supply factories) with regard to the SRSG'S Principles

1. Be open but cautious about solutions imposed from the outside

If there is one lesson that supplier factories in a situation similar to that of Chicony or Delta should glean from this case study – it would be to be both open to dialogue *but also* to resist being too quick to accept institutional innovations imposed from the outside. By using the SRSG's Principles as a basis for engaging with clients, auditors, and NGOs, companies such as Delta and Chicony can amicably disentangle form from function. In the case of Chicony, where there was in fact no functional worker grievance process in place, it was clear according to the SRSG's Principles, Chicony was falling behind. Thus, in Chicony's case, the management itself decided to engage with HP in an effort to improve its system. In Delta's case, however, a functional analysis based on the SRSG's Principles would have yielded a lot of positive affirmation of management's past efforts, thus making it easier for Delta to argue in defense of some – if not all – of its pre-existing institutional arrangements. Thus, in both cases, the use of the SRSG's Principles allows management to argue for building a system that truly fits within its institutional framework and organizational culture.

2. Be transparent if you do not intend to engage on further reforms

One final recommendation to suppliers is to be abundantly transparent in situations where – for whatever reason – management is unwilling or unable to engage in further reforms of its worker grievance process. While the buyers and NGOs would presumably be disappointed by being told that the conditions for reform are not right, their disappointment would undoubtedly be much greater if they felt actively misled by false overtures, followed by insufficient follow-through.

IV. SUGGESTIONS FOR FURTHER IMPROVEMENTS TO THE SRSG'S PRINCIPLES AND ACCOMPANYING GUIDANCE POINTS

What follows is a list of suggestions on how to make the SRSG's Principles and the CSRI Guidance Points more practitioner-friendly, based on our understanding of the SRSG's Principles and informed significantly by our experience in Dongguan trying to use the CSRI Guidance Points as tools to elaborate on those Principles as a potential analysis framework.

1. Work to get the SRSG's Principles integrated to industry attempts to self-regulate, such as the EICC

As we saw, Chicony took great pride in joining the EICC, and publicly declared its intention to progressively bring its policies in line with the EICC Code of Conduct. To the extent such voluntary codes of conduct are common in other sectors as well, CSRI and other concerned civil society actors should work to integrate the SRSG's Principles and an associated list of more concrete Guidance Points into these other industry self-regulation efforts.

2. Develop user-friendly tools for compliance auditors, grievance system overseers, and other interested parties

Even after one year of working with the SRSG's Principles and the associated CSRI Guidance Points, they are still difficult to describe coherently, much less to represent in a user-friendly fashion. Our team struggled to succinctly present to HP, Delta or Chicony our findings and recommendations in a way that could give them concrete guidance on areas of strength and weakness. As an example, our research team initially produced an unwieldy 100+ page written report to summarize our research at Delta and Chicony, which failed to produce an "actionable" roadmap towards improvement, but also barely managed to

respond to the complexity of the SRSG's Principles and the CSRI Guidance Points.

Thus, we were yearning for user-friendly tools, KPIs, or interview kits designed to help distill the significant wisdom contained in the SRSG's Principles and associated literature into a set of manageable action-oriented research tasks for consultants, managers, or Human Resource experts. We therefore encourage the SRSG and the Corporate Social Responsibility Initiative to continue the quest to develop user-friendly "tools" for practitioners hoping to use the SRSG's Principles as a standard for evaluating corporate grievance systems. A few examples of such "tools" that we might have found useful in our own research effort include:

- A standardized assessment tool or questionnaire for a field-researcher seeking to understand and describe a grievance mechanism,
- A website devoted to explaining and illustrating each of the Guidance Points, perhaps with reference to illustrative examples of what to look for (key performance indicators),
- A more finalized metric to allow comparisons across different grievance systems, or to highlight the relative strengths and weaknesses of a single grievance mechanism

V. CONCLUSION

As was mentioned above, this pilot project is different from the other four in that the two worker grievance processes were not designed with the SRSG's Principles in mind. Thus, an interesting next step for this pilot project would be to partner with HP or some other similarly placed corporation to actually approach one or more of its suppliers with the intention of collaboratively designing and implementing a worker grievance process according to the SRSG's Principles.

Even without that preliminary step to this project, however, a lot can be learned from this study. First, it is apparent that companies like HP are uniquely placed to promote worker grievance systems in their immediate supplier factories. In HP's case, it seems that several factors allowed for this kind of successful engagement. First was the existence of fairly stable relationships between supplier factories and the client HP. In HP's case, this was perhaps more the result of high transaction costs involved in changing suppliers than something of HP's choosing. In other situations, however, this might speak in favor of suppliers and consumers agreeing on longer-term contracts to allow for relationships to stabilize and suppliers to focus on real workplace improvement efforts rather than just on the factory's price point.

Second, the two HP-led efforts to engage at Chicony and Delta showcased a very effective HP engagement strategy, namely (1) to partner with NGOs, (2) to engage constructively with supplier factories, and (3) to restructure the incentives for supplier factories to reward genuine progress on worker grievance processes. HP and other similarly placed enterprises might use this method to engage with their various suppliers and lend support to those suppliers willing to go above and beyond with regard to their worker grievance processes.

