



Ludwig Boltzmann Institute  
Human Rights

## THE RIGHT TO REMEDY

### **Extrajudicial Complaint Mechanisms for Resolving Conflicts of Interest between Business Actors and Those Affected by their Operations**

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## Abstract

In recent years, companies have faced increasing scrutiny for their human rights conduct. Current international human rights law has been traditionally state-based and provides only dissatisfying ways for potential victims of corporate human rights violations to hold companies accountable. Moreover, judicial proceedings may not be the primary option for both parties involved due to their costs and length as well as the often associated negative public attention.

The aim of this study is to address the current gap in international human rights law and to explore alternative ways of conflict resolution that may provide for more immediate and equitable solutions on an extrajudicial basis. For this purpose, a total of five complaint mechanisms, both international and corporate initiatives, have been examined in order to assess their capacity to strike a fair balance between human rights and business interests. The analysis reveals decisive factors and major challenges for establishing and implementing a human rights compatible extrajudicial grievance mechanism. It has distilled a set of model features that allow for assessing the quality of the mechanism and complement the effectiveness criteria of the UN Guiding Principles.





## I Introduction

### I.1 Contextualization

In recent years, companies have been facing ever-growing scrutiny for their human rights conduct. Some of them have been confronted with high-level human rights allegations that entailed years of litigation and public campaigns.

From a legal point of view, litigation still represents the most formalised and regulated response with binding outcomes. It fulfils an important role in providing clarity, predictability and increased understanding of how human rights are to be applied in the business context. Nevertheless, in many cases legal recourse is not the preferable choice and functions only as a last resort for both aggrieved persons and companies. Apart from the presumed negative implications of court proceedings outlined above, it is often also simply beyond some states' capabilities to provide for the necessary effective judicial mechanisms, at least within a reasonable period of time. Thus, non-judicial remedies have gained increasing importance for handling business and human rights disputes.

This study undertakes to explore the potential and impact of extrajudicial complaint mechanisms. It analyses selected international and corporate complaint mechanisms as to their human rights compliance and assesses their value for alternative conflict resolution and/or prevention between business and individual actors.

### I.2 Research Questions

The guiding research questions of this study are:

- How effective are existing types of extrajudicial complaint mechanisms in relation to bringing instances of human rights violations to the attention of responsible companies, providing remediation for it and resolving the dispute in the best interest of all parties concerned?
- How suitable are they in terms of balancing economic and human rights interests to achieve sustainable and fair outcomes?
- Finally, which are crucial characteristics ("model features") to ensure that an extrajudicial complaint mechanism is of value for the implementation and enforcement of human rights in business operations?

### I.3 Methodology

The research project takes a comparative approach to international and company-level extrajudicial complaint mechanisms. It builds on desk research of legal documents, relevant case law, literature, company policy documents as well as on empirical data gained through expert interviews. From a legal human rights perspective, it uses the international human rights framework and pertinent ILO documents defining especially work related human rights as its theoretical basis.<sup>1</sup> The human rights compatibility of the mechanisms has been assessed on the basis of the so-called "Ruggie criteria" (see below).

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<sup>1</sup> E.g. Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, ILO Declaration on Fundamental Rights of Work, etc.

The research questions have been tackled according to consecutive methodological steps illustrated in figure 1.



Figure 1: Research Methodology

To begin with, the project team has mapped the key characteristics and features of the selected mechanisms on the basis of available documents. The chapters on the World Bank Inspection Panel and the OECD Guidelines have been enriched by an overview of relevant case law and/or exemplary case studies (see chapters II.1.4 and II.2.3, as well as Appendices 2 and 3).

To complement these findings and to capture the perspectives of relevant actors involved in complaint processes, the team has conducted a total of 11 semi-structured interviews, either personally, via phone or email questionnaire with the following persons: representatives of international organisations (OECD, World Bank); companies' representatives; business consultants; legal counsels or other representatives of plaintiffs (e.g. lawyers, NGOs, community members); and complainants themselves, where feasible (for a detailed list see Appendix 4). Due to confidentiality reasons a number of interviews have been anonymised. The empirical data were analysed on the basis of content analysis.

Finally, the project team has assessed each mechanism as to its compliance with the so-called "Ruggie criteria", a set of effectiveness criteria for non-judicial grievance mechanisms provided by the UN Guiding Principles.<sup>2</sup> The latter have been developed as a result of the work of the UN Special Representative on Human Rights and Business and his team, which

<sup>2</sup> UN Human Rights Council (2011), Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, 21 March 2011 (hereinafter: Ruggie Guiding Principles), para. 31.

was accompanied by a broad multi-stakeholder process (see chapter I.3.1). After highlighting major strengths and weaknesses of the individual mechanisms, the researchers have identified particular strengths and weaknesses of non-judicial complaint mechanisms on a more general level. This has resulted in the elaboration of a set of specific “model features” which complement the existing Ruggie criteria.

### ***I.3.1 The Ruggie Framework***

From 2005 to 2011, Prof. John Ruggie served as the UN Secretary-General’s Special Representative on Business and Human Rights. In the course of his mandate, Ruggie developed the business and human rights framework “Protect, Respect and Remedy” (2008) and subsequently presented the so-called “Guiding Principles” (2011) for the implementation of this framework.<sup>3</sup> The latter provide an authoritative global standard addressing the risk of adverse human rights impacts caused by business activities. They outline the duties of states to foster businesses’ respect for human rights, as well companies’ duties to reduce the risk of causing or contributing to human rights harm.

According to the third pillar of the Ruggie framework (“access to remedies”), effective regulation of corporate conduct also calls for effective ways to investigate, punish and redress human rights violations. As a part of their responsibility to respect, companies should provide for remediation through operational level grievance mechanisms. To this end, the Guiding Principles include a set of effectiveness criteria for non-judicial grievance mechanisms, which apply to corporate and other non-state based grievance mechanisms (see figure 2).

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<sup>3</sup> UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31.

### **Effectiveness criteria for non-judicial grievance mechanisms**

**In order to ensure their effectiveness, non-judicial grievance mechanisms, both Statebased and non-State-based, should be:**

- (a) Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) 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;
- (c) Predictable:** providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) 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) 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;
- (f) Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

**Operational-level mechanisms should also be:**

- (h) Based on engagement and dialogue:** 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.

Figure 2: Effectiveness Criteria for Non-Judicial Grievance Mechanisms<sup>4</sup>

## **I.4 Definitions**

### **I.4.1 General Remarks**

The complaint mechanisms which will be examined in the following chapters are internal, institutionalised mechanisms providing a process through which stakeholders can file complaints with an organisation and the organisation responds to it.<sup>5</sup> Thus, they can be seen as alternative dispute resolution mechanisms.

Alternative dispute resolution refers to forms of dispute resolution that involve the active engagement of the parties concerned, but are not litigation. They encompass a spectrum extending from direct negotiation, through dialogue assisted by a neutral third-party but with non-binding outcomes, to the more adjudicative process of binding arbitration. The terms for some of the non-binding forms of dispute resolution such as facilitation, conciliation and

<sup>4</sup> UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31.

<sup>5</sup> One World Trust (2007), Complaint and Response Mechanisms, 1.

mediation are used differently or interchangeably in the literature. Rather than differentiate between types of alternative dispute resolution, some commentators see these as different styles of mediation which may be applied according to the needs of a particular dispute or as a result of the preferences and skills of the mediator involved.<sup>6</sup>

Arbitration, as the most formal kind of a facilitated process, is usually binding on the parties who agree at the outset to accept the outcome. In a situation of distrust and power imbalances, it is less likely that the parties will agree to be bound by this kind of process. However, arbitration can also be used in a non-binding manner, in instances where mediation has failed to achieve an agreed settlement and the parties wish to see how the dispute might be assessed or adjudicated by an independent third party, before going to court.<sup>7</sup>

#### ***1.4.2 Complaint and Grievance***

The words “complaint” and “grievance” are often used interchangeably, but are sometimes ascribed separate meanings in the literature. Some suggest that a complaint is an isolated or event-based concern, whereas a grievance is more complex. Others suggest that a complaint can be dealt with informally and without compensation, whereas a grievance requires compensation through a formal process. Some see a complaint as a conflict that has not risen to the level of a lawsuit, while a grievance is an issue of litigation. Others see the relationship in reverse.<sup>8</sup> For the purposes of this study, in order to avoid terminological confusion, the term “complaint” will be used to refer to all mechanisms examined.

### **1.5 Complaint Mechanisms under Study**

#### ***1.5.1 Selection Criteria***

The research explicitly focused on a small number of complaint mechanisms which were chosen on the basis of the following aspects:

- Human rights relevance: The first common denominator among the mechanisms is their attention to human rights. References to human rights may be explicit or implicit, with or without referrals to international legal documents, but should at least contain a considerable spectrum of procedural and material human rights requirements. To credibly and effectively address alleged breaches of human rights in the business context, non-judicial mechanisms must be based on certain minimum criteria including legitimacy, accessibility, predictability, equity, rights compatibility and transparency.
- Business relevance: The very same factors are to be taken as a basis concerning the question, whether the complaint mechanisms included in the study are also relevant for companies. In addition, they should bear the potential to exert a certain incentive effect on corporate actors; that is to say, they should take sufficient account of economic considerations besides stressing human rights concerns.
- Length of operation: The selected complaint mechanisms should draw on a considerable time of functioning, at least three years. This is to make sure that the particular

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<sup>6</sup> Corporate Social Responsibility Initiative (2008), Rights-Compatible Grievance Mechanisms, 11-12.

<sup>7</sup> Supra, at 12.

<sup>8</sup> Supra.

instruments have already brought about enough “case law” in order to adequately examine the implementation process and assess their practical effects in relation to balancing conflicting interests.

### ***1.5.2 Selected Mechanisms***

The existing patchwork of extrajudicial mechanisms addressing human rights grievances in the business context is extensive and diverse, and comprises international, national, regional, multi- and bilateral, multi-stakeholder, industry or multi-industry initiatives. Yet, according to UN Special Representative John Ruggie, it “remains incomplete and flawed”<sup>9</sup> and calls for enhancement.

A number of international organisations have recognised the need for effective complaint mechanisms besides courts already many years before Ruggie was appointed Special Representative for this issue, and consequently have developed pertinent procedures of their own. For the purposes of this analysis, two of the most prominent international mechanisms<sup>10</sup> have been analysed: the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and the World Bank Inspection Panel (World Bank IP). Both have been referred to in a number of international, national and regional documents on complaint procedures, and reflect a long standing tradition of extrajudicial mechanisms for resolving business and human rights conflicts.

Likewise, a handful of multinational companies have installed internal complaint systems – a development that has been clearly identified as an indispensable requirement, forming one part of a company's duty to respect human rights and to comply with corporate due diligence requirements, as promoted by John Ruggie.<sup>11</sup> As yet only a couple of company-based complaint mechanisms has been established, which explicitly aim at balancing business and human rights interests. However, strengthening the company level is clearly the future direction for alternative ways of dispute settlement mechanisms regarding corporate human rights abuses.<sup>12</sup> Our selection of company mechanisms covers both internal and external aspects, and they may be used by stakeholders inside and outside a company; these are: Anglo American, Gap Inc. (Lesotho) and Hewlett Packard (Mexico).

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<sup>9</sup> UN Human Rights Council (2008), *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5, 7 April 2008, 22.

<sup>10</sup> “International” in this context means mechanisms functioning all over the world or at least across several continents. See also the categories applied by Rees/Vermijs (2008), *Mapping Grievance Mechanisms in the Business and Human Rights Arena*.

<sup>11</sup> UN Human Rights Council (2008), *Protect, Respect and Remedy*, 24.

<sup>12</sup> UN Human Rights Council (2009), *Business and Human Rights: Towards Operationalizing the “Protect, Respect and Remedy” Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/11/13, 22 April 2009, 14.

## II Analysis of International Complaint Mechanisms

### II.1 The OECD Guidelines for Multinational Enterprises

#### II.1.1 General Description

The OECD very early acknowledged that human rights form a pivotal element of the values and practices within which global markets are to be embedded. As of October 2012 it has a total of 34 member states<sup>13</sup> and functions as a platform for information and coordination on national and international economics and public policies. Its objectives include the support of sustainable economic growth and economic development by boosting employment, raising living standards and maintaining financial stability worldwide.<sup>14</sup>

In 1976, the governments of the OECD countries undertook a policy commitment for encouraging the positive contribution of multinational enterprises to economic and social progress and for minimising possible negative effects of their operations in the context of regulating international investments. The so-called “OECD Declaration and Decisions on International Investment and Multinational Enterprises” consists of four elements including the OECD Guidelines for Multinational Enterprises (the Guidelines).<sup>15</sup> The Guidelines comprise a set of voluntary recommendations for responsible business conduct, addressed to companies operating in or from the territories of the 44 adhering governments.<sup>16</sup> They cover standards and principles on all major areas of business ethics including labour relations, human rights, environment, information disclosure, anti-corruption, consumer protection, science and technology, competition and taxation.<sup>17</sup>

Notwithstanding the non-binding nature of the Guidelines for business enterprises, the adhering countries make a binding to commitment to implement them. This does not guarantee, however, that companies not willing to abide by the principles enshrined therein will be held to account, because no legally enforceable sanctions exist. The Guidelines belong to the group of so-called “soft law” instruments, which govern the whole area of corporate human rights responsibility.<sup>18</sup> And they constitute to date the only such soft law regime that has a distinctive implementation and complaint mechanism in place.<sup>19</sup> All countries adhering to the Guidelines are obliged to establish “National Contact Points” (NCPs) which are responsible for raising awareness on and promoting the Guidelines among the business community, employee organisations, civil society organisations and the wider public. Moreover, they help to resolve issues that arise in specific instances of corporate

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<sup>13</sup> Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States, see <http://www.oecd.org/about/membersandpartners/> (05.10.2012).

<sup>14</sup> About the OECD, <http://www.oecd.org/about/> (05.10.2012).

<sup>15</sup> OECD Declaration and Decisions on International Investment and Multinational Enterprises, <http://www.oecd.org/daf/inv/investment-policy/oecddeclarationanddecisions.htm> (08.03.2013).

<sup>16</sup> 34 OECD member countries and 10 non-members (as of May 2012): Argentina, Brazil, Chile, Colombia, Egypt, Estonia, Israel, Latvia, Lithuania, Morocco, Peru, Romania, Slovenia and Tunisia. Supra.

<sup>17</sup> Guidelines for multinational enterprises, <http://www.oecd.org/daf/inv/mne/> (08.03.2013).

<sup>18</sup> Buhmann (2007), A Poverty Perspective on Human Rights and Business, 247.

<sup>19</sup> Lukas (2011), The Protection of Labour Rights in Global Production Networks, 6.

misconduct by facilitating a mediated dialogue between the parties (details on the complaints procedure will be presented in chapter II.1.3).<sup>20</sup>

### **II.1.2 Development over Time**

The OECD Guidelines have been revised five times: in 1979, 1984, 1991, 2000, and finally 2011. While the earlier revisions had brought only limited developments and textual changes, the last two updates entailed important modifications and improvements. Prior to the 2000 review, the OECD member states shared the opinion that only continued stability would account for effective application of the Guidelines. Therefore, the 1979 update consisted in one modification with regard to employee transfer during collective bargaining only; the 1984 amendment concerned the protection of consumer interests with minor changes relating to collective bargaining and disclosure; and in 1991 a new chapter on environmental protection was introduced.<sup>21</sup>

Regarding the Guidelines' practical relevance, one can distinguish three main stages: The initial phase, lasting from their adoption until the mid 1980s, was a quite "active" one. It was marked by a number of important cases on corporate misbehaviour, raised by trade unions and actively supported by governments. Following this, the Guidelines witnessed a rather "dormant" period. Apart from the review process concluded in 1991, they came into disuse as governments were keen on attracting foreign investments, and therefore abstained from pushing companies too much to comply with the Guidelines. They had a revival in the 1990s, when public awareness of negative business practices pertaining to labour, human rights or environmental issues increased again.<sup>22</sup> However, at that time the Guidelines had lost importance as an instrument, given the increase in initiatives by international organisations, trade unions, NGOs or business branches to establish their own Codes of Conduct and other tools. Moreover, the OECD had to cope with criticism and certain loss of credibility following the unsuccessful attempt to negotiate a multilateral investment agreement (MAI). Consequently, another review process was launched in 1998 bringing about the 2000 version of the Guidelines.<sup>23</sup>

The 2000 review involved business representatives, trade unions, inter- and – for the first time – non-governmental organisation (NGOs). It delivered both textual modifications of the Guidelines as well as changes to their operating and implementation procedures. None of the consulted parties was entirely satisfied with the outcome of this review, though.<sup>24</sup> Notwithstanding that several important topics were added (e.g. recommendations on sustainable development, human rights, effective self-regulation etc.) and that the Guidelines' scope of application was extended to the supply chain, the wording of many phrases remained rather vague and optional. References made to key international standards like the ILO's Core Labour Standards, or the introduction of explanatory

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<sup>20</sup> National Contact Points for the OECD Guidelines for Multinational Enterprises, <http://www.oecd.org/daf/inv/mne/ncps.htm> (08.03.2013).

<sup>21</sup> Tully (2001), The 2000 review of the OECD Guidelines for Multinational Enterprises, 394f; TUAC, A Users' Guide for Trade Unionists to the OECD Guidelines to Multinational Enterprises, 3.

<sup>22</sup> TUAC, A Users' Guide, 3.

<sup>23</sup> Supra.

<sup>24</sup> Tully (2001), 402f.



“Commentaries” to the Guidelines couldn’t satisfy critics either.<sup>25</sup> Above all, the 2000 review’s declared aim had been to strengthen the role and impact of the NCPs in order to foster the Guidelines’ relevance and practical effectiveness. Thus, the most important modifications were those pertaining to the complaints handling process. The circle of complainants was expanded to civil society organisations and the public, and it was clarified what was expected from governments, and NCPs respectively, when resolving specific instances. In the end, however, much was left to the discretion of individual NCPs again (e.g. whether to follow-up on a case; whether to report publicly on it, or not; etc.) – a fact especially criticised by NGOs.<sup>26</sup> Their demand to change the Guidelines’ legal character into a binding instrument failed too.<sup>27</sup>

The landscape for multinationals and their investments kept changing rapidly. Hence, a new update process of the Guidelines was started exactly ten years after the last major review. The 2010 revision should address the challenges posed by the financial and economic crisis, the ongoing climate change and the issues that were on the international development agenda. Its aim was to further increase the Guidelines’ relevance and better clarify the responsibilities of the private sector.<sup>28</sup> The review was carried out as a concentrated multi-stakeholder process with an impressive number of governmental and non-governmental actors, including various OECD committees and bodies, interested non-adhering countries, international organisations and institutions such as the International Labour Organisation (ILO), the UN Global Compact, the Office of the UN Special Representative John Ruggie, the International Finance Corporation (IFC), the UNEP Finance Initiative, the Global Reporting Initiative (GRI), the International Standardisation Organisation (ISO) as well as many other representatives from civil society, academia and business.<sup>29</sup> In May 2011, coinciding with the OECD’s 50th anniversary, the update was finished and the (then 42) adhering governments formally adopted the new Guidelines (“2011 Edition”).<sup>30</sup>

The 2011 update has brought about changes concerning both the Guidelines’ content and scope of application. A highlight among the content-related innovations constitutes the integration of a comprehensive chapter on human rights.<sup>31</sup> In this respect, the OECD has chosen the “Protect, Respect and Remedy” framework as the basis for defining the human rights responsibilities of multinational enterprises. In accordance with the Ruggie framework, the new Guidelines also include the recommendation to exercise due diligence as an overall principle for business conduct. It requires companies to assess, avoid or mitigate negative impacts of their activities, covering their operations worldwide and explicitly applying it to all their business relationships (supply chain responsibility).<sup>32</sup> Moreover, in the wake of the 2011 update important changes have been made in many other issue-specific chapters including

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<sup>25</sup> See Oldenziel (2000), *The 2000 Review of the OECD Guidelines for Multinational Enterprises: A new Code of Conduct?*, 15ff and 49f.

<sup>26</sup> *Supra*, 23ff and 31.

<sup>27</sup> *Supra*, 46f.

<sup>28</sup> 2011 Update of the OECD Guidelines for Multinational Enterprises, <http://www.oecd.org/daf/inv/mne/2011update.htm> (08.03.2013).

<sup>29</sup> Huarte Melgar/Nowrot/Wang (2011), *The 2011 Update of the OECD Guidelines for Multinational Enterprises: Balanced Outcome or an Opportunity Missed?*, 12.

<sup>30</sup> OECD (2011), *OECD Guidelines for Multinational Enterprises, 2011 Edition*; See also 2011 Update of the OECD Guidelines for Multinational Enterprises, <http://www.oecd.org/daf/inv/mne/2011update.htm> (08.03.2013).

<sup>31</sup> OECD (2011), *Guidelines*, 31.

<sup>32</sup> *Supra*, 20, paras. 10-13.

Employment and Industrial Relations, Combating Bribery, Bribe Solicitation and Extortion, Environment, Consumer Interests, Disclosure and Taxation.<sup>33</sup>

Probably the most controversial issue in any discussion on non-binding codes of business conduct is implementation. With regard to the Guidelines' implementation procedures, the OECD announced to have reinforced the 2011 edition with stronger and more predictable rules for the handling of complaints.<sup>34</sup> However, the reforms actually undertaken turned out to be rather disappointing, at least for NGOs.<sup>35</sup> According to them, the renewed procedural provisions can serve to improve the performance of NCPs in some aspects, but fall short to ensure the effectiveness and consistency regarding the implementation of the Guidelines' standards and principles across all adhering countries.<sup>36</sup> In short, one can say that the 2011 update again has increased the Guidelines' scope and relevance, but the real test remains in its implementation, which is due to the NCPs.

### ***II.1.3 Institutional and Procedural Features of the Guidelines***

The implementation procedures are outlined in Part II of the Guidelines, which contains both procedural guidance for the implementing bodies as well as a comprehensive commentary that comprises information and explanations on all aspects of their implementation.<sup>37</sup>

The Guidelines feature two main entities entrusted with implementation: the National Contact Points (NCPs) and the OECD Investment Committee.<sup>38</sup> As mentioned above, NCPs have to be set up by all adhering governments as specialized agencies charged with promoting the Guidelines and acting as a facilitation platform in instances of corporate non-compliance. The countries have a certain flexibility as regards the organisation of NCPs which can be designed as single or multiple government offices, and may also involve business representatives, workers' representatives (trade unions) and/or civil society representatives as well as independent experts (multi-partite structure).<sup>39</sup>

Given the largely decentralized implementation structure with more than 40 different NCPs in the adhering countries, the Investment Committee functions as an oversight body that provides for a more coordinated and consistent application of the Guidelines. It offers support to the NCPs as regards interpretation of the Guidelines and it can make recommendations to improve their effective functioning. The adhering governments, the advisory bodies to the OECD (which represent the adhering countries' business and labour federations, i.e. Business and Industry Advisory Committee, BIAC;<sup>40</sup> and Trade Union Advisory Committee,

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<sup>33</sup> For a critical overview of all modifications see e.g. the OECD Watch statement on the update of the OECD Guidelines for MNEs of 25 May 2011, [http://oecdwatch.org/publications-en/Publication\\_3675/at\\_download/fullfile](http://oecdwatch.org/publications-en/Publication_3675/at_download/fullfile) (05.10.2012).

<sup>34</sup> OECD (2011), Guidelines, 4.

<sup>35</sup> Huarte Melgar/Nowrot/ Wang (2011), 44.

<sup>36</sup> See the criticism raised by e.g. OECD Watch: OECD Watch press release, 25 May 2011, OECD updates ethical business standards but fails to ensure enforcement, <http://oecdwatch.org/news-en/oecd-watch-press-release-oecd-updates-ethical-business-standards-but-fails-to-ensure-enforcement> (09.10.2012).

<sup>37</sup> Part I of the Guidelines also features text commentaries which are placed after each chapter which they refer to. Both commentary sections do not form part of the Guidelines and therefore have only declaratory effect.

<sup>38</sup> The latest update has also assigned the OECD Secretariat with a more important role in the implementation framework including tasks like e.g. developing unified reporting formats for creating a database on specific instances. See OECD (2011), Guidelines, 75; and Huarte Melgar/Nowrot/Wang (2011), 55.

<sup>39</sup> A list of National Contact Points of all adhering countries (as of February 2012) is provided here: <http://www.oecd.org/daf/inv/mne/2012NCPContactDetails.pdf> (08.03.2012). OECD Guidelines (2011), 71, para. 2.

<sup>40</sup> See <http://www.biac.org/> (08.10.2012).

TUAC),<sup>41</sup> as well as the international NGO network OECD Watch<sup>42</sup> can make submissions to the Investment Committee in case a NCP fails to properly implement the Guidelines in a specific instance. The Committee does, however, not act as an appeals body regarding the findings or statements issued by a NCP (apart from questions of interpretation).<sup>43</sup>

The graph below illustrates the institutional framework for implementing the Guidelines. The abbreviation “CIME” stands for the Committee on International Investment and Multinational Enterprises, which, together with Committee on Capital Movements and Invisible Transactions, has been merged in April 2004 to form the OECD Investment Committee.<sup>44</sup>

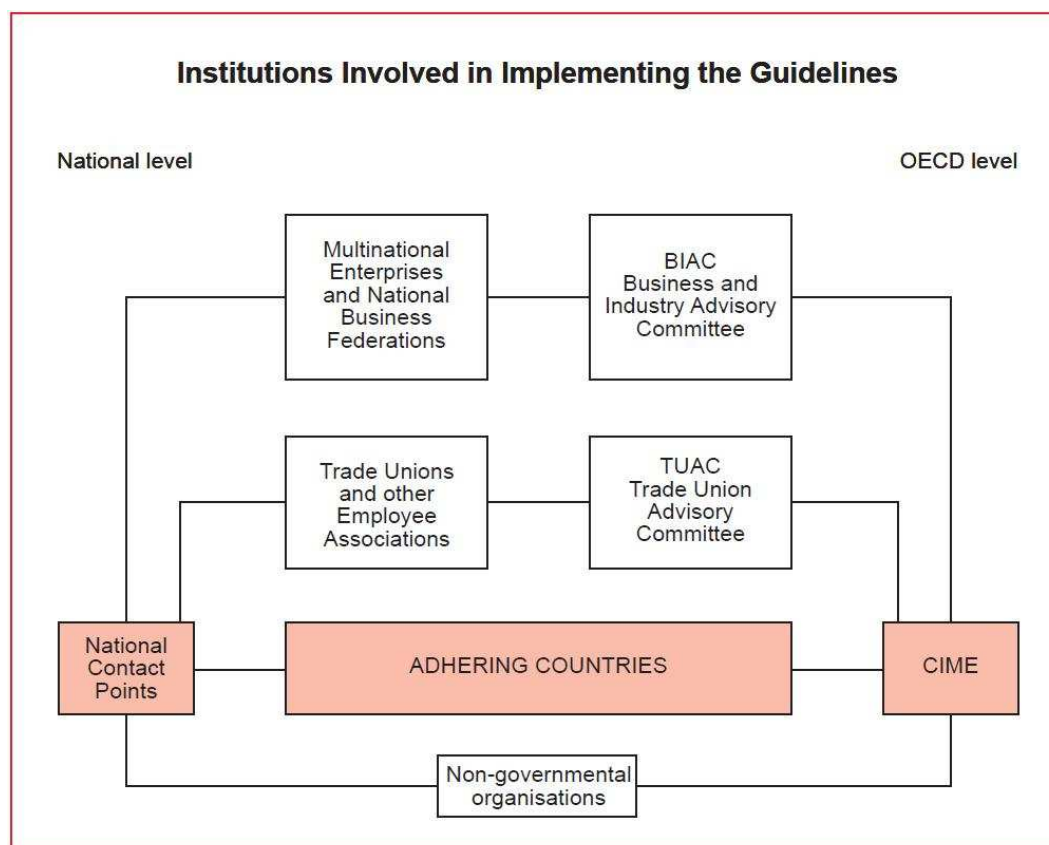


Figure 3: Institutions Implementing the OECD Guidelines<sup>45</sup>

Although the handling of complaints varies from country to country, there is a set of provisions that apply to all OECD national contact points:

In case of an alleged breach of the standards set out in the Guidelines by a company operating in or from an OECD or adhering country, any interested party can submit a complaint. This can be done by email or regular mail. The group of complainants includes both individuals like a company's employees, and organisations such as trade unions, NGOs or communities that are locally affected by a company's operations.<sup>46</sup> Concerns may be

<sup>41</sup> See <http://www.tuac.org/en/public/index.phtml> (08.10.2012).

<sup>42</sup> See <http://oecdwatch.org/> (08.03.2013).

<sup>43</sup> OECD (2011), Guidelines, 88f (Commentary); OECD Investment Committee, <http://www.oecd.org/daf/internationalinvestment/oecdinvestmentcommittee.htm> (08.10.2012).

<sup>44</sup> Supra.

<sup>45</sup> OECD (2001), OECD Policy Brief, 5.

<sup>46</sup> OECD (2011), Guidelines, 72.

voiced with regard to past, currently ongoing or imminent violations of the Guidelines, either caused by the company itself or by any of its suppliers or other business partners.<sup>47</sup> In general, a complaint should be filed with the host state NCP (i.e. the country where the issue has arisen), as this is the most relevant one. However, the case might also be raised with the NCP of the company's home state or of any other adhering country where a relevant part of the company is located. This means that instances of corporate misconduct can be followed-up on regardless of where they occurred, even if it happened in non-adhering or non-OECD countries.<sup>48</sup> Complainants are well advised, however, to consider a company's structure, the political context of a country as well as other economical or strategic factors (e.g. institutional aspects of a NCP, potential language barriers etc.) before deciding which NCP to submit a complaint to.<sup>49</sup> Multiple submissions to more than one contact point on the same issue are also possible. In such a case, all invoked NCPs have to consult and agree on which NCP will take the lead in the complaint handling process.<sup>50</sup>

Once a complaint has been submitted, the complaint procedure begins. The diagram below illustrates the three-stage process and indicative time frames. In total, from receipt of a complaint to its final conclusion it should take no longer than 12 months (except in cases that involve non-adhering countries or other specific circumstances):<sup>51</sup>

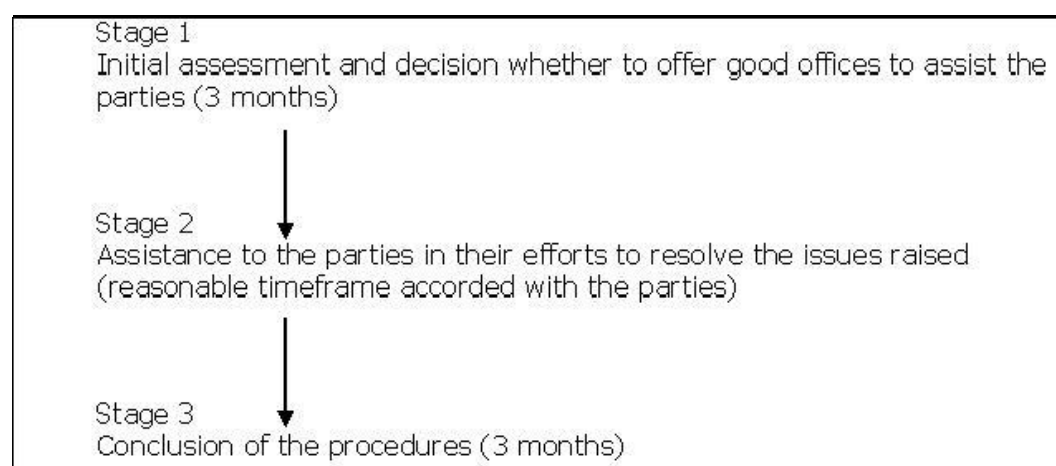


Figure 4: OECD Complaint Procedure

Firstly, the NCP assesses whether to pursue the issue or not. This decision is taken on account of a number of facts including e.g. the complainant's identity and interest in the matter, the alleged violation, the company's involvement in or contribution to it, the relevance of applicable law and procedures, or the handling of similar issues in other proceedings.<sup>52</sup> The NCP has to notify the parties of its decision; when it comes to the conclusion that the issue does not merit further examination, it has to state the reasons for this. The further examination of a case must not be rejected solely because of parallel proceedings being conducted on the national or international level. Rather, NCPs have to consider whether their

<sup>47</sup> OECD Watch (2012), The OECD Guidelines for Multinational Enterprises: A tool for responsible business conduct, 6.

<sup>48</sup> When implementing the Guidelines in non-adhering countries however, certain limitations are likely to occur. OECD (2011), Guidelines, 86, para. 39 (Commentary).

<sup>49</sup> See Friends of the Earth (2004), A Guide to the Guidelines, 11.

<sup>50</sup> OECD (2011), Guidelines, 82, paras. 23-24 (Commentary).

<sup>51</sup> Supra, at 86f, paras. 40-41 (Commentary).

<sup>52</sup> Supra, at 82, para. 25 (Commentary).

services could make an additional positive contribution to the resolution of the issues raised.<sup>53</sup>

The second phase consists in conciliation and facilitation services provided by the NCP to the parties involved in the case. For this purpose, the NCP provides “good offices”, that is to say, it acts as a mediator between the complainant(s) and the company to help them resolve the issue amicably. This stage of the complaint process is marked by discussions and consultations of the parties and aims at reaching a conclusion to the problem that is acceptable to both of them. In fulfilling this task, the NCP can consult relevant experts and stakeholders (e.g. business or workers’ representatives, NGOs), other NCPs or the Investment Committee. Subject to the approval of both parties, it can also offer or resort to external means of conciliation and mediation.<sup>54</sup>

The dispute resolution procedures are concluded with a final statement or report issued by the NCP. While confidentiality has to be maintained throughout the process, the results of it have to be made publicly available. This applies irrespective of whether the parties could reach an agreement or not. If the mediation was successful, the NCP has to report on the issues at stake and the process that has led to the resolution (the agreement’s contents will only be included upon explicit consent of both parties); in the reverse case, the NCP has to issue a final statement including “recommendations as appropriate, on the implementation of the Guidelines.”<sup>55</sup> In this way, NCPs on the one hand can make public whether companies have engaged properly in the complaint resolution process, and on the other hand they can speak out on the alleged violation.<sup>56</sup>

The parties should be given the opportunity to comment on a NCP’s draft statement before it is being issued. It can be modified on the basis of these comments; however, a party cannot demand that a NCP re-considers its decision.<sup>57</sup> Generally, there are no avenues for appeal available in case a party is not satisfied with the outcome of a complaint resolution process. However, the Investment Committee might be asked to review a NCP’s performance in a given case by adhering countries, the two OECD advisory bodies or OECD Watch; this possibility might be regarded as a quasi-appellate instance. The Committee cannot contest or overrule the findings or statements made by NCPs, however, but may only make recommendations in order to improve their general functioning.<sup>58</sup>

Given the Guidelines’ legal character, compliance of companies is not legally enforceable. So far, the only consequence that follows from a violation of the Guidelines consists in the “naming and shaming” of companies by mentioning corporate misconduct in the concluding statements of NCPs, and the public pressure imposed on them as a result. Since the finding of a violation is not a mandatory requirement for NCPs when concluding a case, this “sanction” appears fairly weak, though. Unfortunately, the 2011 update again has not brought about any modifications that would provide for effective sanctions in case of infringements of

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<sup>53</sup> Supra, at 83, paras. 26-27 (Commentary).

<sup>54</sup> Supra, at 72f, and 83f, paras. 28-29 (Commentary).

<sup>55</sup> Supra, at 85, para. 35 (Commentary).

<sup>56</sup> Supra, at 73.

<sup>57</sup> Supra, at 85, para. 36 (Commentary).

<sup>58</sup> Supra, at 74 and 88, paras. 44-47 (Commentary).

the Guidelines, as favoured in particular by civil society actors.<sup>59</sup> Notwithstanding the voluntary nature of the Guidelines, the adhering governments would be free to attach a *de facto* binding force to the Guidelines, for instance by establishing a link between their public instruments of foreign trade promotion and businesses' commitments to observe the Guidelines. Interestingly, the 2011 version of Procedural Guidance for NCPs features a new provision that hints in this direction: It calls on NCPs to inform the relevant government agencies of their statements and reports when these might have some significance with regard to governmental policies and programmes.<sup>60</sup>

#### **II.1.4 Case Law<sup>61</sup>**

While different features of the OECD Guidelines including its text, implementation procedures, or institutions, have been thoroughly analysed by academics in a qualitative way, there's hardly any academic work that probes into the mechanism's functioning quantitatively. References or brief descriptions of some of the most important cases reappear in scholarly literature, and illustrate the Guidelines' strengths and weaknesses and their application in individual cases. A few of them have even served to demonstrate their potential as regards the enforcement of domestic laws outside a state's jurisdiction (e.g. RAID vs. Das Air).<sup>62</sup> However, to show whether the complaint mechanism is effective in general, requires a comprehensive analysis on the huge number of cases considered by NCPs, the issues at stake, and the parties and institutions involved. Attempts to do so have been scarce, if not non-existent to date.

The following constitutes such a quantitative overview of all cases filed with NCPs between May 2001 and June 2011 (121 cases documented in the OECD Watch database, see Appendix 2). An effort has been made to complement the case information already provided by OECD Watch with more qualitative data, which could then be statistically processed to reveal correlations between the different patterns of a complaint (e.g. its thematic focus, the parties, the role of businesses concerned, the time span until conclusion or its current status respectively, the location, structure and performance of NCPs in charge with handling it, etc.). The analysis exclusively comprises cases that were brought under the 2000 version of the Guidelines,<sup>63</sup> since no cases had been filed under the 2011 edition at the time this research was conducted. However, the Guidelines 2000 version did not entail a separate human rights chapter. Therefore, to be able to identify those that have a human rights nexus, the cases were classified into three categories featuring either high, a certain or no connection with this issue. According to this, most of the relevant cases were brought under the General Policies chapter of the Guidelines' 2000 version (chapter II), stipulating the need to respect the human rights of those affected by corporate activities in accordance with the host government's commitments and obligations under international law.<sup>64</sup> Cases pertaining to

<sup>59</sup> See OECD Watch statement on the update of the OECD Guidelines for MNEs; and OECD Watch press release, both of 25 May 2011.

<sup>60</sup> See OECD (2011), Guidelines, 85, para. 37 (Commentary).

<sup>61</sup> This chapter is based on a comprehensive statistical analysis conducted by Benjamin T. Thannesberger. See Thannesberger (2012), The OECD Guidelines for Multinational Enterprises and their Complaint Mechanism – Evaluation and Statistical Analysis of the Case Law.

<sup>62</sup> Case filed 28 June 2004, documented at [http://oecdwatch.org/cases/Case\\_41](http://oecdwatch.org/cases/Case_41) (08.03.2013).

<sup>63</sup> OECD (2000), The OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts, DAF/IME(2000)20, 8 November 2000.

<sup>64</sup> Supra, at 11.

chapter IV on Employment and Industrial Relations<sup>65</sup> did also show a considerable link to human rights matters. Cases invoking other chapters but referring also to potential human rights impacts, like e.g. in the context of environmental damage, were classified as “linked” to human rights.

		none		linked		high		TOTAL <sup>183</sup>	
		cases	%	cases	%	cases	%	cases	%
status	filed	3	13,6	3	20	11	13,3	17	14,2
	rejected	5	22,7	3	20	23	27,7	31	25,8
	concluded	8	36,4	5	33,3	30	36,1	43	35,8
	others	6	27,3	4	26,7	19	22,6	29	24,2
	TOTAL <sup>184</sup>	22	18,3	15	12,5	83	69,2	120	100

Figure 5: OECD – Case Law Overview<sup>66</sup>

The table above shows that the majority of cases have a strong link towards human rights issues (69,2%), while only less than 20 percent have no linkage at all. One could conclude from this that the OECD Guidelines’ complaint mechanism is widely accepted by potential victims of corporate human rights infringements or their representatives, presumably mostly NGOs. Only about a third of the cases (35,8%) have been concluded (as of June 2011), which is a surprisingly low amount, considering that the conclusion of specific instances entails having a mediation process that arrives at some kind of agreement between the parties, as well as a final statement of the NCP charged with it. However, there are no indications that the human rights nexus would negatively affect the conclusion rate; In other words, the NCPs do not “discriminate” between cases invoking human rights and cases invoking other topics.

Disaggregating the cases according to their regional distribution reveals that European NCPs seem to be the most engaged ones. They have handled a total of 67,5% of the specific instances, followed by contact points from North America and Oceania (20%), Latin America (8,3%) and Asia (4,2%).<sup>67</sup> Moreover, human rights issues play quite an important role in these two major regions (both amounting to approx. 70% of all cases raised). All cases filed with Asian NCPs are strongly linked to human rights, while there are no complaints on other topics such as the environment in this region.<sup>68</sup>

In this context, it is also necessary to look at the actors and institutions filing complaints with NCPs: Civil society organisations are the key group since they are involved in almost all of the cases examined (only three instances without any NGO involvement); very frequently two, three or even more NGOs cooperate. Most commonly, environmental NGOs are among such a group of complainants, followed by NGOs specialised on human rights and development assistance. A case overview according to the types of complainants (NGOs) demonstrates

<sup>65</sup> Supra, at 13f.

<sup>66</sup> Thannesberger (2012), 59.

<sup>67</sup> Supra, at 61.

<sup>68</sup> Supra, at 63.

that instances of human rights violations are followed-up on more actively in Europe, while in North American and Oceania regions environmental concerns take priority. Europe also shows a higher engagement of research institutions in respect of filing NCP complaints. Generally, it can be stated that smaller NGOs, which are regularly based in those countries where breaches of the Guidelines occur, are underrepresented as compared to bigger NGOs working on the international scale and usually having their seat in the western hemisphere. This fact is not surprising at all, since smaller NGOs often lack the resources to adequately engage in complaint proceedings. Moreover, those countries which feature high violation rates of the Guidelines often are not among adhering countries and don't have a national contact point. Consequently, specific instances have to be brought to the attention of home country NCPs and NGOs from these countries take the lead for these.<sup>69</sup>

Looking at the number of specific instances lodged over time, a constant increase can be witnessed following the Guidelines' revision in 2000, reaching a remarkable peak in 2004 with a total of 20 complaints (as compared to only four instances in 2001), most of which feature a significant human rights connection. In the following years, the complainants' enthusiasm for bringing cases to the attention of NCPs ceased in parallel with the expectations they had in terms of the newly revised Guidelines, it seems (see figure 6).

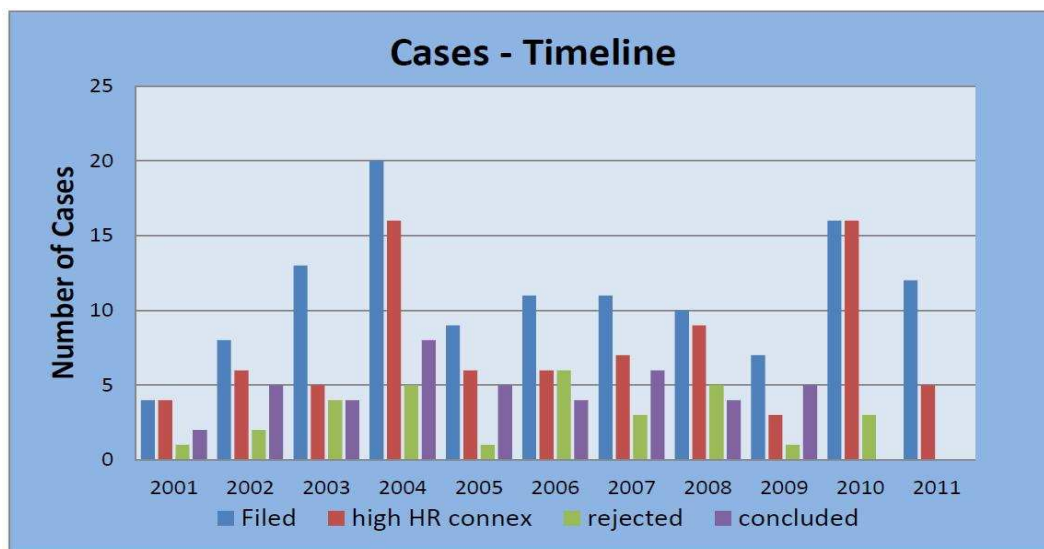


Figure 6: OECD – Timeline of Cases<sup>70</sup>

Although there is no differentiation as regards the issues tackled that would determine which cases are followed-up on or rejected, in terms of the length of proceedings before NCPs those cases invoking human rights issues appeared to be handled much faster than other grievances; this proves true regarding both the initial assessment phase as well as reaching a conclusion. On average, it takes about two years time from lodging a complaint until a case can be concluded. Such a long time frame might discourage potential complainants from resorting to a NCP with their particular grievance, since it requires much patience and extensive resources from them. This is certainly a fact that strongly undermines the effectivity of the Guidelines' mechanism.<sup>71</sup>

<sup>69</sup> Supra, at 74ff.

<sup>70</sup> Supra, at 64.

<sup>71</sup> Supra, at 65f.



However, cases pending for a long time should not necessarily be seen as indicative of ineffectiveness or unsatisfactory outcomes. In this regard, the NCP of the United Kingdom, which is known for its good practice as regards performance,<sup>72</sup> and which has handled most of the specific instances compared to the other contact points, is a good example: in total, it has dealt with 19 complaints raised in the evaluation period, 12 of which have been concluded, and none was rejected. Yet, the time it took to conclude cases is highest there with 28,1 months on average. This could be due to thorough case investigations, but also because of a lack of resources, parties unwilling to cooperate etc.<sup>73</sup>

Overall, human rights grievances represent the majority of complaints issued with NCPs worldwide, ranging from 50 to 70%, with only little higher numbers in a few countries (i.e. France 85%, Australia 80%, and Canada 75%). Breaking down cases roughly regarding the three main economic sectors (primary, secondary and tertiary) does not allow for solid conclusions in respect of the importance that is being attached to the Guidelines for remedying human rights violations in particular sectors. However, the primary sector including extractive industries (oil, mining), raw material processing as well as crop farming stands out: More than 50% of all complaints have been raised on grounds of grievances originating within this category.<sup>74</sup> After refining the ratio according to industrial sub-groups, companies of the mining and metals sector including downstream processing companies still top the list of accused businesses. Specific instances brought against finance and trade, textiles and sports equipment, and fossil fuels (processing) companies follow. Except for fossil fuels, these are also the top three industrial groups in terms of cases claiming human rights violations. The garment and sports equipment as well as finance and trade industries actually show not any complaint that would not raise this issue.<sup>75</sup>

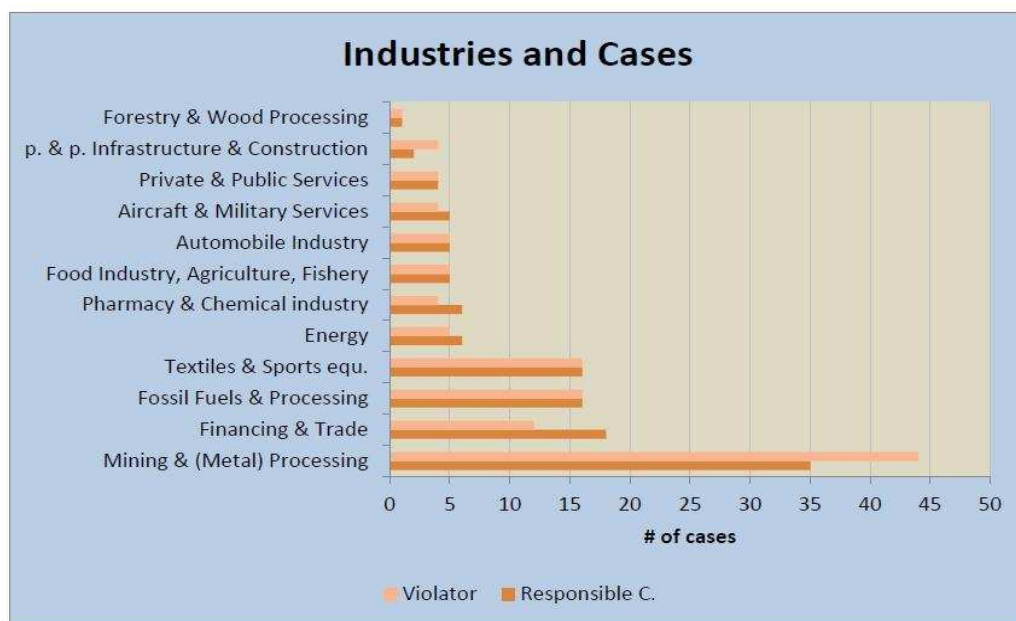


Figure 7: OECD – Industries and Cases<sup>76</sup>

<sup>72</sup> See Lukas (2011), 173f.

<sup>73</sup> Thannesberger (2012), 67 and 72.

<sup>74</sup> Supra, at 71.

<sup>75</sup> Supra, at 89f.

<sup>76</sup> Supra, at 86.

However, the latter sector in particular has a huge rejection rate. This is most probably due to the fact that a breach of the Guidelines occurred at a corporate entity distinct from the bank or investment firm that becomes party to the complaint procedures. If this business relationship and hence the potential to exert influence on the business partner is considered too weak, the violation of the latter may not be attributable to the bank/investor.<sup>77</sup> This “investment nexus” problem – which was also a matter of different interpretation and standard-setting by NCPs – considerably hampered the complaint resolution process and fortunately has been overcome in the course of the 2011 update (see chapter II.1.5).

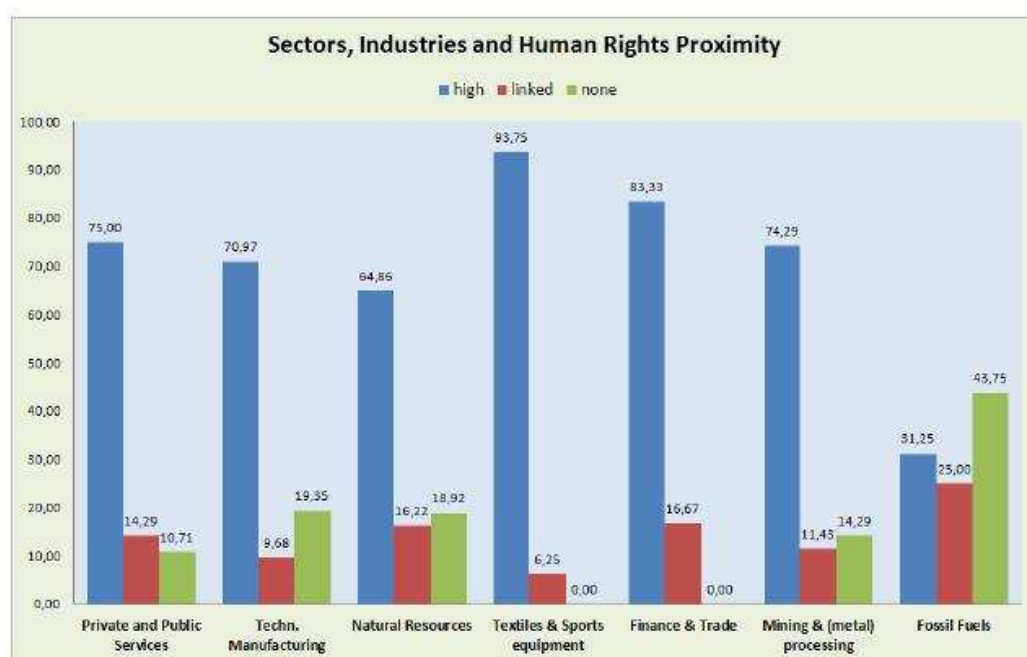


Figure 8: OECD – Sectors, Industries and Human Rights Nexus<sup>78</sup>

### II.1.5 Comparison with Ruggie Criteria

The work of the UN Special Representative has considerably influenced the latest update of the Guidelines. On 4 October 2010, John Ruggie held a special consultation with the adhering governments to discuss the possible role of the Guidelines with regard to operationalizing his “Protect, Respect and Remedy” Framework.<sup>79</sup> Already on the occasion of the 10th Roundtable on Corporate Responsibility in June 2010, he had pointed out the particular potential borne by the NCPs to function as an effective non-judicial grievance mechanism beyond the operational level – given that certain principles (“core criteria”) for effectiveness and credibility were paid attention to.<sup>80</sup>

Finally, only some of Ruggie’s core criteria for effective grievance mechanisms have been adopted with regard to the performance of NCPs. The Procedural Guidance purports that in

<sup>77</sup> Supra, at 88f.

<sup>78</sup> Supra, at 88.

<sup>79</sup> See OECD, Consultation on the Guidelines for Multinational Enterprises and the UN “Protect, Respect and Remedy” Framework, <http://www.oecd.org/daf/internationalinvestment/investmentfordevelopment/consultationontheguidelinesformultinationalenterprisesandtheunprotectrespectandremedyframework.htm> (08.03.2013).

<sup>80</sup> See Ruggie (2010), 10<sup>th</sup> OECD Roundtable on Corporate Responsibility, Updating the guidelines for multinational enterprises, Discussion Paper, 5f.

general “NCPs will operate in accordance with core criteria of visibility, accessibility, transparency and accountability (...).”<sup>81</sup> Against the background of the diverse organisation of NCPs across the adhering countries, this set of criteria aims at furthering the overall objective to achieve functional equivalence at least in their activities. In consistence with this, some “Guiding Principles” have been formulated in particular for the handling of complaints. These call upon NCPs to act “in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines”.<sup>82</sup>

Comparing in detail the Ruggie criteria with what the Guidelines provide for, the following observations can be made:

- **Accessibility:** The mechanism must be known to all stakeholder groups for whose use it is intended, and provide adequate assistance for those who may face particular barriers to access.<sup>83</sup>

The complaints procedure of the Guidelines has evolved over the years and gradually enlarged the scope of complainants. Given the limited target audience up to the 2000 review, the Guidelines were hardly known and not considered very relevant as a mechanism to hold companies to account for adverse business conduct. Their publicity increased significantly with the inclusion of NGOs and the public being able to raise complaints for the first time after the 2000 update, which consequently was followed by a substantial rise in specific instances brought to the attention of NCPs. Following a peak in 2004 showing 20 complaints, the number of cases decreased to an average level of less than half of this in the subsequent years (2005-2009).<sup>84</sup> By now, no more obstacles exist with regard to the general awareness of the Guidelines and the functioning of their complaints facilities, which are widely recognised among authorities, businesses and stakeholders worldwide. As regards the other aspects crucial for approaching the complaint mechanism (e.g. language barriers, literacy, finance, distance, etc.), accessibility depends very much on the individual engagement of the NCP in charge of promoting the Guidelines and their implementation procedures. As the NCPs are organised differently across countries not all of them might be equally easily accessible for potential complainants, especially when they are not equipped with the necessary human and financial resources. Particular efforts undertaken by civil society organisations, including awareness raising campaigns and the development of guidance materials for assisting NGOs and aggrieved parties to submit their complaints, might have helped minimize possible barriers in that regard.<sup>85</sup> However, an increase of complaints could not be witnessed as a result (see above, figure 6). For the future, the 2011 update expressly confirmed that adhering governments make a binding commitment to effectively implement the Guidelines by arranging for highest visibility of their NCPs.<sup>86</sup>

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<sup>81</sup> OECD (2011), Guidelines, 71

<sup>82</sup> Supra, at 72.

<sup>83</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31b.

<sup>84</sup> See chapter II.1.4, figure 6.

<sup>85</sup> For instance, OECD Watch provides helpful guides and toolkits for potential complainants in various languages such as the OECD Watch Guide to the OECD guidelines for multinationals enterprises' complaint procedure (2006, available in English and Indonesian); or the OECD Watch Case Feasibility Assessment (2008, available in English and Portuguese), both available for download at <http://oecdwatch.org/publications-en/toolkits-guides> (09.10.2012).

<sup>86</sup> See OECD (2011), Guidelines, 77 para. 2, and 79 (Commentary).

- **Predictability:** The mechanism needs to provide 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.<sup>87</sup>

Although new provisions have been included in the 2011 update in order to address the deficits of the complaint mechanism as regards predictability (e.g. indication of timelines for the conclusion of cases, requirement to make results public), the Guidelines still fail to satisfactorily fulfil this criterion. For instance, no procedural aspects have been prescribed to ensure coherence in the handling of complaints by the NCPs. The newly inserted criteria for functional equivalence of NCPs will hardly be sufficient in that regard. Moreover, concerning the clarity of outcomes NCPs are not obliged to make a statement on whether there was a breach of the Guidelines or not. This is not only an indispensable requirement for any credible complaint mechanism, but would constitute an added value for both the complainants and the companies concerned in order to avoid violations in the future.<sup>88</sup> There are no clear provisions as regards the follow-up of recommendations made by a NCP either. Monitoring implementation of the agreements that are reached between the parties is left completely to the discretion of individual NCPs.<sup>89</sup>

- **Transparency:** The mechanism has to keep parties to a grievance procedure informed about its progress, and to provide sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.<sup>90</sup>

Here, too, the 2011 update has strengthened provisions and has enhanced the transparency requirements for NCPs with regard to both the process and the outcomes. However, it remains to be seen how this criterion will be implemented in practice since NCPs are free to opt for confidentiality of proceedings for reasons of effectiveness; this also applies to the results of proceedings when it "is in the best interests of effective implementation of the Guidelines".<sup>91</sup> The main task therefore will be to find a proper balance between the two requirements, protecting sensitive data or processes (e.g. the dialogue between the parties) while at the same time also meeting the public interest concerns at stake. Transparency about the mechanism's performance could also be improved by the Investment Committee which should start to collect statistics and make available a comprehensive case law database. This would not take too much additional effort since the NCPs are obliged to annually report to the Investment Committee on their handling of complaints anyway.<sup>92</sup>

- **Legitimacy:** This criterion requires the mechanism to enable trust from the stakeholder group for whose use it is intended, as well as being accountable for the fair conduct of the grievance process.<sup>93</sup>

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<sup>87</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31c.

<sup>88</sup> See Utz (2011), Update oder Upgrade? Eine Bilanz zur Revision der OECD-Leitsätze für multinationale Unternehmen, 11.

<sup>89</sup> In the Commentary of the Guidelines it only says that "NCPs should ensure predictability by providing clear and publicly available information on their role in the resolution of specific instances, including (...) the potential role they can play in monitoring the implementation of agreements reached between the parties." OECD (2011), Guidelines, 82 (Commentary). See also Utz (2011), 9; and OECD Watch statement on the update of the OECD Guidelines for MNEs, 25 May 2011.

<sup>90</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31e.

<sup>91</sup> OECD (2011), Guidelines, 79 (Commentary).

<sup>92</sup> The 2011 update has assigned the OECD Secretariat with the task to establish and maintain an up-to-date database on specific instances. See OECD (2011), Guidelines, 75. To date, such a case-database is provided only by OECD Watch.

<sup>93</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31a.

Despite the inclusion of references to impartiality and accountability in the 2011 edition of the Guidelines, due to the lack of (binding) procedural provisions there is no guarantee that all NCPs will fully abide by these two principles. Some NCPs are established within the economic ministries of adhering countries which poses the risk that parties to a grievance procedure might interfere with its fair conduct. Particularly NGOs, who use the Guidelines' complaint mechanism most frequently, have voiced serious concerns in this regard.<sup>94</sup> In order to comply with the requirements of legitimacy as well as to build trust from all the stakeholder groups for whose use the Guidelines are intended, measures should be taken to eliminate any possibility of undue business intervention in complaints processes; for example, providing for a multi-department structure of NCPs, involving civil society organisations and supervision by a national oversight body (e.g. parliament). The model of some already existing best practice examples of NCPs in other countries (e.g. UK)<sup>95</sup> should be followed.<sup>96</sup>

The same applies to the following principle:

- **Equity:** The mechanism has 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.<sup>97</sup>

The Guidelines 2011 edition has introduced this principle for NCPs dealing with specific instances, according to which they “should ensure that the parties can engage in the process on fair and equitable terms, for example by providing reasonable access to sources of information relevant to the procedure”.<sup>98</sup> However, as this procedural aspect again is not binding for NCPs, it cannot be ensured that it is fully observed by all of them. Particularly where those remain to be poorly equipped, in terms of both finances and staff,<sup>99</sup> or otherwise are not willing to exercise certain control over MNE activities in their country, the natural imbalance between business enterprises and affected parties to a complaints process in accessing information and expert resources will hardly be redressed. Reverting to the NCPs of the home countries of companies or improved cooperation between host and home country NCPs might offer a solution in these cases. The effectiveness of grievance handling might also be questioned as regards single-department NCPs housed within economic ministries (see arguments above “Legitimacy”).

- **Rights-compatibility:** The mechanism has to ensure that outcomes and remedies comply with internationally recognised human rights.<sup>100</sup>

The Guidelines provide for NCPs operating in accordance with the standards and principles contained therein which include the whole spectrum of human rights, referencing non-exclusively the International Bill of Human Rights and a number of UN instruments (e.g. on the rights of Indigenous Peoples, for persons belonging to certain marginalized groups, migrant workers etc.). Moreover, given the addition of an explicit human rights chapter in the

<sup>94</sup> See e.g. OECD Watch statement on the update of the OECD Guidelines for MNEs, 25 May 2011.

<sup>95</sup> Lukas (2011), 173f.

<sup>96</sup> The Guidelines include a reference to this exchange of best practices as well as to the role national parliaments could have to play. See OECD (2011), Guidelines, 79 (Commentary).

<sup>97</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31d.

<sup>98</sup> OECD (2011), Guidelines, 82 (Commentary).

<sup>99</sup> According the 2011 update adhering governments are obliged to make available the necessary human and financial resources to effectively implement the Guidelines. It remains to be seen, however, whether this is put into practice across all member states.

<sup>100</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31f.

Guidelines' 2011 edition which contains clear standards on what is expected of enterprises concerning human rights, future complaints are very likely to be explicitly framed in terms of human rights (while under previous versions, human rights concerns often have not been raised initially).

- **Continuous learning:** This criterion implies drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.<sup>101</sup>

This principle seems to be perfectly fulfilled by the now clearer mandate that has been assigned to the OECD Secretariat. It provides for the Secretariat being “a central point of information for NCPs that have questions on the promotion and implementation of the Guidelines”.<sup>102</sup> By collecting relevant information on recent trends and emerging practices concerning the activities of NCPs, it will help harmonize the Guidelines' implementation across countries. For that purpose, the Secretariat has also been charged with the development of unified reporting formats, supporting the set-up of a case database and regular analysis of these cases; as well as with the facilitation of peer learning activities, including voluntary evaluations, and capacity building and training for NCPs, particularly those in new adhering countries.<sup>103</sup>

- **Engagement and dialogue:** The mechanism should be based on engagement and dialogue, which means consulting the stakeholder groups for whose use it is intended on its design and performance, and focusing on dialogue as the means to address and resolve grievances.<sup>104</sup>

The last Ruggie criterion is specific to operational-level complaint mechanisms administered by enterprises themselves; however, the Guidelines address the need for meaningful stakeholder engagement by enterprises several times, both in general terms (e.g. with regard to the planning of projects that could affect local communities), as well as with a view to establishing company grievance mechanisms which conform to the Ruggie effectiveness criteria, including this eighth criterion for achieving agreed solutions.<sup>105</sup>

### **II.1.6 Concluding Assessment**

From the above analysis, one can conclude that the OECD Guidelines bear significant potential for an effective non-judicial complaint mechanism. This is predominantly due to the 2011 update which has brought a number of modifications conducive to remedying human rights grievances, above all in terms of scope and content of the Guidelines.

Firstly, the highlights of this update encompass the inclusion of a full chapter on human rights aspects in business which draws upon the Ruggie framework. This chapter states the minimum expectations towards MNEs and clearly determines their responsibility to respect the internationally recognised human rights including humanitarian law. Furthermore, it mentions the concept of corporate complicity and includes an explicit provision to act in due diligence for identifying, preventing or remediating any corporate human rights risks or harms

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<sup>101</sup> Supra, para. 31h.

<sup>102</sup> OECD (2011), Guidelines, 75.

<sup>103</sup> Supra.

<sup>104</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31g.

<sup>105</sup> OECD (2011), Guidelines, 25 and 34 (both Commentary).

posed to affected individuals or communities. Similarly, the Guidelines' employment chapter has been accorded to the ILO Tripartite Declaration for MNEs so that it covers a wider range of workers now (it also stipulates that wages have to meet workers' basic needs, while not referring to the notion of a "living wage"). Notwithstanding these positive changes, the human rights references are incomplete since the Guidelines do not take into account the Indigenous Peoples' right to free, prior and informed consent. Generally, the importance of engagement with and consultation of potentially affected stakeholders throughout companies' activities is highlighted as an integral part of due diligence in the Guidelines; an explicit recommendation to consult with communities and obtain their consent prior to company decision-making, however, is lacking.

Secondly, the new Guidelines feature a progressive approach towards responsible supply chain management. The general principle of due diligence, according to which companies should always exercise due diligence in matters related to the Guidelines, explicitly extends the applicability of the Guidelines to a company's suppliers and other business partners. This aspect was a major shortcoming in previous versions of the Guidelines: Prior to the 2011 update, when a complaint dealt with supply chain issues the NCPs had to check for a so-called "investment nexus"; meaning that the accused company needed to have certain influence on its suppliers or an investment-like relationship with them (see chapter II.1.4). Although in 2000 the Guidelines were adapted in order to include supply chain operations, the wording remained rather weak and amounted to a mere recommendation for MNEs to encourage their business partners to adhere to the Guidelines.<sup>106</sup>

Thirdly, it has been confirmed that the Guidelines apply to all business sectors, including the financial sector. Together with its worldwide applicability, which allows that also (human) rights violations occurring in non-adhering countries may be raised with home country NCPs, this underlines and strengthens the Guidelines' wide recognition and application. In fact, the Guidelines and its implementation procedures have a long-standing tradition as they constitute the only multilaterally endorsed code of conduct for MNEs featuring a complaint mechanism; however, this mechanism might have been used so frequently also because of a lack of adequate alternatives.<sup>107</sup>

Turning towards the Guidelines implementation, above all the handling of specific instances of human rights complaints by national NCPs does not yield an equally positive assessment. Any textual improvements can only have positive effects when they are backed up by more effective implementation procedures. In this regard, the update promised to improve significantly the complaint handling process in terms of credibility and coherence, as well as with respect to the effectiveness criteria for grievance mechanisms introduced by John Ruggie. Actually, the Procedural Guidance and commentary sections of the Guidelines now contain provisions prescribing indicative timelines to resolve specific instances; requesting of home and host country NCPs to seek for cooperation; and requiring NCPs to work in a most transparent manner including their final statements to complaints proceedings.

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<sup>106</sup> Lukas (2011), 166.

<sup>107</sup> Interview with Patricia Feeney, 18 June 2012. See also <http://oecdwatch.org/about-us> (18.09.2012).

However, all of this is still left to the discretion of individual NCPs which have shown very diverse commitment and ability to resolve disputes back in the past. The NCPs discretionary powers are further extended by the weak wording of the Guidelines. What has been subject to criticism for really a long time, also after the last update, the Guidelines' phrasing has remained vague and limited (e.g. by mentioning "where appropriate"). This leaves open loopholes for corporate abuses not being followed-up on by NCPs. Due to their non-uniform structures and consequently diverse effectiveness of performance, there are reasonable concerns regarding potentially conflicting interests of these agencies (especially that of single-department NCPs housed within national ministries promoting trade and industries), which are even shared by the UN Special Representative.<sup>108</sup>

A major weakness of the Guidelines is that – beyond mere referencing the Ruggie criteria – they do not entail binding procedural provisions which would ensure their effective and consistent application across adhering countries. This is even aggravated by the fact that there is no mandatory oversight or peer review mechanism. A silver lining in this regard constitutes only the option to request clarification from the Investment Committee on the performance of NCPs and on their interpretations of specific provisions of the Guidelines' in particular cases; since the latest update, OECD Watch is entitled to request such clarification too.

This cannot replace, however, the lacking requirement of NCPs to issue an official statement on the case (i.e. the complaint's validity and the finding of a breach of the Guidelines in case mediation failed), in order to make the mechanism more predictable and transparent, and to promote its observance. Monitoring or follow-up of NCPs' recommendations and agreements reached in a mediation process are possible, but not obligatory either; not to mention their continuous inability to impose any kind of sanctions, or to offer compensation in case they have found a breach of the Guidelines – a fact that certainly undermines the mechanism's effectiveness most of all.

## **II.2 The World Bank Inspection Panel**

### **II.2.1 General Description**

The Inspection Panel was created in 1993 by the Executive Directors of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA),<sup>109</sup> both independent organisations of the World Bank Group. The IBRD and the IDA provide loans or credits to developing countries in order to finance investment projects. The World Bank has defined Operational Policies (OPs)<sup>110</sup> and Bank Procedures (BPs)<sup>111</sup> to be complied with when it extends loans or credits. Those policies and procedures

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<sup>108</sup> See OECD Watch (2010), 10 Years on: Assessing the contribution of the OECD Guidelines for Multinational Enterprises to responsible business conduct, 43; Human Rights Council (2008), Ruggie Report 2008, para. 98.

<sup>109</sup> About the Inspection Panel, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64129249~pagePK:64132081~piPK:64132052~theSitePK:380794,00.html> (08.03.2013).

<sup>110</sup> Standards derived from the Bank's Articles of Agreement, the general conditions, and policies approved by the Board. OPs establish the parameters for the conduct of operations and describe the circumstances under which exceptions to policy are admissible.

<sup>111</sup> BPs explain how Bank staff carry out the policies set out in the OPs. They spell out the procedures and documentation required for the implementation process. See also Operational Manual of the World Bank, Definitions, <http://go.worldbank.org/RF8N5YBBF0> (08.03.2013).



cover standards and implementation procedures regarding major areas of social and environmental policy which relate to human rights, indigenous peoples and environmental protection issues. These standards are part of the contract between the borrower and the World Bank.

The Resolutions 93-10 and 93-6 give certain guarantees of independence to the Inspection Panel from the Bank's Management and jurisdiction with respect to operations supported by IBDR and IDA. The resolutions establish the structure and mandate of the Panel, which is to receive requests presented by an affected party in the territory of the borrower.<sup>112</sup> The Panel was created to respond to outside demands for greater transparency and accountability of World Bank Projects.<sup>113</sup> Accordingly, the Inspection Panel's mandate is to carry out independent investigations of Bank-financed projects in order to verify whether the Bank's policies and procedures have or have not been complied with. These investigations are triggered by requests of claimants that demonstrate that the claimants have been, or are likely to be, harmed as a result of this non-compliance. The Panel complaint procedure is a three-steps process that begins with a decision of the Inspection Panel about the admissibility of the request (admissibility phase), followed by the World Bank's Management's response by proposing Action Plans (management response). Finally, the process may result in an approval of the World Bank's Board of Executives Directors that authorises the Inspection Panel to conduct an investigation on the matter (Board approval). The specific steps are described in detail in the subsequent chapter.

The early years of the Inspection Panel's operations were marked by a certain resistance to its investigative work. In the first case (the Arun III Hydroelectric Project Case, Nepal 1994), the Board authorised the Inspection Panel to conduct an investigation into the project that finally led to a termination of support for the project. Subsequently, it took nearly five years before the Board authorised the Panel to conduct another investigation which concerned the China Western Poverty Reduction Project case in 1999/2000.<sup>114</sup> Between these cases, the Board either denied authorisation or limited the extent of the inspections. This situation resulted from the requirement that the Panel must have approval of the Board to conduct an investigation, and executive directors from borrowing countries tended to oppose recommendations to investigate.

The initial Resolutions 93-10 and 93-6 were reviewed in 1996<sup>115</sup> and 1999<sup>116</sup> to address those weaknesses, particularly clarifying certain aspects in the original resolution such as the Panel's function, eligibility and access, composition and role of the Board. In both resolutions, the need to more widely disseminate information about the Panel was highlighted as a key factor to be improved. In the 1996 resolution a "mini-investigation" was integrated into the Panel's preliminary stage of analysis of whether a claim is eligible.<sup>117</sup> This alternation was taken back again in the 1999 clarification. Therein, the Panel's task in the preliminary stage

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<sup>112</sup> International Bank for Reconstruction and Development/International Development Association (1993), Resolution No. IBDR 93-10, Resolution No. IDA 93-6, "The World Bank Inspection Panel", 22 September 1993.

<sup>113</sup> Shihata (1994), The World Bank Inspection Panel, 5f.

<sup>114</sup> Clark (2003a), Understanding the World Bank Inspection Panel, in: Clark/Fox/Treacle (2003), Demanding Accountability, 12.

<sup>115</sup> Review of the Resolution establishing the Inspection Panel, 1996 Clarification of Certain Aspects of the Resolution (hereinafter 1996 Clarification).

<sup>116</sup> 1999 Clarification of the Board's Second Review of the Inspection Panel (hereinafter 1999 Clarification).

<sup>117</sup> Clark (2003a), 14.

of the process was reduced to an evaluation of the eligibility of the claim.<sup>118</sup> Moreover, elements of substance were introduced in the admissibility phase such as a certain gravity of the violation, or the criterion that Management must respond *adequately* to the allegation,<sup>119</sup> meaning that its action plans should be based on the Panel's findings instead of pre-empting an investigation.<sup>120</sup> In addition, field visits may only be undertaken with the consent of the borrower.<sup>121</sup>

The first request after the 1999 review process was the China Western Poverty Reduction Case.<sup>122</sup> It marked a new stage in the Panel process, strengthening its role and the impact of its investigations. In recent years, the Panel has started to respond more directly to Bank Management's allegations of conformity by including detailed arguments for non-compliance in its final eligibility or investigation reports.<sup>123</sup>

A review of all cases over the period from 1993 to 2011 shows that from all 68 cases accepted,<sup>124</sup> 34 led to an investigation of the Panel and of these, three were not approved by the Board. As a result, less than half of the cases (31 country cases) went through the complete process and the eligibility as well as the investigation report were issued. Of the remaining 31 cases, 11 were not followed by an investigation process and thus had only an eligibility report. In 13 cases the Panel did not recommend to investigate because the request failed to satisfy a procedural criterion<sup>125</sup> and in the remaining seven cases the Panel did not make a decision on whether to investigate, or did not start an investigation because during the eligibility phase the Bank, the requesters and the concerned borrower successfully reached mutual agreements to solve the relevant problems (e. g. Mexico, Romania, Democratic Republic of Congo and Yemen).

## **II.2.2 Specific Features of the Mechanism**

Requests made to the Panel will not be accepted when they are filed by a single individual, but only when it is a community of persons such as an organisation, association, society or other groups of individuals which is defined as "two or more persons who share some common interests or concerns".<sup>126</sup> Only in exceptional cases and with prior consent of the Executive Directors of the World Bank may an international NGO file a complaint in representation of the individuals or the community affected. In this case, a formal proof of representation will be a mandatory element of the complaint.

When two or more individuals decide to file a complaint, the first step is to submit a "request" to the World Bank Office in the country where the requesters live or to the nearest office from

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<sup>118</sup> Supra, at 16.

<sup>119</sup> 1999 Clarification, paras. 9b and 9c.

<sup>120</sup> Clark (2003a), 16.

<sup>121</sup> 1999 Clarification, para. 16.

<sup>122</sup> The Inspection Panel, China: Western Poverty Reduction Project, 18 June 1999, P046564.

<sup>123</sup> Clark (2003a), 18.

<sup>124</sup> "Accepted cases" comprise those 62 accepted and those 6 that are currently pending.

<sup>125</sup> A "no recommendation status" occurs when the request has failed to satisfy a procedural criterion, which means that the Requesters had brought the subject matter to Management's attention and that, in the Requester's view, Management failed to respond adequately. See the Inspection Panel Process, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20173251~menuPK:64129467~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013).

<sup>126</sup> 1996 Clarification, 1.

the country of residence. If the response from the World Bank office does not meet the concerns of the requesters, they then submit a “request for inspection”<sup>127</sup> to the Panel. Requests can only be accepted by the Panel if a (material or imminent) adverse effect arises directly through an action or omission of the Bank to follow its own operational policies and procedures, like environmental concerns, involuntary resettlement or indigenous peoples.<sup>128</sup> Such a request can be submitted before the project will be approved by the World Bank or after. However, the request will not be eligible when the loan or credit funding of the project is closed or if more of the 95 percent of the funding has been disbursed. The complainants need to refer to a project where IDA or IBDR are directly involved; otherwise the complaint will not be accepted. A request will also be rejected if it raises issues of procurement decisions by the World Bank borrower from suppliers of goods or services financed by the Bank loan or credit agreement.<sup>129</sup> Once the request has been received by the Panel, the process is set into motion.

At the registration of the request the eligibility phase starts. In 21 working days (from the day that the request has been registered) the World Bank’s Management has to provide the Panel with evidence that it complies or intends to comply with the relevant policies and procedures.<sup>130</sup> Once the Panel has received Management’s response, the Panel has 21 working days to determine the eligibility of the request.

The possible outcomes of a request for inspection comprise three different stages: First, before submitting a request of inspection affected persons must approach the Bank’s Management to see if the parties can resolve their concerns directly. Subsequently, if this is not achieved, once the Panel has registered the request it encourages dialogue between the requesters and Bank Management. According to the Inspection Panel’s annual report (2009-2010), in this second step “Management has submitted substantive Responses with proposed action that addresses some of the Requester’s concerns”.<sup>131</sup>

In such cases, the Panel postpones its recommendations to a later date, allowing the Management and the requesters to resolve their differences.<sup>132</sup> When the dialogue has been established between Bank Management and the requesters, the Panel may take the role of a mediator by promoting problem-solving and supporting a resolution.

The third step is taken in cases where a full investigation by the Inspection Panel has been granted to the requesters. In this case, the Management can develop “action plans” to address the Panel’s findings of non-compliance.<sup>133</sup>

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<sup>127</sup> The World Bank Inspection Panel, Brochure, “Suggested Format for a Request for Inspection”, <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/BrochureEnglishwhole.pdf> (08.03.2013).

<sup>128</sup> The Inspection Panel Process, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20173251~menuPK:64129467~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013).

<sup>129</sup> See The World Bank Inspection Panel, Brochure.

<sup>130</sup> Supra.

<sup>131</sup> The World Bank (2010), Inspection Panel annual report July 1, 2009 to June 30, 2010, message from the panel, xiv.

<sup>132</sup> See the Inspection Panel Process, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20173251~menuPK:64129467~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013).

<sup>133</sup> The World Bank (2010), The Inspection Panel annual report July 1, 2009 to June 30, 2010, message from the panel, xiv.

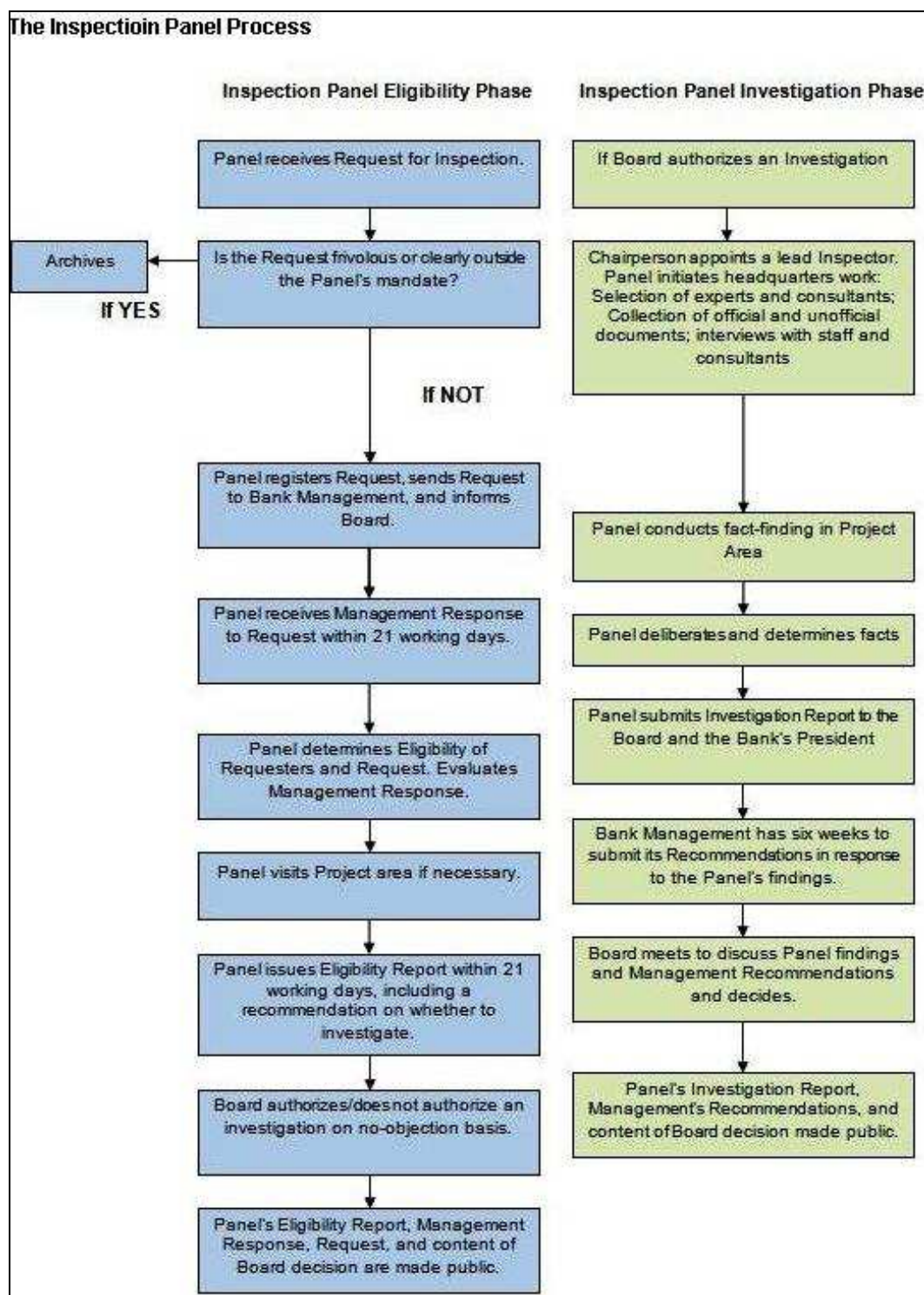


Figure 9: The Inspection Panel Process<sup>134</sup>

In practice, not all accepted requests lead to a full investigation. Hence, as soon as the Panel determines the eligibility of the request, Bank Management responds to the Panel's findings. At this stage, the Panel can decide whether to collect additional facts with a field visit. By doing this, the Panel may recommend to the Board of Executives Directors to open the investigation process. The Board is the only body who can authorise this phase (see figure 9). Often, donor-country directors support a recommendation whilst the borrower countries

<sup>134</sup> Source: <http://go.worldbank.org/SDHRTL85G0> (27.02.2013).

oppose it, with the consequence that decisions about authorisation are postponed or denied.<sup>135</sup> In case the Board has not approved an investigation phase, it may authorise the Panel to undertake a review of the existing problems.<sup>136</sup> By doing so, the Panel can decide to collect additional facts with a field visit, usually including meetings with affected people and their organisation(s). When no investigation has been approved, only an eligibility report (or a final eligibility report in cases where field visits were conducted) will be issued. The eligibility report consists of the registration of the request, its eligibility and a case description, Panel recommendations and annexes. In around 30 of 70 countries, requests only resulted in eligibility reports<sup>137</sup> (see total in Appendix 3).

In cases where the request leads to an investigation,<sup>138</sup> the Panel will review relevant documents, conduct interviews with World Bank staff and visit the borrowing country (including meetings with the requesters and other relevant stakeholders). Once the investigation has been completed, the Panel sends an investigation report to the Board and a copy to the Bank's Management. Then Management has six weeks to submit to the Board its own report and recommendations in response to the Panel's findings. The Board finally decides whether to approve the Management's and/or the Panel's recommendations. Management recommendations are intended to bring the project into compliance with the World Bank's policies and procedures. At this stage, the Board may ask the Panel whether the consultations between the Management and the requesters as well as other affected persons were conducted appropriately prior to approving the Management's recommendations for remedial measures.<sup>139</sup> It should be noted here that after having filed a request, the requesters largely lose any option to participate. Neither is there a possibility for requesters to comment on the Management's response, nor do they have access to information before decisions are made about the claim.<sup>140</sup>

The Panel procedure does not include any appeals mechanism or a follow-up mechanism.<sup>141</sup> The reports do not contain information on monitoring or follow-up activities concerning the Panel's recommendations. Although there were instances where the Board endorsed the Management's suggestion to monitor the project in order to ensure that outstanding issues relating to resettlement are substantially resolved, and to report to the Board on these issues

<sup>135</sup> That was for example the case in the Xacyreta Hydroelectric Project in Argentina/Paraguay in 1996. See Treacle/Pena (2003), *Accountability at the World Bank: What Does It Take? Lessons from the Yacyretá Hydroelectric Project*, Argentina/Paraguay in: Clark/Fox/Treacle (2003), 75.

<sup>136</sup> Supra, at 76. In the Argentina/Paraguay case, the Panel conducted a visit in the field, meeting affected people of the project. This had a certain impact for the community organisations, but in the end the existing problems could not be solved. The failure to improve the situation was due to the lack of any follow-up and bank staff that did not take responsibility but tended to deflect the blame.

<sup>137</sup> Summary of Inspection Panel Cases, 8 November 2010, [http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Panel\\_Cases\\_2010\\_Nov\\_8.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Panel_Cases_2010_Nov_8.pdf) (08.03.2013).

<sup>138</sup> It is important to note that in some cases the Panel has not taken a final decision whether the request merits an investigation, see Appendix 3.

<sup>139</sup> See the Inspection Panel Process, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20173251~menuPK:64129467~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013).

<sup>140</sup> See Treacle/Fox/Clark (2003), *Lessons Learned*, in: Clark/Fox/Treacle (2003), 267.

<sup>141</sup> On very rare occasions, the Board has invited the Panel to review the Management's action plan (see e.g. the case Argentina/Paraguay, Yacyretá Hydroelectric Project, INSP/R96-2), usually instead of endorsing a full investigation, but this can certainly not be seen as a regular follow-up procedure.

in regular intervals,<sup>142</sup> the Panel does not participate in this monitoring phase.<sup>143</sup> Hence, remedial actions or action plans often lack effective implementation.<sup>144</sup>

Moreover, the Panel doesn't have the power to impose any sanctions in order to enforce Bank policies. It cannot issue an injunction, stop a project or award financial compensation. The main result of the Panel process is a public report with the findings of its investigations. This is due to the Panel's mandate which was designed to present findings to the Board, not to supervise the implementation of the solution of problems at hand.<sup>145</sup> In the end, it is the Board's role to consider the findings and to decide what actions should be taken in order to enforce its policies. Hence, one possible impact of a claim brought to the Panel could be the cancellation of World Bank participation in funding the project.<sup>146</sup> In some cases of non-compliance with Bank policies and procedure, the loan has been cancelled, sometimes paralleled by granting compensation or the creation of protected areas, depending on the situation to be remedied.<sup>147</sup>

### **II.2.3 Case Study**

The following case is illustrative of a number of issues related to the Inspection Panel procedure. It demonstrates the challenges involved to reach a satisfactory outcome from a human rights point of view, bearing in mind the Ruggie criteria for an extrajudicial mechanism.

In 1997, the first complaint in relation to the National Thermal Power Corporation (NTPC) in Singrauli/India was filed,<sup>148</sup> followed in 2000 with a second request concerning the same issue.

The loan for the project was approved in 1993 and was declared effective in 1994, which was before the Inspection Panel was created. These earlier acquisitions caused the involuntary resettlement of about 370 families in the first implementation phase of the project. The requesters alleged violations by Management of policies and procedures of the IBRD, which caused the involuntary resettlement because of a lack of alternative livelihood possibilities such as jobs or land for adequate housing.<sup>149</sup> Among other demands, the requesters asked for Panel investigation and called for remedies to compensate the people affected by the project for the adverse impacts they had suffered and were going to suffer because of inadequate social and environmental mitigation measures.<sup>150</sup>

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<sup>142</sup> This was for example the case in the Coal Sector Mitigation Project and Coal Sector Rehabilitation Project, India, in 2001. Nurmukhametova (2006), Problems in Connection with the Efficiency of the World Bank Inspection Panel, 405.

<sup>143</sup> For a list of Management follow-up measures after Panel investigations as of April 2011 see Status of Follow-up Progress Reports by Management to Panel Investigations, April 2011, [http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Post\\_Investigation\\_IPN\\_Cases\\_April\\_2011.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Post_Investigation_IPN_Cases_April_2011.pdf) (08.03.2013).

<sup>144</sup> Clark (2003a), 17.

<sup>145</sup> Treacle/Fox/Clark (2003), 258.

<sup>146</sup> See for example the result of the panel process in the Arun III Hydroelectric Project in Nepal, October 1994. An analysis of the case is provided by Bissell (2003), The Arun III Hydroelectric Project, Nepal, in Clark/Fox/Treacle (2003), 25-44. A survey of possible impacts of the Panel process can be found in Treacle/Fox/Clark (2003), 259 ff.

<sup>147</sup> See also chapter II.2.4 Strengths and Weaknesses of the Mechanism.

<sup>148</sup> The Inspection Panel, India: NTPC Power Generation Project (1997).

<sup>149</sup> The Inspection Panel, Eligibility Report, Report and recommendation, India: NTPC Power Generation Project (loan 3632-IN), 24 July 1997.

<sup>150</sup> Supra.

The requesters alleged that such acts and omissions violated Bank policies and procedures including inter alia the following:

- Economic Evaluation of Investment Operations;
- Environmental Assessment;
- Involuntary Resettlement;
- Indigenous Peoples;
- Bank Project Supervision.

The Bank Management responded to the request by alleging that the Bank had complied fully with the economic evaluation of investment operations and with the Bank policies on indigenous peoples; they had complied substantially with involuntary resettlement and with Bank supervision; they had complied partially with the environmental assessment; and finally, they were going to implement an Action Program with the intention to substantially improve the implementation of the project and to bring the Bank into full compliance with all policies and procedures concerned.<sup>151</sup>

After the Management's response and in relation to involuntary resettlement, the representative of the requesters alleged that the affected people had been forcibly removed from three villages where dykes were constructed during the first acquisitions of land in 1994 when the loan was declared effective. These allegations were denied by a report from NTPC, describing that the relocation at that time had been performed peacefully in accordance with a recent court order approving their eviction within 15 days after the receipt of compensation. This statement was supported by the visit of the Chairman of NTCP in the affected area, who informed Bank Management that the affected people "have received the necessary grant/assistance and that they have shifted voluntarily without any pressure".<sup>152</sup> Later, Bank staff visited the area and reported conflicting views of those interviewed.

The main objective of the resettlement and rehabilitation policy is to ensure that those who are involuntarily resettled have their former standard of living at least restored or improved. To achieve this, it is required to prepare a Resettlement Action Plan (RAP) in line with the mentioned policy. In this case, the project required the preparation and implementation of two Resettlement Action Plans (RAPs for Vindhyachal-I area and Rihand area) and three Remedial Action Plans (ReAps for Vindhyachal-I, Rihand-I and Singrauli). The Resettlement Action Plans were included to remedy those involuntarily displaced by the Bank project in 1993. Remedial Action Plans were required in order to remedy those already displaced by NTPC's initial investment (thermal power plants). The latter had been constructed from the late 1980's to the early 1990's without Bank financing, and hence, without Resettlement Action Plans.<sup>153</sup> NTPC agreed to the resettlement and remedial actions as part of the project. After negotiations in Washington D.C. in March/April 1993, the Resettlement Action Plans were prepared in May 1993. The NTPC adopted for the first time a "resettlement and rehabilitation (R&R) corporate policy" which the Bank found to be in general conformity with

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<sup>151</sup> Supra.

<sup>152</sup> Supra.

<sup>153</sup> The Inspection Panel, Eligibility Report, Report and recommendation, India: NTPC Power Generation Project (loan 3632-IN), 24 July 1997 (hereinafter: Eligibility Report (1997)), para. 4, 31; The Inspection Panel, Investigation Report, India: NTPC Power Generation Project (Loan 3632-IN), 22 December 1997 (hereinafter: Investigation Report, India (1997)), Appendix 3.

its resettlement policy.<sup>154</sup> The project was signed off by Management just in time to be presented to the Bank's Board before the end of the 1993 Fiscal Year (June 30, 1993).<sup>155</sup>

In its response, the Management admitted that during the implementation of these Resettlement Action Plans by NTPC certain problems had arisen and that the options provided were unrealistic.<sup>156</sup> Although Management found that the R&R options were in line with the Bank policies, its response included an action programme to provide remedial measures. This action programme was divided in two phases: One part consisted of a "broader action programme" (a comprehensive approach to rectify very complex and difficult problems for the future), the other in a "project-specific action programme". In addition, the Inspection Panel included information obtained by Mr. Ernst-Günther Bröder, an Inspector designated according to the Inspection Panel operating procedures<sup>157</sup> during July 1997, as well as additional information from the requesters, NGO's, Bank Management and NTPC.

In response to the allegations made by the requesters, the Inspection Panel concluded that it was not going to take into consideration the allegation on indigenous peoples because of the contradictory information that the Inspector had received during his field visit. The same reasons were given regarding the economic evaluation of the investment operations. However, in terms of the environmental and resettlement concerns, the Panel considered the close relation between the two, recognizing that "to build the ash dykes land had to be acquired and people involuntary resettled. In addition, it constitutes a potential environmental hazard to the population."<sup>158</sup>

The conclusions from the Panel in view of the Action Program, which included remedies proposed by the Management, were critical and significant. The Panel recommended an approval for investigation, stating that "the Action Program does not address the fundamental question of whether there are currently serious problems in the resettlement & rehabilitation and environmental operations, as alleged by the Requesters and supported by others during the Inspector's visit"<sup>159</sup>. The Board of Executive of Directors was recommended to authorise an investigation into the involuntary resettlement and associated aspects in the project because the Panel deemed it possible that serious violations of the Bank's policies and procedures had occurred, going beyond those already identified by the Management in the *prima facie* evidence of harm.<sup>160</sup> This recommendation was approved by the Board and an investigation was carried out.

The findings of the Panel's desk investigation report<sup>161</sup> concluded that the violations of the Bank's policies and procedures could be attributed to the pressure from the Senior Regional

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<sup>154</sup> The Inspection Panel, Eligibility Report (1997), para. 33.

<sup>155</sup> The Inspection Panel, Investigation Report, India (1997), paras. 16; 87.

<sup>156</sup> The Inspection Panel, Eligibility Report (1997), paras. 34, 39.

<sup>157</sup> In accordance with Panel's Procedures "any member of the public may provide the Inspector(s), either directly or through the Executive Secretary, with supplement information that they believe is relevant to evaluating the Request". See the Inspection Panel Process, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20173251~menuPK:64129467~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013).

<sup>158</sup> The Inspection Panel, Eligibility Report (1997), para. 21.

<sup>159</sup> Supra, para. 71.

<sup>160</sup> Supra, para. 74.

<sup>161</sup> The nature of this report lies in the confirmation of the preliminary conclusions reached in the Panel's Eligibility report (Report and Recommendation) in July 1997, which relied on the Inspector's observations in the field.



Management to accelerate the approval of the loan. Resettlement and rehabilitation were not considered within the environmental actions as essential components of the project. Thus, the issues were not addressed at the Regional Loan Committee meeting in March 1993, before the borrower NTPC signed the loan agreement eight months later.<sup>162</sup>

In relation to the implementation of the Resettlement and Rehabilitation as well as the Environmental Actions Plans, the Panel found that “the Bank did not assure itself that the borrower had the necessary initial capacity to carry out these tasks”<sup>163</sup> and that the Bank did not have the necessary capacity to support the borrower in carrying these tasks out. The Panel concluded that this aspect appeared to be a serious violation of Bank policies on:

- Environmental Assessment because of the serious consequences of fly ash disposal that had not been considered during the design phase;
- Involuntary Resettlement and Rehabilitation because of the insufficient measures taken to strengthen and monitor NTPC’s capacity in the R&R aspect, being a Bank’s failure to observe policies and procedures as required in Bank supervision.<sup>164</sup>

The same conclusion was reached regarding the participation of and consultation with affected people as a pre-requisite for the implementation of the Bank’s project, “considering this issue as the Bank’s failure to observe policies and procedures in the design phase”.<sup>165</sup>

The Management reported its recommendations two months later in response to the Panel’s investigation report. It recognised that the operational policies had not fully been complied with (Involuntary Resettlement, Project Supervision and Environmental Assessments). Nevertheless, the Management considered that some important statements from the Panel were not supported by facts as documented in the project files, such as pressure from Senior Regional Management to accelerate the process of loan approval, the omission of the issue of Resettlement and Rehabilitation (R&R), or the preparation of the Resettlement Action Plans in the agenda of the Regional Loan Committee.<sup>166</sup>

A second request was sent to the Inspection Panel in November 2000,<sup>167</sup> submitting the same allegations as the original Request in 1997. However, this request was rejected due to the fact that more than 95% of the funding had already been disbursed, and thus any subsequent issues concerning the correction of the Bank’s failures could not be followed up on.<sup>168</sup>

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<sup>162</sup> The Inspection Panel, Investigation Report, India (1997), para. 5.

<sup>163</sup> Supra.

<sup>164</sup> Supra.

<sup>165</sup> Supra.

<sup>166</sup> The Inspection Panel, India, NTPC: Power Generation Project (Loan 3632-IN), Management Report and Recommendations on Inspection Panel Report, <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ManagementReport.pdf> (08.03.2013).

<sup>167</sup> The Inspection Panel, India NTPC Power Generation Project, Second Request (2000).

<sup>168</sup> The Inspection Panel, India: NTPC Power Generation Project (1999), <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/India-NTPC.pdf> (08.03.2013).

#### ***II.2.4 Strengths and Weaknesses of the Mechanism***

From the above case study and the other cases which have been analysed, the following procedural and content-related strengths and weaknesses could be identified:

Certainly, a strength of the Inspection Panel procedure is its transparency. All Panel reports concerning eligibility and investigation (including recommendations) are publicly disclosed and accessible on the Panel's website. Similarly, all responses of the Bank's Management to the requests are publicly available. Publication also includes rejected cases. This is an indispensable feature of the process in order to be able to "track" the requests that the Panel receives, the number of cases accepted and rejected and, to a more limited extent, impacts of investigations made. Based on the summary of the Panel cases (see Appendix 3) as published on its website,<sup>169</sup> a total of 77 country cases<sup>170</sup> have been submitted between 1994 and 2011, 68 of which were accepted and nine rejected, the remaining six cases are pending.

According to the Inspection Panel itself, its work indirectly triggered the establishment of the Bank's Quality Assurance Group which led to increased accountability and improved Bank performance.<sup>171</sup>

The mechanism however faces a number of impediments:

One fundamental issue is the Inspection Panel's mandate which in principle excludes the Panel from investigations on more general human rights issues. According to the Bank's Articles of Agreement, "only economic considerations shall be relevant to [the Bank's] decisions."<sup>172</sup> Two legal opinions by the Bank's general counsel and senior vice-president explain that the prohibition of political activities of the Bank has to be interpreted as non-interference into a state's affairs regarding "political rights", as long as this has no demonstrable effect on the country's economy.<sup>173</sup> This is quite a restrictive view. The Panel dealt with this issue for the first time in the Chad Petroleum Development Project<sup>174</sup> where a requester alleged that he had been tortured because of his opposition to the project. The Panel takes the approach of finding "human rights implicitly embedded in various policies of the Bank" and, thus, within the "Panel's jurisdiction".<sup>175</sup> Bank Management "by and large" agreed with this approach.<sup>176</sup> In this case, the Panel concluded that the Bank should be "more forthcoming about articulating its role in promoting rights within the countries in which it operates ... [and] perhaps this case should lead to study the wider ramifications of human rights violations as these relate to the overall success or failure of policy compliance in future Bank-financed projects."<sup>177</sup>

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<sup>169</sup> Summary of Inspection Panel Cases, 8 November 2010.

<sup>170</sup> The Panel website lists a total of 71 country cases as some cases were combined, e.g., Argentina with Paraguay and South Africa with Lesotho were taking as one each.

<sup>171</sup> The World Bank (2003), Accountability at the World Bank: The Inspection Panel 10 Years On, 79.

<sup>172</sup> IBRD, Articles of Agreement, Article IV "Operations", Section 10 ; and IDA, Articles of Agreement, Article V "Operations", Section 6.

<sup>173</sup> See The World Bank (2003), Accountability at the World Bank, 96.

<sup>174</sup> The Inspection Panel, Chad: Petroleum Development and Pipeline Project (2001), 22 March 2001.

<sup>175</sup> Ayensu (2002), Remarks of the Chairman of the Inspection Panel to the Board of Executive Directors on the Chad-Cameroon Pipeline Projects, 12 September 2002; The World Bank (2003), Accountability at the World Bank, 97.

<sup>176</sup> Supra.

<sup>177</sup> The World Bank (2003), Accountability at the World Bank, 98.

Another decisive issue is the application of Bank policies and procedures by Bank Management and whether there is a certain margin of appreciation in their application. In some cases, such as the India Coal Sector Environmental and Social Mitigation Project, the Cambodia Forest Concession Management and Control Pilot Project and the Chad Petroleum Development Project, Bank Management applied policies inaccurately or gave no or misinformation. According to Nurmukhametova, one reason could lie in the Bank's view that the policies and procedures are more or less flexible rules which allow for a certain margin of appreciation.<sup>178</sup> On the contrary, the Panel is of the opinion that these norms, in particular the environmental standards, require uniform application and are not subject to discretion. They are binding documents and should be treated as such.<sup>179</sup> According to Kingsbury, the operational directives have been understood to be obligatory to Bank staff within the management structure, but have been applied and enforced "flexibly" with the objective of "ameliorating project failures and learning for the future."<sup>180</sup> In order to get a more precise view of binding Bank norms and mere guidelines, the Bank has engaged in the process of developing operating policies and bank procedures (both mandatory) and good practice. The Panel has taken the approach that Bank policies are mandatory for Bank staff and only give the margin of appreciation which they explicitly indicate.<sup>181</sup> Still, the exact nature and application of Bank policies are ambiguous and cause tension between the Panel and Bank Management. A former chairman of the Inspection Panel, Werner Kiene, also pointed out that the non-binding guidelines are not subject to review by the Panel, which has been seen as problematic when Bank Management and Panel interpretations of the guidelines differ in substance.<sup>182</sup>

The analysis of the cases reviewed shows considerable antagonism between the Panel's findings and Bank Management's position on whether a violation of Bank policies has occurred.<sup>183</sup> For some time, it even seemed as if Management's influence on the Board undermined the Inspection Panel's independence.<sup>184</sup> When the Panel made findings of non-compliance, the reaction from bank managers and borrowing-country governments was to deny any wrongdoing and to attempt to discredit the Panel's work. Sometimes, these conflicting views continue to exist even beyond the end of the investigation. In the Yacyretá Hydroelectric Project case for example, the Bank deliberately misinterpreted the Panel's findings.<sup>185</sup> In a letter to a Paraguayan newspaper, the Vice President for Latin America and the Caribbean stated: "The Bank is satisfied with the conclusions of the [Inspection Panel's] report which confirm[s] that the Bank policies on resettlement, the environment, community participation and all other areas were fully met and implemented in the Yacyretá case."<sup>186</sup>

<sup>178</sup> Nurmukhametova (2006), 419.

<sup>179</sup> Gualtieri (2001), The environmental accountability of the World Bank to Non-State Actors, 245.

<sup>180</sup> Kingsbury (2001), Operational Policies of International Institutions as Part of the Law-Making Process: The World Bank and Indigenous Peoples, cited in: Roos (2001), The World Bank Inspection Panel in its Seventh Year: An Analysis of its Process, Mandate, and Desirability with special reference to the China (Tibet) case, at 503.

<sup>181</sup> For details on the Panel's approach see Roos (2001), *supra*, 506f.

<sup>182</sup> Interview with Werner Kiene, 25 April 2012.

<sup>183</sup> The tendency was for the Management to deny that there had been a violation of policies. Sometimes the Management even challenged the eligibility of a case in order to prevent the Panel from examining the case. For example in the Argentina's Garden Program, the Management doubted the eligibility of the case, maintaining that no supervisory errors had been made and that the participants lacked standing to make a complaint. See Abramovich (2003), Social Protection Conditionality in World Bank Structural Adjustment Loans: The Case of Argentina's Garden Program (Pro-Huerta), in: Clark/Fox/Treacle (2003), 204.

<sup>184</sup> See Treacle/Fox/Clark (2003), 254.

<sup>185</sup> *Supra*.

<sup>186</sup> The World Bank (2003), Accountability at the World Bank, 67.

This misinterpretation led to an NGO campaign with the involvement of several international newspapers and finally, the Bank's President James Wolfensohn formally apologized and press statements expressing the "erroneous description of the findings" were released.<sup>187</sup>

By establishing a two-steps procedure to requests received because of the eligibility criteria, the Panel's intervention is delayed in cases where serious social and environmental harm takes place. There is no possibility for taking procedural measures in cases of imminent danger, as courts and some human rights mechanisms provide for.<sup>188</sup> The requirement to request the opinion of the responsible management's office can be seen as a barrier for the requesters to receive a prompt solution or a timely action from the Panel's side.<sup>189</sup> This limitation was addressed in the review of the Resolution in 1996 after the creation of the Panel. The Panel clearly stated that the Resolution limited the first phase of the inspection process to ascertaining the eligibility of the request<sup>190</sup> and it proposed instead a "preliminary assessment" which could lead to a quick resolution without the need to ask for approval of a full investigation. This would have narrowed the time frame for the acceptance of a request for inspection by the Panel, and it would have reduced the period of days of the approval or rejection of an investigation process based on the Board's decision; however, the Board rejected this proposal in its Clarification 1999.<sup>191</sup>

According to Werner Kiene, the eligibility phase has become more of a barrier than in the beginning of the Panel process.<sup>192</sup> This phase is based on a number of preliminary assessments: the qualification of the term "serious harm" and that serious harm has been inflicted by the failure to abide by Bank policies and procedures. The complaint process is seen as costly by Bank Management, and as an unpleasant exercise by borrowing countries, at best. Eligibility has come under heightened scrutiny by some Board Members from borrowing countries and Bank Management. On the other hand, according to Mr. Kiene, there has been a shift in the Board Members' view of the objectives of the Bank and the Inspection Panel. In a more and more globalised world where considerable power has shifted from states to other actors, the Board acknowledges that more power includes more responsibility. Hence, the importance of the Inspection Panel as an international accountability mechanism is appreciated by most members of the Board.<sup>193</sup>

As already mentioned, the process foresees that the Panel can formulate two reports, the eligibility and the investigation report. The eligibility report is by its nature less substantial than the investigation report; it contains the reasons why the case has been filed, why it was accepted and the recommendations of the Panel on how to proceed. The investigation report analyses the compliance or non-compliance of the Bank and the linkages to the borrowers involved. Consequently, it portrays the violations and the lack of success of the policies and

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<sup>187</sup> Supra, at 68.

<sup>188</sup> See for example the recent changes in the "Rules and Working Methods" of the European Committee of Social Rights which provide for an "urgent procedure" in cases of imminent danger.

<sup>189</sup> According to Paragraph 9(c) of the eligibility criteria, the request must assert that the subject matter has been brought to Management's attention and that, in the Requesters' view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures."

<sup>190</sup> See 1996 Clarification.

<sup>191</sup> See 1999 Clarification.

<sup>192</sup> Interview with Werner Kiene, 25 April 2012.

<sup>193</sup> Supra.

performance of both the branch (IBDR and IDA), and to a limited extent of the borrower in a specific project.

This latter “grey zone” of linkages to the borrower continues to be a point of controversy between the Inspection Panel and the Board and leads to different interpretations. Since the very beginning, some Board Members have been extremely cautious to avoid the impression that a Panel investigation touches upon borrowers’ activities. In a recent case, the South Africa Eskom Investment Support Project,<sup>194</sup> the Panel submitted an eligibility report and a statement by the Chairperson, Mr. Roberto Lenton.<sup>195</sup> The statement refers to the correction by the Board of the eligibility report which clarifies that the investigation would focus on the issues raised by the request “that relate to allegations of violations of the World Bank operational policies and procedures.”<sup>196</sup> In this respect, Mr. Lenton notes that “[s]ome Executive Directors felt that our Eligibility Report could have been more precise on the scope of what the Panel recommends to investigate, and that there was concern as to whether the Panel was recommending an investigation of *all* the issues raised on the Request -- even though some of these do not raise issues of compliance under Bank policies.”<sup>197</sup> He then repeatedly asserts that the Panel has no mandate to investigate the borrower and closes with a fervent appeal: “[t]he Panel is an instrument of the Board and as such, subject to its oversight and guidance. To effectively perform its functions, however, it needs a degree of independence and credibility that up to now has been assured by this Board. If the Panel is to properly assess compliance with operational policies, the scope of its investigations would include all the specific operational policies and procedures currently in effect.”<sup>198</sup> This statement emphasises the dilemma of the position of the Panel vis-à-vis the Board: The Panel has to walk on a very thin line between independence from and supervision by the Board. Sensitivities of some members of the Board concerning the treatment of borrowers, who are in fact the clients of the Bank, are intense. Under such conditions, one can only speak of a partial independence of the Panel.

As previously mentioned, the Board is the only body who can authorise a Panel investigation. In circumstances where the Board has not approved an investigation phase, only an eligibility or final eligibility report will be issued. This approach has been rightly criticized as creating a strong dependency of the Panel from the Board. According to Ghazi, “[t]his means that there can be no investigation other than that accepted by the Executive Directors themselves.”<sup>199</sup> Thus, the strongest and most substantial weapon of the Panel can only be used if authorised by the Board. This rule can be seen as a considerable weakness of the procedure.<sup>200</sup> However, for political reasons it is unlikely that this dependency is going to change in the near future.

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<sup>194</sup> South Africa – Eskom Investment Support Project, IBRD Loan No. 78620, Case Nr. 65, filed April 4 2010.

<sup>195</sup> Inspection Panel Report and Recommendation: South Africa – Eskom Investment Support Project, INSP/R2010-0003 (Eligibility Report).

<sup>196</sup> *Supra*, 1, emphasis as in original document.

<sup>197</sup> *Supra*, at 2.

<sup>198</sup> *Supra*, at 4.

<sup>199</sup> Ghazi (2005), The IMF, the World Bank Group and the Question of Human Rights, 219.

<sup>200</sup> For example, in the Singrauli, Itaparica and Yacyreta cases, the Board rejected the Panel’s recommendation for full investigation. This led to a high degree of tensions, see Clark (2003b), Singrauli: An Unfulfilled Struggle for Justice, in: Clark/Fox/Treacle (2003), 179.

Moreover, the creation of these two reports leaves a certain time gap between the Panel's recommendations and its implementation by Bank Management. As mentioned above, an action plan or action programme of Bank Management can be implemented already *before* the Panel has formulated its recommendations. The fact that Management can implement action plans without full recognition of the Panel's recommendations in the eligibility phase considerably weakens the mechanism at the moment where it could have most impact.

The cases reviewed show that the Panel sometimes could not propose a final investigation because Bank Management had in the meantime decided to implement an action plan (or sometimes even an action programme) in response to the request. Assuming that an action plan is being implemented in order to settle the differences between the parties, it may be considered as a foreclosure to the Panel's decision whether to conduct an investigation. As in the case of NTCP India in 1997, the Panel sometimes did not fully agree with the proposals of Management in its action plan, because it left aside Panel recommendations and potential efforts of compliance of the branches and the borrowers to those recommendations. This problem is also highlighted by the International Accountability Project: "Bank Management will propose an 'action plan' in response to the Panel claim or the Panel's report, and the Board will then authorise the Management to implement the plan, with very little oversight or independent on-site verification of the outcomes of the action plans. These plans have been problematic in the past, as they have generally not been developed in consultation with the claimants or the Panel, nor are the claimants or the Panel consulted during its implementation, nor is there sufficient oversight by the Board."<sup>201</sup> The repeated "strategic coup" of Bank Management to present remedial action plans just prior to or even at the same meeting where the Board deals with the Panel's recommendations for investigation, has prevented the Panel and the Board from assessing whether these plans fully address the requesters' concerns and the Panel's analysis.

This problem becomes evident in the case Argentina/Paraguay Yacyreta Hydroelectric Project (1996).<sup>202</sup> In this case, the Executive Directors decided not to authorise an investigation although the Panel recommended approving one. Right before the Board's meeting to discuss the Panel's recommendation, the Management presented two action plans. Hence, the Executive Directors based their decision on the argument that a number of elements had to be further defined. Serious doubts remained whether such speedily developed plans allowed for effective consultation as required by the Bank's policies.<sup>203</sup>

This situation caused a lack of policy reform, leaving the Panel's recommendations as mere recommendations on paper with no impact on the Bank's policies and performance. In the above mentioned case Argentina/Paraguay, the Board directed the Panel to conduct a review of the existing problems of the Yacyreta Project, but decided that "independent of the above decision, the Inspection Panel was expected to look at the extent to which the Bank staff had followed Bank procedures with respect to this project."<sup>204</sup> Actually, the Panel's review found that the Bank had not been able to bring the project into compliance with the

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<sup>201</sup> Clark (2004), *The Strategic Guide to the Inspection Panel*, 17.

<sup>202</sup> Argentina/Paraguay: Yacyretá Hydroelectric Project (1996), IBRD Loan 2854-AR/IBRD Loan 3520-AR, P006036.

<sup>203</sup> Nurmukhametova (2006), 420.

<sup>204</sup> The World Bank (2003), *Accountability at the World Bank*, 63.

relevant policies and procedures. During the Board's subsequent meeting, it was decided to exclude the Panel from any follow-up activity.

Such an approach affects the successful conclusion of complaints – one result of this has been the re-submissions of complaints.<sup>205</sup> Hence, Bank Management should include Panel recommendations when drafting and implementing an action plan, in order to increase the coherence and effectiveness of both the Panel and the Management, and to avoid receiving repeated requests for the same situation.

An additional issue arises with cases where the Bank withdraws from a project because the problems analysed by the Panel could not be resolved satisfactorily. This situation mirrors a dilemma which has also been faced by human rights-aware companies face: Would it have been better if we had stayed? The “exit solution may leave “burnt earth” behind. As has been shown in a number of cases, the companies that took over the activities from those leaving usually were less or not at all interested in improving the human rights situation.<sup>206</sup> However, this dilemma can be avoided if the cancellation of the loan is linked with remedial measures such as compensation or the creation of protected areas, depending on the situation at hand.

As already mentioned, one final considerable shortcoming is the lack of a follow-up procedure. The Board has explicitly prohibited the Panel from overseeing the management-generated action plans.<sup>207</sup> Therefore, it is difficult to assess the impact of the Panel's work on the actual cases as such. It would be useful and immensely contribute to the impact of the Panel mechanism if such follow-up procedures were provided for.

The following concluding analysis looks at whether the Inspection Panel mechanism fulfils the Ruggie criteria, and summarizes the findings regarding its strengths and weaknesses on a more general level.

### ***II.2.5 The Ruggie Criteria***

- **Legitimacy:** This criterion requires the mechanism to enable trust from the stakeholder group for whose use it is intended, as well as being accountable for the fair conduct of the grievance process.<sup>208</sup>

Being the first international mechanism of its kind, the Inspection Panel continuously gained legitimacy through its work for people negatively affected by World Bank projects. Undoubtedly, this could be achieved since its establishment in 1993, and the continuous flow of complaints demonstrates that this standing of the IP lasts. Throughout the years, the IP also gained trust with the Board of Directors due to its impartial approach towards the cases brought before it. However, although the IP is formally seen as a legitimate complaint mechanism by the Board, not all borrowing countries see it as having the legitimacy to investigate to the extent it has shown to have done. The tendency of members of the Board

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<sup>205</sup> Treacle/Fox/Clark speak about “one of the most significant weaknesses of the Inspection Panel Process”. See Treacle/Fox/Clark (2003), 266.

<sup>206</sup> See for example the operations of the Canadian oil company Talisman in Sudan, whose assets were taken over by ONGC Videsh Ltd, an Indian company.

<sup>207</sup> Treacle/Fox/Clark (2003), 266.

<sup>208</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31a.

to raise the bar for the eligibility of complaints can be seen as an attempt to undermine the legitimacy of the IP (on this issue see also the criterion of accessibility below).

- **Accessibility:** The mechanism must be known to all stakeholder groups for whose use it is intended, and provide adequate assistance for those who may face particular barriers to access.<sup>209</sup>

In this regard, the IP process is quite permeable to requesters. Knowledge about its objectives and functions has been disseminated throughout the years and it has become more widely known among its target group. No major obstacles have been encountered in the process regarding barriers<sup>210</sup> such as language, literacy, awareness, financial considerations, distance or fear of reprisal. However, eligibility has come under heightened scrutiny by some Board Members from borrowing countries and Bank Management in recent years. The complaint process is still seen as costly by Bank Management and as an unpleasant experience for borrowing countries.

- **Predictability:** The mechanism needs to provide 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.<sup>211</sup>

The IP process provides a clear procedure with a time frame, the type of process and the outcomes the Panel can or cannot provide. Monitoring of the implementation of the outcomes is not foreseen, however.

- **Transparency:** The mechanism has to keep parties to a grievance procedure informed about its progress, and to provide sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.<sup>212</sup>

The IP process as such is transparent, all complaints as well as IP reports regarding all stages of the process are publically available. This is clearly a main strength of the mechanism. However, Board decisions have at times not been transparent and are quite unpredictable, both to the Panel and the public.

- **Equity:** The mechanism has 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.<sup>213</sup>

Considerable doubts remain concerning the role of the Board of Directors in the complaint process. In a few cases, local World Bank management took steps to keep the IP from closer investigation of the matter, shedding serious doubts on the "equality of arms" between the IP and local management. Some decisions of the Board that precluded Panel investigations were also taken to pre-empt any possible misgivings by the borrower which undoubtedly interfered with the legitimacy and independence of the process.

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<sup>209</sup>Supra, para. 31b.

<sup>210</sup> For an analysis of the accessibility of the IP for women see Lukas (2000), Is the World Bank Accessible to Women Affected by a World Bank Project? An Analysis of the Inspection Panel of the World Bank and Possible Alternatives.

<sup>211</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31c.

<sup>212</sup> Supra, para. 31e.

<sup>213</sup> Supra, para. 31d.



- **Rights-compatibility:** The mechanism has to ensure that outcomes and remedies comply with internationally recognised human rights.<sup>214</sup>

The IP case law developed so far and the authoritative commentary of the Clarifications issued after the first review underline the role of the Inspection Panel as an important complaint mechanism to protect the rights of persons adversely affected by World Bank projects.<sup>215</sup> Aspects of empowerment and participation of the local population can clearly be identified. However, the Inspection Panel's mandate in principle excludes the Panel from investigations on more general human rights issues. In terms of the content of the complaints dealt with, the mechanism addresses a number of human rights-related issues such as indigenous rights, land rights, rights to participation and meaningful consultation, etc.

- **Continuous learning:** This criterion implies drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.<sup>216</sup>

Throughout the years since its establishment, the IP has developed its “case law” and sought to reach its objectives in its engagement with the complainants, the World Bank Management and the Board of Directors. Although faced with obstacles, in particular of procedural nature and due to the limitations of its mandate, the IP has developed a more human rights-conducive approach to its work over the years and thus can be seen as a “learning body”.

### ***II.2.6 Concluding Remarks***

Undoubtedly, a number of problems of procedural nature could be solved since the establishment of the Inspection Panel in 1993. Despite the shortcomings analysed in the previous chapters, the Inspection Panel process is an important extrajudicial complaint mechanism. According to one source, more than half of the cases received were concluded with favorable results for the requesters.<sup>217</sup> Claimants sought to receive compensation for being forcibly displaced, to demand implementation of environmental protection and mitigation measures, to have their livelihoods restored, and to receive support for social programmes.<sup>218</sup> As mentioned, the Inspection Panel does not have the power to take measures other than publishing a report; It is up to the Board to announce remedial measures. Nevertheless, a number of claims have had positive impacts for the requesters such as the projects Arun, Planaflo, Jamuna, Yacyreta, Jute Sector, Itapraica, Singrauli 1, China/Tibet and Structural Adjustment Argentina.<sup>219</sup> In those cases, the project was stopped, the claimants were provided with compensation, and protected areas or new project-level policies were created.

Over the years, the Panel has become more aware of human rights principles and has sought to more closely align its processes with human rights standards without making it explicit. This tendency goes hand in hand with the developments within the Bank itself which has moved from an organisation that viewed human rights as “political” and thus well outside of its mandate, to a body which has identified human rights as an issue which the Bank

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<sup>214</sup> Supra, para. 31f.

<sup>215</sup> Schlemmer-Schulte (1999), *The World Bank Inspection Panel: A Record of the First International Accountability Mechanism and Its Role for Human Rights*.

<sup>216</sup> Cf. UN Human Rights Council (2011), *Ruggie Guiding Principles*, para. 31h.

<sup>217</sup> See Roos (2001), 514.

<sup>218</sup> See Treackle/Fox/Clark (2003), 257.

<sup>219</sup> Supra, 258 ff.

needs to address, although cautiously and with an extensive side-glance to the borrowing country partners.

All in all, the IP process can be seen as a promising instrument for persons adversely affected by World Bank projects but several inadequacies, as pointed out in the previous chapters, still remain and prevent the IP to fully qualify as a complaint mechanism according to the Ruggie principles.

### III Analysis of Company-Based Complaint Mechanisms

#### III.1 Anglo American

##### III.1.1 Context

Anglo American (Anglo) is one of the world's largest diversified mining and natural resource groups, headquartered in London, UK. It engages in exploration, mining, smelting and processing of raw materials including platinum, diamonds, copper, nickel, iron ore, manganese, metallurgical and thermal coal. Its operations stretch out to approx. 40 countries in Africa, Europe, South and North America, Australia and Asia, partly through subsidiaries like Anglo Platinum or DeBeers (diamond producer).<sup>220</sup>

By virtue of the nature, scale and location of the businesses operated by Anglo American, they bear the particular potential for lasting impacts on host and associated communities (e.g. where manpower is drawn from) as well as on the environment. Anglo claims to uphold the highest CSR standards in its business sector. Over the last couple of years, the company actually has taken a number of steps with a view to improving its sustainable development and social performance, and it also participates in some international initiatives in this regard like the UN Global Compact, the Extractive Industries Transparency Initiative (EITI) or the Voluntary Principles on Security and Human Rights.<sup>221</sup> Despite all this, the company repeatedly has been reproached for corporate misconduct concerning e.g. the repression of local communities, the failure to comply with fundamental labour rights and standards, or for profiting from conflict and associated human rights abuses.<sup>222</sup> Though countering these accusations,<sup>223</sup> Anglo is among the most controversial mining companies with regard to its environmental, social and governance performance.<sup>224</sup> In 2011, it also faced a major lawsuit in a UK High Court filed by ex-workers claiming compensation for occupational diseases. The plaintiffs represented thousands of ex-employees suffering from tuberculosis or silicosis

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<sup>220</sup> Anglo American, At a glance, <http://www.angloamerican.com/about/ata glance> (21.08.2012).

<sup>221</sup> See Our approach, <http://www.angloamerican.com/about/approach>; and Partnerships and collaboration, <http://www.angloamerican.com/development/approach-and-policies/partnerships-and-collaboration/collaboration> (both accessed 28.08.2012).

<sup>222</sup> For details see for instance Curtis (2007), Anglo American, The Alternative Report; Mattera (2008), Anglo American's Track Record: Rhetoric or Reality?

<sup>223</sup> Anglo American (2007), Response to the Allegations Made in War on Want's 'Anglo American – The Alternative Report'; Anglo American (2008), The Reality, Anglo American plc's response to Mr. Philip Mattera's report entitled 'Anglo American's Track Record: Rhetoric or Reality'.

<sup>224</sup> See RepRisk (2012), Most Controversial Mining Companies of 2011, 10. In particular, a Colombian coal mining company which Anglo is part-owner of has attracted negative attention. The very same mine participated in a pilot project to test the benefits of grievance mechanisms in line with the Ruggie principles. The facts and findings of this project are provided as a case study in chapter III.1.4.

who argued that these diseases resulted from a lack of dust-protection in South African gold mines, owned by a former Anglo subsidiary.<sup>225</sup>

### **III.1.2 Anglo's Complaints Facilities**

In 2003, Anglo American has introduced a standardised process across the company for identifying and managing corporate impacts on communities, and for addressing complaints and grievances. The so-called "Socio-Economic Assessment Toolbox" (SEAT),<sup>226</sup> which has been updated and enhanced in 2007 and most recently in 2011/2012, comprises a set of international best-practice guidance and instruments allowing for comprehensive impact assessment and management. In May 2012, Anglo was awarded the "Corporate Initiative Award" by the International Association for Impact Assessment (IAIA) for SEAT, which was identified to make a notable contribution to responsible development practice through applying impact assessment.<sup>227</sup>

The SEAT process is structured in a seven-step approach and has to be carried out by all Anglo operations every three years. It covers projects from development throughout closure.<sup>228</sup> Besides tools for stakeholder engagement, conflict management, resettlement planning, engagement with indigenous peoples, training, local development, reporting etc., SEAT equally includes guidance on establishing and operating human rights based complaints procedures at the project level (SEAT, Tool 4A: Complaints and Grievance Procedure).<sup>229</sup> Since 2011, all Anglo American exploration and other project sites (i.e. 70-80 worldwide) have to record and handle complaints mandatorily according to the requirements specified therein.<sup>230</sup>

Tool 4A sets out the basic components of a complaint mechanism and includes guidance as to the internal assessment of complaints, as well as third party involvement in the grievance procedures. First of all, complaints and grievances are logged in a computerized system, then classified according to the type and severity of the reported matter, and gradually processed further. This includes identifying the relevant company department, determining the investigation tasks and defining timelines and, in more complex cases, referring the issue to a review committee which may involve third persons and community representatives. The procedure is overseen by a specific complaints coordinator, whose nomination constitutes a minimum requirement, as does the option to raise complaints anonymously and free of charge. All actions that are taken to resolve the issue require the signature of senior management. In case it cannot be resolved within a certain time frame, for instance when further investigations are needed, the complainants are provided with an interim response. The system also provides for evaluation and monitoring, and thus facilitates tracking

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<sup>225</sup> Supra. See also South Africa gold miners sue Anglo American (2011, 21 September), *BBC News Africa*, <http://www.bbc.co.uk/news/world-africa-14992024>; Anglo American urged to act over tuberculosis claims (2012, 18 April), *The Guardian*, <http://www.guardian.co.uk/business/2012/apr/18/anglo-american-sued-miner-tuberculosis>; South Africa: Anglo Ordered to Disclose Documents (2012, 16 July), *South African Press Association*, <http://allafrica.com/stories/201207170524.html> (all accessed 30.08.2012).

<sup>226</sup> Anglo American (2012), SEAT Toolbox, Version 3, [http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/docs/updated\\_SEAT\\_v3\\_Toolbox.pdf](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/docs/updated_SEAT_v3_Toolbox.pdf) (22.08.2012).

<sup>227</sup> Anglo American wins international award for Socio-Economic Assessment Toolbox (2012, 27 January), *ICMM*, <http://www.icmm.com/page/70711/anglo-american-wins-international-award-for-socio-economic-assessment-toolbox-seat> (22.08.2012).

<sup>228</sup> See Anglo American, SEAT, <http://www.angloamerican.com/development/social/seat> (22.08.2012).

<sup>229</sup> Anglo American (2012), SEAT Toolbox, 71ff.

<sup>230</sup> Schwarte/Wei (2011), International approaches to corporate accountability, 14.

progress of investigations as well as compiling empirical data on the reported complaints and their outcomes.<sup>231</sup>

In addition to the site-based complaint mechanisms, Anglo also operates a whistle-blowing programme at the corporate level. “SpeakUp”<sup>232</sup> equally has been rolled out in 2003, despite the fact that many Anglo operations already had some form of whistle-blowing initiative in place, as an attempt to create a more independent, comprehensive and secure service with assured anonymity and a large variety of communication channels. It is available for Anglo’s offices in Luxemburg, South Africa and the United Kingdom; other business units are responsible for implementing their own capabilities. SpeakUp enables employees, suppliers, communities and other external stakeholders to draw attention to unethical or unsafe business practices which either violate the legal obligations or neglect any of Anglo’s Business Principles<sup>233</sup> (i.e. actions causing health and safety risks, environmental damage, criminal offences, or improper accounting practices etc.). An independent third party provider (“Tip-offs Anonymous”) receives the complaints twenty-four-seven via phone, fax, email, regular mail or website contact, including translation services in a number of relevant languages. Persons submitting complaints are provided with a confidential username and password, in order to be able to follow the steps taken and to answer further questions on the case if needed. To protect the complainant’s identity, an edited (anonymised) version of the report is forwarded to the relevant Anglo business units for evaluation and possible investigation of the complaint, which may result in recommendations to the management.<sup>234</sup>

In 2011, a total of 299 complaints were raised via SpeakUp (a little less than in 2010: 313), of which 237 were closed after investigation and 46 were followed by management action. About half of the instances raised concerned human resource issues (152), the rest related to procurement, accounting, health and safety.<sup>235</sup> Frequently, complaints are made by one employee against another and the SpeakUp programme has proved particularly successful with regard to controlling corruption.<sup>236</sup>

In the following section, the focus will be on the project-level grievance mechanism required by SEAT Tool 4A.

### ***III.1.3 Specific Features of the Complaints and Grievance Procedure***

SEAT generally focuses on social and economic issues; the complaint and grievance procedure, however, was designed in a way as to address complaints of any subject matter, as long as they are community-related (i.e. environmental impacts on local communities). This means that complaints pertaining to e.g. the conditions of employment are not intended

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<sup>231</sup> Details on the steps and procedures will be given in the following chapter. Anglo American (2012), SEAT Toolbox, 71ff. See also Schwarte/Wei (2011), International approaches to corporate accountability, 14; ICMM (2009), Human Rights in the Mining and Metals Sector, Handling and Resolving Local Level Concerns and Grievances, 15.

<sup>232</sup> Anglo SpeakUp, [www.anglospeakup.com/](http://www.anglospeakup.com/) (24.08.2012).

<sup>233</sup> Anglo American, Good Citizenship: Business Principles, [http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/citizenship\\_bus\\_principles.pdf](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/citizenship_bus_principles.pdf) (22.08.2012).

<sup>234</sup> See Anglo SpeakUp, Whistleblowing Policy, <https://www.anglospeakup.com/anglo/WhistleBlowerPolicy.aspx>; How SpeakUp works, <https://www.anglospeakup.com/Anglo/HowDoesItWork.aspx> (both accessed 24.08.2012).

<sup>235</sup> See Anglo American, Sustainable Development Report 2011, 19 April 2012, <http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/reports/AA-SDR-2011.pdf> (24.08.2012), 16.

<sup>236</sup> Schwarte/Wei (2011), International approaches to corporate accountability, 15.

to be raised via this mechanism, as the 2007 version of Tool 4A<sup>237</sup> explicitly stated. Although this distinct exception is no longer included in the tool's 2012 edition, the categories of complaints given therein support the conclusion that employment issues are still to be addressed by other means. This perception is further supported by Anglo's Business Principles, which mention complaint and grievance procedures only with regard to communities, not in relation to employees.<sup>238</sup> The latter may therefore use either particular local employee grievance mechanisms, or, in the absence of such, the "SpeakUp" facility where it concerns corporate activities that are contrary to Anglo's values.<sup>239</sup>

A complaint can be raised by any stakeholder impacted by Anglo's operations. Moreover, third parties can submit complaints on behalf of the complainant.<sup>240</sup> The company's stakeholder definition embraces all "interested or affected parties."<sup>241</sup> Employees are included in this definition; however, as has been pointed out, they should use the mechanism for grievances on an operation's performance and impact on communities mostly. Examples for the wide range of issues covered are: business integrity and corruption; health and safety impacts on host communities; consultation and communication techniques; stakeholder engagement; human rights; housing and accommodation of Anglo's workforce; formal and informal land rights; acquisition and resettlement issues; service quality, including that of third parties providing services; social investments; unfair treatment or discrimination; training; business or employment opportunities; etc.<sup>242</sup>

Anglo's model mechanism provides for easy access. There are various entry points for complaints including a phone hotline, email and regular mail service, as well as particular spokespersons (e.g. staff representatives, elected community members, civil society organisations etc). As minimum criteria, at least one of these means has to be free of charge and, moreover, there must be an option to remain anonymous if preferred by the complainant.<sup>243</sup>

There are a number of components a complaints and grievance management process should consist of (see figure 10). Its specific configuration is left to the business operation that sets up and runs the mechanism, which should take into account the following aspects: type and volume of complaints lodged; levels of trust and goodwill between the company and its stakeholders; public opinion on the operation in a wider regional or national context; the role of the industry and of civil society.<sup>244</sup>

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<sup>237</sup> See Anglo American, Tool 4A 2007 version, available for download at BASESwiki, [http://baseswiki.org/w/images/en/7/72/Upload--4A\\_Complaints\\_and\\_Grievance\\_Procedures.pdf](http://baseswiki.org/w/images/en/7/72/Upload--4A_Complaints_and_Grievance_Procedures.pdf) (24.08.2012), 85.

<sup>238</sup> See Anglo American, Good Citizenship: Business Principles, 5.

<sup>239</sup> Anglo American (2012), SEAT Toolbox, 74.

<sup>240</sup> Supra, at 72.

<sup>241</sup> This includes: neighbouring communities and businesses; local, regional and national governments (i.e. the authorities); employees, contractors, and suppliers; NGOs and community-based organisations; media groups; other Anglo American operations and Anglo American Corporate. See Anglo American, The Anglo Social Way, Management System Standards, Version 1, April 2009, [http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/aa\\_social\\_way](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/aa_social_way) (24.08.2012), 15. The key information table, which has to be filled in when complaints are logged into Anglo's online system, furthermore mentions individual members of the public, police and other state security forces, politicians, potential suppliers, and legal representatives; it also provides a category named "Other" for stakeholders not otherwise specified. Anglo American (2012), SEAT Toolbox, 78.

<sup>242</sup> Supra, at 78f.

<sup>243</sup> Anglo American (2012), SEAT Toolbox, 74.

<sup>244</sup> Supra.

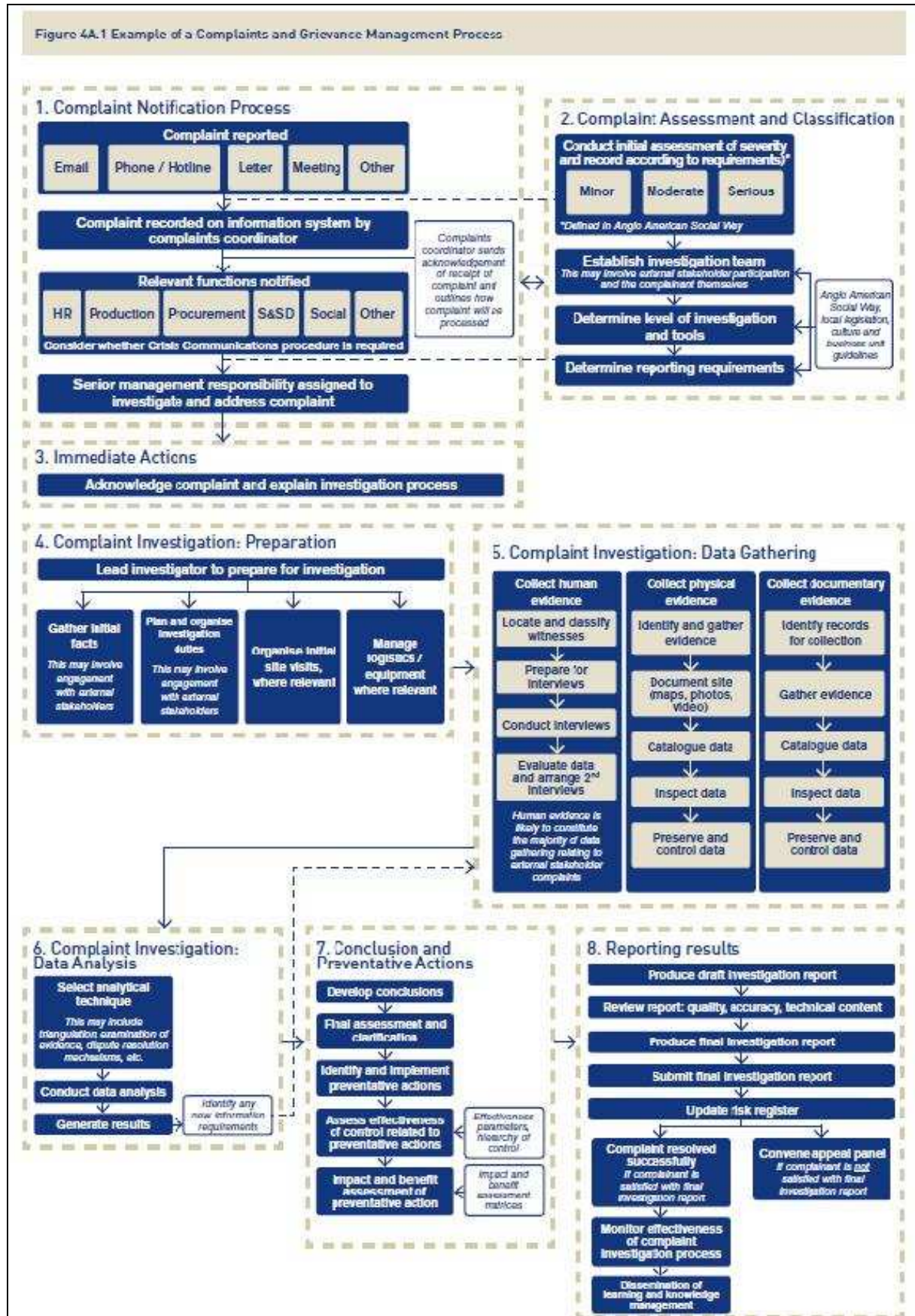


Figure 10: Anglo American – Complaint Management Process<sup>245</sup>

<sup>245</sup> Anglo American (2012), SEAT Toolbox, 73.

Each complaint or grievance has to be recorded in Anglo's online system, this is obligatory for all reported cases (see figure 10, step 1). To this end, certain key data concerning the complaint, the complainant, and the planned approach for dealing with the instance have to be collected.<sup>246</sup> In the very beginning, all complaints have to undergo internal assessment according to which the grievances are classified into Minor, Moderate or Serious (step 2). There are clear guidelines on how to define a complaint's degree of severity such as:

- Actual or potential frequency of a grievance;
- Potential impact of a complaint on the company both locally and beyond (including reputational risks, duration and reversibility);
- Occurrence of injuries, health impacts or deaths of members of the public, caused by any action or incident attributable to the operation/company.<sup>247</sup>

In case of alleged human rights abuses, the complaint is considered a serious matter and in-depth investigation has to take place, regardless of whether the grievance has been raised repeatedly or only once. Anglo explicitly points out that it would not tolerate *any level* of human rights violation.<sup>248</sup>

The Anglo model complaint process clearly determines the roles and responsibilities within the operation/company, including a senior staff member in charge of the overall functioning of the procedure (i.e. the so-called complaints coordinator), as well as appropriately trained staff for following-up on complaints (investigation and resolution of the case). In this regard, the person dealing with a complaint should be different from the one signing off the concluding actions. This applies at least in respect of moderate and serious cases, whilst minor grievances do not necessarily require signing-off by management, but only periodic review to verify their correct handling.<sup>249</sup> Moreover, it has to be ensured that no manager is both the alleged source of grievances and the sole facilitator of the operation's response to it.<sup>250</sup>

The processes and time frames for notifying company management and for responding to stakeholders are equally clearly defined. Moderate incidents must be reported within 24 hours to divisional management; serious complaints must be reported immediately, and, in addition, within 24 hours to Anglo's Group Government and Social Affairs department.<sup>251</sup> Stakeholders should be informed about the receipt of the complaint (initial response; step 3), about the estimated timeline for investigation, that is to say until when they can expect the case to be resolved, as well as of any reasons causing a delay and the revised deadline for conclusion (interim response).<sup>252</sup>

Complaint investigation is designed in a three-step approach (see steps 4-6): At the preparation stage an investigation plan is elaborated, including a first collection of facts and

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<sup>246</sup> See Key Information Table at Anglo American (2012), SEAT Toolbox, 77ff.

<sup>247</sup> For more details on classification see *supra*, 75.

<sup>248</sup> *Supra*, 76.

<sup>249</sup> Box 4A.4 at Anglo American (2012), SEAT Toolbox, 75f.

<sup>250</sup> He or she can be part of the facilitation team, however. See *The Anglo Social Way*, 11.

<sup>251</sup> Anglo American (2012), SEAT Toolbox, 74.

<sup>252</sup> *Supra*, 75.



organising initial site visits; this may involve the engagement of external stakeholders. Then it proceeds to data gathering, which involves the collection and review of human, physical and documentary evidence with regard to the reported grievance or complaint, such as personal interviews, photos, maps, videos, data of the records etc. Finally, when it comes to data analysis, dispute resolution techniques may be applied along with other analytical mechanisms for generating results from the evidence.<sup>253</sup>

Following a grievance's investigation, a complaint can be maintained (either fully or partially) and may require further action for its definite resolution then, or it can be closed.<sup>254</sup> The identification and implementation of preventative actions is also part of the concluding stage (step 7). Tool 4A, however, does not specify the steps that might be taken in this regard, since these depend very much on the particular case (i.e. the kind of operation, the category and classification of the complaint, the involved stakeholders, etc.). To ensure that a case has been dealt with adequately, any decisions or actions taken to resolve it require signing-off by a senior staff member who is well aware of the issues at stake.<sup>255</sup> In any case, complainants have to be notified of the outcome;<sup>256</sup> when they are not satisfied with it, they may appeal both the internal findings and/or the proposed resolution (management response) to their grievance. To this effect, a complaints appeal panel should be formed, composed of senior managers of the operation and at least one independent third party member; technical experts and other Anglo staff may also be brought in. Panels for appeals in more controversial cases can be formed without participation of company representatives even, in order to ensure that the panel commands confidence by the key stakeholders involved. Before refusing an appeal (which might be the case e.g. when the complainant hasn't acted in good faith), either divisional management (for moderate complaints) or Anglo's Head of Social Performance (for serious complaints only) should be consulted, depending on the complaint's level of severity.<sup>257</sup>

The complaint process concludes with a final investigation report, an entry in the company's or operation's risk register, and the dissemination of the lessons learned (step 8). The effectiveness of both the complaints procedures as well as the implementation of resolutions should be ensured by conducting internal or external audits, as well as by reporting on the number and kinds of issues dealt with.<sup>258</sup>

### ***III.1.4 Case Study: The Cerrejón Complaints Office, Colombia***

Carbones del Cerrejón (Cerrejón) is an independently operated mining joint venture co-owned by Anglo American, BHP Billiton and Xstrata Coal in three equal shares. It is situated in La Guajira, a peninsular province in the very north of Colombia near the Venezuelan border, and comprises a large coal mine as well as 150 kilometres of railroad tracks and a sea port for transportation. The company has a total of 10,000 employees, about half of

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<sup>253</sup> Supra, 73.

<sup>254</sup> The latter applies in case a complaint turns out to be factually incorrect or if it doesn't relate to an Anglo American operation. See supra, 79.

<sup>255</sup> As set out above, this requirement applies with regard to moderate and serious grievances only. Supra, 76.

<sup>256</sup> Notification might not be feasible when the submission was made anonymous.

<sup>257</sup> Anglo American (2012), SEAT Toolbox, 76 and 79; The Anglo Social Way, 11

<sup>258</sup> Supra.



which are contract workers, and it is the largest private exporter and most important tax payer in the country.<sup>259</sup>

In 2009, Cerrejón and three other enterprises agreed to pilot a project on behalf of the UN Special Representative John Ruggie, which aimed to test the practical applicability of his draft set of principles for effective extrajudicial grievance mechanisms for company-stakeholder complaints. The findings were intended to refine the draft principles, in order to reflect operational realities prior to their integration in the Guiding Principles on Business and Human Rights.<sup>260</sup> The project's focus was specifically on operational-level grievance mechanisms, like the one conceptualized by Anglo's SEAT Tool 4A.<sup>261</sup> Interestingly, Cerrejón didn't have a formal stakeholder complaint mechanism in place by then. Instead, the company relied on a strategy marked by a minimum of cooperation with affected communities and, where unresolved grievances had escalated into more serious disputes, on legal action.<sup>262</sup>

The region where mining operations are located is characterized by weak governance structures, the presence of illegal armed groups and a high ratio of indigenous population (the so-called Wayúu). Cerrejón has frequently been blamed for not sufficiently protecting human rights or remedying its severe corporate impacts on the local livelihoods. These allegations primarily concerned the local communities' constant struggle against displacement, environmental destruction and human rights violations by paramilitary forces, as well as disregard of fundamental labour rights resulting in a high number of deaths among the workforce.<sup>263</sup> In spite of that, the company remained reluctant for a long time as regards providing a formal access point for its aggrieved stakeholders. NGOs intervening on behalf of them lodged complaints with the home state OECD National Contact Points of Cerrejón's owners,<sup>264</sup> as well as with the UN Global Compact Office. Within the company, different departments accepted complaints on a variety of issues from resettlement to labour conditions and environmental concerns. Moreover, grievances were voiced with the company's Human Rights office, which was actually responsible for implementing the Voluntary Principles on Security and Human Rights,<sup>265</sup> and therefore lacked both an official mandate and a formalised approach for the management of complaints. In the given situation, company management opted for the creation of a centralised complaint mechanism with uniform rules, transparent processes and clear internal roles and responsibilities. It undertook to do so in the course of the Ruggie pilot project for which it volunteered, following an internal revision process on the company's state of play regarding business ethics.<sup>266</sup>

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<sup>259</sup> Cerrejón, Our company, <http://www.cerrejon.com/site/english/our-company.aspx>; Work with us, <http://www.cerrejon.com/site/english/our-company/work-with-us.aspx> (both accessed 20.08.2012).

<sup>260</sup> See Rees (2011), Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned, 5.

<sup>261</sup> It actually includes a brief summary of the pilot project, see Anglo American (2012), SEAT Toolbox, 72.

<sup>262</sup> Rees (2011), 32.

<sup>263</sup> RepRisk (2012), 4 and 10. For details see the documentation of Arbeitsgruppe Schweiz-Kolombien (ASK), El Cerrejón und Xstrata, <http://www.askonline.ch/themen/wirtschaft-und-menschenrechte/bergbau-und-rohstoffkonzerne/el-cerrejon-und-xstrata/>; the London Mining Network, <http://londonminingnetwork.org/?s=cerrejon>; and Mines and Communities (MAC), <http://www.minesandcommunities.org/search.php?words=cerrejon> (all accessed 25.08.2012).

<sup>264</sup> The cases were concluded, however, without producing considerable benefits for those affected. See Colombian communities vs. BHP Billiton, 26 June 2007, [http://oecdwatch.org/cases/Case\\_121](http://oecdwatch.org/cases/Case_121); and Colombian communities vs. Xstrata, 4 October 2007, [http://oecdwatch.org/cases/Case\\_153](http://oecdwatch.org/cases/Case_153) (both accessed 25.08.2012).

<sup>265</sup> I.e. a set of non-binding guidelines that help businesses ensuring the safety and security of its operations while at the same time safeguarding human rights, see [http://www.voluntaryprinciples.org/files/voluntary\\_principles\\_english.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf) (28.08.2012).

<sup>266</sup> Rees (2011), 32f; Interview with Carlos Franco, 27 September 2012.

The development of the complaint mechanism was undertaken step by step, starting with a status quo assessment and gap analysis with regard to the (draft) Ruggie principles. Engagement with internal and external stakeholders was sought at various stages of the project in order to ensure ownership and trust from all relevant actors, both inside and outside the company; this was particularly important given the initial resistance from the departments that already used their own complaint mechanisms and wouldn't want to lose grip. Designing the mechanism, the necessary software and associated database, was followed by training activities and a four-month test run. After its presentation to Cerrejón's technical departments, contractors were introduced into the purpose and benefits of the new grievance system in special workshops. By December 2010, when the pilot project had come to an end, Cerrejón had three complaints procedures in place for different issue areas: community grievances, employee related grievances, and resettlement issues. Moreover, the so-called "Complaints Office" had been established within the Social Standards and International Engagement Department for "channelling" the incoming grievances. It is responsible for logging all complaints in the database and directing it to the company department in charge of dealing with it. That way, the company has retained its subject-related mechanisms, while at the same time allowing for a more coherent and proper investigation and tracking of all stakeholder complaints.<sup>267</sup> Additional mechanisms established by Colombian law or agreed upon with the Union in Collective Bargaining Agreements are not replaced by the Complaints Office, however. Therefore, grievances pertaining to labour, occupational health, meals and transportation of workers, ethical or disciplinary issues are *not* addressed by the Complaints Office in the first place. There is a regulated complaints process for labour related grievances outside the formal complaint mechanisms. It involves the union and is based on discussion with the worker/employee and the Human Capital Department. In case the aggrieved party and/or the union are not satisfied with the outcome, they may submit a formal complaint to the Complaints Office.<sup>268</sup>

Cerrejón's new complaint-handling process generally follows the model of Anglo's SEAT Tool 4A, with a few distinctions or specifics, however. The procedure is organised as a 4-steps approach,<sup>269</sup> as shows the diagram below:



Figure 11: Complaint Procedure at Cerrejón

- (1) It starts with the complainant presenting his/her claim either via telephone, email or in person. This may be done by anybody who claims to be negatively impacted by Cerrejón's operations, such as neighbouring communities, workers and staff associated with contractors. The latter were disadvantaged under the previous system which did accept complaints from company employees only, while contract workers

<sup>267</sup> Rees (2011), 33.

<sup>268</sup> Supra, at 36. See also Cerrejón, Complaints Office, <http://www.cerrejon.com/site/english/sustainable-development-%E2%80%A2-social-responsibility/complaints-office.aspx> (24.08.2012).

<sup>269</sup> Interview with Carlos Franco, 27 September 2012.

were excluded from reporting their grievances.<sup>270</sup> Complainants can share their concerns or grievances with personnel both inside the company (i.e. all staff members including the front desk) and outside the company (e.g. staff working along the railroad track). Whoever receives a complaint can log it in independently, or can inform the Complaints Office for further processing.<sup>271</sup> Afterwards, the grievance's level of severity is determined according to the complexity and risk level of a case (low/medium/medium-high/high).<sup>272</sup> This classification is based on three questions in particular: Who is affected (one or more person/s; a whole community; members of a particularly vulnerable societal group, for instance an indigenous woman)? Which right(s) are targeted (property rights, land rights, right to health, personal integrity, etc.)? How frequently did/does this incident (re)occur?<sup>273</sup>

- (2) Upon this, Cerrejón decides on the members of the investigation team. Cases ranked low-risk are investigated by the department which the grievance pertains to, while for medium and higher risk levels, investigators are assigned from other departments but the one concerned, in order to avoid conflicts of interests. Complaints touching upon alleged human rights abuses or the activities of security forces fall under the exclusive authority of the Coordinator of Voluntary Principles.<sup>274</sup> The investigators are in charge of gathering all relevant information and conducting interviews with the complainants, their family members, community leaders, etc., so as to clarify events in the subsequent second stage.<sup>275</sup> Besides the core team in the Complaints Office, Cerrejón has specifically trained field staff (roughly 60 people) and has also contracted representatives of indigenous communities for translation or culturally sensitive advice, if required.<sup>276</sup> Fact-finding constitutes a cooperative action, whereby the Cerrejón investigator is joined by the aggrieved party.<sup>277</sup> This approach doesn't allow for the complainant to remain anonymous, since the whole investigation is based on personal engagement and discussion.<sup>278</sup>
- (3) For resolving a complaint, Cerrejón enters into direct, participatory dialogue with the affected party until they can reach an agreement. The outcome of this conversation process typically consists in a compromise on compensation for damages. If the complainant is not satisfied with the results of the process, dialogue continues, possibly led by a higher-level manager of the company (recourse option). A second round of investigation can also take place when the complainant wants to provide the company with new evidence.<sup>279</sup> External experts might be consulted on specific subject matters (e.g. technical questions), but this depends on the parties' mutual

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<sup>270</sup> Supra.

<sup>271</sup> Rees (2011), 35.

<sup>272</sup> Supra, at 36.

<sup>273</sup> The exact process is documented in a comprehensive manual on the handling of complaints, which is currently under review and therefore not available. Interview with Carlos Franco, 27 September 2012.

<sup>274</sup> Rees (2011), 36.

<sup>275</sup> Supra.

<sup>276</sup> Supra, at 38f; Interview with Carlos Franco, 27 September 2012.

<sup>277</sup> Rees (2011), 35.

<sup>278</sup> It is not clear how this conforms to the Anglo model tool which provides for anonymity as a mandatory feature of a complaint mechanism. Cerrejón, however, is an independently managed company only partly owned by Anglo, and might have a free hand in this regard, as opposed to Anglo's direct subsidiary operations. Interview with Carlos Franco, 27 September 2012.

<sup>279</sup> Rees (2011), 38.

consent. This option does not provide for generally involving third party facilitators, however.<sup>280</sup> Cerrejón allows for negotiation support from third parties only with respect to resettlement related complaints. As for other issues, alternative dispute resolution is available only as a last resort for cases categorized as upper risk level (medium-high or high) when an agreement is unlikely to be reached otherwise.<sup>281</sup>

- (4) All activities are carefully documented in the system and the results are presented to the committee in charge of determining the remedy. Where appropriate, it can also recommend modifications with respect to the company's policies and practices in order to avoid similar events in the future.<sup>282</sup> The Management Response Committee takes the final decision in medium or medium-to-high risk cases ("level 2 complaints"), which make up the majority of grievances (2010: 85%). It is comprised of a number of representatives from Cerrejón's middle management (i.e. managers from the Social Standards, Public Affairs, Finance, and Legal department, as well as the department under investigation and the one leading investigations) plus the Complaints Office Supervisor. If a case exceeds a certain limit of compensation sum or grade of complexity ("level 3 complaints"), it has to be referred to the Top Management Response Team. Responses to low-risk cases ("level 1 complaints") are provided by the Complaints Office alone.<sup>283</sup>

From 2010 onwards, Cerrejón has carried out various activities to publicise the existence of the Complaints Office to its employees, contractors and communities. The mechanism was presented to almost 1,800 local stakeholders on the occasion of community meetings along the length of the railroad concerning a mine expansion project. Moreover, more than 230 company employees have been introduced to the new complaints procedures in special training sessions.<sup>284</sup> As a consequence, the first complaints were submitted soon after the mechanism's launch.<sup>285</sup> To date, from a total of 300 filed complaints, only 170 could be resolved so far, the rest is still pending.<sup>286</sup>

### ***III.1.5 Review According to the Ruggie Criteria***

Anglo's model complaint mechanism (SEAT Tool 4A) duly takes account of the Ruggie recommendations. Its 2012 updated version expressly addresses the eight key criteria and emphasises their particular importance for the effectiveness of a company's complaints procedures.<sup>287</sup> Most interesting is the fact that the aspect of "continuous learning" is an add-on to the initial set of criteria that were put to the test in the pilot project. In the light of

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<sup>280</sup> Interview with Carlos Franco, 27 September 2012.

<sup>281</sup> Rees (2011), 37.

<sup>282</sup> Cerrejón, Complaints Office, <http://www.cerrejon.com/site/english/sustainable-development-%E2%80%A2-social-responsibility/complaints-office.aspx> (24.08.2012); Interview with Carlos Franco, 27 September 2012.

<sup>283</sup> Rees (2011), 34.

<sup>284</sup> Cerrejón, Sustainability Report 2010, [http://www.cerrejon.com/site/Portals/1/Documents/pdf/sustainability\\_reports/Cerrejon\\_Sustainability\\_Report\\_2010.pdf](http://www.cerrejon.com/site/Portals/1/Documents/pdf/sustainability_reports/Cerrejon_Sustainability_Report_2010.pdf) (24.08.2012), 51.

<sup>285</sup> In 2010, the Complaints Office logged in six complaints concerning incidents of discrimination and quite a number of complaints with regard to indigenous rights: 41 cases pertained to accidents along the railroad track, three of which involved persons, the rest involved animals (cattle owned by the communities); nine official complaints referred to restriction of movement, seven incidents related to security services, five complaints were reported in relation to a protected area at the port, and environmental impacts of the operation were claimed two times. See *supra*.

<sup>286</sup> Interview with Carlos Franco, 27 September 2012.

<sup>287</sup> See Anglo American (2012), SEAT Toolbox, 71.

experience from the participant companies including Cerrejón, the Special Representative decided to include continuous learning as a further principle for effective grievance redress mechanisms, which he had not considered before.<sup>288</sup>

In respect of Cerrejón, when the company entered the pilot phase it had no structured complaint mechanism in place. Thus, the Ruggie criteria were in the centre of the whole development process or, as Cerrejón puts it now, “the Complaints Office is based on the principles of legitimacy, accessibility, justice and fairness, a predictable process, transparency, compatibility with a human rights perspective, and based on dialogue and lessons learned.”<sup>289</sup> However, there exist a number of shortcomings with regard to these principles, which are as follows:

- **Legitimacy:** This criterion requires the mechanism to enable trust from the stakeholder group for whose use it is intended, as well as being accountable for the fair conduct of the grievance process.<sup>290</sup>

The complaint mechanism mostly fulfils this criterion. While setting up the mechanism, Cerrejón sought to build legitimacy on all levels both inside and outside the company. With regard to the latter, feedback from communities was collected by a local NGO on behalf of Cerrejón, but no external stakeholders were directly involved in the development process. The company had concerns that a joint exercise could be misused by these groups for addressing completely different issues than designing a grievance mechanism, or for pushing for unlimited third party access which would undermine the complaint resolution process.<sup>291</sup> Given the power imbalance between such a big company and its stakeholders, these arguments are not very convincing. Cerrejón, however, tries to gain legitimacy by stakeholder participation in the implementation phase through joint fact finding.

- **Accessibility:** The mechanism must be known to all stakeholder groups for whose use it is intended, and provide adequate assistance for those who may face particular barriers to access.<sup>292</sup>

The activities undertaken for publicising the mechanism, as well as the number of complaints submitted so far seem promising with regard to this criterion. However, it appears that the indigenous communities are not that familiar with the mechanism regarding both its existence as well as its functioning.<sup>293</sup> Already in the course of the pilot project it became clear that it would be particularly difficult to bring the mechanism to the attention of its target group, which lives spread out over a huge area impacted by Cerrejón; even more, since these communities traditionally pass on information from person to person only.<sup>294</sup> The company still has to increase its activities to meet the requirements of the accessibility criterion.

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<sup>288</sup> Rees (2011), 26f.

<sup>289</sup> Cerrejón, Complaints Office, <http://www.cerrejon.com/site/english/sustainable-development-%E2%80%A2-social-responsibility/complaints-office.aspx> (24.08.2012).

<sup>290</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31a.

<sup>291</sup> See Rees (2011), 34f.

<sup>292</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31b.

<sup>293</sup> Interview with Stephan Suhner, 18 September 2012; Interview with Community Representative II, 26 September 2012.

<sup>294</sup> See Rees (2011), 35f.

- **Predictability:** The mechanism needs to provide 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.<sup>295</sup>

The procedures provide a period of no more than three weeks between logging a complaint and agreeing on an action plan for redress, including timelines, roles and responsibilities. In practice, Cerrejón unfortunately faces a massive challenge with regard to providing timely responses to the complainants.<sup>296</sup> This is particularly problematic as the communities traditionally expect that conflicts are being addressed quickly and in a positive manner.<sup>297</sup> Currently, the mechanism is absolutely not satisfactory in this respect.

- **Equity:** The mechanism has 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.<sup>298</sup>

Some serious constraints exist with regard to justice and fairness of the mechanism. Research has revealed that the power relations between Cerrejón and the communities are quite imbalanced. Third-party involvement in the complaints procedures is provided for only in exceptional cases. The communities report that for years of business conduct their issues either have not been taken seriously by the company,<sup>299</sup> or that they have been personally exposed to threats following the notification of grievances.<sup>300</sup> Therefore, it is unlikely that the new mechanism will be widely considered as a fair and empowering redress tool.

- **Rights-compatibility:** The mechanism has to ensure that outcomes and remedies comply with internationally recognised human rights.<sup>301</sup>

Both the design of the mechanism as well as its outcomes are in line with international human rights standards. More attention should be paid to conforming to the “rights” claimed by the indigenous communities (e.g. compensation for animals being hit by the coal transporting train, communication is only handled by specific spokespersons of a clan etc.),<sup>302</sup> though.

- **Transparency:** The mechanism has to keep parties to a grievance procedure informed about its progress, and to provide sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake.<sup>303</sup>

The mechanism is partly transparent as Cerrejón is open about the process as such, but it doesn’t provide any information on the cases’ outcomes. Numbers are available only with regard to how many complaints have been filed and resolved within a certain period of time. The company argues that revealing information like who received damages and how much

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<sup>295</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31c.

<sup>296</sup> Interview with Carlos Franco, 27 September 2012.

<sup>297</sup> See Rees (2011), 36.

<sup>298</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31d.

<sup>299</sup> For instance, a main irritation for the Indigenous was Cerrejón’s practice not to compensate for animals being hit by the train. Thus, they saw no way to receive a fair settlement from the company. This “no-compensation policy” has come under review following the first formal complaints with the Complaints Office. See Rees (2011), 36 and 39.

<sup>300</sup> Interview with Stephan Suhner, 18 September 2012; Interview with Community Representative, 27 September 2012.

<sup>301</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31f.

<sup>302</sup> See Rees (2011), 38.

<sup>303</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31e.

would have negative consequences for the complainants or even put them at risk. However, it could also be argued that this serves to conceal discriminatory treatment of complainants in similar cases, because a number of people have reported that they were offered quite different amounts of financial compensation for similar grievances in the context of resettlement.<sup>304</sup>

- **Engagement and dialogue:** The mechanism should be based on engagement and dialogue, which means consulting the stakeholder groups for whose use it is intended on its design and performance, and focusing on dialogue as the means to address and resolve grievances.<sup>305</sup>

In the past, general and ongoing engagement with indigenous peoples has been very limited. The company has only begun to reach out to the communities, which is complicated by a lack of knowledge how to engage with them in a culturally appropriate manner. Under these circumstances, it remains to be seen whether the dialogue process will function well.

- **Continuous learning:** This criterion implies drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.<sup>306</sup>

From our assessment, the mechanism seems satisfactory with regard to integrating the lessons learned, at least so far. According to the head of Social Standards, Carlos Franco, the continuous learning process is number two on the list of challenges envisaged for the next years.<sup>307</sup> In order to fulfil this criterion in future, Cerrejón will have to probe into all the complaints filed with the Complaints Office and start to address the root causes for the various grievances.<sup>308</sup>

### **III.1.6 Final Assessment**

Both Anglo's group-wide SEAT system for the recording and handling of complaints as well as the Complaints Office of its joint venture, Cerrejón, have come into operation only a short while ago. It might therefore be a bit early to extract relevant empirical data from the system.<sup>309</sup> Measuring the effectiveness of the group-wide mechanism on the basis of key performance indicators has just started in 2011. Although all Anglo operations have complaint mechanisms in place, no disputes have been reported so far.<sup>310</sup> According to Anglo, the majority of grievances pertained to rather low-level issues ("housekeeping stuff") and did not touch upon serious rights violations. It acknowledges, however, that the potentially affected people are not yet well aware of the complaint mechanisms and don't make use of it regularly. Targets for the future are, therefore, to raise awareness of the system, train the company staff who is in constant contact with communities to receive complaints, and report on the progress and outcomes including internal auditing.<sup>311</sup> Moreover, Anglo has to make sure that all operations use the very new model for grievance procedures (included in SEAT Version 3), which duly takes account of the Ruggie framework.<sup>312</sup>

<sup>304</sup> Interview with Stephan Suhner, 18 September 2012.

<sup>305</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31g.

<sup>306</sup> Supra, para. 31h.

<sup>307</sup> Interview with Carlos Franco, 27 September 2012.

<sup>308</sup> See Rees (2011), 40.

<sup>309</sup> See Schwarte/Wei (2011), 14.

<sup>310</sup> See Anglo American, GRI indicator table, [http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/development/performance/GRI\\_2011.pdf](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/development/performance/GRI_2011.pdf) (28.08.2012).

<sup>311</sup> Schwarte/Wei (2011), 14.

<sup>312</sup> See Anglo American, Sustainable Development Report 2011, 10i.

Generally, Anglo says “the new system has made a positive contribution to the company’s cultural integrity, openness and accountability.”<sup>313</sup> The same proves true for Cerrejón, which has changed from a rather closed and defensive corporate culture towards a more open, engaging and accountable company. It constitutes an added-value of the mechanism that it has been developed in an environment prepared to put the Ruggie criteria into practice. The case also shows, however, that developing a policy or procedure on paper is relatively simple, compared to what it takes implementing it with both internal and external buy-in.<sup>314</sup>

Regarding the overall strengths and weaknesses of the Complaints Office, it can be said that the process is very well-elaborated and clearly structured, with defined timelines and responsibilities. In practice, the company struggles with extreme delays concerning the handling and resolution of complaints. This is one of the major challenges remaining; otherwise the mechanism runs risk of losing credibility. This problem is aggravated by the fact that there is a massive lack of confidence in the company in general, which is due to the corporate misbehaviour in the past, as well as to the prevailing power imbalance between Cerrejón and those affected from its operations. This was also pointed out by one expert who draws on 20 years of experience in negotiating with the company on behalf of communities. From his point of view, with the establishment of the formal complaint mechanism an important step forward has been taken compared to earlier times, when “abuse and arrogance” used to dominate the mining activities.<sup>315</sup>

Apparently, Cerrejón shows the willingness to engage much more closely with the affected communities than it ever has before. Notwithstanding this effort, one should also be aware of the forces that might slow or hinder progress in respect of this. First of all, there are bureaucratic hurdles to overcome. Already in the past, the “gigantism of the company has prevented paperwork to be done within reasonable time.”<sup>316</sup> The particular challenge is to find a balance between Cerrejón’s formal requirements for complaint investigation, and the cultural traditions of the surrounding communities who tend to resolve conflicts rather immediately on a personal level than by means of independent investigation, which can take weeks to complete.<sup>317</sup> In this regard, concessions will have to be made on both sides. Moreover, concerns remain with regard to the people charged with responding to complaints. Awareness raising and training will have to take place in order to help them deviate from the business-as-usual way of dealing with the grievances of communities, otherwise the effectiveness of the complaint mechanism cannot be ensured.<sup>318</sup>

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<sup>313</sup> Schwarte/Wei (2011), 14.

<sup>314</sup> See the final observations of Rees (2011), 40.

<sup>315</sup> Interview with a Lawyer, 27 September 2012.

<sup>316</sup> Supra.

<sup>317</sup> See also Rees (2011), 18.

<sup>318</sup> Interview with a Lawyer, 27 September 2012.



### **III.2 GAP Inc., Lesotho**

Gap is an international fashion retailer headquartered in San Francisco, USA, with about 132,000 employees, 3,000 company-operated stores and over 200 franchise stores. It sources products from suppliers in more than 50 countries worldwide. In 2011, it reported an operational income of 1.4 billion US\$.<sup>319</sup> Gap remains the largest specialty apparel retailer in the US, although it has recently been surpassed by the Spanish-based Inditex Group as the largest global apparel retailer.<sup>320</sup>

#### ***III.2.1 Gap and its Way to Corporate Social Responsibility***

In 1995, an NGO campaign against Gap and the Mandarin International maquiladora factory in El Salvador, alleging exploitative working conditions of primarily young female workers<sup>321</sup> and illegal dismissals of workers on strike,<sup>322</sup> compromised Gap's reputation and set the stage for Gap's efforts regarding corporate social responsibility. An agreement was signed between Gap and the NGOs which allowed third-party monitoring of the factory in question and other factories in the region (for details see the following chapter).

In October 2000, the BBC raised allegations of child labour in a Phnom Penh factory which produced for Gap.<sup>323</sup> The BBC claimed to have found at least one worker under the legal minimum working age. Since most documents attesting to age were destroyed during the genocide, Gap relied on "family books" – documents legally recognised in Cambodia – to verify that workers were above the minimum working age. Gap could not verify BBC's claims. Later a BBC documentary report reiterated the allegations. Gap's Director of Social Investment in Asia explained that Gap's investigation of the case included the consultation of medical doctors to verify the age of workers. He concluded: "The doctors could not give a solid method of doing that. So even from a medical point of view it was not easy."<sup>324</sup> Due to this occurrence, students picketed Gap outlets, and letters of protest flooded Gap's communications and global compliance departments. Unlike many other brands, Gap decided not to leave Cambodia after having considered the potentially negative consequences of such action on Cambodian workers.<sup>325</sup> At that time, Gap had already invested millions of dollars into labour standards monitoring.

In October 2007, another case became public. The Observer, a British newspaper, reported child labour in an Indian company working on shirts for the Gap Kids label.<sup>326</sup> Gap made its own investigations into the case. According to Gap's Social Responsibility Report 2007/2008, an approved supplier had referred work to a small company that subcontracted with an

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<sup>319</sup> GAP Annual Report 2011.

<sup>320</sup> See Farfan (2012, August 31), 2011 World's Largest Retailers by Country – Top Global Retail Companies List, *About.com*, <http://retailindustry.about.com/od/famousretailers/a/what-are-worlds-largest-retail-companies-retailers-chains-complete-list-2011-.htm> (12.03.2012).

<sup>321</sup> Institute for Global Labour and Human Rights, Leading Human Rights Groups Blast GAP Cover-Up in El Salvador, 1 October 1995, <http://www.globallabourrights.org/alerts?id=0259> (12.03.2013).

<sup>322</sup> Institute for Global Labour and Human Right, The GAP in El Savador: The Case of Mandarin International, 28 June 1995, <http://www.globallabourrights.org/alerts?id=0261> (12.03.2013).

<sup>323</sup> See Smith/Ansett/Erez (2011a), How Gap Inc. Engaged with its Stakeholders, MIT Sloan Management Review 52-4/2011, 69-76.

<sup>324</sup> Supra, at 72.

<sup>325</sup> Supra.

<sup>326</sup> Supra, at 75; Gap, 2007/2008 Social Responsibility Report, 34.

unauthorised shanty.<sup>327</sup> There, children younger than ten years had to work under despicable conditions. As a measure to achieve compliance with the Code of Vendor Conduct, Gap took full responsibility, cancelled the product order and barred the subcontractor from any future involvement with the company.<sup>328</sup> It also decided that the garments would not be sold. After internal discussion, Gap decided not to end its relationship with the supplier but the violation of the Code was punished by a cut of 50 percent of Gap's order for six months. A remedial process followed that was not led by Gap, but by the Indian government that worked together with a local child labour NGO (Bachpan Bachao Andolan, BBA). The children were removed from the factory and received medical care. As a longer-term initiative, Gap started funding BBA to serve as a local educator against child labour.<sup>329</sup>

In Lesotho, a region of considerable engagement<sup>330</sup> of Gap after continued allegations of sweatshop labour until 2003,<sup>331</sup> the Centre for Research on Multinationals (SOMO) reported unfair working conditions in factories producing clothing for Gap. The wages paid are at the legal minimum or just above it, so that the workers feel forced to request an advance on their redundancy money, which has to serve as a pension when they leave the factory.<sup>332</sup> In 2009, a Sunday Times article reported tons of illegally dumped waste from garment manufacturers including suppliers of Gap.<sup>333</sup> According to the report, the dump was constantly burning, with acrid smoke filling the air. Children suffered from chest infections and people complained of skin irritations. A local river was polluted, leading to further health problems of the local population.<sup>334</sup> Gap reacted quickly and commissioned an independent investigation. It also placed one of the factories on immediate notice until the end of the investigation.<sup>335</sup>

Gap also reported on a tragic case of non-compliance in Bangladesh in 2010.<sup>336</sup> Since Gap's Code of Vendor Conduct requires suppliers to comply with local fire regulations and having "sufficient, clearly marked exits, allowing for the orderly evacuation of workers in case of fire or other emergencies", Gaps Social Responsibility Specialists visited the factory several times through both announced and unannounced visits, to monitor and ensure compliance. Nevertheless, at a factory of the "Hameem Group" (a Sportswear factory in Dhaka, Bangladesh) that supplies Gap a fire broke out, taking the lives of 23 workers.<sup>337</sup> In the weeks that followed the fire, Gap worked with local and international trade unions to review

<sup>327</sup> Supra.

<sup>328</sup> See Smith/Ansett/Erez (2011a), 75; Gap, 2007/2008 Social Responsibility Report, 34f.

<sup>329</sup> See Smith/Ansett/Erez (2011a), 75; Smith/Ansett/Erez (2011b): What's at Stake? Stakeholder Engagement Strategy as the Key to Sustainable Growth, 24.

<sup>330</sup> Besides the Lesotho complaint mechanism see for example the RED program on the eradication of HIV/AIDS, <http://www.joinred.com/> (12.03.2013), and the Better Work Program, in Gap's Social Responsibility Report 2009/2010, 45.

<sup>331</sup> Mathiason (2007, 16 September), Gap needs to mind the cracks, *The Observer*, <http://www.guardian.co.uk/business/2007/sep/16/5> (12.03.2013).

<sup>332</sup> De Haan/Stichele (2007), Footloose Investors: Investing in the Garment Industry in Africa, 50f.

<sup>333</sup> McDougall (2009, August 2), African dream turns sour for orphan army, *The Sunday Times*.

<sup>334</sup> MacVicar (2010, January 8), Jean Factory Toxic Waste Plagues Lesotho, *CBS News*, [http://www.cbsnews.com/8301-18563\\_162-5205416.html](http://www.cbsnews.com/8301-18563_162-5205416.html) (12.03.2013).

<sup>335</sup> Gap Inc. Reaffirms Commitment to Improving the Lives of Workers in Lesotho, Press Release 2 August 2009, [http://www.gapinc.com/content/gapinc/html/media/pressrelease/2009/Med\\_pr\\_LesothoStatement\\_08022009.html](http://www.gapinc.com/content/gapinc/html/media/pressrelease/2009/Med_pr_LesothoStatement_08022009.html) (12.03.2013).

<sup>336</sup> See Gap Inc. Social Responsibility, Bangladesh, [http://www.Gapinc.com/content/csr/html/Goals/supplychain/our\\_program\\_in\\_action/bangladesh.html](http://www.Gapinc.com/content/csr/html/Goals/supplychain/our_program_in_action/bangladesh.html) (12.03.2013); see Gap, 2009/2010 Social and Environmental Responsibility Report, 47.

<sup>337</sup> See Manik/Bajaj (2010, December 14), Bangladesh Factory Fire Kills at Least 20, *The New York Times*, [http://www.nytimes.com/2010/12/15/world/asia/15bangladesh.html?\\_r=0](http://www.nytimes.com/2010/12/15/world/asia/15bangladesh.html?_r=0) (12.03.2013).

infrastructure issues and discuss compensation allocations for the victims of the fire.<sup>338</sup> In February of 2011, Gap's Vice President of Social and Environmental Responsibility travelled to Bangladesh. The Bangladesh government was requested to implement and enforce strict codes for electrical wiring.<sup>339</sup> In April and June 2011, members of Gap's Social Responsibility Team attended another stakeholder meeting in order to discuss remediation efforts related to the Hameem fire.<sup>340</sup> In September 2011, Gap together with 18 international companies produced two films, one addressing factory management and the other one addressing workers, in order to instruct them on fire safety.<sup>341</sup> The films and supplements are free of charge and distributed among apparel factories.

Occurrences of forced overtime and overtime payment violations in Ocean Sky, a manufacturing facility in El Salvador, became public in April 2010.<sup>342</sup> According to information provided by Gap, it sent a team of Social Responsibility specialists to Ocean Sky to conduct investigations. This team met with authors of the report and with officials of the Salvadoran Ministry of Labor. At the same time, the Fair Labor Association (FLA) commissioned an independent investigation and hired the Commission for the Verification of Codes of Conduct – an independent non-profit organisation in Guatemala that focuses on business and labour conditions – to conduct an assessment of Ocean Sky. In March 2011, FLA made a final report regarding the Ocean Sky Factory public. Therein, some non-compliances including the harassment of workers, overtime requirements, high temperatures in work areas and procedures for payment of wages, that were paid out late and irregularly, were identified.<sup>343</sup> Based on these results, Ocean Sky in association with FLA developed a remediation plan that consisted of a combination of short- and long-term action items, aimed at improving the workplace environment. This remediation plan comprised issues such as reinforcing freedom of association standards, providing training courses about the Vendor Code of Conduct, and policies and procedures for workers.<sup>344</sup> In addition, ventilators were installed to reduce heat, and water tests were conducted by an independent laboratory. Finally, Ocean Sky agreed to establish a Termination and Retrenchment Policy and Procedure, guided by the FLA, until March 2012.<sup>345</sup> Since then, Ocean Sky Apparel has begun to implement a number of remedial actions.<sup>346</sup> FLA remains to assist in the remediation process.

The history of these cases of non-compliance aptly shows the difficulties to ensure human rights in the supply chain. Although Gap dedicates considerable resources to monitoring and capacity-building of its suppliers as well as stakeholder engagement,<sup>347</sup> cases of non-compliance have occurred and are likely happen in the future. However, a closer look at

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<sup>338</sup> See Hammadi/Taylor (2010, December 14), Workers jump to their deaths as fire engulfs factory making clothes for Gap, *The Guardian*, <http://www.guardian.co.uk/world/2010/dec/14/bangladesh-clothes-factory-workers-jump-to-death> (12.03.2013).

<sup>339</sup> See Gap, 2009/2010 Social and Environmental Responsibility Report, 47. See also Gap's report, Bangladesh Fire Safety Supplier Meeting, 4 February 2011.

<sup>340</sup> Gap, 2009/2010 Social and Environmental Responsibility Report, 47.

<sup>341</sup> See Gap, Fashion brands join forces for fire safety, Information – Fire Safety Films, 27 September 2011.

<sup>342</sup> See Gap, FAQ, <http://www.gapinc.com/content/csr/html/topnavtoolbar/faq.html> (12.03.2013).

<sup>343</sup> See Fair Labor Association (2011), Final Report Regarding the Ocean Sky Apparel Factory in El Salvador.

<sup>344</sup> Further information about findings of non-compliance and remediation actions see Ocean Sky Apparel Factory in El Salvador, Remediation Plan, available at [http://www.fairlabor.org/sites/default/files/documents/reports/ocean\\_sky\\_remediation\\_plan\\_03.25.11.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/ocean_sky_remediation_plan_03.25.11.pdf) (12.03.2013).

<sup>345</sup> Supra.

<sup>346</sup> See the summary on latest processing of May 2011 at Institute for Global Labour and Human Rights, Ocean Sky: Workers Win Major Improvements, 4 May 2011, <http://www.globallabourrights.org/alerts?id=0337> (12.03.2013).

<sup>347</sup> On Gap's stakeholder engagement strategy see Smith/Ansett/Erez (2011b).

Gap's global compliance programme and its complaints process in Lesotho, Southern Africa, provides valuable insights into corporate human rights protection mechanisms and access to remedies as foreseen by the Ruggie framework.

### **III.2.2 Gap's Global Compliance Programme**

In December 1995, an agreement between Gap and a group of NGOs was signed to introduce independent monitoring of Gap's code of conduct at the Mandarin International Maquiladora Factory in El Salvador. The agreement was achieved after an intensive public campaign in the US, Canada and El Salvador.<sup>348</sup>

An "Independent Monitoring Working Group" was established which consisted of three non-governmental organisations and one company: the Business for Social Responsibility Education Fund (BSREF), the Center for Reflection, Education and Action (CREA), the Interfaith Center on Corporate Responsibility (ICCR), and Gap Inc. The Working Group's activities supplement Gap Inc.'s existing monitoring programme by working with Central American factory owners and managers to ensure compliance with national laws and Gap's Code of Vendor Conduct. The Working Group has ceased its operations after the completion of its goal of exploring the viability of independent monitoring in Central America. This is evidenced by the establishment of pilot projects in each of the countries where the Working Group became active. Reports regarding the results of monitoring were collected and publically disclosed by each independent monitoring group respectively, as the programmes developed.<sup>349</sup> The pilots were conducted in Honduras, El Salvador and Guatemala.<sup>350</sup> These initiatives were the starting point of Gap's global compliance programme which encompasses large-scale monitoring activities of Gap's social compliance team, sometimes in cooperation with external stakeholders as in the case of South America. According to one source, the cooperation with local civil society groups is often reduced due to their limited capacities, in some countries; no more than four factories could be covered.<sup>351</sup>

Over the years, Gap's monitoring and compliance efforts have intensified. Today, over 70 persons of Gap's Social and Environmental Responsibility Department work on supply chain compliance.<sup>352</sup> Core areas of monitoring include wage and hour issues, such as correct payment of wages, voluntary overtime and at least one day off in seven, as well as the prohibition of forced labour, child labour and physical abuse, and the right to freedom of association. Monitoring activities include visual inspections of the factory, a thorough review of timecard, production and payroll records, and interviews with workers.<sup>353</sup>

Gap's list of suppliers is not shared publicly, but can be accessed by the International Textile, Garment and Leather Workers' Federation (ITGLWF) in Brussels.<sup>354</sup> Usually, a local trade

<sup>348</sup> See also chapter III.2.1; and Yan (1998), On Independent Monitoring and Latin American Workers, <http://www.hartford-hwp.com/archives/40/109.html> (12.03.2013).

<sup>349</sup> Independent Monitoring Working Group (2002), Final Report on the Independent Monitoring in Central America, [http://www.iccr.org/news/press\\_releases/art\\_imwg.htm](http://www.iccr.org/news/press_releases/art_imwg.htm) (12.03.2013).

<sup>350</sup> In Guatemala, the monitoring activities were conducted by the Commission for the Verification of Corporate Codes of Conduct (COVERCO). Their reports can be found at <http://www.cleanclothes.org/documents/coverco.PDF> and <http://www.cleanclothes.org/documents/coverco2.PDF> (both accessed 12.03.2013).

<sup>351</sup> Interview with Business Consultant, 15 June 2012.

<sup>352</sup> Gap, 2009/2010 Social and Environmental Responsibility Report, 20.

<sup>353</sup> Gap, Social Responsibility Report 2003/4, 12f.

<sup>354</sup> On Gap's general cooperation with ITGLW see Gap, 2009/2010 Social Responsibility Report, 34.

union receives the complaint and then passes it on to ITGLWF, which verifies whether the supplier was from Gap, and if yes, Gap investigates the case. The worker then communicates the details of his/her grievance either to the union in the factory or to the local union or NGO (if the factory is not unionised). In case the union cannot resolve the issue with management, Gap will send monitors in and talk to the parties to resolve the situation. The involvement of ITGLWF would depend on the particular circumstances of the case in question. The result would be an agreement signed between local management and Gap. In case of non-compliance with this agreement, a termination of the cooperation by Gap is foreseen.

Thus, Gap imposes sanctions in order to enforce its Code of Vendor Conduct. If a breach of the Code of Vendor Conduct is identified, the Code states that non-compliances may result either in the termination of the relationship between Gap and the supplier, “and/or (Gap) require(s) the factory to implement a corrective action plan”.<sup>355</sup> In practice, Gap first requires the factory to remedy all non-compliances.<sup>356</sup> Only if remedial action is not taken, Gap will terminate current contracts.<sup>357</sup> Termination, however, is only seen as a last resort because of the negative consequences for the workers involved.<sup>358</sup> In the following chart, factory ratings of compliance and non-compliance are shown by region (data 2011):

Region	Number of factories	Action required (%)	Fair (%)	Good (%)	Excellent (%)
Greater China	326	19.3%	35.6%	31.0%	14.1%
North Asia	75	14.7%	37.3%	44.0%	4.0%
Southeast Asia	297	12.5%	30.3%	39.7%	17.5%
South Asia	361	18.6%	41.3%	31.6%	8.6%
Persian Gulf	1	100.0%	0.0%	0.0%	0.0%
North Africa & the Middle East	31	41.9%	45.2%	3.2%	9.7%
Sub-Saharan Africa	3	0.0%	100.0%	0.0%	0.0%
Europe	28	0.0%	32.1%	35.7%	32.1%
United States and Canada	36	0.0%	11.1%	30.6%	58.3%
Mexico, Central America & the Caribbean	81	2.5%	17.3%	38.3%	42.0%
South America	16	12.5%	25.0%	62.5%	0.0%
<b>Total</b>	<b>1255</b>	<b>15.6%</b>	<b>34.3%</b>	<b>34.2%</b>	<b>15.9%</b>

Figure 12 GAP – 2011 Factory Ratings by Geographic Region<sup>359</sup>

<sup>355</sup> Gap Inc., Code of Vendor Conduct, 6.

<sup>356</sup> See Rees/Vermijs (2008), 15: “Gap Inc. requires factories to remediate all non-compliances (...) and non-compliances can result in termination of that relationship/contract”. See also Gap’s 2009/2010 Social and Environmental Responsibility Report, 26.

<sup>357</sup> See Rees/Vermijs (2008), 15. BasesWiki, Workers Grievance Processes, Gap Inc., Lesotho, [http://baseswiki.org/en/Gap\\_Inc.,\\_Lesotho](http://baseswiki.org/en/Gap_Inc.,_Lesotho) (12.03.2013).

<sup>358</sup> Gap 2009/2010 Social Responsibility Report, 28.

<sup>359</sup> Source: [http://www.Gapinc.com/content/csr/html/Goals/supplychain/data/factory\\_ratings\\_by\\_geographic\\_region.html](http://www.Gapinc.com/content/csr/html/Goals/supplychain/data/factory_ratings_by_geographic_region.html) (27.02.2013).

In 2009, Gap joined Social Accountability International (SAI's), a non-governmental, multi-stakeholder organisation which developed the SA8000 standards for workplaces, based on ILO and UN conventions; SA8000 is recognised as one of the most comprehensive workplace standards today.<sup>360</sup> These standards are monitored by independent auditors of SAI. Some of Gap's suppliers have received SA8000 certification. In the course of this process, Gap conducted a gap analysis of the Code of Vendor Conduct relative to the SA8000 standards and examined areas in which its policies and programme can be brought into closer alignment with SA8000.<sup>361</sup> Gap also encourages suppliers to use SAI's training centre in order to increase SA8000 certification.<sup>362</sup>

Embedded in these compliance efforts is a specific grievance mechanism for Gap supplier factories in Lesotho, Southern Africa. Gap has developed guidelines on complaints policies and procedures and provides regular trainings for managers of its suppliers in order to support factories to implement the process.<sup>363</sup>

### ***III.2.3 The Gap Grievance Mechanism in Lesotho***

In 2004, Gap established a complaints process for workers in its contract factories in Lesotho. Any worker, groups of workers or union representatives in the factory can lodge a complaint concerning the violation of Gap's Code of Vendor Conduct.<sup>364</sup> While these processes are primarily intended to remedy breaches of the company's Code of Vendor Conduct, complaints relating to issues outside the Code may also be brought against the company, which could include privacy breaches.<sup>365</sup> Since it is not a formal complaints process, there are no formal written criteria to access the mechanism.<sup>366</sup> The employee may raise the grievance verbally or in writing.<sup>367</sup> The only formal condition at this stage of the process is that it must be clear that an official grievance is being lodged. The overarching requirement is that there may be no retaliation against complainants.<sup>368</sup>

The complaints process is initiated at the factory-level where the employee can raise the complaint with his/her supervisor. The supervisor then investigates and attempts to resolve the matter within two days. If the resolution proposed is not acceptable to the worker, a grievance form needs to be completed. This written complaint is then referred to the department manager. At this second stage, a meeting consisting of all stakeholders including trade union representation will be convened. If the issue can be resolved, this will be documented and then included in the worker's personal file. If the persons involved cannot

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<sup>360</sup> More information on Social Accountability International and SA8000 can be found at <http://www.sai-intl.org/index.cfm?fuseaction=Page.ViewPage&pageId=490> (12.03.2013).

<sup>361</sup> Business Leaders Initiative for Human Rights (2010), A Guide for Integrating Human Rights into Business Management, Case Studies, [http://www.integrating-humanrights.org/processes\\_procedures\\_case\\_studies](http://www.integrating-humanrights.org/processes_procedures_case_studies) (12.03.2013).

<sup>362</sup> Gap 2009/2010 Social Responsibility Report, 29; see also Social Fingerprint, <http://www.socialfingerprint.org/> (12.03.2013).

<sup>363</sup> See Gap, Code of Business Conduct, including the Code Hotline, [http://www.gapinc.com/content/dam/gapincsite/documents/COBC/COBC\\_english.pdf](http://www.gapinc.com/content/dam/gapincsite/documents/COBC/COBC_english.pdf); the Code of Vendor Conduct, <http://www.itglwf.org/lang/en/documents/GapCodeofConduct.pdf>; and capacity building for suppliers such as the Vendor Development Program, [http://www.gapinc.com/content/csr/html/Goals/supplychain/working\\_with\\_factories/capacity\\_building.html](http://www.gapinc.com/content/csr/html/Goals/supplychain/working_with_factories/capacity_building.html) (12.03.2013).

<sup>364</sup> See BasesWiki, Workers Grievance Processes, Gap Inc., Lesotho.

<sup>365</sup> UN Global Compact, Human Rights and Business Dilemmas Forum, [http://human-rights.unglobalcompact.org/case\\_studies/Privacy/](http://human-rights.unglobalcompact.org/case_studies/Privacy/) (12.03.2013).

<sup>366</sup> See Rees/Vermijs (2008), 12.

<sup>367</sup> See BasesWiki, Workers Grievance Processes, Gap Inc., Lesotho.

<sup>368</sup> Rees/Vermijs (2008), 13.

agree on a solution within three days, the reason for the disagreement will be documented and the matter is brought to the company manager respectively to his/her nominee (who must be a member of senior management).<sup>369</sup> At this stage, the persons involved including witnesses may make representations. Minutes of the enquiry will be taken. The manager may undertake further investigations and then takes a final written decision which is communicated to all parties within five days.

Alternatively, a process can be initiated by union representatives to raise complaints with Gap's social responsibility manager for the region. The social responsibility manager might then encourage the union to discuss the matter directly with factory management. In the past, most complaints came first to the social responsibility manager. More recently, both sides usually engage directly as a first step.<sup>370</sup>

Besides this first-contact facilitation, the social responsibility manager can gather further information, advise management, and assist the parties in possible conciliation if he/she is needed to play a facilitation role. Outcomes of the process may include remediation or any other measures of redress agreed between management and worker(s) and/or union representatives.

If the employee or any other concerned party is unsatisfied with the outcomes of the factory-level process or with the efforts of Gap's social responsibility manager, he/she can at any time take the dispute to the appropriate conciliation mechanism such as the Lesotho National Development Corporation (LNDC),<sup>371</sup> the Directorate of Dispute Prevention and Resolution (DDPR),<sup>372</sup> or the appropriate legal channels which are the labour courts. In case the LNDC process does not lead to an acceptable resolution, the DDPR can be engaged to support the parties to reach an agreement by conciliation. If the dispute is not resolved by conciliation, the Labor Code of Lesotho provides that the matter must go to the competent labour court.<sup>373</sup>

The following diagram illustrates the 4-steps procedure:

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<sup>369</sup> Supra.

<sup>370</sup> See supra, at 11f; and BasesWiki, Workers Grievance Processes, Gap Inc., Lesotho.

<sup>371</sup> The LNDC is a government-created body that falls under the Ministry of Trade and Industry, Cooperatives and Marketing. Its mandate is to initiate, promote and facilitate the development of manufacturing and processing industries. For further information see <http://www.lndc.org.ls/home/> (12.03.2013).

<sup>372</sup> The DDPR was created under the Labour Code 2000 to prevent and resolve labour disputes. It is independent of the government but its deputy director is appointed by the government. For further information see <http://www.jurisint.org/en/ctr/179.html> (12.03.2013).

<sup>373</sup> See UN Global Compact, Human Rights and Business Dilemmas Forum, [http://human-rights.unglobalcompact.org/case\\_studies/Privacy/](http://human-rights.unglobalcompact.org/case_studies/Privacy/) (12.03.2013).

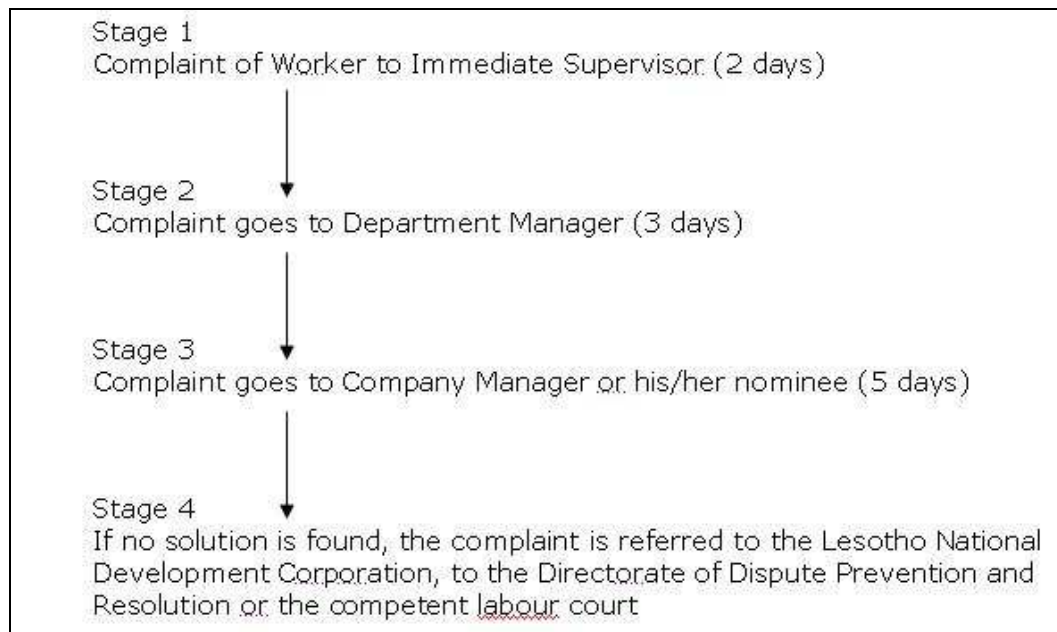


Figure 13: GAP – Four-Stage Complaint Procedure

Alternatively:

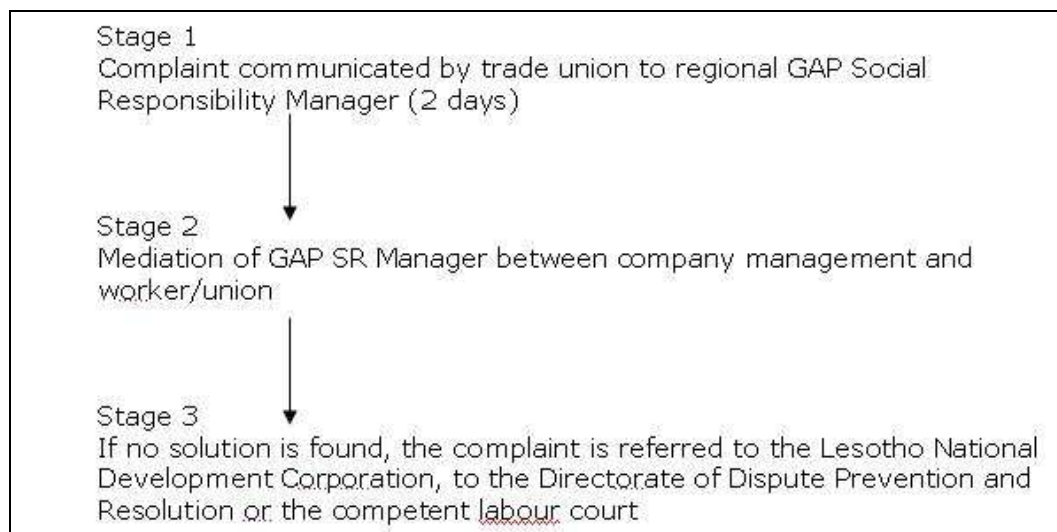


Figure 14: GAP – Three-Stage Complaint Procedure

No follow-up process is foreseen, it is up to the parties (workers and management) to communicate the outcomes of the process to the relevant stakeholders. Since Gap itself does neither release information related to grievances<sup>374</sup> nor disclose the list of factories that manufacture its products,<sup>375</sup> it is very difficult to monitor the implementation of the results and thus assess the success of the grievance mechanism. Similarly, Gap Inc. provides little information about recent cases of violations of the Code of Vendor Conduct in its Social and Environmental Responsibility Reports. Upon request, Gap's social responsibility management was not available for an interview due to reasons of confidentiality and resource constraints.<sup>376</sup> Although Gap requires its suppliers to remediate all non-compliances

<sup>374</sup> See Rees/Vermijs (2008), 15.

<sup>375</sup> See Gap, FAQ, <http://www.gapinc.com/content/csr/html/topnavtoolbar/faq.html> (12.03.2013).

<sup>376</sup> Email Gap SR Management of 5th June 2012.



with its Vendor Code of Conduct (see section on Gap's compliance programme), it remains unclear how many of the overall remediation measures have been initiated by the Lesotho grievance process.

The following concluding analysis examines whether the Lesotho mechanism fulfils the Ruggie criteria, and identifies its strengths and weaknesses on a more general level.

### **III.2.4 The Ruggie Criteria**

- **Legitimacy:** This criterion requires the mechanism to enable trust from the stakeholder group for whose use it is intended, as well as being accountable for the fair conduct of the grievance process.<sup>377</sup>

Gap's Global Compliance Programme, which foresees third-party monitoring through SAI and the FLA as well as the involvement of NGOs, fulfils this criterion. However, this cannot be fully argued for the Lesotho complaint mechanism. As the Lesotho mechanism is very much focused on internal processes and solutions, the inclusion of third parties who could provide legitimacy to the process is limited to the possibility of the involvement of local workers' representatives, trade unions. Thus, the mechanism does not fully qualify regarding this category.

- **Accessibility:** The mechanism must be known to all stakeholder groups for whose use it is intended, and provide adequate assistance for those who may face particular barriers to access.<sup>378</sup>

Publically available information does not allow for a sound conclusion on the accessibility of the complaint mechanism in Lesotho to workers in the Lesotho factories. According to one source, around 50 complaints have been lodged since the establishment of the mechanism in 2004, but since 2007, no further complaints seem to have been filed.<sup>379</sup> According to Gap's company policy, complainants are protected by the strict prohibition of retaliation against workers who use the mechanism.

- **Predictability:** The mechanism needs to provide 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.<sup>380</sup>

The mechanism clearly fulfils the predictability criteria. The complaints procedure is clear, with a time frame for each stage and clarity on the outcomes, as well as the possible solutions and boundaries of the process.<sup>381</sup>

- **Equity:** The mechanism has 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.<sup>382</sup>

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<sup>377</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31a.

<sup>378</sup> Supra, para. 31b.

<sup>379</sup> Rees/Vermijs (2008), 15.

<sup>380</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31c.

<sup>381</sup> See also Corporate Social Responsibility Initiative (2008), Rights-Compatible Grievance Mechanisms, 30.

<sup>382</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31d.

The Lesotho mechanism is mainly an internal mechanism which uses the work-related hierarchical channels. This traditional set-up is slightly altered by the (alternative) involvement of the Gap social responsibility manager. The process, however, gives both parties the opportunity to present their case and on the part of the worker, rely on support by local trade unions or NGOs.

- **Rights-compatibility:** The mechanism has to ensure that outcomes and remedies comply with internationally recognised human rights.<sup>383</sup>

In terms of the content of the complaints dealt with, the mechanism is clearly rights-compatible as it deals with a wide range of labour rights issues. Regarding the process, aspects of empowerment and participation are limited in accordance with the target group of the process. Wider consultation processes as in the case of local communities cannot be accommodated. However, aspects of a fair process with adequate opportunities to present the case are clearly foreseen, and given the target group and the objectives of the process, the mechanism's processes and outcomes seem to conform to international human rights standards.

- **Transparency:** The mechanism has to keep parties to a grievance procedure informed about its progress, and to provide sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.<sup>384</sup>

In this regard, the mechanism is not satisfactory and reveals the dilemma of according sufficient transparency to the public, while providing confidentiality for the complainants. Gap does not report on the number of complaints filed or on the actual outcomes of the process. On the other hand, confidentiality may greatly enhance the effectiveness of the process. According to one source, due to the confidential relationships of Gap with civil society groups, issues could be resolved at an early stage before they could become "big media stories".<sup>385</sup>

- **Engagement and dialogue:** The mechanism should be based on engagement and dialogue, which means consulting the stakeholder groups for whose use it is intended on its design and performance, and focusing on dialogue as the means to address and resolve grievances.<sup>386</sup>

Publically available information does not allow for a sound conclusion on this category. Gap reports that problems tend to be solved more directly between workers and management without the need for mediation of Gap's social responsibility manager. However, the fact that hardly any new complaints seem to have been filed since 2007 does not speak for continued dialogue and engagement under this mechanism.

- **Continuous learning:** This criterion implies drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.<sup>387</sup>

See previous criterion.

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<sup>383</sup> Supra, para. 31f.

<sup>384</sup> Supra, para. 31e.

<sup>385</sup> Interview with Business Consultant, 15 June 2012.

<sup>386</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31g.

<sup>387</sup> Supra, para. 31h.

### ***III.2.5 Strengths and Weaknesses of the Mechanism***

The Lesotho mechanism's main strength lies in its clear procedure including timely resolution due to short timelines, its possibilities as well as the clearly outlined limitations for remediation. The mechanism attributes the responsibility for the resolution of the issue to those persons who have the power and the duty to remedy the situation: the employer of the worker, in this case the local management of the supplier factory. The worker may resort to his or her workers' representative, local trade union or NGO for support. As an "interested third-party", Gap's CSR manager may take a facilitating role. In case the issue is not resolved satisfactorily, Gap has a variety of avenues to exert pressure on local management: the reduction of orders; as a last resort, the termination of cooperation; but even more importantly, the provision of capacity-building to implement remediation plans and other support measures to solve the problem. The latter is much more conducive to protect the rights of the workers than the termination of cooperation which may be detrimental to the security of the worker's job.

The internal confidential treatment of a complaint allows for the solution of the problem in a targeted fashion and may solve the issue before it becomes too big to be solved. However, a balance needs to be struck between the important principle of confidentiality with its main objective to protect the complainant, and the principle of transparency which is indispensable to show the effectiveness of the process to the public. The Lesotho mechanism is too focused on the internal side, and not transparent enough to allow an assessment of its effectiveness. It is neither necessary nor desirable to disclose details of a case, but it is imperative to publicise information on the number of complaints dealt with, the issues involved, the number of complaints resolved, and at which stage. This would allow for an evaluation of the mechanism and its improvement.

In conclusion, it can be said that the mechanism is well designed and looks very promising on paper. However, due to the lack of (public) information, it remains unclear whether the mechanism delivers in practice what it promises in theory.

## **III.3 Hewlett Packard, Mexico**

### ***III.3.1 Context***

Hewlett Packard (HP) headquartered in Palo Alto, California, is one of the world's largest global IT corporations. It provides information technology infrastructure as well as software services and solutions to individuals and organisations. Founded in 1939, it operates today in more than 170 countries in the Americas, Europe, Middle East, Africa and Asia and employs more than 350,000 people. In 2011, it reported a net revenue of 127 billion US\$.<sup>388</sup>

### ***III.3.2 HP's Way to Corporate Social Responsibility***

In many countries, HP's business activities and in particular those of its supplier companies have raised challenging human rights questions. While HP itself hardly runs any production facilities on its own, its supply chain includes more than 1,000 production and thousands of

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<sup>388</sup> HP History, <http://www8.hp.com/us/en/hp-information/about-hp/history/history.html>, (24.09.2012); HP Global Citizenship Report 2011, 5-7, [http://www.unglobalcompact.org/system/attachments/16336/original/hp\\_fy11\\_gcr.pdf?1341521769](http://www.unglobalcompact.org/system/attachments/16336/original/hp_fy11_gcr.pdf?1341521769) (12.03.2013).

non-production companies located in more than 45 countries including e.g. China, the Philippines, India, Malaysia or Mexico.<sup>389</sup> Prominent names among HP's contract manufacturers are for example Flextronics, Hitachi, Jabil, Sanmina, Compal or Cisco.<sup>390</sup> Many supplier factories have come under scrutiny due to their poor working conditions and frequent human rights violations.

In Mexican supplier factories, these included for example systematic discriminatory treatment of subcontracted workers, accidents due to a lack of protection or training, health problems resulting from toxic substances, sexual harassment, excessive overtime hours or illegal wage deductions. Overall, the situation has been particularly aggravated by the lack of genuine trade unions. In Mexico, it has become common practice to sign so-called "collective protection agreements" between the company management and fake "trade unions", which aim at avoiding the establishment of a proper workers' representation. Usually, workers neither know these agreements nor their so-called representatives.<sup>391</sup>

Similar issues were raised with respect to Malaysian supplier factories. A study on the situation of migrant workers at Flextronics and Jabil revealed that they were mainly employed on a subcontracted basis and faced multiple issues of discrimination. Labour contracts were often available in English only, so that the workers could not understand their content. In fact, they often included illegal restrictions such as the prohibition to join trade unions, the prohibition of migrant workers to marry Malaysian citizens, to become pregnant or to seek other employment. Further human rights violations concerned illegal wage deductions, non-payment of salaries, passport withholding, physical or psychological problems caused by the work in the factory, and poor or even no accommodation facilities.<sup>392</sup>

Recently, China Watch published a report on electronics industry suppliers, which equally included some of HP's suppliers. It reported e.g. excessive overtime hours, low wages that did not allow for paying the living costs, high labour intensity such as the requirement to complete an action every three seconds, standing for ten consecutive hours with only a ten minute break, illegal work contracts or discrimination.<sup>393</sup>

HP has been aware of these issues and has invested considerable efforts to address the problem. Already in 1999, in response to workers' complaints on safety issues, HP began to investigate working conditions in its supply chain. In 2002, as one of the first electronic companies, it released a Supply Chain Social and Environmental Responsibility Policy as well as a Supply Chain Code of Conduct. In the same year it published its first Social and Environmental Responsibility Report, which proclaimed HP's aim to become a leader in corporate social responsibility. The company clearly recognised its human rights responsibility and signed the Global Compact.<sup>394</sup> In 2004, it joined the Business Leaders

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<sup>389</sup> CEREAL (2007), Electronics Multinationals and Labour Rights in Mexico, <http://goodelectronics.org/news-en/cereal-report-multinationals-and-labour-rights-2> (12.03.2013); HP Global Citizenship Report 2011, 91; Van Dijk/Schipper (2007), Hewlett Packard, CSR Company Profile, 28.

<sup>390</sup> HP Suppliers, [http://www.hp.com/hpinfo/globalcitizenship/media/files/hp\\_suppliers\\_2011\\_gcr.pdf](http://www.hp.com/hpinfo/globalcitizenship/media/files/hp_suppliers_2011_gcr.pdf) (12.03.2013).

<sup>391</sup> CEREAL (2007), 16-64; Interview with CEREAL, 4 July 2012.

<sup>392</sup> Bormann/Krishnan/Neuner (2010), Migration in a Digital Age: Migrant Workers in the Malaysian Electronics Industry, 16-29.

<sup>393</sup> China Labor Watch (2012), Tragedies of Globalization: The Truth Behind Electronics Sweatshops, <http://chinalaborwatch.org/pdf/20110712.pdf> (12.03.2013), 5f.

<sup>394</sup> HP, Social and Environmental Responsibility Report 2001, [http://www.hp.com/hpinfo/globalcitizenship/08gcreport/pdf/hp\\_csr\\_full\\_hi.pdf](http://www.hp.com/hpinfo/globalcitizenship/08gcreport/pdf/hp_csr_full_hi.pdf) (12.03.2013); Van Dijk/Schipper (2007), 11.

Initiative on Human Rights. HP was equally one of the leading companies in the development of the Electronic Industry Code of Conduct (EICC), which finally became a core benchmark for all HP suppliers. This voluntary code provides guidance on human and labour rights, health and safety, ethics, the environment and management system. It also requires its members to monitor first tier suppliers on their compliance with the principles.<sup>395</sup> HP's EICC Code even includes additional requirements on freedom of association, collective bargaining and alternative means of communicating and resolving workers' issues.<sup>396</sup>

Moreover, HP engaged with a broad range of other human rights relevant organisations such as Business Social Responsibility (BSR), the Global Business Initiative on Human Rights, CSR Asia, CSR Europe, the Ethos Institute for Business and Social Responsibility, or the Public-Private Alliance for Responsible Minerals Trade. In recent years, the company has invested particular efforts on the fight against the use of conflict minerals from the Democratic Republic of Congo as raw materials for electronic devices.<sup>397</sup>

### ***III.3.3 HP's Corporate Citizenship Strategy and Governance***

HP's awareness of its human rights responsibility is reflected in its corporate strategy and policy documents. Its Global Citizenship Strategy includes ethics, human rights, privacy, environmental sustainability, responsible supply chain management and social innovation. In its Human Rights Policy, HP has explicitly committed itself to follow a human rights due diligence process, to investigate allegations, and to mitigate adverse human rights impacts as well as to provide access to independent grievance mechanisms.<sup>398</sup>

In addition, other HP policies, in particular those on non-discrimination, on harassment-free work environment, privacy, health or supply chain responsibility as well as an "open-doors" policy, equally contain human rights relevant aspects.<sup>399</sup> Traditionally, the Supply Chain Responsibility Policy has been at the core of HP's global citizenship efforts.<sup>400</sup> It focuses on capability building, knowledge transfer and training. Its implementation has been accompanied by self-assessments of the factories, on-site visits by HP, corrective action plans and regular audits. HP has also trained its first tier suppliers to audit and train their own suppliers (HP's second tier suppliers). In practice, these efforts could successfully contribute to improve the conditions in the supply chain. However, also for HP, unannounced visits or the fear of workers to speak out have remained key challenges of independent verification.<sup>401</sup>

The implementation of HP's strategies and policies is based on a comprehensive system of global citizenship governance (see figure 15):

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<sup>395</sup> EICC Code of Conduct, Version 4.0, 2012, <http://www.eicc.info/documents/EICCCodeofConductEnglish.pdf> (12.03.2013).

<sup>396</sup> HP Electronic Industry Code of Conduct, <http://www.hp.com/hpinfo/globalcitizenship/environment/pdf/supcode.pdf> (12.03.2013); Van Dijk/Schipper (2007), 12.

<sup>397</sup> HP Global Citizenship Report 2011, 13, and 15f.

<sup>398</sup> HP Global Human Rights Policy, <http://www.hp.com/hpinfo/globalcitizenship/humanrights.html> (12.03.2013).

<sup>399</sup> HP 2011, Global Citizenship Report, 87.

<sup>400</sup> Supra, at 91.

<sup>401</sup> Van Dijk/Schipper (2007), 18-23.

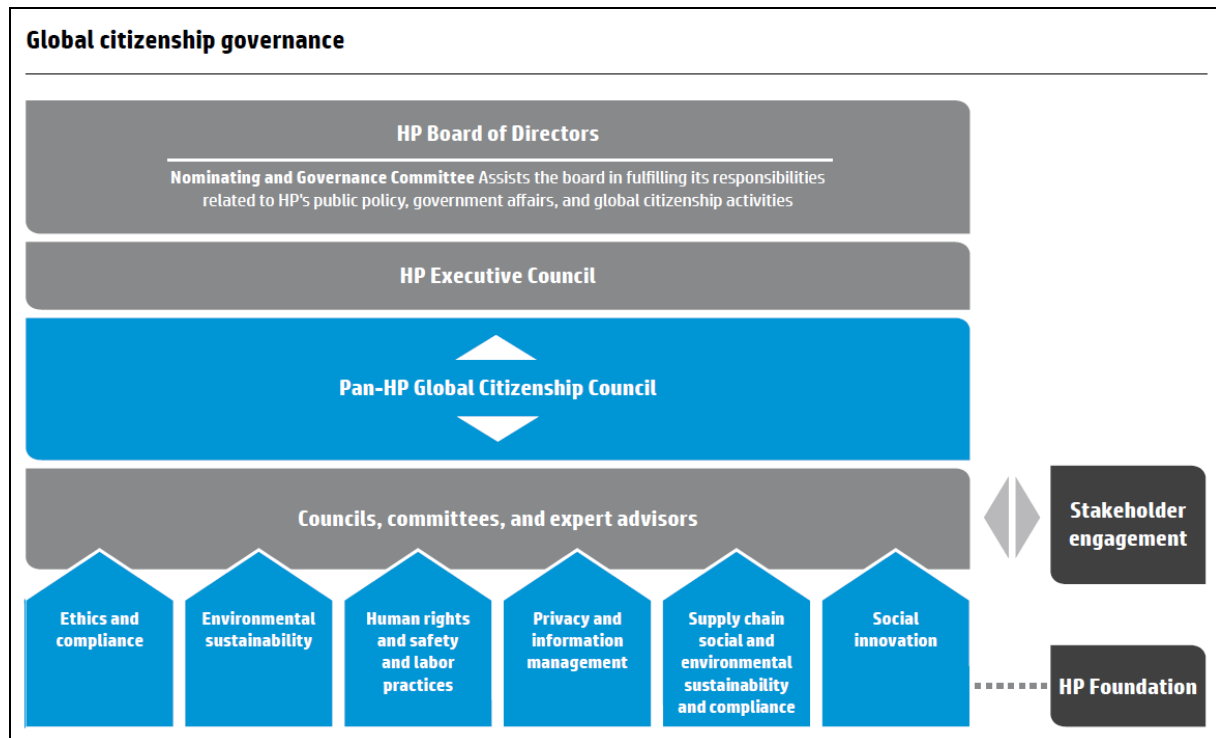


Figure 15: HP Global Citizenship Governance<sup>402</sup>

Accordingly, HP's Executive Council bears the overall responsibility for global citizenship as part of the company's general business strategy. The Global Citizenship Council consisting of company executives, subject matter experts as well as external stakeholders ensures alignment to global citizenship objectives on the company level. It is supported by sub-councils, committees and expert advisors that work on particular issues such as human rights, ethics or supply chains. In addition, HP's global citizenship process involves a range of external stakeholders including academics, customers, employees, investors, legislators, local communities, NGOs, peer companies, professional organisations, social entrepreneurs and suppliers.<sup>403</sup>

### III.3.4 HP's Global Complaint Facilities

HP has set up a range of global reporting and investigation procedures to ensure ethical behaviour and legal compliance throughout the company. In line with its Open Door Policy, the company generally encourages employees to speak up and to ask questions whenever "anything doesn't seem right". It underlines the importance of "open and honest communication in an environment of trust and mutual respect."<sup>404</sup> HP's Grievance Policy lays down that, in case of potential issues contrary to company policies (human rights, harassment, non-discrimination, etc.) and standards or legal provisions, employees should talk to their line or senior managers first. If they are not comfortable with this approach or no action is taken, they may talk to the ethics and compliance department, the regional HP Standards of Business Conduct experts, or to the human resource department.<sup>405</sup>

<sup>402</sup> HP Global Citizenship Report 2011, 11.

<sup>403</sup> Supra, at 11f.

<sup>404</sup> HP Open Door Policy, <http://www.hp.com/hpinfo/abouthp/diversity/open-door.html> (12.03.2013).

<sup>405</sup> HP Global Citizenship Report 2011, 84; HP Harassment-free Work Environment Policy, <http://www.hp.com/hpinfo/abouthp/diversity/harassfree.html> (12.03.2013).

In the case that violations of laws, company policies or HP's Standards of Business Conduct have already occurred, employees and third parties may anonymously report via an online form or a global 24-hour toll-free hotline with translators. Reports are kept confidential and are recorded in a world wide database, which can be accessed by the management without viewing personal information of the complainants.<sup>406</sup> Between 2007 and 2011, major issues reported were related to human resources (the majority of the cases), misuse of assets, fraud, sales channel violations, conflicts of interest, confidentiality, customer relationships, financial and public reporting, as well as competition.<sup>407</sup>

After a violation has been recorded, HP starts investigations on the alleged matter. The investigation process may involve local, regional or international corporate-level employees and is monitored by a so-called "litigation investigations team". The HP investigation process has to follow specific investigation principles including e.g. an investigation plan, a case owner and on-site visits.<sup>408</sup>

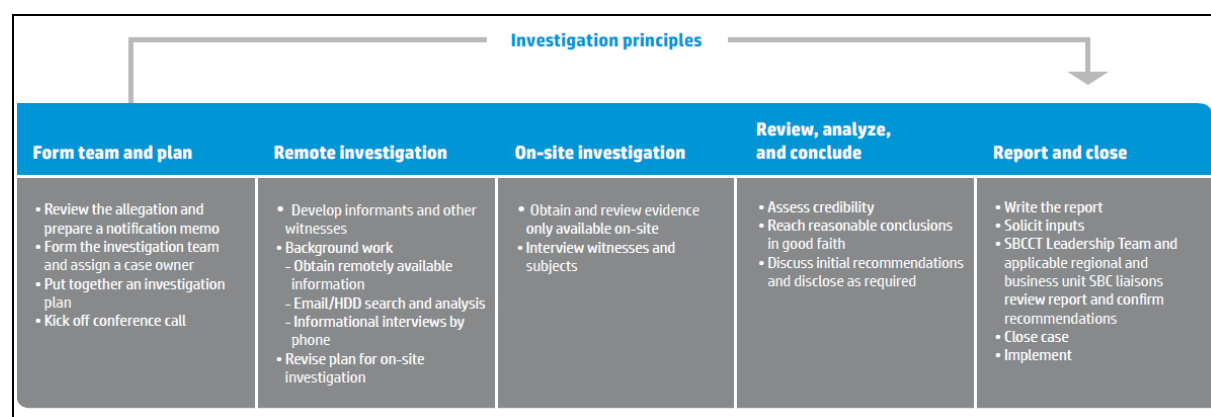


Figure 16: HP – Investigation Principles<sup>409</sup>

According to the Global Citizenship Report, the details and results of the investigation are "kept confidential to the extent practical and reasonable." Possible outcomes of the process may consist in "disciplinary actions such as terminating employees' contracts or reviewing relationships with partners".<sup>410</sup>

### III.3.5 Case Study: HP Mexico

Apart from HP's global procedures, HP Mexico together with the Mexican NGO Centre for Labour Reflection and Action (CEREAL) has established a local pilot grievance mechanism on human and labour rights.<sup>411</sup> It is therefore of particular interest for this project. The following case study will further analyse its features and assess its particular contribution to balancing workers' and companies' interests.

<sup>406</sup> HP, Report ethics concerns, <http://www8.hp.com/us/en/hp-information/global-citizenship/governance/report-ethics-concerns.html> (12.03.2013).

<sup>407</sup> HP Global Citizenship Report 2011, 85.

<sup>408</sup> Supra.

<sup>409</sup> Supra, at 84.

<sup>410</sup> Supra, at 85.

<sup>411</sup> See e.g. Rees (2008), Grievance Mechanisms for Business and Human Rights, [http://www.hks.harvard.edu/m-rbcb/CSRI/publications/workingpaper\\_40\\_Strengths\\_Weaknesses\\_Gaps.pdf](http://www.hks.harvard.edu/m-rbcb/CSRI/publications/workingpaper_40_Strengths_Weaknesses_Gaps.pdf) (12.03.2013).

Currently, HP Mexico, located in Guadalajara, employs more than 4,500 people, which are composed of about 3,300 employees and 1,200 contingent workers.<sup>412</sup> It sources products and services from a broad range of local Mexican supplier factories.

The country has been one of the electronics industries' preferred countries for contract manufacturing. It attracts foreign investment by low costs, speed to markets, customs and duties, infrastructure for logistics, a young and cheap labour force and a market conducive framework of trade agreements.<sup>413</sup> At the same time, this has contributed to massive labour exploitation, which has also been enabled by weak Mexican labour laws and their even weaker implementation, as well as by the lack of genuine trade unions.<sup>414</sup>

To retain market shares, local companies have traditionally been striving to reduce labour costs and created a wide range of flexible work and outsourcing systems. In practice, this resulted in fierce conflicts between employed and contracted workers, gave a major role to employment agencies and promoted a wide range of illegal practices.<sup>415</sup> Those include various labour and human rights violations such as the abandonment of social benefits including annual leave, severance payments, maternity benefits or the express prohibition of enrolling in trade unions. Attempts to create genuine unions usually resulted in immediate dismissals or other reprisals.<sup>416</sup>

To date, Mexican labour laws are under revision. However, the new proposal still clearly reflects the interest of attracting transnational corporations and again risks to substantially weaken the position of workers with respect to the right to strike, to join trade unions and in terms of labour security.<sup>417</sup>

For years, CEREAL, a local Mexican NGO, has been a key actor in speaking up about bad labour practices and human rights violations in Mexico's electronics industry. In 2005, HP Mexico finally reacted to CEREAL's criticism. The company took the lead in engaging together with other big brands such as IBM, local manufacturers such as Flextronics, and the Mexican Chamber of the Electronics Industry (CANIETI) in a communication process with CEREAL. The process turned out to be a major success and resulted in the joint elaboration of a specific Code of Conduct for the supply chain and the present formal complaint mechanism to de-escalate work-related conflicts.<sup>418</sup>

HP Mexico's complaint mechanism can be used for all kinds of complaints. It is accessible for HP's employees and workers of supplier factories. In practice, major problems arise in the supply chain. According to CEREAL, about 90 percent of the workers who contact the NGO are sub-employed in supplier factories.<sup>419</sup> Most frequent complaints from supplier company

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<sup>412</sup> Information provided by HP Mexico, July 2012.

<sup>413</sup> Rees/Vermijs (2008), 16ff.; CEREAL (2007), Electronics Multinationals and Labour Rights in Mexico, 11.

<sup>414</sup> CEREAL, *supra*, at 13.

<sup>415</sup> Rees/Vermijs (2008), 16ff.

<sup>416</sup> CEREAL (2007), 12 and 31; Interview with CEREAL, 4 July 2012.

<sup>417</sup> IndustriALL Global Union, Join the Resistance Against Proposed Regressive Labour Law Reforms in Mexico, 21 September 2012, <http://www.industrialall-union.org/join-the-resistance-against-proposed-regressive-labour-law-reforms-in-mexico> (20.02.2013); CEREAL (2011), The Crisis that Never Went Away, Labour conditions in the Mexican electronics industry, 4.

<sup>418</sup> Interview with HP Mexico, 2 July 2012; Interview with CEREAL, 4 July 2012.

<sup>419</sup> Interview with CEREAL, 4 July 2012.



workers concerned labour rights issues such as extra hours, extensive shifts or the lack of adequate salaries. Other issues included incorrect payments, discrimination or harassment. Instances of discrimination were for example men examining women when going to the toilet, or the order to publicly take off the bra for medical examination. Within HP itself, complaints concerned extra hours and non-payment of work benefits. In both cases, no genuine trade unions existed that could represent the workers.<sup>420</sup> Overall, contracted workers employed via an employment agency are particularly vulnerable to abusive labour practices. About 60 percent of the complaints received by CEREAL concerned illegal dismissals of subcontracted workers.<sup>421</sup>

A particular problem consists in employment agencies issuing consecutive short term working contracts. Although the Mexican law prohibits temporal employment or sub-employment, this prohibition is usually bypassed by issuing determined contracts “for the accomplishment of a particular activity.” This is often combined with the pressure to sign “voluntary” resignation letters after the end of an activity. In practice, this means that e.g. a brick layer’s job would end after the house was built; for the next house, he would resume his work under a new contract, although continuing work for the same company. By signing such resignation letters, the legal provision providing for an automatic conversion of the determined contract into an undetermined one loses its effect. As most of the workers are not aware of this rule, employment agencies have been abusing their ignorance and pushing them to sign a range of consecutive short term contracts. This ultimately resulted in the fact that workers, who were de facto working for a company for several years, were only given the payoff according to their last short term contract, which may have lasted from a week up to a month.<sup>422</sup>

Problems were also associated with a particular practice called “time for time”, according to which workers were sent home in the event that there was not enough work. Later on, they had to make up for the hours missed, which resulted in extensive shifts of 12 or 13 hours or weekend shifts.<sup>423</sup>

On the procedural level, the mechanism consists of four stages with specific time frames from the second to the fourth stage. On the second level, it should be accomplished within 93 days.<sup>424</sup>

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<sup>420</sup> Supra.

<sup>421</sup> Supra; and Interview with HP Mexico, 2 July 2012.

<sup>422</sup> Interview with CEREAL, 4 July 2012.

<sup>423</sup> Supra.

<sup>424</sup> Interview with HP Mexico, 2 July 2012.

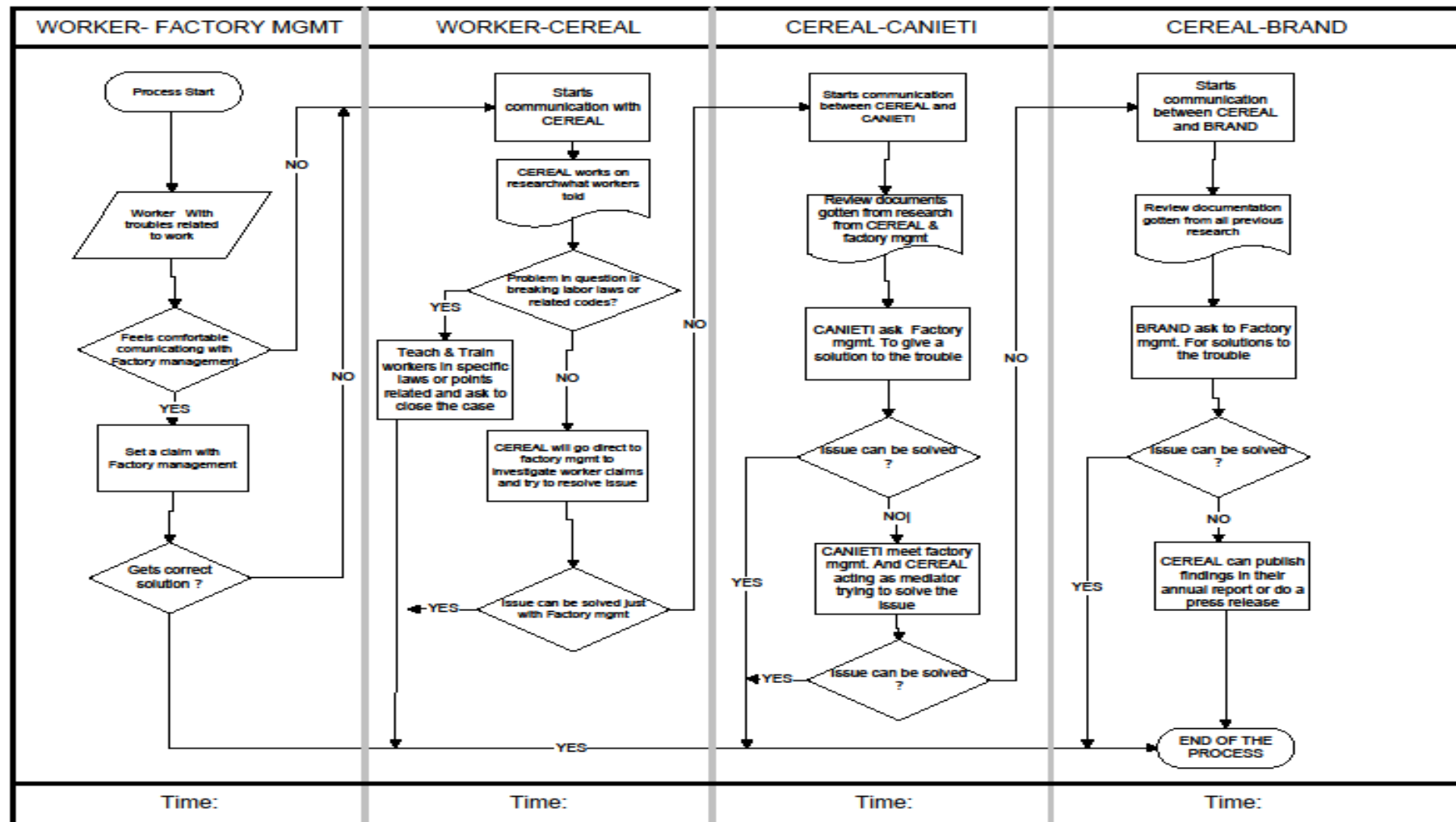


Figure 17: HP – Complaint Procedure<sup>425</sup>

<sup>425</sup> Provided by HP Mexico.

The first level foresees that the complainant refers directly to the factory management and tries to settle the claim with them. Workers may talk to their direct boss, the factory manager or the human resources department. Some factories provide also telephone hotlines or post boxes. The timeframe depends largely on the case and on the persons involved.<sup>426</sup>

In practice, the efficiency of a first level complaint depends very much on whether a worker is employed by the factory or works on a subcontracted basis. In the latter case, he or she is usually less informed about the mechanism and cannot go directly to the factory management, but has to lodge the complaint with a representative of the employment agency. The latter then would have to take up the case and speak to the worker's supervisor or to the human resource department of the factory. As subcontracted workers are usually treated with a lot of intimidation by employment agencies, the threshold to take this path is very high. The same often holds true for hotlines or post boxes offered alternatively, which cannot be used anonymously and workers may fear negative consequences as a result. In sum, only an estimated 20 to 30 percent of the cases can be resolved on the first level therefore.

First level actors include:

- Employee outsourced or not
- Company representative:
  - Local management of human resources of HP
  - and/or human resources management of local manufacturing company
  - and/or subcontracting agency representatives.

Figure 18: HP – First Level Actors in Complaint Procedures<sup>427</sup>

In case that the complainant feels uncomfortable or not well represented by the factory management due to the above mentioned reasons, or in case the solution seems “not correct”, he or she may proceed to the second level and contact CEREAL. “A correct solution” on the first level would imply that the worker freely consents to the solution proposed by the factory management. This is not always the case in practice. Some factories are known for having forced and pressured workers to sign the proposed conflict settlement agreement or voluntary terminations of their work contracts. They have prevented workers from leaving the factory by withholding their keys, threatened with non-payment of their payoffs or other intimidations.<sup>428</sup>

On the second level, CEREAL, whose services are free for the workers, first of all assesses whether the case constitutes a violation of the law. If the complaint is not legitimate, CEREAL does not represent the worker but trains him or her on his/her rights.<sup>429</sup> According to HP, there shall be no retaliation for the worker resulting from the fact that he/she has raised the

<sup>426</sup> Interview with HP Mexico, 2 July 2012.

<sup>427</sup> Interview with CEREAL, 4 July 2012.

<sup>428</sup> Supra.

<sup>429</sup> Supra.

potential violation to CEREAL.<sup>430</sup> If the claim is legitimate, CEREAL conducts its own investigations about the case and contacts the factory's human resources department to ask them for their point of view. Usually, the factory agrees to negotiate on the case and CEREAL, which represents the worker's interests, strives to achieve a solution according to the law (e.g. re-employment in case of illegal dismissals). Thereby it stays in close contact with the worker, who is not directly involved in the negotiations, to make sure that his/her interests are represented. HP Mexico equally takes part in the negotiations. Workers only receive the reports of negotiation meetings, and they may get in contact with the factory or its lawyers if they want to do so.<sup>431</sup>

The complaints process on the second level is confidential, but not anonymous. CEREAL may mention the name of the complainant when talking to the human resource manager. The time frame for the second level is 33 working days. Generally, about 90 percent of the cases can be resolved on the second level. It is rather exceptional that the process continues on to the third or fourth level.<sup>432</sup>

Second level actors include:

- Employee outsourced or not
- Company representative:
  - Local management of human resources of HP
  - and/or human resources management of local manufacturing company
  - and/or subcontracting agency representatives
- CEREAL

Figure 19: HP – Second Level Actors in Complaint Procedures<sup>433</sup>

The third level provides that CEREAL refers the matter to the Mexican Chamber of the Electronics Industry CANIETI (Cámara Nacional de la Industria Electrónica de Telecomunicaciones y Tecnologías de la Información), which reviews the documents provided by CEREAL and the factory management and asks the factory again to propose a solution. If the issue cannot be solved, CEREAL may mediate between CANIETI and the factory management. CANIETI represents an influential group of brands and supplier manufacturing companies; thus, it has considerable leverage in the negotiations to pressure the factory to propose a solution. On this level, companies have to communicate the case to the International Chamber of Commerce (ICC) which they duly tend to avoid. Moreover, CEREAL publishes an annual rating of companies which equally creates a certain pressure.<sup>434</sup> The third level phase should be accomplished within 30 working days.

<sup>430</sup> Interview with HP Mexico, 2 July 2012.

<sup>431</sup> Interview with CEREAL, 4 July 2012.

<sup>432</sup> Supra; and Interview with HP Mexico, 2 July 2012.

<sup>433</sup> Interview with CEREAL, 4 July 2012.

<sup>434</sup> Interview with CEREAL, 4 July 2012.

Third level actors include:

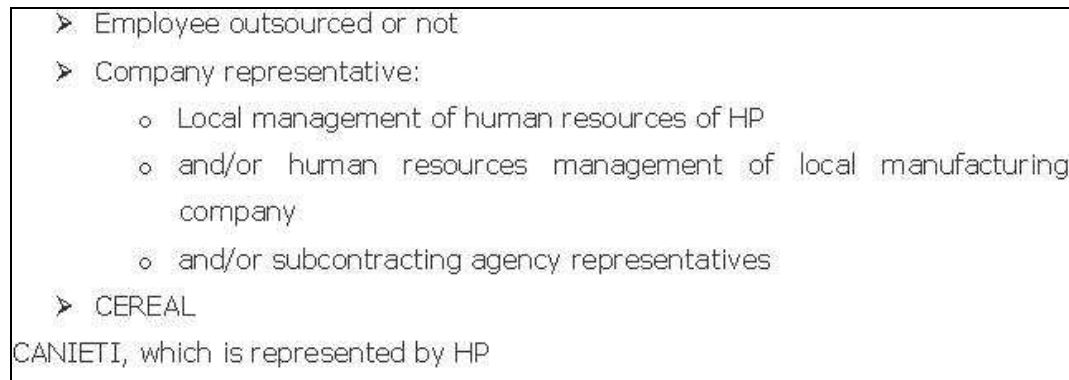


Figure 20: HP – Third Level Actors in Complaint Procedures<sup>435</sup>

If there is still no agreement, the case may be brought to the fourth level. Accordingly, CEREAL may get in touch with the brand in the US, which would then review all the previous information and urge the factory to propose a solution. This may have all kinds of negative consequences for HP Mexico and the supplier. For instance, the brand can end the manufacturing contract with the supplier factory. This final stage has a time frame of 30 days.

Fourth level actors include:

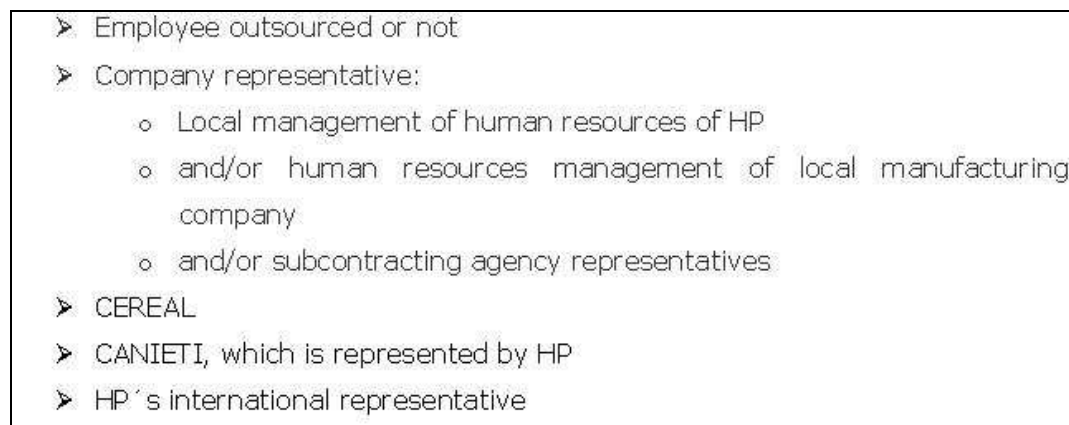


Figure 21: HP – Fourth Level Actors in Complaint Procedures<sup>436</sup>

If it is impossible to solve the issue through this process, as an ultimate step, CEREAL would publish the case in its annual report or issue a press release.

Possible outcomes of the complaints process most frequently include the compensation of workers according to their legal entitlements or their re-employment.<sup>437</sup> Moreover, there may be disciplinary measures such as transferring persons to other regions, e.g. in case of sexual harassment, or trainings on the EICC Code of Conduct.

Monitoring of the outcomes' implementation is part of HP's supplier evaluation on their compliance with the Code of Conduct. Non-compliance with the Code may result in a

<sup>435</sup> Supra.

<sup>436</sup> Supra.

<sup>437</sup> Supra.

termination of the supplier relationship.<sup>438</sup> HP audits its first tier of suppliers, in some cases also second tier suppliers. In addition, it requires its suppliers to audit their own suppliers on the standards of the EICC Code of Conduct.<sup>439</sup> Over the last six to seven years about five to six complaints were made to CANIETI, and about 25-30 cases to the company.<sup>440</sup>

### ***III.3.6 The Ruggie Criteria***

- **Legitimacy:** This criterion requires the mechanism to enable trust from the stakeholder group for whose use it is intended, as well as being accountable for the fair conduct of the grievance process.<sup>441</sup>

Mexico's complaint mechanism foresees a central role for CEREAL, which is an independent NGO focusing on workers' rights in the Guadalajara region. It functions as the principal key actor to ensure trust of workers. Accountability for the fair conduct of the process is primarily safeguarded by the involvement of third parties, which include primarily CEREAL but also CANIETI. Therefore, HP Mexico's complaint mechanism complies with the legitimacy criterion. On the global level, the publically available information does not allow for evaluating HP's international complaint facilities with respect to the legitimacy criterion. The "litigation investigation teams" may equally include third parties such as expert advisors or witnesses. However, their involvement rather seems to be related to fact-finding than to function as independent third party monitoring of the process.

- **Accessibility:** The mechanism must be known to all stakeholder groups for whose use it is intended, and provide adequate assistance for those who may face particular barriers to access.<sup>442</sup>

The Mexican mechanism, and in particular CEREAL, seem to be well known among the workers. This is equally indicated by the percentage of cases resolved on the second level. The accessibility of the mechanism is supported by the fact that CEREAL's services, which include legal support and representation as well as trainings on labour rights or psychological support, are free for workers. In theory, it is equally accessible for both employed and subcontracted workers. The latter are in a much more precarious situation and may also lack adequate information on the mechanism, however. CEREAL is aware of these challenges and provides adequate assistance. In its conception the mechanism fulfils the accessibility criteria. Nevertheless, several circumstances, which are no direct result of the complaints process like intimidation by employment agencies or a lack of information, complicate the access of subcontracted workers in practice. HP's reporting and investigation procedures on the global level are disseminated on its website, which does not mean that all workers are sufficiently aware of the process, however. Employees and third parties may report violations via an online form or a toll-free hotline with translators. From the information available, one can at least conclude that the procedures take account of potential cost and language barriers, which could hinder access to the complaint procedure.

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<sup>438</sup> Interview with CEREAL, 4 July 2012.

<sup>439</sup> Interview with HP Mexico, 2 July 2012.

<sup>440</sup> Supra.

<sup>441</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31a.

<sup>442</sup> Supra, para. 31b.

- **Predictability:** The mechanism needs to provide 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.<sup>443</sup>

The Mexican mechanism provides for a predictable procedure including clear timelines for three of its four levels. From a human rights perspective, it would be desirable to set a time limit also for the first level, in particular with respect to the decision of the management. The type of the process and the actors involved are equally clear. A chart on the mechanism provides a good overview on the proceedings, but cannot replace a more comprehensive description on the mechanism's functioning. It would be helpful to have a guidance document which further elaborates on the potential outcomes of the process and the monitoring of implementation of results. It should equally include frequent challenges or lessons learned. Overall, this would secure institutional knowledge and learning on the mechanism, and contribute to enhanced transparency. In sum, the mechanism does not yet fully qualify on this criterion. HP's information on its global procedures is mainly contained in its policies, e.g. its grievance policy. However, they remain on a very general level, or do only comprise a paragraph with an email address to refer to, so that the predictability criterion is not fulfilled.<sup>444</sup>

- **Equity:** The mechanism has 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.<sup>445</sup>

In Mexico, equity of the aggrieved parties is primarily ensured by the involvement of CEREAL, making sure workers are informed and advising and represents them in the negotiations. It thereby addresses the existing power imbalance between employers and workers. Thus, the mechanism complies with the equity criterion. Compared to the global level, there seems to be no inclusion of third parties to alter this power imbalance. The grievance procedures are mainly internal and follow hierarchical channels. According to the available information, they seem not to comply with the equity requirements.

- **Transparency:** The mechanism has to keep parties to a grievance procedure informed about its progress, and to provide sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.<sup>446</sup>

The Mexican complaint mechanism provides for a confidential procedure. Cases may only be published if no solution could be found after the fourth level. During the process, both parties – CEREAL on behalf of the worker and the factory – have to elaborate written statements on the case, which should ensure a transparent compilation of information. CEREAL maintains regular contacts with the workers and informs them on the process. Overall, the mechanism is transparent in relation to the parties involved. Due to its confidential nature, cases are not made public before the fourth level, however. Public transparency is to some extent ensured by CEREAL's annual reports on working conditions and unresolved cases. Generally, it is difficult to balance the interests of confidentiality and transparency. The Mexican mechanism

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<sup>443</sup> Supra, para. 31c.

<sup>444</sup> HP Open Door Policy, <http://www.hp.com/hpinfo/abouthp/diversity/open-door.html> (12.03.2013).

<sup>445</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31d.

<sup>446</sup> Supra, para. 31e.

complies with transparency requirements of the parties during the process. With respect to public transparency, it would be desirable to provide an annual overview on the number of cases and the major issues dealt with.

HP has published the percentages of the major complaints issues over the last five years in its Global Citizenship Report 2011. About half of the complaints lodged concerned human resource issues, the precise content of which is not further defined. About ten percent of complaints targeted misuse of assets, fraud, or conflicts of interest (see figure 22). While this gives some insight, it does not inform about the number of admissible and non-admissible cases or the duration of the procedure. Improvements on this aspect of transparency would be required to comply with this Ruggie criterion.

Items reported to the Global SBC team or other compliance functions, 2007–2011					
	2007*	2008	2009	2010	2011
Human resources	37%	56%	35%	44%	42%
Misuse of assets	20%	19%	14%	11%	10%
Fraud	12%	5%	12%	10%	9%
Sales channel violations	9%	1%	3%	3%	3%
Conflicts of interest	7%	4%	7%	6%	8%
Confidentiality	4%	4%	6%	5%	6%
Customer relationships	1%	0%	2%	2%	3%
Financial and public reporting	1%	1%	4%	3%	2%
Competition	0%	1%	1%	1%	3%
Other	9%	9%	16%	15%	14%

\* This data is for the calendar year. Data for 2008–2011 is for HP's financial year ending October 31, 2011.

Figure 22: HP Global Citizenship Report<sup>447</sup>

- **Rights-compatibility:** The mechanism has to ensure that outcomes and remedies comply with internationally recognised human rights.<sup>448</sup>

The Mexican mechanism deals with international human rights and national and international labour rights issues. During the process, participation and equity of the workers seem to be ensured. Equally, according to HP, workers raising a complaint will not suffer retaliation. The remediation resulting from the process is being aligned with national Mexican law, e.g. re-

<sup>447</sup> HP Global Citizenship Report 2011, 85.

<sup>448</sup> Cf. UN Human Rights Council (2011), Ruggie Guiding Principles, para. 31f.



employment after illegal dismissals or the payment of legitimate benefits. The requirements on rights compatibility are thus ensured on a national level. From a human rights perspective, it would be imperative to live up to international standards. In practice, it is questionable to which extent this can be delivered by a non-judicial complaint mechanism. HP's EICC Code of Conduct reflects international standards and includes even particular requirements on freedom of association and trade unions. The company equally claims to monitor and train suppliers on the Code. However, the practice does not confirm these commitments in all aspects; for example, genuine trade unions do not seem to exist. HP underlines the respect of international standards in its Code of Conduct, which does not suffice to say that its complaints procedures fulfil the criterion of rights compatibility, however.

- **Engagement and dialogue:** The mechanism should be based on engagement and dialogue, which means consulting the stakeholder groups for whose use it is intended on its design and performance, and focusing on dialogue as the means to address and resolve grievances.<sup>449</sup>

Mexico's mechanism was established as a result of a multi-stakeholder process and is still embedded in regular communications between relevant stakeholders (HP, CANIETI, CEREAL). Therefore, it fully qualifies with regard to this criterion. The mechanisms and procedures on the global level seem to have grown out of workers' complaints, too. However, this information does not suffice to draw a sound conclusion on this criterion.

- **Continuous learning:** This criterion implies drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.<sup>450</sup>

Over time, the Mexican mechanism has been fine-tuned and improved. Its efficiency has equally been proven by the fact that most of the complaints are solved on the second level. Notwithstanding that it has led to successful case-by-case solutions, it has not yet led to the prevention of future grievances by structural changes (e.g. transfer of a person accused for sexual harassment instead of his dismissal).<sup>451</sup> It has to be acknowledged, however, that broad structural changes such as strengthening workers representation or job security require substantial change in a whole industrial sector. One local mechanism such as HP Mexico's will not be able to bring about these changes. Nevertheless, it is a very promising initiative in this regard. In view of HP's global procedures, no information is publically available.

### ***III.3.7 Concluding Remarks***

Overall, the major strengths of HP's complaint mechanism in Mexico lie in the following features:

It grew out of a multi-stakeholder dialogue process and therefore benefits from a high level of credibility among all participating actors. According to the interviews, there seem to be very good contacts and regular communication between HP and CEREAL, and the process has considerably reduced conflict escalation.<sup>452</sup>

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<sup>449</sup> Supra, para. 31g.

<sup>450</sup> Supra, para. 31h.

<sup>451</sup> Interview with CEREAL, 4 July 2012.

<sup>452</sup> Supra.

The mechanism provides for a fairly predictable procedure with clear responsibilities. It meets the Ruggie criteria on legitimacy, accessibility, equity, engagement and dialogue, and to some extent also on predictability, transparency, rights compatibility and continuous learning.

The most important strength of the Mexican mechanism lies certainly in the involvement of third parties such as CEREAL or CANIETI. CEREAL plays a key role in establishing trust and accessibility. The positive impact of third party involvement is ultimately confirmed by the fact that most of the cases are resolved on the second level. Moreover, the involvement of more powerful actors at higher stages of the process increases both the pressure on the conflict parties as well as the publicity of the case, which ultimately advances the settlement of the conflict.

In sum, the mechanism has turned out to be a very efficient alternative to judicial processes which successfully balances human rights and business interests. Notwithstanding this, it equally has its limits. Its major weaknesses can be summarized as follows:

It is still a challenge to make sure that all workers are informed about the existence of the mechanism. Since CEREAL can represent a certain number of workers only, many of them are not adequately represented and thus have not access to the mechanism at all. The capacity to ensure a human rights compliant extrajudicial process is fairly limited, therefore. It could be enhanced, however, by expanding the mechanism to other regions and include other actors like CEREAL. Furthermore, there still exists a high threshold to speak up and file a complaint because of fear of negative consequences, e.g. by an employment agency. Although these problems are not a result of the mechanism, they remarkably influence its applicability for subcontracted workers.

The complaint mechanism as such has turned out to be very successful in solving individual cases, but has very limited effects on tackling the root causes of the problem, which are e.g. that nearly all supervisors are male; that sexual harassment would be answered only by transferring the person to another region instead of dismissing him; or that there is a general lack of trade unions.<sup>453</sup> Finally, the mechanism should be improved with respect to some of the Ruggie effectiveness criteria, for instance as regards predictability (see above).

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<sup>453</sup> Interview with CEREAL, 4 July 2012.

## IV Research Findings and Conclusions

In the course of the analysis of the strengths and weaknesses of the complaint mechanisms concerned, a pattern of critical stages emerged where these strengths and weaknesses become most apparent. These critical stages are: the establishment of the complaint mechanism; its mode of operation when handling the complaints; and the outcomes and impact of the complaint processes. The following findings and conclusions distil the analyses of the various complaint mechanisms along the lines of the stages mentioned.

### IV.1 Strengths and Weaknesses of the Mechanisms







Establishment of Mechanism		Handling of Complaints		Outcomes and Impact	
					
Clear procedure, timelines and responsibilities	Lack of predictability	Confidentiality	Lack of transparency	Implementation of the results	Lack of consequences in case of non-conformity to the rules
Involvement of external stakeholders	Lack of credibility and trust	Equity	Ambiguous wording	Monitoring	Institutional power structures
Broad applicability and non-bureaucratic accessibility	Lack of independence	Transparency	Institutional power structures		Monitoring and follow-up
	Limited or implicit mandate	Corporate culture	Procedural barriers		Dealing with symptoms instead of root causes

Figure 23: Strengths and Weaknesses of Complaint Mechanisms

#### IV.1.1 Establishment of a Mechanism

##### **Strengths**

A clear procedure, timelines and responsibilities constitute essential pillars of a successful non-judicial grievance mechanism which allow for its predictability. Overall, the analysed mechanisms fulfil this criterion. Except for one case (HP), written policies on how to deal with complaints also exist. Timelines are short, lasting from some days up to a month for each stage of the process. For company mechanisms, responsibilities are attributed to the persons who equally have the power and the duty to remedy the situation. Procedures thus usually start on the first level with the supervising manager, and then involve higher company hierarchies, CSR managers or other company departments in charge (e.g. human resources).

The involvement of external stakeholders in the establishment of the grievance process considerably contributes to trust and credibility. In some cases, the companies have

elaborated their mechanism in cooperation with NGOs (e.g. HP); others, by contrast, did not involve external stakeholders (e.g. Anglo), which turned out to be a weakness. Provided that they constitute a genuine representation of workers, the involvement of trade unions equally proves to be a success factor. The latest revision of the OECD Guidelines was accompanied by a broad multi-stakeholder process involving civil society, employers' and employee representatives, politicians and trade unions, which finally resulted in a heightened acceptance of the new Guidelines.

Broad applicability and non-bureaucratic accessibility have to be guiding paradigms when conceiving the mechanism. Worldwide applicable mechanisms such as the Inspection Panel and the OECD Guidelines' National Contact Points have been long standing institutions and enjoy broader recognition. The comprehensive applicability of the OECD Guidelines to all sectors of the economy, including the financial sector, has equally been confirmed by the last review. Accessibility may be enhanced by involving external stakeholders who have contacts to the potentially affected persons (e.g. NGOs, trade unions). Nevertheless, to comprehensively spread information about the existence and the functioning of a mechanism constitutes a major challenge, particularly in the corporate context.

### ***Weaknesses***

A lack of predictability has proven to be one of the major weaknesses of a mechanism. The OECD Guidelines, for instance, are currently the most widely applicable and most commonly known mechanism with respect to corporate human rights violations. Nevertheless, due to the individual structures of NCPs in adhering countries, they fail to comply with the predictability criterion. Although the procedures, timelines and responsibilities seem to be clear in general, the Guidelines lack provisions that would ensure that outcomes of the complaints processes are equally foreseeable. NCPs should at least be required to issue a public statement on whether a breach has occurred or not, in case that the mediation process has failed.

**Credibility and trust:** When external stakeholders (e.g. communities, workers representatives, NGOs) are excluded from the process establishing a complaint mechanism, it is much more likely that acceptance remains low among potential complainants. The lack of trust in a mechanism prevents people from resorting to it and may result in complete boycott. One company mechanism very well conceived and human rights compatible on paper, ultimately failed to be accepted by its potential users due to a massive lack of confidence in the company, resulting from corporate misbehaviour in the past (i.e. Anglo). This example equally shows that cultural differences may be closely related to issues of trust. In case that the company's and the communities' approach to resolve conflicts are fundamentally different, it will become a major challenge to find a common understanding on the way forward.

The analysis has revealed that the credibility of a mechanism very much depends on its independence; this applies already in the establishment phase. For instance, the NCPs of the OECD Guidelines are usually hosted by the national ministries of the economy, which may result in conflicts of interest in practice. These concerns were also voiced by UN Special Representative John Ruggie. Likewise, the Inspection Panel is in principle an independent organ; however, it is also being supervised by the Board of Executive Directors which in

practice means that no investigation other than that accepted by the Board can take place. Thus, the strongest and most substantial weapon of the Panel can only be used if authorised by the Board, which considerably hampers the Panel process. In conclusion, independence to the highest possible extent should already be provided for at the establishment phase.

Also with regard to the Inspection Panel, a limited or implicit mandate has turned out as a major challenge. Originally, the Panel was excluded from investigations on general human rights issues. More recently, the Bank has moved from viewing human rights as merely “political” and thus well outside of its mandate, and has identified human rights as an issue that the Bank needs to address. Nevertheless, this approach is still very cautious and with an extensive side-glance to the borrowing country partners, whose actions cannot be reviewed by the Inspection Panel, according to the Bank policy.

#### ***IV.1.2 Handling of Complaints***

##### ***Strengths***

Confidentiality is key to any successful grievance process. Internal confidential treatment of a complaint allows for the solution of the problem in a targeted fashion and may solve the issue before it becomes too big to be solved (see Gap Lesotho mechanism). This equally implies that there are no risks of reprisals for those raising a complaint. Local NGOs may equally support workers on a confidential basis.

Equity between the parties involved (i.e. companies and its workers or communities) constitutes a core issue in any complaint process. There definitely exists a high threshold to speak up, in particular if the company management is directly involved. Some mechanisms address the power imbalance by involving NGOs or trade unions or workers’ representatives (e.g. HP). Overall, equity could be considerably enhanced by bringing in external stakeholders. For example, both Gap and HP involve local NGOs in the resolution process of complaints raised by workers from their supplier firms. The revised OECD Guidelines have explicitly introduced the principles of impartiality and equity for NCPs. The vast majority of complaints under the Guidelines are issued by NGOs; however, in particular smaller civil society groups might encounter problems as regards their “bargaining position” compared with multinational enterprises.

Transparency has been identified as a major strength of a grievance mechanism. In the case of the Inspection Panel, for instance, all Panel reports concerning eligibility and investigation (including recommendations) are publicly disclosed and accessible on the Panel’s website. Similarly, all responses of the Bank’s Management to the requests are publicly available. Publication also includes rejected cases. The revised OECD Guidelines have equally introduced strengthened requirements on transparency. The NGO OECD Watch may request clarification from the Investment Committee on NCP performance and interpretation of the Guidelines.

Finally, grievance mechanisms need to be rooted in a conducive corporate culture. It requires internal awareness raising and training to depart from a “business-as-usual” approach, and to develop a culture of dialogue and mutual understanding, a “grievance culture”. While a few companies show quite a developed grievance culture, in other cases

this is not yet the case (e.g. Anglo). This conclusion can, however, only be preliminary as it was not possible to thoroughly assess this factor on the basis of policy papers and the limited number of experts interviewed during the project.

### ***Weaknesses***

Lack of transparency: The analysis showed that it is difficult to strike the balance between the principle of confidentiality with its main objective to protect the complainant, and the principle of transparency. Although it is neither necessary nor desirable to disclose details of a case, it is imperative to publicise information on the number of complaints dealt with, the issues involved, the number of complaints resolved, and at which stage. This would allow for an evaluation of the mechanism and its improvement over time. Some company mechanisms do not fulfil this requirement (e.g. GAP), some are open on complaints and outcomes at least partly (e.g. Anglo). As regards the OECD mechanism, the diverse nature and performance of NCPs across countries results in equally varying degrees of transparency. Although NCPs have to report to the Investment Committee annually, a comprehensive case law database on complaints and outcomes has not yet been made available by the OECD (but is in planning, however).

Ambiguous wording may pose major obstacles in adequately processing complaints. The analysis of the Inspection Panel revealed frequent disagreements between the Panel and the Bank Management about the interpretation and the margin of appreciation of World Bank policies. Although the Panel insisted on their strictly binding character,<sup>r</sup> and mandatory operating policies and procedures were elaborated, the exact nature and application of Bank policies still seem ambiguous. Furthermore, the non-binding operational guidelines are not subject to review by the Panel although the interpretations of the guidelines by Bank Management and the Panel sometimes differ. The OECD Guidelines show similar shortcomings: Their language includes numerous caveats and disclaimers that provide enterprises with loopholes and give wide discretionary powers to the individual NCPs. However, the last update has improved this situation since the Commentaries to the Guidelines have been extended, and clarifications on the interpretation of certain provisions from the Investment Committee can also be requested from the NGO OECD Watch now.

Institutional power structures may considerably weaken the process or undermine its outcomes and impacts as well as question its independence. Particular problems arose in case of the Inspection Panel when the Bank Management did not agree with, or even contested the findings of the Panel on whether a violation of the Bank Policies had occurred. Recent developments show that the recognition of the Panel by the Management has increased.

Moreover, procedural barriers may negatively impact a mechanism's effectiveness. By establishing a two-step procedure to requests received, the Inspection Panel's intervention has been delayed in cases where serious social and environmental harm takes place. Unlike courts and some human rights mechanisms provide for, there is no possibility for taking provisional measures in cases of imminent danger. In practice, the eligibility phase has thus become a considerable barrier to the detriment of the complainants. Similarly, some company mechanisms have struggled with extreme delays due to their complexity and

bureaucracy (e.g. Anglo). After all, too complicated and long procedures may also undermine the credibility of the mechanism as such.

#### ***IV.1.3 Outcomes and Impact***

##### ***Strengths***

Ensuring that the outcomes of a dispute resolution process are being implemented is essential to guarantee the effectiveness of a mechanism. Companies may resort to a variety of means to pressure local management to abide by an agreement, e.g. the reduction of orders vis-à-vis their suppliers, or the termination of cooperation as a last resort. However, providing capacity-building in order to implement remediation plans and other such supporting measures might be the more favourable option with regard to the protection of the rights of workers, in particular the safeguard of employment in general. The possibilities of NCPs, in contrast, have turned out to be very weak. Similarly, the Inspection Panel's findings have to be acknowledged by the Board of Directors to become "binding".

Monitoring of the mechanism and its outcomes is indispensable, but it constitutes a major challenge. Some companies conduct regular audits where they equally follow-up on the results of grievance procedures (e.g. HP, Anglo). The World Bank has established a Quality Assurance Group that has the potential to increase accountability and performance. The NGO OECD Watch is given the permission to request clarification from the Investment Committee on the NCPs' performance, which provides at least for a minimum of overview and control (NCPs however are free to decide whether they follow-up on cases or not, see also Weaknesses).

##### ***Weaknesses***

Weak impact of a mechanism may result from various factors:

Lack of consequences in case of non-conformity to the rules: In case of the OECD Guidelines for example, neither a breach of the latter nor a refusal to engage in mediation guided by a NCP entails any serious consequences for the enterprise. The results are of a non-binding nature only; moreover, NCPs are free to decide whether they establish the existence of a violation in a given case or not. There are no sanctions linked to it except for the voluntary option to "name and shame" the company in the NCP's final statement.

Institutional power structures: In case of the Inspection Panel the impact of its recommendations has been undermined by the role of the Bank Management as the implementing institution. The latter may additionally elaborate action plans or programmes and implement them even before the Panel has formulated its recommendations. Bank Management Action plans generally have not been developed in consultation with the claimants or the Panel, nor are the claimants or the Panel consulted during its implementation, nor is there sufficient oversight by the Board. Finally, the Bank Management is by no means held to fully recognise the Panel's recommendations.

Monitoring and follow-up of the mechanism's outcomes definitely pose challenges. Apart from the examples mentioned above, the overview and follow-up of the decisions rendered by the mechanisms are often rather weak. E.g. in case of the OECD Guidelines there exists

no assurance of effective NCP performance through mandatory oversight or peer review mechanisms. NCPs are not required to monitor and follow-up on recommendations and agreements reached in the mediation process.

Dealing with symptoms instead of root causes: One company mechanism seems successful in solving individual cases but fails to address the root causes of the problems (HP). Therefore, it has to deal with the same issues over and over again. Similarly, Anglo American has a long “tradition” of difficult relationships with the communities negatively affected by its operations. Although key issues of communities’ complaints (e.g. non-compensation for animals being hit by trains) were well-known already before the development of their grievance mechanism, it has provided a venue for formally addressing these ongoing problems. As more complaints are being received and the underlying patterns are analysed, there is an opportunity to identify and address the root causes of these grievances, and thus move from a case-by-case remediation approach to a focused preventative approach.

## IV.2 Key Challenges

Given the analysis conducted, the following main challenges for successful extrajudicial complaint mechanisms have been identified:

- Raising awareness on the existence of the mechanism among its main target groups (this pertains in particular to corporate mechanisms);
- Establishing and maintaining trust by all stakeholders involved;
- Ensuring equity during the process;
- Striking a fair balance between transparency to assess effectiveness and confidentiality to protect complainants;
- Ensuring independence;
- Timely handling and resolving complaints;
- Monitoring of and follow-up on the agreed solutions;
- Contributing to institutional learning (corporate culture, root causes);

Figure 24: Key Challenges

## IV.3 Model Features for Extrajudicial Complaint Mechanisms

Based on these research findings and the existing key challenges, we have formulated a set of model features that complement the effectiveness criteria of the UN Guiding Principles on a structural level. In practice, they function as a first “quick check” and draw the attention to specific organisational elements that may pose potential obstacles to the success of a complaint mechanism.



The first overall quality assessment of a mechanism or the considerations underlying its establishment may thus be conducted by addressing the following six aspects:

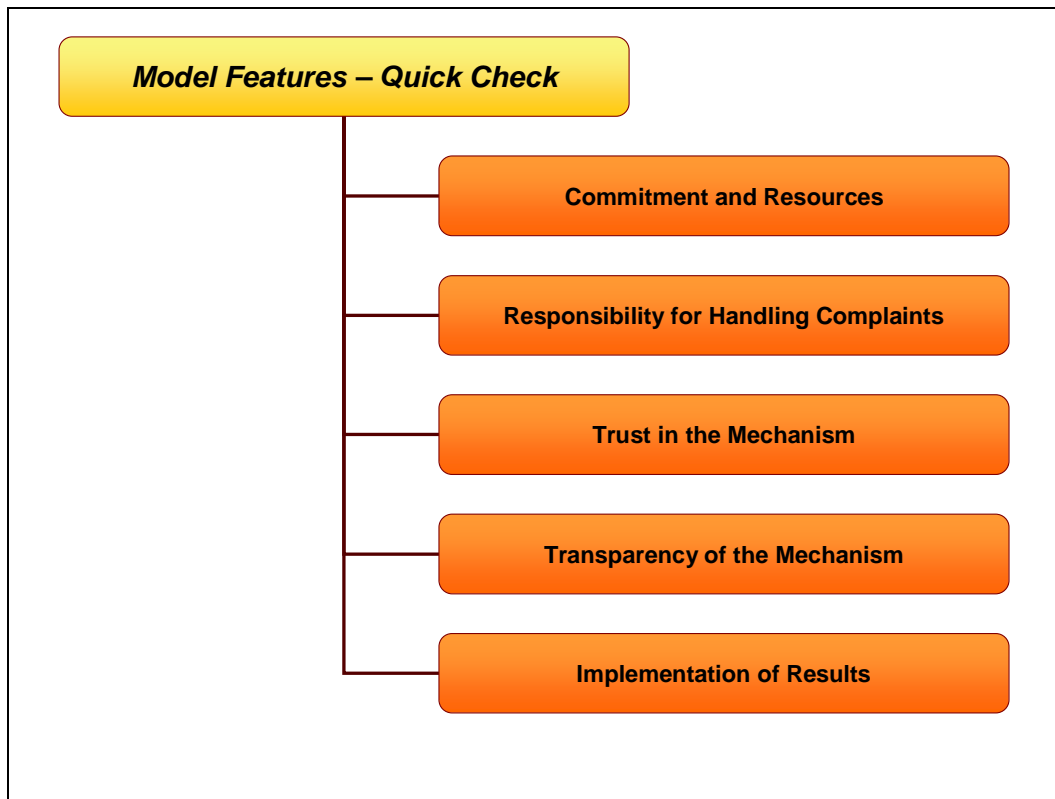


Figure 25: Model Features for Extrajudicial Complaint Mechanisms

#### ***IV.3.1 Commitment and Resources***

Providing adequate resources depends primarily on the importance company management attaches to this issue. Overall, leadership on conflict resolution is decisive. Company management has to live and promote this culture and demonstrate its support for conflict resolution by getting involved in the process. Ignoring conflicts on the part of management may impede the whole mechanism structure and implementation process.

The success of a grievance mechanism depends for the most part on the adequacy of resources provided for its implementation. The best-conceived mechanism will fail if the necessary personal, financial or structural resources are lacking. Considering the cost risk entailed by court proceedings or of other actions negatively affecting the production process, cost-cutting measures should never touch upon the funds allocated for complaints procedures.

#### ***IV.3.2 Responsibility for Handling Complaints***

Persons mandated with conflict resolution should be impartial and have the power to really influence (resolve) a situation. Moreover, they should be specifically trained in conflict resolution, e.g. in mediation techniques.

#### ***IV.3.3 Trust in the Mechanism***

As a common rule, the quality of a process directly correlates with the trust a mechanism enjoys. Generally, a clear procedure and mandate with clearly distributed competences, sufficient resources and adequate conflict resolution skills of personnel constitute the key factors that determine the quality of a complaints process. Moreover, persons raising complaints should enjoy certain procedural guarantees in order to build trust in the mechanism (e.g. participation, confidentiality - these criteria are set out in detail in the UN Guiding Principles).

#### ***IV.3.4 Transparency of the Mechanism***

Information on the existence of the mechanism and its outcomes constitute preconditions for being trusted and used by stakeholders, as well as for measuring and improving its effectiveness over time. This implies adequate internal and external communication on the procedures; confidentiality must not be used as an excuse for poor communication on process and outcomes.

#### ***IV.3.5 Implementation of Results***

Given their mostly non-binding nature, it is important to ensure that the execution of outcomes of a complaints process does not amount to a voluntary exercise of the conflicting parties only. Therefore, any prescribed follow-up activities including the availability of appeals procedures, monitoring and evaluation of results, as well as potential sanctions in case of misconduct (e.g. withdrawing of contracts, making public the facts of a case, etc.) help to strengthen the effectiveness of any complaint mechanism.

## Bibliography

### Books, Essays, Reports and Study Papers

- Abramovich, Victor* (2003): Social Protection Conditionality in World Bank Structural Adjustment Loans: The Case of Argentina's Garden Program (Pro-Huerta), in: Clark/Fox/Treakle (eds.), *Demanding Accountability, Civil Society Claims and the World Bank Inspection Panel*, Rowman & Littlefield Publishers 2003, 191-210, <http://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf> (08.03.2013)
- Anglo American (2007): Response to the Allegations Made in War on Want's 'Anglo American – The Alternative Report', August 2007, <http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/media/releases/2007pr/2007-08-09/2007-08-09.pdf> (28.08.2012)
- Anglo American (2008): The Reality, Anglo American plc's response to Mr. Philip Mattera's report entitled 'Anglo American's Track Record: Rhetoric or Reality', August 2008, <http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/media/publication/guides/AngloAmericanTheReality.pdf> (28.08.2012)
- Anglo American (2012), Sustainable Development Report 2011, 19 April 2012, <http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/reports/AA-SDR-2011.pdf> (24.08.2012)
- Anglo American urged to act over tuberculosis claims (2012, 18 April), *The Guardian*, <http://www.guardian.co.uk/business/2012/apr/18/anglo-american-sued-miner-tuberculosis> (30.08.2012)
- Anglo American wins international award for Socio-Economic Assessment Toolbox (SEAT) (2012, 27 January), International Council on Mining and Metals (ICMM), <http://www.icmm.com/page/70711/anglo-american-wins-international-award-for-socio-economic-assessment-toolbox-seat> (22.08.2012)
- Ayensu, Edward S.* (2002): Remarks of the Chairman of the Inspection Panel to the Board of Executive Directors on the Chad-Cameroon Pipeline Projects, 12 September 2002
- Bissell, Richard E.* (2003): The Arun III Hydroelectric Project, Nepal, in: Clark/Fox/Treakle (eds.), *Demanding Accountability, Civil Society Claims and the World Bank Inspection Panel*, Rowman & Littlefield Publishers 2003, 25-44, <http://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf> (08.03.2013)
- Bormann, Sarah/Krishnan, Pathma/Neuner, Monika E.* (2010): Migration in a Digital Age: Migrant Workers in the Malaysian Electronics Industry, Case Studies on Jabil and Flextronics, WEED, December 2010, [http://www2.weed-online.org/uploads/migration\\_in\\_a\\_digital\\_age.pdf](http://www2.weed-online.org/uploads/migration_in_a_digital_age.pdf) (12.03.2013)
- Buhmann, Karin* (2007): A Poverty Perspective on Human Rights and Business, in: Salomon, Margot E./ Tostensen, Arne/ Vandenhoe, Wouter (eds.), *Casting the Net Wider: Human Rights, Development and New Duty-Bearers*, Intersentia, 2007
- Business Leaders Initiative for Human Rights (2010): A Guide for Integrating Human Rights into Business Management, Case Studies, [http://www.integrating-humanrights.org/processes\\_procedures\\_case\\_studies](http://www.integrating-humanrights.org/processes_procedures_case_studies) (12.03.2013)
- CEREAL (Centro de Reflexión y Acción Laboral) (2007): Electronics Multinationals and Labour Rights in Mexico, Second report on working conditions in the Mexican electronics industry Centre for Reflection and Action on Labour Issues (CEREAL), 3 October 2007, <http://goodelectronics.org/news-en/cereal-report-multinationals-and-labour-rights-2> (12.03.2013)

- CEREAL (Centro de Reflexión y Acción Laboral) (2011): The Crisis that Never Went Away, Labour conditions in the Mexican electronics industry, 19 December 2011, <http://goodelectronics.org/news-en/the-crisis-that-never-went-away-report-on-labour-conditions-in-the-mexican-electronics-industry> (12.03.2013)
- Cerrejón (2011), Sustainability Report 2010, [http://www.cerrejon.com/site/Portals/1/Documents/pdf/sustainability\\_reports/Cerrejon\\_Sustainability\\_Report\\_2010.pdf](http://www.cerrejon.com/site/Portals/1/Documents/pdf/sustainability_reports/Cerrejon_Sustainability_Report_2010.pdf) (24.08.2012)
- China Labor Watch (2012), Tragedies of Globalization: The Truth Behind Electronics Sweatshops, <http://chinalaborwatch.org/pdf/20110712.pdf> (12.03.2013)
- Clark, Dana/Fox, Jonathan/Treakle, Kay (2003): Demanding Accountability, Civil Society Claims and the World Bank Inspection Panel, Rowman & Littlefield Publishers 2003, available at <http://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf> (08.03.2013)
- Clark, Dana (2003a): Understanding the World Bank Inspection Panel, in: Clark/Fox/Treakle (eds.), Demanding Accountability, Civil Society Claims and the World Bank Inspection Panel, Rowman & Littlefield Publishers 2003, 1-24, <http://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf> (08.03.2013)
- Clark, Dana (2003b): Singrauli: An Unfulfilled Struggle for Justice, in: Clark/Fox/Treakle (eds.), Demanding Accountability, Civil Society Claims and the World Bank Inspection Panel, Rowman & Littlefield Publishers 2003, 167-190, <http://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf> (08.03.2013)
- Clark, Dana (2004): The Strategic Guide to the Inspection Panel, Friends of the Earth International and International Accountability Project (IAP), April 2004, [http://www.accountabilityproject.org/downloads/strategic\\_guide.pdf](http://www.accountabilityproject.org/downloads/strategic_guide.pdf) (12.03.2013)
- COVERCO (Commission for the Verification of Corporate Codes of Conduct) (1999): 1st Public Report, Independent Monitoring Pilot Project with Liz Claiborne, Inc., 15 October 1999, <http://www.cleanclothes.org/documents/coverco.PDF> (12.03.2013)
- COVERCO (Commission for the Verification of Corporate Codes of Conduct) (2000): 2nd Public Report, Independent Monitoring Pilot Project with Liz Claiborne, Inc., August 2000, <http://www.cleanclothes.org/documents/coverco2.PDF> (12.03.2013)
- Curtis, Mark (2007): Anglo American – The Alternative Report, War on Want, August 2007, <http://www.waronwant.org/attachments/Anglo%20American%20-%20The%20Alternative%20Report.pdf> (28.08.2012)
- De Haan, Esther/Stichele, Myriam Vander (2007): Footloose Investors. Investing in the Garment Industry in Africa, SOMO Report, September 2007, [http://somo.nl/publications-en/Publication\\_2210](http://somo.nl/publications-en/Publication_2210) (12.03.2013)
- EICC (Electronic Industry Citizenship Coalition) (2012): EICC Code of Conduct, Version 4.0, 2012, <http://www.eicc.info/documents/EICCCodeofConductEnglish.pdf> (12.03.2013)
- Fair Labor Association (2011): Final Report Regarding the Ocean Sky Apparel Factory in El Salvador, 25 March 2011, [http://www.fairlabor.org/sites/default/files/documents/reports/fla\\_ocean\\_sky\\_final\\_report\\_03.25.11.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/fla_ocean_sky_final_report_03.25.11.pdf) (12.03.2013)
- Farfan, Barbara (2012, August 31), 2011 World's Largest Retailers by Country - Top Global Retail Companies List, Global Powers of Retailing Names Biggest and Best Retail Chains Worldwide, *About.com*, Guide, <http://retailindustry.about.com/od/famousretailers/a/what-are-worlds-largest-retail-companies-retailers-chains-complete-list-2011-.htm> (12.03.2013)

- Friends of the Earth (2004): A Guide to the Guidelines, Practical Guidance for Individuals, Communities and NGOs on the Organisation for Economic Cooperation and Development's Guidelines for Multinational Enterprises, [http://raid-uk.org/docs/Guidelines/Guide\\_to\\_Guidelines.pdf](http://raid-uk.org/docs/Guidelines/Guide_to_Guidelines.pdf) (08.03.2013)
- Gap, Social Responsibility Report 2003/4, [http://www.gapinc.com/content/dam/csr/documents/Gap\\_Inc.\\_Social\\_Responsibility\\_Report\\_2000-2004.pdf](http://www.gapinc.com/content/dam/csr/documents/Gap_Inc._Social_Responsibility_Report_2000-2004.pdf) (12.03.2013)
- Gap, 2007/2008 Social Responsibility Report, <http://www.Gapinc.com/content/dam/csr/documents/GapInc0708SR.pdf> (12.03.2013)
- Gap, 2009/2010 Social and Environmental Responsibility Report, <http://www.gapinc.com/content/dam/csr/documents/SR%20Full%20Report.pdf> (12.03.2013)
- Gap, Annual Report 2011, [http://www.gapinc.com/content/attachments/gapinc/GapInc\\_AR\\_11.pdf](http://www.gapinc.com/content/attachments/gapinc/GapInc_AR_11.pdf) (12.03.2013)
- Gap, Gap Inc. Reaffirms Commitment to Improving The Lives Of Workers In Lesotho, Press Release, 2 August 2009, [http://www.gapinc.com/content/gapinc/html/media/pressrelease/2009/Med\\_pr\\_LesothoStatement\\_08022009.html](http://www.gapinc.com/content/gapinc/html/media/pressrelease/2009/Med_pr_LesothoStatement_08022009.html) (12.03.2013)
- Gap, Bangladesh Fire Safety Supplier Meeting, 4 February 2011, [http://www.Gapinc.com/content/dam/csr/documents/Fire\\_Safety\\_Meeting\\_Statement\\_4Feb2011.pdf](http://www.Gapinc.com/content/dam/csr/documents/Fire_Safety_Meeting_Statement_4Feb2011.pdf) (12.03.2013)
- Gap, Fashion brands join forces for fire safety, Information – Fire Safety Films, 27 September 2011, [http://www.gapinc.com/content/dam/csr/documents/Bangladesh\\_FireSafety%20Video.pdf](http://www.gapinc.com/content/dam/csr/documents/Bangladesh_FireSafety%20Video.pdf) (12.03.2013)
- Ghazi, Bahram* (2005): The IMF, the World Bank Group and the Question of Human Rights, Martinus Nijhoff
- Gualtieri, Alix Gowlan* (2001): The environmental accountability of the World Bank to Non-State Actors, BYIL 72 2001, 213-253, <http://www.ielrc.org/content/a0106.pdf> (12.03.2013)
- Hammadi, Saad/Taylor, Matthew* (2010, December 14), Workers jump to their deaths as fire engulfs factory making clothes for Gap, *The Guardian*, <http://www.guardian.co.uk/world/2010/dec/14/bangladesh-clothes-factory-workers-jump-to-death> (12.03.2013)
- HP (Hewlett Packard), Social and Environmental Responsibility Report 2001, [http://www.hp.com/hpinfo/globalcitizenship/08gcreport/pdf/hp\\_csr\\_full\\_hi.pdf](http://www.hp.com/hpinfo/globalcitizenship/08gcreport/pdf/hp_csr_full_hi.pdf) (12.03.2013)
- HP, Global Citizenship Report 2011, [http://www.unglobalcompact.org/system/attachments/16336/original/hp\\_fy11\\_gcr.pdf?1341521769](http://www.unglobalcompact.org/system/attachments/16336/original/hp_fy11_gcr.pdf?1341521769) (12.03.2013)
- Huarte Melgar, Beatriz/Nowrot, Karsten/Wang, Yuan* (2011): The 2011 Update of the OECD Guidelines for Multinational Enterprises: Balanced Outcome or an Opportunity Missed?, in: Tietje, Christian /Kraft, Gerhard/Lehmann, Matthias (eds.), Beiträge zum Transnationalen Wirtschaftsrecht, Heft 112, June 2011, [http://telc.jura.uni-halle.de/sites/default/files/BeitraegeTWR/Heft112\\_0.pdf](http://telc.jura.uni-halle.de/sites/default/files/BeitraegeTWR/Heft112_0.pdf) (08.03.2013)
- ICMM (International Council on Mining and Metals) (2009): Human Rights in the Mining and Metals Sector, Handling and Resolving Local Level Concerns and Grievances, October 2009, [http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/Resources/HR-Concerns-and-Grievances.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/HR-Concerns-and-Grievances.pdf) (12.03.2013)

- Independent Monitoring Working Group (2002): Final Report on the Independent Monitoring in Central America) 24 May 2002, [http://www.iccr.org/news/press\\_releases/art\\_imwg.htm](http://www.iccr.org/news/press_releases/art_imwg.htm) (12.03.2013)
- IndustriALL Global Union, Join the Resistance Against Proposed Regressive Labour Law Reforms in Mexico, 21 September 2012, <http://www.industrial-all-union.org/join-the-resistance-against-proposed-regressive-labour-law-reforms-in-mexico> (20.02.2013)
- Institute for Global Labour and Human Rights, Leading Human Rights Groups Blast GAP Cover-Up in El Salvador, 1 October 1995, <http://www.globallabourrights.org/alerts?id=0259> (12.03.2013)
- Institute for Global Labour and Human Rights, The GAP in El Salvador: The Case of Mandarin International, 28 June 1995, <http://www.globallabourrights.org/alerts?id=0261> (12.03.2013)
- Institute for Global Labour and Human Rights, Ocean Sky: Workers Win Major Improvements, 4 May 2011, <http://www.globallabourrights.org/alerts?id=0337> (12.03.2013)
- Kingsbury, Benedict* (2001): Operational Policies of International Institutions as Part of the Law-Making Process: The World Bank and Indigenous Peoples, in: Goodwin-Gill, Guy S./Talmon, Stefan (eds), *The Reality of International Law: Essays in Honour of Ian Brownlie*, Clarendon Press, Oxford 1999, 323-341
- Lukas, Karin* (2011): *The Protection of Labour Rights in Global Production Networks*, Wien
- Lukas, Karin* (2000): *Is the World Bank Accessible to Women Affected by a World Bank Project? An Analysis of the Inspection Panel of the World Bank and Possible Alternatives* Maastricht/Vienna 2000
- MacVicar, Sheila* (2010, January 8), Jean Factory Toxic Waste Plagues Lesotho, *CBS News*, [http://www.cbsnews.com/8301-18563\\_162-5205416.html](http://www.cbsnews.com/8301-18563_162-5205416.html) (12.03.2013)
- Mathiason, Nick* (2007, September 16), Gap needs to mind the cracks, *The Observer*, <http://www.guardian.co.uk/business/2007/sep/16/5> (12.03.2013)
- Manik, Julfikar Ali/Bajaj, Vikas* (2010, December 14), Bangladesh Factory Fire Kills at Least 20, *The New York Times*, [http://www.nytimes.com/2010/12/15/world/asia/15bangladesh.html?\\_r=0](http://www.nytimes.com/2010/12/15/world/asia/15bangladesh.html?_r=0) (12.03.2013)
- Mattera, Philip* (2008): Anglo American's Track Record: Rhetoric or Reality?, July 2008, [http://ourbristolbay.com/pdf/anglo\\_trackrecord\\_final.pdf](http://ourbristolbay.com/pdf/anglo_trackrecord_final.pdf) (28.08.2012)
- McDougall, Dan* (2009, 2 August), African dream turns sour for orphan army, *The Sunday Times*
- Nurmukhametova, Elvira* (2006): Problems in Connection with the Efficiency of the World Bank Inspection Panel, in: von Bogdandy, A./ Wolfrum, R. (eds.), *Max Planck Yearbook of United Nations Law*, Volume 10, 2006, Brill, The Netherlands, p. 397-421
- Oldenziel, Joris* (2000): The 2000 Review of the OECD Guidelines for Multinational Enterprises: A new Code of Conduct?, Centre for Research on Multinational Corporations, SOMO, 2000, [http://somo.nl/publications-en/Publication\\_1870/](http://somo.nl/publications-en/Publication_1870/) (05.10.2012)
- OECD (2001): OECD Policy Brief, The OECD Guidelines for Multinational Enterprises, June 2001, <http://www.oecd.org/dataoecd/12/21/1903291.pdf> (08.03.2013)
- OECD Watch (2006): Guide to the OECD guidelines for multinationals enterprises' complaint procedure, November 2006, <http://oecdwatch.org/publications-en/toolkits-guides> (09.10.2012)
- OECD Watch (2008): Case Feasibility Assessment, January 2008, available at <http://oecdwatch.org/publications-en/toolkits-guides> (09.10.2012)

- OECD Watch (2010): 10 Years on: Assessing the contribution of the OECD Guidelines for Multinational Enterprises to responsible business conduct, available at [http://oecdwatch.org/publications-en/Publication\\_3550](http://oecdwatch.org/publications-en/Publication_3550) (08.03.2013)
- OECD Watch press release, 25 May 2011, OECD updates ethical business standards but fails to ensure enforcement, <http://oecdwatch.org/news-en/oecd-watch-press-release-oecd-updates-ethical-business-standards-but-fails-to-ensure-enforcement> (09.10.2012)
- OECD Watch statement on the update of the OECD Guidelines for MNEs, 25 May 2011, [http://oecdwatch.org/publications-en/Publication\\_3675/at\\_download/fullfile](http://oecdwatch.org/publications-en/Publication_3675/at_download/fullfile) (05.10.2012)
- OECD Watch (2012): The OECD Guidelines for Multinational Enterprises: A tool for responsible business conduct, available at [http://oecdwatch.org/publications-en/Publication\\_3816](http://oecdwatch.org/publications-en/Publication_3816) (08.10.2012)
- One World Trust (2007): Complaint and Response Mechanisms, Workshop, 26 March 2007, London
- Rees, Caroline/Vermijs, David (2008): Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, Cambridge, MA: Harvard Kennedy School, <http://www.reports-and-materials.org/Rees-Vermijs-Mapping-grievance-mechanisms-Jan-2008.pdf> (07.03.2013)
- Rees, Caroline (2008): Grievance Mechanisms for Business and Human Rights, Strengths, Weaknesses and Gaps, Working paper No.40, January 2008, [http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper\\_40\\_Strengths\\_Weaknesses\\_Gaps.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_40_Strengths_Weaknesses_Gaps.pdf) (12.03.2013)
- Rees, Caroline (2011): Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned, CSR Initiative, Harvard Kennedy School, Cambridge 2011, [http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report\\_46\\_GM\\_pilots.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf) (24.08.2012)
- RepRisk (2012): Most Controversial Mining Companies of 2011, March 2012, [http://www.reprisk.com/downloads/mccreports/23/150312%20Top%2010%20Most%20Controversial%20Mining%20Companies\\_RepRisk.pdf](http://www.reprisk.com/downloads/mccreports/23/150312%20Top%2010%20Most%20Controversial%20Mining%20Companies_RepRisk.pdf) (28.08.2012)
- Roos, Stefanie Ricarda (2001): The World Bank Inspection Panel in its Seventh Year: An Analysis of its Process, Mandate, and Desirability with special reference to the China (Tibet) case, Max Planck Yearbook of United Nations Law, Vol. 5, Kluwer 2001, 473-521, [http://www.mpil.de/shared/data/pdf/pdfmpunyb/roos\\_5.pdf](http://www.mpil.de/shared/data/pdf/pdfmpunyb/roos_5.pdf) (12.03.2013)
- Ruggie, John (2010): 10<sup>th</sup> OECD Roundtable on Corporate Responsibility, Updating the guidelines for multinational enterprises, Discussion Paper, 30 June 2010, <http://www.oecd.org/investment/mne/45545887.pdf> (08.03.2013)
- Schlemmer-Schulte, Sabine (1999): The World Bank Inspection Panel: A Record of the First International Accountability Mechanism and Its Role for Human Rights, WCL HR Brief 1999, <http://www.wcl.american.edu/hrbrief/06/2worldbank.cfm> (12.03.2013)
- Schwarte, Christoph/Wei, David (2011): o International approaches to corporate accountability, Working Paper, FIELD (Foundation for International Environmental Law and Development), Working Paper, [http://www.field.org.uk/files/tncs\\_account.pdf](http://www.field.org.uk/files/tncs_account.pdf) (12.03.2013)
- Shihata, Ibrahim (1994): The World Bank Inspection Panel, Oxford University Press 1994
- Smith, N. Craig/Ansett, Sean/Erez, Lior (2011a): How Gap Inc. Engaged with its Stakeholders MIT Sloan Management Review, Volume 52, Number 4, 69-76, [http://www.bsr.org/files/How\\_Gap\\_Engaged\\_with\\_stakeholders1.pdf](http://www.bsr.org/files/How_Gap_Engaged_with_stakeholders1.pdf) (12.03.2013)
- Smith, N. Craig/Ansett, Sean/Erez, Lior (2011b): What's at Stake? Stakeholder Engagement Strategy as the Key to Sustainable Growth, INSEAD Working Paper, 2011/25/AL/ISIC, <http://www.insead.edu/facultyresearch/research/doc.cfm?did=47212> (12.03.2013)

- South Africa: Anglo Ordered to Disclose Documents (2012, 16 July), *South African Press Association*, <http://allafrica.com/stories/201207170524.html> (30.08.2012).
- South Africa gold miners sue Anglo American (2011, 21 September), *BBC News Africa*, <http://www.bbc.co.uk/news/world-africa-14992024> (30.08.2012)
- Thannesberger, Benjamin T.* (2012): The OECD Guidelines for Multinational Enterprises and their Complaint Mechanism – Evaluation and Statistical Analysis of the Case Law, diploma thesis, Vienna 2012
- Treakle, Kay/Fox, Jonathan/Clark, Dana* (2003): Lessons Learned, in: Clark/Fox/Treakle (eds.), *Demanding Accountability, Civil Society Claims and the World Bank Inspection Panel*, Rowman & Littlefield Publishers 2003, 247-309, <http://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf> (08.03.2013)
- Treakle, Kay/Pena, Eliaz Diaz* (2003): Accountability at the World Bank: What Does It Take? Lessons from the Yacyretá Hydroelectric Project, Argentina/Paraguay, in: Clark/Fox/Treakle (eds.), *Demanding Accountability, Civil Society Claims and the World Bank Inspection Panel*, Rowman & Littlefield Publishers 2003, 69-91, <http://jonathanfoxucsc.files.wordpress.com/2011/11/demandingaccountability.pdf> (08.03.2013)
- Tully, Stephen* (2001): The 2000 review of the OECD Guidelines for Multinational Enterprises, ICLQ Vol. 50/2, 2001
- TUAC, A Users' Guide for Trade Unionists to the OECD Guidelines to Multinational Enterprises, p. 3, <http://old.tuac.org/publicat/guidelines-EN.pdf> (08.03.2013)
- Utz, Britta* (2011): Update oder Upgrade? Eine Bilanz zur Revision der OECD-Leitsätze für multinationale Unternehmen, Friedrich Ebert Stiftung, Juni 2011, <http://library.fes.de/pdf-files/iez/08232.pdf> (08.03.2013)
- The World Bank (2003), Accountability at the World Bank: The Inspection Panel 10 Years On, [http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/TenYear8\\_07.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/TenYear8_07.pdf) (08.03.2013)
- The World Bank (2010): Inspection Panel annual report, July 1, 2009 to June 30, 2010, <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/32457.pdf> (08.03.2013)
- Van Dijk, Michiel/Schipper, Irene* (2007): Hewlett Packard, CSR Company Profile, SOMO, May 2007, [http://www.fair-computer.ch/cms/fileadmin/user\\_upload/computer-Kampagne/Firmenstudien/HP\\_CSR\\_company\\_profile\\_EN.pdf](http://www.fair-computer.ch/cms/fileadmin/user_upload/computer-Kampagne/Firmenstudien/HP_CSR_company_profile_EN.pdf) (12.03.2013)
- Yanz, Lynda* (1998): On Independent Monitoring and Latin American Workers, Meeting hosted by the Independent Monitoring Group in El Salvador (GIMES), 26 January 1998, <http://www.hartford-hwp.com/archives/40/109.html> (12.03.2013)

### **Legal Documents and Cases**

- IBRD (International Bank for Reconstruction and Development), Articles of Agreement, 16 February 1989, <http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf> (08.03.2013)
- IDA (International Development Association), Articles of Agreement, <http://www.worldbank.org/ida/articles-agreement/IDA-articles-of-agreement.pdf> (08.03.2013)
- Inspection Panel Report and Recommendation: South Africa – Eskom Investment Support Project (IBRD Loan No. 78620), INSP/R2010-0003, [http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Final\\_Elig\\_Rpt\\_for\\_Disclosure.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Final_Elig_Rpt_for_Disclosure.pdf) (12.03.2013)



- Ocean Sky Apparel Factory in El Salvador, Remediation Plan,  
[http://www.fairlabor.org/sites/default/files/documents/reports/ocean\\_sky\\_remediation\\_plan\\_03.25.11.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/ocean_sky_remediation_plan_03.25.11.pdf) (12.03.2013)
- OECD (2000): The OECD Declaration and Decisions on International Investment and Multinational Enterprises: Basic Texts, DAF/IME(2000)20, 8 November 2000,  
[http://www.mofa.go.jp/mofaj/gaiko/investment/pdfs/daffe\\_ime.pdf](http://www.mofa.go.jp/mofaj/gaiko/investment/pdfs/daffe_ime.pdf) (08.03.2013)
- OECD (2011): OECD Guidelines for Multinational Enterprises, 2011 Edition, OECD Publishing,  
<http://www.oecd.org/daf/inv/mne/48004323.pdf> (08.03.2013), permanent URL  
<http://dx.doi.org/10.1787/9789264115415-en>
- RAID vs. Das Air, 28 June 2004, [http://oecdwatch.org/cases/Case\\_41](http://oecdwatch.org/cases/Case_41) (08.03.2013)
- Resolution No. 9-10 IBRD (International Bank for Reconstruction and Development), Resolution No. 93-6 IDA (International Development Association), Resolution Establishing the World Bank Inspection Panel, 22 September 1993,  
<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf> (08.03.2013)
- Review of the Resolution establishing the Inspection Panel, 1996 Clarification of Certain Aspects of the Resolution, 17 October 1996,  
<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1996ReviewResolution.pdf> (08.03.2013)
- 1999 Clarification of the Board's Second Review of the Inspection Panel, 20 April 1999,  
<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/1999ClarificationoftheBoard.pdf> (08.03.2013)
- Summary of Inspection Panel Cases, 1 June 2007,  
[http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Summary\\_of\\_Inspection\\_Panel\\_Cases\\_%5Bupdated%5D.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Summary_of_Inspection_Panel_Cases_%5Bupdated%5D.pdf) (08.03.2013)
- Summary of Inspection Panel Cases, 8 November 2010,  
[http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Panel\\_Cases\\_2010\\_Nov\\_8.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Panel_Cases_2010_Nov_8.pdf) (08.03.2013)
- The Inspection Panel, South Africa – Eskom Investment Support Project, IBRD Loan No. 78620, P116410, Case Nr. 65, filed April 4 2010,  
<http://www.worldbank.org/projects/P116410/eskom-investment-support-project?lang=en> (12.03.2013)
- The Inspection Panel, Argentina/Paraguay: Yacyretá Hydroelectric Project (1996), IBRD Loan 2854-AR/IBRD Loan 3520-AR, P006036,  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22515733~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (12.03.2013)
- The Inspection Panel, Arun III Proposed Hydroelectric Project and Restructuring of IDA Credit, Nepal, 24 October 1994, P010483,  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22515755~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (02.04.2013)
- The Inspection Panel, Chad: Petroleum Development and Pipeline Project, Management of the Petroleum Economy Project, and Petroleum Sector Management Capacity Building Project (2001), Project IDs P044305, P062840, P048202, 22 March 2001,  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22515234~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (02.04.2013)
- The Inspection Panel, China: Western Poverty Reduction Project, 18 June 1999, P046564,  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22515626~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (02.04.2013)

- The Inspection Panel, Coal Sector Mitigation Project and Coal Sector Rehabilitation Project, India, 21 June 2001, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22514813~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013)
- The Inspection Panel, Eligibility Report, Report and recommendation, India: NTPC Power Generation Project (loan 3632-IN), 24 July 1997, <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/NTPC1Eligibilityreport.pdf> (08.03.2013)
- The Inspection Panel, India: NTPC Power Generation Project, 1 May 1997, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22515666~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013)
- The Inspection Panel, India: NTPC Power Generation Project (1999), <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/India-NTPC.pdf> (08.03.2013)
- The Inspection Panel, India: NTPC Power Generation Project, Second Request (2000), 27 November 2000, <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:22515269~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013)
- The Inspection Panel, India, NTPC: Power Generation Project (Loan 3632-IN), Management Report and Recommendations on Inspection Panel Report, <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ManagementReport.pdf> (08.03.2013)
- The Inspection Panel, Investigation Report, India: NTPC Power Generation Project (Loan 3632-IN), 22 December 1997, <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/NTPCInvestigationReport.pdf> (08.03.2013)
- The Status of Follow-up Progress Reports by Management to Panel Investigations, April 2011, [http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Post\\_Investigation\\_IPN\\_Cases\\_April\\_2011.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Post_Investigation_IPN_Cases_April_2011.pdf) (08.03.2013)
- UN Human Rights Council (2008): Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; A/HRC/8/5, 7 April 2008, <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> (07.03.2013)
- UN Human Rights Council (2009): Promotion of all Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, Business and Human Rights: Towards Operationalizing the “Protect, Respect and Remedy” Framework, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises; A/HRC/11/13, 22 April 2009, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf> (07.03.2013)
- UN Human Rights Council (2011): Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31, 21 March 2011, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (27.02.2013)

### **Business Tools and Policy Documents**

- Anglo American (2007): Tool 4A, 2007 version, available for download at BASESwiki, [http://baseswiki.org/w/images/en/7/72/Upload--4A\\_Complaints\\_and\\_Grievance\\_Procedures.pdf](http://baseswiki.org/w/images/en/7/72/Upload--4A_Complaints_and_Grievance_Procedures.pdf) (24.08.2012)
- Anglo American (2012): Socio-Economic Assessment Toolbox (SEAT), Version 3, 2012, [http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/docs/updated\\_SEAT\\_v3\\_Toolbox.pdf](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/docs/updated_SEAT_v3_Toolbox.pdf) (12.03.2013)
- Anglo American, Good Citizenship: Business Principles, [http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/citizenship\\_bus\\_principles.pdf](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/citizenship_bus_principles.pdf) (22.08.2012)
- Anglo American, GRI indicator table, [http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/development/performance/GRI\\_2011.pdf](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/development/performance/GRI_2011.pdf) (28.08.2012)
- Gap, Code of Business Conduct (COBC), [http://www.gapinc.com/content/dam/gapincsite/documents/COBC/COBC\\_english.pdf](http://www.gapinc.com/content/dam/gapincsite/documents/COBC/COBC_english.pdf) (12.03.2013)
- Gap, Code of Vendor Conduct (COVC), <http://www.itglwf.org/lang/en/documents/GapCodeofConduct.pdf> (12.03.2013)
- HP, Electronic Industry Code of Conduct, Version 4.01, 12 June 2012, <http://www.hp.com/hpinfo/globalcitizenship/environment/pdf/supcode.pdf> (12.03.2013)

### **Related Websites and Links**

- Anglo American, <http://www.angloamerican.com>
- At a glance, <http://www.angloamerican.com/about/ataglance> (21.08.2012)
- Our approach, <http://www.angloamerican.com/about/approach> (28.08.2012)
- Partnerships and collaboration, <http://www.angloamerican.com/development/approach-and-policies/partnerships-and-collaboration/collaboration> (28.08.2012)
- SEAT, <http://www.angloamerican.com/development/social/seat> (22.08.2012)
- The Anglo Social Way, Management System Standards, Version 1, April 2009, [http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/aa\\_social\\_way](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/aa_social_way) (24.08.2012)
- Anglo SpeakUp, [www.anglospeakup.com/](http://www.anglospeakup.com/) (24.08.2012)
- How SpeakUp works, <https://www.anglospeakup.com/Anglo/HowDoesItWork.aspx> (24.08.2012)
- Whistleblowing Policy, <https://www.anglospeakup.com/anglo/WhistleBlowerPolicy.aspx> (24.08.2012)
- ASK (Arbeitsgruppe Schweiz-Kolombien), El Cerrejón und Xstrata, <http://www.askonline.ch/themen/wirtschaft-und-menschenrechte/bergbau-und-rohstoffkonzerne/el-cerrejon-und-xstrata/> (25.08.2012)
- BASESwiki, <http://baseswiki.org>
- Workers Grievance Processes, Gap Inc., Lesotho, [http://baseswiki.org/en/Gap\\_Inc.,\\_Lesotho](http://baseswiki.org/en/Gap_Inc.,_Lesotho) (12.03.2013)
- BIAC (The Business and Industry Advisory Committee to the OECD), <http://www.biac.org/> (08.10.2012)
- Cerrejón, Responsible Mining, <http://www.cerrejon.com>

Complaints Office, <http://www.cerrejon.com/site/english/sustainable-development-%E2%80%A2-social-responsibility/complaints-office.aspx> (24.08.2012)

Our company, <http://www.cerrejon.com/site/english/our-company.aspx> (20.08.2012)

Work with us, <http://www.cerrejon.com/site/english/our-company/work-with-us.aspx> (20.08.2012)

DDPR (The Directorate of Dispute Prevention and Resolution),  
<http://www.jurisint.org/en/ctr/179.html> (12.03.2013)

GAP Inc., <http://www.gapinc.com>

FAQ, <http://www.gapinc.com/content/csr/html/topnavtoolbar/faq.html> (12.03.2013)

Social Responsibility, Bangladesh,  
[http://www.gapinc.com/content/csr/html/Goals/supplychain/our\\_program\\_in\\_action/bangladesh.html](http://www.gapinc.com/content/csr/html/Goals/supplychain/our_program_in_action/bangladesh.html) (12.03.2013)

Social Responsibility, Supply Chain, <http://www.angloamerican.com>  
[http://www.gapinc.com/GapIncSubSites/csr/Goals/SupplyChain/SC\\_Factory\\_Working\\_Conditions.shtml](http://www.gapinc.com/GapIncSubSites/csr/Goals/SupplyChain/SC_Factory_Working_Conditions.shtml)

Vendor Development Program,  
[http://www.gapinc.com/content/csr/html/Goals/supplychain/working\\_with\\_factories/capacity\\_building.html](http://www.gapinc.com/content/csr/html/Goals/supplychain/working_with_factories/capacity_building.html) (12.03.2013)

HP (Hewlett Packard), <http://www.hp.com>

HP Global Human Rights Policy,  
<http://www.hp.com/hpinfo/globalcitizenship/humanrights.html> (12.03.2013)

HP Harassment-free Work Environment Policy,  
<http://www.hp.com/hpinfo/abouthp/diversity/harassfree.html> (12.03.2013)

HP History, <http://www8.hp.com/us/en/hp-information/about-hp/history/history.html>,  
(24.09.2012)

HP Open Door Policy, <http://www.hp.com/hpinfo/abouthp/diversity/open-door.html>  
(12.03.2013)

HP Suppliers,  
[http://www.hp.com/hpinfo/globalcitizenship/media/files/hp\\_suppliers\\_2011\\_gcr.pdf](http://www.hp.com/hpinfo/globalcitizenship/media/files/hp_suppliers_2011_gcr.pdf)  
(12.03.2013)

Report ethics concerns, <http://www8.hp.com/us/en/hp-information/global-citizenship/governance/report-ethics-concerns.html> (12.03.2013)

LNDC (Lesotho National Development Corporation), <http://www.lndc.org.ls/home/> (12.03.2013)

London Mining Network, <http://londonminingnetwork.org/?s=cerrejon> (25.08.2012)

MAC (Mines and Communities),  
<http://www.minesandcommunities.org/search.php?words=cerrejon> (25.08.2012)

OECD (Organisation for Economic Co-operation and Development), <http://www.oecd.org>

About the OECD, <http://www.oecd.org/about/> (05.10.2012)

Consultation on the Guidelines for Multinational Enterprises and the UN "Protect, Respect and Remedy" Framework, 4 October 2010,  
<http://www.oecd.org/daf/internationalinvestment/investmentfordevelopment/consultationontheguidelinesformultinationalenterprisesandtheunprotectrespectandremedyframework.htm>  
(08.03.2013)

Declaration and Decisions on International Investment and Multinational Enterprises.  
<http://www.oecd.org/daf/inv/investment-policy/oecddeclarationanddecisions.htm>  
(08.03.2013)

Guidelines for multinational enterprises, <http://www.oecd.org/daf/inv/mne/> (08.03.2013)

Investment Committee,  
<http://www.oecd.org/daf/internationalinvestment/oecdinvestmentcommittee.htm>  
(08.03.2013)

Members and partners, <http://www.oecd.org/about/membersandpartners/> (08.03.2013)

National Contact Points for the OECD Guidelines for Multinational Enterprises,  
<http://www.oecd.org/daf/inv/mne/ncps.htm> (08.03.2013)

2011 Update of the OECD Guidelines for Multinational Enterprises,  
<http://www.oecd.org/daf/inv/mne/2011update.htm> (08.03.2013)

OECD Watch, <http://oecdwatch.org/>

About OECD Watch, <http://oecdwatch.org/about-us> (18.09.2012)

OECD Guidelines Case Database, [http://oecdwatch.org/cases\\_](http://oecdwatch.org/cases_) (12.03.2013)

RED, Fighting for an Aids-Free Generation, <http://www.joinred.com/>

SAI (Social Accountability International), <http://www.sa-intl.org> (12.03.2013)

Social Fingerprint, <http://www.socialfingerprint.org/> (12.03.2013)

The Voluntary Principles on Security and Human Rights,  
[http://www.voluntaryprinciples.org/files/voluntary\\_principles\\_english.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf) (28.08.2012)

The World Bank Inspection Panel,  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64132057~pagePK:64130364~piPK:64132056~theSitePK:380794,00.html> (08.03.2013)

About the Inspection Panel  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64129249~pagePK:64132081~piPK:64132052~theSitePK:380794,00.html> (08.03.2013)

Operational Manual of the World Bank, Definitions, <http://go.worldbank.org/RF8N5YBBF0>  
(08.03.2013)

Inspection Panel Process,  
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20173251~menuPK:64129467~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html> (08.03.2013)

Brochure, Suggested format for a Request for Inspection,  
<http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/BrochureEnglishwhole.pdf> (08.03.2013)

TUAC (Trade Union Advisory Committee to the OECD),  
<http://www.tuac.org/en/public/index.phtml> (08.03.2013)

UN Global Compact, Human Rights and Business Dilemmas Forum, [http://human-rights.unglobalcompact.org/case\\_studies/Privacy/](http://human-rights.unglobalcompact.org/case_studies/Privacy/) (12.03.2013)

## Appendices

### Appendix 1: Effectiveness Matrix of Complaint Mechanisms

<b>INTERNATIONAL COMPLAINT MECHANISMS</b>							
	<i>Which kinds of complaints can be handled?</i>	<i>Who can access the mechanism?</i>	<i>What are the conditions of access?</i>	<i>Which processes are used?</i>	<i>What are the possible outcomes and available solutions?</i>	<i>Does an appeal or follow-up procedure exist?</i>	<i>Can decisions be enforced and if yes, how?</i>
<b>OECD Guidelines National Contact Points:</b>  Domestic agencies in adhering countries promote and implement the Guidelines by providing a mediation and conciliation platform for stakeholder complaints ("specific instances").	Complaints about corporate misconduct touching on a chapter/issue covered by the Guidelines; for instances either occurring in adhering countries or committed by companies based in an adhering country.	Any interested party including both individuals and groups or organisations (e.g. employees, trade unions, communities impacted by a company's activities, NGOs etc).	Complaints must be submitted in writing (by email or regular mail). Complainants representing an affected group like NGOs have to state their interest in the matter.	Forum for discussion to assist and reconcile between the complainant and accused company; external experts or relevant stakeholders (e.g. business or workers' representation, NGOs) might be consulted as well.	Consensual agreement between the parties that can include remediation or compensation; NCPs have to issue a final statement, irrespective of whether the dispute could be settled or not. In the latter case, NCPs should make recommendations with regard to proper implementation of the Guidelines.	No avenues for appeal exist for the parties of a complaint. Upon request from adhering countries, the OECD advisory bodies (BIAC, TUAC) or OECD Watch the Investment Committee can review NCPs performance in a particular case; its findings or statements cannot be contested or overruled, however.	No. Both the engagement in the mediation process as well as its outcomes are non-binding. NCPs are not obliged to state whether they found a breach of the Guidelines; their final statements include only recommendations.
<b>World Bank Inspection Panel:</b>  Accountability and recourse mechanism that investigates IBDR/IDA projects	Complaints on alleged Bank failure to comply with its own policies, procedures regarding projects funded by IBDR/IDA.	At least 2 individuals (group) of persons affected, a local NGO representing the group or (exceptionally) an int. NGO representing the group or an Executive Director of the Bank regarding Bank failures.	Requesters must show in writing that: - they live in the project area (or represent people who do) and are likely to be affected adversely by project activities; - they believe that they may suffer actual or are likely to suffer harm resulting from a failure by the Bank to follow its policies and procedures; - their concerns have been discussed with Bank management and they are not satisfied with the outcome.	A written request for inspection which is either desk research or on-site visit (the latter subject to approval by the Board of Directors and the borrower)  Mediation of Panel between Bank Management and requesters.	A remedial action plan by Bank Management in response to the request.  Panel recommendations on how to remedy the situation after an investigation.	No. Only follow-up by Bank Management and reporting to Board of Directors, no involvement of the Panel	No. The Panel's Investigation Report only contains recommendations, final approval of these recommendations lies with the Board of Directors.

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<b>COMPANY COMPLAINT MECHANISMS</b>							
	<i>Which kinds of complaints can be handled?</i>	<i>Who can access the mechanism?</i>	<i>What are the conditions of access?</i>	<i>Which processes are used?</i>	<i>What are the possible outcomes and available solutions?</i>	<i>Does an appeal or follow-up procedure exist?</i>	<i>Can decisions be enforced and if yes, how?</i>
<b>Anglo American Complaints and Grievance Procedure:</b>  Model of a human rights based project-level complaint mechanism; has to be established individually by all Anglo sites, considering certain minimum requirements. Centralized online system recording complaints.	Community-related complaints of any subject matter. Employment-related complaints can be raised if they have a community impact (e.g. housing and accommodation of workforce, discrimination, training or employment opportunities).	Any stakeholder either directly impacted by Anglo's operations, or on behalf of those affected. (Employees are included, however, for complaints about employment conditions they should use either local employee complaint mechanism or Anglo's corporate-level whistle-blowing facility).	The mechanisms provides for numerous entry points (hotline, mail and email, personally or via spokespersons); complainants can opt for anonymity	Formal mechanism overseen by complaints coordinator: - internal assessment phase (classification into minor, moderate and serious instances); - three-step investigation phase, includes consulting complainants (dispute resolution techniques may be applied); - concluding stage (resolution, identification of preventative actions)	Actions for resolution like compensation payments are not specified in Anglo's Model mechanism since it depends on the particular circumstances of a case. Decisions to resolve a complaint need to be signed-off by senior staff members or management (moderate and serious complaints).	Yes. Both, the internal findings or proposed resolution of a complaint can be appealed by complainants. A specific panel for appeals has to be formed for each case (involving senior managers, independent third party members, technical experts if required).	Not really; the effectiveness of the complaints procedure and the implementation of resolutions should be ensured by internal and external audits; moreover, the number and kinds of complaints should be reported on (no further details on the cases like e.g. the outcomes are required to be made public, however).
<b>GAP Complaint Mechanism:</b> Four instance complaints process for workers in Lesotho  Informal mechanism that investigates the alleged violation of Gap's Code of Vendor Conduct	Complaints on alleged supplier's violation of Gap's Code of Vendor Conduct or other issues outside the Code of Vendor Conduct regarding worker's interests in supply factories of Gap	Any worker, groups of workers or union representative in the factory can register a complaint concerning the violation of Gap's Code of Vendor Conduct or other issues regarding worker's interests	There are no formal criteria at first instance of the process. Workers can raise the complaint - verbally or in writing - but: it must become clear that an official grievance is being lodged Later on, at the second stage of the process, a written complaint needs to be completed	An informal factory-level process, which is either investigation or a written decision that ends the dispute  Mediation of Gap's social responsibility manager between worker(s) and supplier	Outcomes of the process may include remediation or any other measures of redress agreed between management and worker(s) If no solution can be found, the grievance is referred to official legal channels in the country (e.g. labour courts) See also appeals procedure	Not formally; the party that does not agree with outcomes can take the dispute to the applicable legal channels.  No follow-up procedure. It is up to the parties to communicate the outcome of the proceedings. Gap itself does not publicise any information	Gap imposes sanctions to enforce its Code of Vendor Conduct. Either it terminates the relationship with the supplier or it requires the implementation of an action plan
<b>HP Complaints Mechanism Mexico:</b>	Complaints on alleged failure of HP or its suppliers on the EICC Code of Conduct and on labour rights.	All workers (employed or subcontracted) of HP and its supplier companies; no group complaints.	Requesters can access directly the management, the employment agency or CEREAL; a written substantiation of the alleged violation is not required, CEREAL assesses whether the request is legitimate and documents the facts.	Direct negotiation between the worker and the company on the first level of the mechanism; mediation between the conflicting parties by third parties, in particular CEREAL from the 2nd to the 4th level.	Remedial action may consist in compensation of workers for legitimate claims (e.g. payoffs); restitution according to Mexican labour law (e.g. resumption of work contract); disciplinary (translocation of worker) or training measures.	Yes. The third and the fourth level of the mechanism review the case.	HP imposes sanctions to enforce the Code of Conduct. In case of non-compliance it either terminates the manufacturing contract with the supplier or it requires the implementation of an action plan.

## Appendix 2: OECD Guidelines – Specific Instances (5/2001-6/2011)

No.	Case	Date filed	Issue	Country	NCP(s)	Complainant(s)	Company/ies	Status	Reasons for Non-conclusion
1	RAID vs. Binani	5/2001	Binani's corruption in mining industry in Zambia	Zambia	UK	Afronet, Rights and Accountability in Development	Ramco (violator), Binani Inc. (responsible)	withdrawn	bankruptcy of violator
2	ICN vs Adidas Netherlands	6/2001	labour violations in football production	India	Netherlands	India Committee of the Netherlands	Mayor & Company (violator), Adidas Benelux (responsible), Mitre Sports International (involved)	(concluded)	
3	ICN vs Kubbinga	6/2001	labour violations in Indian football production	India	Netherlands	India Committee of the Netherlands	Mayor & Company (violator), Ch. H. Kubbinga B.V. (responsible)	rejected	investment nexus
4	Oxfam Canada vs. First Quantum Mining	7/2001	First Quantum forced evictions in Zambia	Zambia	Canada	Afronet, Oxfam Canada, DECOP, Rights and Accountability in Development	Mopani Copper Mines (violator), First Quantum Minerals Ltd. (responsible), Glencore International AG (involved)	concluded	
5	RAID vs Anglo American	2/2002	Anglo American mining activities in Zambia -	Zambia	UK	Afronet, Citizens for a better Environment, Rights and Accountability in Development	Congola Copper Mines (violator), Anglo American Plc. (responsible)	closed	unwill, "waste of time"
6	Greenpeace vs TotalFinaElf	4/2002	TotalFinaElf's oil supply from Russia	Russia	Germany	Greenpeace Germany	Total Fina Elf GmbH	rejected	investment nexus
7	Germanwatch vs Continental AG	5/2002	Continental AG's labour practices in Mexico	Mexico	Germany – then Mexico	Germanwatch	Continental AG (violator; Germany), Euzkadi (involved; Mexico)	concluded	
8	FoE Netherlands vs Nutreco	8/2002	Nutreco/Marine Harvest's Salmon in Chile -	Chile	Netherlands – then Chile	Centro Ecoceanos, FoE Netherlands	Marine Harvest (violator; Chile), Nutreco Holding (responsible; Netherlands)	concluded	
9	CCC vs Adidas	9/2002	Labour rights violations in Indonesian supply chain	Indonesia	Austria – then Germany	Clean Clothes Campaign Austria, Clean Clothes Campaign Germany, SÜDWIND – Institut für Ökonomie und Ökonomie	PT Panarub (violator; Indonesia), Adidas (responsible; Germany), PT Nikomas Gemilang	concluded	
10	CCC vs Nike	9/2002	Labour rights violations in Indonesian supply chain	Indonesia	Austria – then USA	Clean Clothes Campaign Austria, Clean Clothes Campaign Germany, Global Exchange	PT Nikomas Gemilang (violator; Indonesia), Nike (responsible; USA)	rejected	NCP USA: "addressed through other appropriate means"
11	Unite et al vs Brylance Inc.	10/2002	Brylance's anti-trade union practices in the US	USA	France – then Austria	Trade Unions (UNITE, FNV, Mondiaal, Confédération Générale du Travail-Force Ouvrière, Confédération Générale du Travail, Confédération Française	Brylance Inc. (violator; USA), Pinault-Printemps-Redoute (FRA), Gucci Group N.V.	withdrawn	



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						Démocratique du Travail, American Federation of Labor - Congress of Industrial Organizations), Clean Clothes Campaign Austria			
12	Table de Concertation sur Droits Humains vs First Quantum Minerals	12/2002	Illegal Resource exploitation in DRC	DR Congo	Canada	Table de Concertation sur Droits Humains	First Quantum Minerals Ltd. (CAN)	closed	NCP never filed decision
13	ATTAC & FoE Sweden vs Atlas Copco	2/2003	Gold mining, pollution and human rights violations in Ghana	Ghana	Sweden	ATTAC Sweden, Friends of the Earth Sweden	Ashanti Goldfields Ltd. (violator; Ghana), Atlas Copco Group (responsible; Sweden), Sandvik AB (also involved)	concluded	
14	ATTAC & FoE Sweden vs Sandvik	2/2003	Gold mining, pollution and human rights violations in Ghana	Ghana	Sweden	ATTAC Sweden, Friends of the Earth Sweden	Ashanti Goldfields Ltd. (violator; Ghana), Sandvik AB (responsible; Sweden), Atlas Copco Group (also involved, view Case 13)	concluded	
15	CRBM vs ENI	9/2004	El papel de BP en el oleoducto de BTC	Georgia	UK – then Italy	Campagna per la Riforma della Banca Mondiale, World Economy, Ecology & Development, FERN, FoE Netherlands, Friends of the Earth England, Wales and Northern Ireland, Friends of the Earth France, Friends of the Earth Germany, Friends of the Earth United States of America, Germanwatch, PLATFORM, The Corner House, urgewald e.V.	Baku-T'blisi-Ceyhan Consortium (violator), ENI (responsible; Italy), Total Fina Elf GmbH, BP p.l.c., SOCAR, Unocal, ConocoPhillips, Statoil, TPAO National Oil and Gas Company of Turkey, Itochu, Inpex Corporation, Delta Hess	pending	UK records status as lead NCP
16	FoE France vs TotalFinaElf	4/2003	BTC oil pipeline through Azerbaijan, Georgia and Turkey	Georgia	UK – then France	Campagna per la Riforma della Banca Mondiale, World Economy, Ecology & Development, FERN, FoE Netherlands, Friends of the Earth England, Wales and Northern Ireland, Friends of the Earth France, Friends of the Earth Germany, Friends of the Earth United States of America, Germanwatch, PLATFORM, The Corner	Baku-T'blisi-Ceyhan Consortium (violator), TotalFinaElf (responsible; Italy), BP p.l.c., SOCAR, Unocal, ConocoPhillips, Statoil, TPAO National Oil and Gas Company of Turkey, Itochu, Inpex Corporation, Delta Hess	rejected	UK records status as lead NCP

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17	CRBM vs ENI	4/2003	BTC oil pipeline through Azerbaijan, Georgia and Turkey	Georgia	UK – then Italy	House, urgewald e.V. Campagna per la Riforma della Banca Mondiale, World Economy, Ecology & Development, FERN, FoE Netherlands, Friends of the Earth England, Wales and Northern Ireland, Friends of the Earth France, Friends of the Earth Germany, Friends of the Earth United States of America, Germanwatch, PLATFORM, The Corner House, urgewald e.V.	Baku-T'blisi-Ceyhan Consortium (violator), ENI (responsible; Italy), Total Fina Elf GmbH, BP p.l.c., SOCAR, Unocal, ConocoPhilips, Statoil, TPAO National Oil and Gas Company of Turkey, Itochu, Inpex Corporation, Delta Hess	pending	UK records status as lead NCP
18	FoE US vs Delta Hess	4/2003	BTC oil pipeline in Azerbaijan, Georgia & Turkey	Georgia	UK – then USA	Campagna per la Riforma della Banca Mondiale, World Economy, Ecology & Development, FERN, FoE Netherlands, Friends of the Earth England, Wales and Northern Ireland, Friends of the Earth France, Friends of the Earth Germany, Friends of the Earth United States of America, Germanwatch, PLATFORM, The Corner House, urgewald e.V.	Baku-T'blisi-Ceyhan Consortium (violator), Delta Hess (responsible; USA), ENI, TotalFinaElf GmbH, BP p.l.c., SOCAR, Unocal, ConocoPhilips, Statoil, TPAO National Oil and Gas Company of Turkey, Itochu, Inpex Corporation	pending	UK records status as lead NCP
19	FoE US vs ConocoPhilips	4/2003	BTC oil pipeline in Azerbaijan, Georgia & Turkey	Georgia	UK – then USA	Campagna per la Riforma della Banca Mondiale, World Economy, Ecology & Development, FERN, FoE Netherlands, Friends of the Earth England, Wales and Northern Ireland, Friends of the Earth France, Friends of the Earth Germany, Friends of the Earth United States of America, Germanwatch, PLATFORM, The Corner House, urgewald e.V.	Baku-T'blisi-Ceyhan Consortium (violator), ConocoPhilips (responsible; USA), ENI, TotalFinaElf GmbH, BP p.l.c., SOCAR, Unocal, Delta Hess, Statoil, TPAO National Oil and Gas Company of Turkey, Itochu, Inpex Corporation	pending	UK records status as lead NCP
20	FoE US vs Unocal	4/2003	BTC oil pipeline in Azerbaijan, Georgia & Turkey	Georgia	UK – then USA	Campagna per la Riforma della Banca Mondiale, World Economy, Ecology & Development, FERN, FoE Netherlands, Friends of the	Baku-T'blisi-Ceyhan Consortium (violator), Unocal (responsible; USA), ENI, TotalFinaElf GmbH, BP p.l.c., SOCAR,	pending	UK records status as lead NCP

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						Earth England, Wales and Northern Ireland, Friends of the Earth France, Friends of the Earth Germany, Friends of the Earth United States of America, Germanwatch, PLATFORM, The Corner House, urgewald e.V.	ConocoPhillips, Delta Hess, Statoil, TPAO National Oil and Gas Company of Turkey, Itochu, Inpex Corporation		
21	Corner House et al vs BP	4/2003	BTC oil pipeline in Azerbaijan, Georgia & Turkey -	Georgia	UK, Germany, USA, France, Italy	Campagna per la Riforma della Banca Mondiale, World Economy, Ecology & Development, FERN, FoE Netherlands, Friends of the Earth England, Wales and Northern Ireland, Friends of the Earth France, Friends of the Earth Germany, Friends of the Earth United States of America, Germanwatch, PLATFORM, The Corner House, urgewald e.V.	Baku-T'blisi-Ceyhan Consortium (violation), BP p.l.c. (responsible; USA), ENI, TotalFinaElf GmbH, Unocal, SOCAR, ConocoPhillips, Delta Hess, Statoil, TPAO National Oil and Gas Company of Turkey, Itochu, Inpex Corporation	concluded	
22	Greenpeace Germany vs West LB	5/2003	West LB financing of oil pipeline in Ecuador	Ecuador	Germany	Greenpeace Germany	Consortium Heavy Crude Oil Pipeline Ecuador (violation; includes: EnCana – Canada, Repsol YPF – Spain, Pecom Energia – Argentina, Occidental Petroleum – USA, ENI Agip – Italy, Techint – Argentina, Perenco – UK), Westdeutsche Landesbank AG (responsible)	rejected	investment nexus
23	NiZA et al. vs CPH	7/2003	CPH & illegal resource exploitation in DRC -	DR Congo	Netherlands	Centre National d'Appui au Développement et à la Participation Populaire, FoE Netherlands, IUCN Netherlands Committee (IUCN NL), Netherlands institute for Southern Africa, Oxfam Novib, Programme d'Actions Locales, RECORE	Eagle Wings Resources International (violation; Trinitech Holding - USA), Chemie Pharmacie Holland (responsible)	rejected	
24	CBE vs National Grid Transco	7/2003	NGT's mining activities in Zambia	Zambia	UK	Citizens for a better environment	National Grid Transco plc (violation & responsible; UK), Copperbelt Energy Corporation plc, Cinergy	closed	closed due to "want of prosecution"

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							Corporation, Zambia Consolidated Copper Mines Investment Holdings		
25	CGB Network vs H.C. Starck	10/2003	H.C. Starck buying Coltan from DRC supporting the conflict	DR Congo	Germany	Coalition against Bayer dangers	H.C.Starck	rejected	n/s
26	Protest Toyota Campaign vs Toyota	3/2004	Toyota's anti-trade union practices in the Philippines	Philippines	Japan	Protest Toyota Campaign, Toyota Motor Philippines Corporation Workers' Association	Toyota Motor Corporation	blocked	blocked; "no time limit specified for initial assessment"
27	Proyecto Gato vs Tractebel - -	4/2004	Tractebel's Houay Ho dam in Laos	Laos	Belgium	Proyecto Gato	Houay Ho Power Limited, Tractebel Electricity & Gas International	concluded	
28	Proyecto Gato vs ING	5/2004	BTC oil pipeline in Azerbaijan, Georgia & Turkey	Georgia	Belgium	Proyecto Gato	Baku-T'blishi-Ceyhan-Consortium (violation), ING (responsible; Belgium), KBC (involved; Belgium), Dexia (involved; Belgium)	blocked	forward to UK-NCP, UK-NCP: "Not responsible for belgian banks."
29	Proyecto Gato vs Dexia	5/2004	BTC oil pipeline in Azerbaijan, Georgia & Turkey	Georgia	Belgium	Proyecto Gato	Baku-T'blishi-Ceyhan-Consortium (violation), Dexia (responsible; Belgium), KBC (involved; Belgium), ING (involved; Belgium)	blocked	forward to UK-NCP, UK-NCP: "Not responsible for belgian banks."
30	Proyecto Gato vs KBC	5/2004	BTC oil pipeline in Azerbaijan, Georgia & Turkey	Georgia	Belgium	Proyecto Gato	Baku-T'blishi-Ceyhan-Consortium (violation), KBC (responsible; Belgium), Dexia (involved; Belgium), ING (involved; Belgium)	blocked	forward to UK-NCP, UK-NCP: "Not responsible for belgian banks."
31	RAID vs Ridgepoint	6/2004	UK companies & illegal resource exploitation in DRC	DR Congo	UK	Rights and Accountability in Development	Ridgepoint International Developments Ltd (violation, responsible; UK), Gecamines (involved; Congo), Central Mining Group (involved)	withdrawn	dropped by complainant, UN Panel resolved issues
32	RAID vs Alex Stewart	6/2004	UK companies & illegal resource exploitation in DRC	DR Congo	UK	Rights and Accountability in Development	Eagle Wings Resources International (violation; USA), Alex Stewart (Assayer) Ltd. (responsible; UK)	withdrawn	dropped by complainant, UN Panel resolved issues
33	RAID vs Tremalt	6/2004	UK companies & illegal resource exploitation in DRC	DR Congo	UK	Rights and Accountability in Development	Tremalt Ltd. (violation, responsible; UK), Breco Business Group (involved)	withdrawn	dropped by complainant, UN Panel resolved issues
34	RAID vs Das Air	6/2004	UK companies & illegal resource exploitation in DRC	DR Congo	UK	Rights and Accountability in Development	Dairo Air Services (violation, responsible; UK)	concluded	
35	RAID vs Avient	6/2004	UK companies & illegal	DR Congo	UK	Rights and Accountability in	Avient Air (violation,	concluded	

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			resource exploitation in DRC			Development	responsible; UK), Oryx national resources (involved)		
36	RAID vs Oryx	6/2004	UK companies & illegal resource exploitation in DRC	DR Congo	UK	Rights and Accountability in Development	Oryx National Resources (violation, responsible; UK), Sengamines, Operation Sovereign Legitimacy	concluded	
37	FoE & RAID vs OM Group Inc.	8/2004	US companies & illegal resource exploitation in DRC	DR Congo	USA	Friends of Earth USA, Rights and Accountability in Development	Groupe pour le Traitement des Scories du Terril de Lumbumbashi, Ltd. (violation), OM Group Inc (responsible; USA), George Forrest International (involved)	rejected	
38	FoE & RAID vs Trinitech	8/2004	US companies & illegal resource exploitation in DRC	DR Congo	USA	Friends of Earth USA, Rights and Accountability in Development	Eagle Wings Resources International (violation; USA), Trinitech International Inc (responsible; USA)	rejected	n/s
39	FoE & RAID vs Cabot Corporations	8/2004	US companies & illegal resource exploitation in DRC	DR Congo	USA	Friends of Earth USA, Rights and Accountability in Development	Eagle Wings Resources International (violation; USA), Cabot Corporations (responsible; USA)	rejected	allegations "have not been adequately substantiated, denied by the firms concerned and called into doubt by the party that originally made them". The NCP is "prepared to make further inquiries with the UN regarding the availability of any further information on the US firms mentioned in the UN Panel's report"
40	Germanwatch vs Bayer	10/2004	Bayer's Cotton Seed production in India	India	Germany	Coalition Against Bayer Dangers, Germanwatch, Global March Against Child Labour	Proagro Seed Company Private Limited (violation; India), Bayer (responsible; Germany)	concluded	
41	11.11.11 et al vs Belgolaise	8/2004	Belgian companies illegal resource exploitation in DRC	DR Congo	Belgium	Proyecto Gato, Rights and Accountability in Development, Vlaamse Noord-Zuid beweging, Groupe de Recherche pour une Stratégie économique alternative	Belgolaise (violation, responsible),	rejected	ongoing legal procedures

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42	11.11.11 et al vs Nami Gems	11/2004	Belgian companies illegal resource exploitation in DRC	DR Congo	Belgium	Proyecto Gato, Rights and Accountability in Development, Vlaamse Noord-Zuid beweging, Groupe de Recherche pour une Stratégie économique alternative	Nami Gems (violation, responsible),	rejected	things have changed for the better since the facts of the case, no investment nexus
43	11.11.11 et al vs Cogecom	11/2004	Belgian companies illegal resource exploitation in DRC	DR Congo	Belgium	Proyecto Gato, Rights and Accountability in Development, Vlaamse Noord-Zuid beweging, Groupe de Recherche pour une Stratégie économique alternative	Cogecom (violation, responsible),	rejected	ongoing legal procedures
44	11.11.11 et al vs George Forrest International SA	11/2004	Belgian companies illegal resource exploitation in DRC	DR Congo	Belgium	Proyecto Gato, Rights and Accountability in Development, Vlaamse Noord-Zuid beweging, Groupe de Recherche pour une Stratégie économique alternative	George Forrest International (violation, responsible)	concluded	
45	Proyecto Gato vs Electricité de France	11/2004	Electricité de France involvement in Laos hydroelectric dam	Laos	France	Campagna per la Riforma della Banca Mondiale, Finnish Asiatic Society, Friends of the Earth France, International Rivers Network, Proyecto Gato, World Rainforest Movement	Nam Theun 2 Power Company (violation; Laos), Electricité de France (responsible), Electricity Generating Public Company of Thailand (involved), Ital-Thai Development Public Company Limited (involved), Electricité du Laos (involved)	concluded	
46	Corner House vs Rolls Royce	4/2005	British companies and UK export credit programme	UK	UK	The Corner House	Rolls Royce	closed	
47	Corner House vs Airbus	4/2005	British companies and UK export credit programme	UK	UK, France involved	The Corner House	Airbus S.A.S.	closed	
48	Corner House vs BAE Systems	4/2005	British companies and UK export credit programme	UK	UK	The Corner House	BAE Systems	closed	
49	DECOIN et al vs Ascendant Copper Corporation	5/2005	Ascendant's Junín mine in Ecuador's cloud forest	Ecuador	Canada	Defensa y Conservación Ecológica de Intag, Les Amis de la Terre Canada, Mining Watch Canada	Ascendant Copper Corporation (violation, responsible, CAN)	withdrawn	
50	MAB & Terra de	6/2005	Alcoa Alumínios et al	Brazil	Brazil	Movimento dos Atingidos	Grupo Votorantim (violation,	blocked	blocked; reason not

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	Direitos vs Votorantim		hydroelectric dam in Brazil			por Barragens, Terra de Direitos	responsible), Alcoa Aluminios		available
51	MAB & Terra de Direitos vs ALCOA Aluminios	6/2005	Alcoa Aluminios et al hydroelectric dam in Brazil	Brazil	Brazil	Movimento dos Atingidos por Barragens, Terra de Direitos	Alcoa Aluminios (violator, responsible), Grupo Votorantim (involved)	blocked	blocked; reason not available
52	Human Rights Council of Australia et al vs Global Solutions –	6/2005	GSL management of detention centers in Australia	Australia	Australia, UK involved	Brotherhood of St Laurence, ChilOut, Human Rights Council of Australia, International Commission of Jurists, Rights and Accountability in Development	Global Solutions Limited (Australia) Pty Ltd	concluded	
53	Rights and Democracy vs Anvil Mining	6/2005	Anvil Mining's Role in massacre in Congo	DR Congo	Canada	L'Entraide Missionnaire, Rights and Accountability in Development, Rights and Democracy	Anvil Mining Corporation	rejected	Anvil Mining denies unfounded allegation
54	ForUM vs Aker Kvaerner ASA	6/2005	Aker Kvaerner involvement in Guantanamo Bay Prisons	Cuba	Norway	Forum for Environment and Development	Aker Kvaerner ASA	concluded	
55	Nepenthes vs Dalhoff, Larsen & Hornemann (DLH)	3/2006	DLH's purchasing of illegal timber from conflict zones	Liberia	Denmark	Nepenthes	Dalhoff, Larsen & Hornemann (DEN)	closed	
56	CEDHA vs Botnia S.A.	4/2006	Botnia's Orion Pulp Mill Project in Uruguay	Uruguay	Finland	Fundación Centro de Derechos Humanos y Ambiente	Oy Metsä-Botnia (violator, responsible, FIN)	concluded	legal complaint ("rejection of specific instance was illegal")
57	Transparency International Germany vs Ratiopharm	4/2006	Ratiopharm's unethical marketing in Germany, Belgium et al	Germany	Germany	Transparency International Germany	Ratiopharm (violator, responsible; Netherlands)	rejected	
58	Fenceline Community & FoE Netherlands vs Royal Dutch Shell	5/2006	Shell's Pandacan Oil Depot in the Philippines	Philippines	Netherlands	FoE Netherlands, Friends of The Earth International, The Fenceline Community For Human Safety	Royal Dutch Shell (violator, responsible; Netherlands)	concluded	
59	CAVE & FoE Netherlands vs Royal Dutch Shell	5/2006	Shell and Exxon's chemical storage & health impact in Brazil	Brazil	Netherlands, Brazil involved	Coletivo Alternativa Verde, FoE Netherlands, Friends of The Earth International, SIPETROL	Pool Sao Paulo (violator), Royal Dutch Shell (responsible; Netherlands)	rejected	
60	CAVE & FoE Netherlands vs Exxon	n/a	Shell and Exxon's chemical storage & health impact in Brazil	Brazil	Brazil, USA involved	Coletivo Alternativa Verde, FoE Netherlands, Friends of The Earth International, SIPETROL	Pool Sao Paulo (violator), Exxon Mobile (responsible; USA)	rejected	
61	CEDHA vs Finnvera plc.	6/2006	Botnia's Orion Pump mill project in Uruguay	Uruguay	Finland	Fundación Centro de Derechos Humanos y Ambiente	Finnvera (violator, responsible; Finland) Oy Metsä-Botnia (involved)	rejected	Finnvera is not a multinational enterprise and the Guidelines cannot be considered

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62	CEDHA & Bellona vs Finnvera plc.	6/2006	Botna's Orion Pump mill project in Uruguay -	Uruguay	Sweden, Finland (involved), Norway (involved)	Fundación Centro de Derechos Humanos y Ambiente, The Bellona Foundation	Nordea (violator, responsible; Sweden), Oy Metsä-Botnia (involved, Finland)	concluded	
63	Transparency International Germany vs Ratiopharm	7/2006	Ratiopharm's unethical marketing in Germany, Belgium et al	Germany	Germany	Transparency International Germany	Ratiopharm (violator, responsible; Germany)	rejected	"to be dealt with by the NCPs of the countries where the alleged misbehaviour occurred, i.e. Belgium, Canada, Estonia, and Spain."
64	ACF et al vs ANZ Bank	8/2006	ANZ Bank's facilitation of destructive forestry in PNG	Papua New Guinea	Australia	Centre for Environmental Law and Community Rights, Australian Conservation Foundation, Environmental Law Centre, Human Rights Council of Australia, PNG Eco-Forestry Forum	ANZ Bank	rejected	ANZ's loans and guarantees do not constitute an "investment nexus" between the bank and the logging company
65	CCC & ICN vs G-Star	10/2006	G-Star's Indian supplier's labour rights abuses	India	Netherlands	Civil Initiatives for Development and Peace, Clean Clothes Campaign International Secretariat, India Committee of the Netherlands, Schone Kleren Campagne, Garment and Textile Workers Union (Trade Union)	Fibres and Fabrics International (violator; India), G-Star International BV (responsible, Netherlands)	withdrawn	G-Star has repaired its relations with FFI/JKPL
66	Global Witness vs Afrimex	2/2007	Afrimex' mineral trading in DRC	UK	UK	Global Witness	Afrimex Ltd. (violator, responsible; UK)	concluded	
67	CGTP et al vs Grupo Altas Cumbres	4/2007	Banco del Trabajo's labour rights abuses in Peru	Peru	Chile	CONFEDERACIÓN GENERAL DE TRABAJADORES DEL PERÚ, Centro de Estudios Nacionales de Desarrollo Alternativo, Programa Laboral de Desarrollo, Federación de Trabajadores Bancarios de Chile (Trade Union)	Banco del Trabajo (violator, Peru), Grupo Altas Cumbres (responsible; Chile)	closed	subsidiary "Banco del Trabajo" sold to Scotiabank Group (CAN)
68	Germanwatch vs Volkswagen	5/2007	Volkswagen's climate change impacts	Germany	Germany	Germanwatch	Volkswagen AG (violator, responsible; Germany)	rejected	non of the issues are regarded violations of the OECD Guidelines
69	Transparency International	6/2007	German companies' involvement in UN Oil	Iraq	Germany	Transparency International	57 German companies	rejected	"trade is not covered by the



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	Germany vs 57 german companies		for Food programme scandal Iraq						OECD Guidelines and ongoing parallel procedures preclude the NCP's handling the case."
70	Colombian Communities vs BHP Billiton	6/2007	BHP Billiton an forced evictions at Colombian coal mine	Colombia	Australia, UK (involved), Switzerland (involved)	Arbeitsgruppe Schweiz-Kolumbien ask, Corporación Colectivo de Abogados	Cerrejon Coal (violator; Colombia), BHP Billiton (responsible, Australia)	concluded	
71	CIPCE vs Skanska	9/2007	Corruption in Skanska's gas pipeline project in ARG	Argentina	Argentina	centro de Investigacion y Prevencion de la Criminalidad Economica	Skanska (violator, responsible; Sweden)	closed	rejected the request for intervention by the Investment Committee, arguing that the committee does not have the ability to interpret the Guidelines.
72	Workers Assistance Center et al vs Il-Kyoung Co. Ltd.	9/2007	Korean textile companies' labour abuses in the Philippines	Philippines	Korea	Workers Assistance Center, Inc., Korean Confederation of Trade Unions (Trade Union), Korean House of International Solidarity (Trade Union), Phils. Jeon Union (Trade Union)	Phils. Jeon Garment Inc. (violator, Philippines), Il-Kyoung Co. Ltd. ( responsible; Rep. of Korea)	pending	
73	Workers Assistance Center et al vs Chongwon Fashion Inc.	9/2007	Korean textile companies' labour abuses in the Philippines	Philippines	Korea	Workers Assistance Center, Inc., Chongwon Union (Trade Union), Korean Confederation of Trade Unions (Trade Union), Korean House of International Solidarity (Trade Union)	Chongwon Fashion (violator, Rep. of Korea), Chongwon Trading ( responsible; Rep. of Korea)	pending	"because of the close down of both the Philippine branch and the head office in Korea."
74	Green Party of New Zealand vs ANZ Bank	9/2007	ANZ Bank's facilitation of destructive forestry in PNG	Papua New Guinea	New Zealand	Centre for Environmental Law and Community Rights, Australian Conservation Foundation, Environmental Law Centre, Human Rights Council of Australia, PNG Eco-Forestry Forum	ANZ Bank (violator, responsible, New Zealand)	rejected	ANZ's loans and guarantees do not constitute an "investment nexus" between the bank and the logging company
75	Colombian Communities vs Xstrata	10/2007	BHP Billiton an forced evictions at Colombian coal mine	Colombia	Australia, Switzerland (involved)	Arbeitsgruppe Schweiz-Kolumbien ask, Corporación Colectivo de Abogados	Correjon Coal (violator; Colombia), Xstrata (responsible, Switzerland), BHP Billiton	concluded	
76	H. Recalde & H. W. Jofre vs Accor Service	11/2007	Accor Service's bribes to retain business in Argentina	Argentina	Argentina	National Deputy Hector Recalde, Wortman Jofre Isola Abogados	Accor Argentina (violator; Argentina), Accor Services (responsible, France),	concluded	

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							Sodexho Pass (involved, France)		
77	Gresea & Transparency International Germany vs Ratiopharm	1/2008	Ratiopharm's unethical marketing in Germany, Belgium et al	Belgium	Belgium, Germany (involved)	Groupe de Recherche pour une Stratégie économique alternative, Transparency International - Germany	Ratiopharm (violator, responsible; Netherlands)	rejected	alleged violations are commonplace in the generic drugs sector and thus not specific to this company
78	Gesellschaft für bedrohte Völker vs Volkswagen	4/2008	Volkswagen indirect support for Human Rights violations in China	China	Germany	Gesellschaft für bedrohte Völker	Volkswagen AG (violator, responsible; Germany)	rejected	n/s
79	FOCO & FoE Argentina vs Shell Capsa –	5/2008	Shell's environmental and health violations in Argentina	Argentina	Argentina	Foro para la Participación Ciudadana, Friends of the Earth Argentina	Royal Dutch Shell (violator, responsible; Germany)	pending	
80	Pobal Chill Chomain Community et al vs Shell	8/2008	Shell-led consortium's gas pipeline in Ireland	Ireland	Ireland; Canada, USA, Norway, Netherlands (involved)	Pobal Chill Chomain, Rossport, Ballina, Co Mayo; Action from Ireland, Association SHERPA	Royal Dutch Shell (violator, responsible; NED), Statoil (involved, Norway), Marathon Oil Corporation (involved, USA)	closed	
81	Pobal Chill Chomain Community et al vs Marathon Oil	8/2008	Shell-led consortium's gas pipeline in Ireland	Ireland	Ireland, Canada, USA, Norway, Netherlands	Pobal Chill Chomain, Rossport, Ballina, Co Mayo; Association SHERPA	Marathon Oil Corporation (violator, responsible; USA), Statoil (involved, Norway), Royal Dutch Shell (involved, NED)	closed	
82	Pobal Chill Chomain Community et al vs Statoil	8/2008	Shell-led consortium's gas pipeline in Ireland	Ireland	Ireland, Canada, USA, Norway, Netherlands	Pobal Chill Chomain, Rossport, Ballina, Co Mayo; Association SHERPA, Action from Ireland	Statoil (violator, responsible; Norway), Marathon Oil Corporation (involved, USA), Royal Dutch Shell (involved, NED)	closed	
83	Shehri Citizens for a better environment vs SHV Holding, NV	10/2008	Makro's Human Rights and environment violations in Pakistan	Pakistan	Netherlands	Shehri Citizens for a Better Environment	SHV Holdings NV (responsible; NED), Makro Habib Pakistan Ltd. (violator, Pakistan)	rejected	investment nexus has ceased to exist
84	Earth Right's International et al vs KOGAS	10/2008	DAEWOO and KOGAS' pipeline project in Burma	Myanmar	Rep. Korea	Citizen's Action Network, Burma Action Korea, EarthRights International, Human Rights Solidarity for New Society, People for Democracy in Burma, The Association for Migrant Workers' Human Rights, Writers for Democracy in Burma, Korean Confederation of Trade Unions (trade union),	Korea Gas Corporation (responsible, violator; Korea), DAEWOO International (involved, Korea)	rejected	n/s

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						Korean House of International Solidarity (trade unions), Federations of Korean Trade Unions (trade union)			
85	Earth Right's International et al vs DAEWOO	10/2008	DAEWOO and KOGAS' pipeline project in Burma	Myanmar	Rep. Korea	Citizen's Action Network, Burma Action Korea, EarthRights International, Human Rights Solidarity for New Society, People for Democracy in Burma, The Association for Migrant Workers' Human Rights, Writers for Democracy in Burma, Korean Confederation of Trade Unions (trade union), Korean House of International Solidarity (trade unions), Federations of Korean Trade Unions (trade union)	DAEWOO International (responsible, violator; Korea), Korea Gas Corporation (involved, Korea)	rejected	n/s
86	Survival International vs Vedanta Resources plc	12/2008	Environmental and HR issues in Vedanta's Operations in India	India	UK	Survival International	Vedanta Resources plc (responsible, violator; UK)	concluded	
87	Framtiden i vare hender vs Intex Resources	1/2009	Intex Resources environmental in Philippines	Philippines	Norway	Future in Our Hands	Intex Resources (responsible, violator; Norway)	pending	
88	ForUM and FoE Norway vs Cermaq ASA	5/2009	Cermaq ASA's salmon farming in Canada and Chile	Canada	Norway, Canada (involved), Chile (involved)	Norges Naturvernforbund, Forum for Environment and Development	Cermaq ASA (responsible, violator; Norway)	concluded	
89	CIPCE vs Skanska	5/2009	Corruption in Skanska's Gas pipeline project, Argentina	Argentina	Argentina	centro de Investigacion y Prevencion de la Criminalidad Economica	Skanska	closed	closing both cases without making an evaluation of the validity of the allegations
90	FIAN and Wake up and Fight for Your Rights vs NKG	6/2009	Forced evictions at NKG coffee plantation in Uganda	Uganda	Germany	Foodfirst Information & Action Network, Wake up and fight for your rights Madudu Group	Neumann Kaffee Gruppe (responsible, violator; Germany)	closed	
91	Greenpeace Germany vs Vattenfall	10/2009	Environment and Disclosure issues at Vattenfall Germany	Germany	Germany	Greenpeace Germany	Vattenfall AB (responsible, violator; Sweden)	rejected	some allegations were not substantiated, some

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									did not fall under the Guidelines, and some were already being dealt with in the German courts
92	Thai and Filipino labor unions vs Triumph International	12/2009	labour rights violations in Triumph Thai & Philippines garment factories	Thailand, Philippines	Switzerland	Bagong Pagkakaisa ng mga Manggagawa sa Triumph Int'l. Phils. Inc. (trade union), Defend Job Philippines Organization Inc. (trade union), Thai Labour Campaign (trade union), Triumph International Thailand Labour Union (trade union)	Triumph International (responsible, violator; Switzerland)	closed	
93	FREDEMI vs Goldcorp International	12/2009	HR issues at Goldcorp's gold mine in Guatemala	Guatemala	Canada	Coalition for the Defense of San Miguel Ixtahuacán, Center for International Environmental Law	Goldcorp Inc (responsible, violator; Canada)	—closed	
94	Norwegian Support Committee for Western Sahara vs Fugro Geo	2/2010	Sahrawi right to self-determination issue in W. Sahara	W. Sahara	Norway	Norwegian Support Committee for Western Sahara	Fugro Geoteam AS (responsible, violator; Norway)	withdrawn	Fugro NV endorsed its subsidiary's statement and announced that it would terminate its involvement in Western Sahara
95	OT Watch vs Ivanhoe Mines Ltd	4/2010	Water and sustainability issues at planned mine in Mongolia	Mongolia	Canada, Australia (involved), UK (involved), USA (involved)	Oyu Togloi Watch	Ivanhoe Mines Ltd. (responsible, violator; Canada), Rio Tinto International Holdings Ltd. (involved, UK)	rejected	
96	OT Watch vs Rio Tinto International Holdings	4/2010	Water and sustainability issues at planned mine in Mongolia	Mongolia	Canada, Australia (involved), UK (involved), USA (involved)	Oyu Togloi Watch	Rio Tinto International Holdings Ltd. (responsible, violator; UK), Ivanhoe Mines Ltd. (involved, Canada)	rejected	
97	Saami Council vs KfW IPEX-Bank	4/2010	German KfW IPEX-Bank's financing of a controversial wind farm	Sweden	Germany, Sweden (involved)	Saami Council	KfW IPEX-Bank (responsible, violator; Germany)	rejected	"complaint did not merit being accepted as a specific instance."
98	Justica Ambiental vs BHP Billiton	10/2010	Concerns about BHP Mozal bypass in Mozambique	Mozambique	UK, Australia (involved)	Justica Ambiental	BHP Billiton (responsible, violator; Australia/UK)	pending	
99	ECCHR, Sherpa & UGF vs Devcot S.A.	10/2010	child labour in Uzbek cotton trade	Uzbekistan	Germany, France (involved), Switzerland	Association SHERPA, European Center for Constitutional and Human	Devcot S.A. (responsible, violator; France); involved: Otto Stadlander, Paul	filed	

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					(involved)	Rights, Uzbek German Forum	Reinhart AG, ECOM Agroindus-trial Corp Ltd., Cargill Cotton, ICT Cotton Limited, Louis Dreyfus Commodities Suisse SA		
100	ECCHR, Sherpa & UGF vs ECOM Agroindus-trial Corp. Ltd.	10/2010	child labour in uzbek cotton trade	Uzbekistan	Germany, France (involved), Switzerland (involved)	Association SHERPA, European Center for Constitutional and Human Rights, Uzbek German Forum	ECOM Agroindus-trial Corp. Ltd. (reponsible, violator; Switzerland); involved: Otto Stadlander, Paul Reinhart AG, Devcot S.A., Cargill Cotton, ICT Cotton Limited, Louis Dreyfus Commodities Suisse SA	pending	
101	ECCHR, Sherpa & UGF vs Paul Reinhart AG	10/2010	child labour in uzbek cotton trade	Uzbekistan	Germany, France (involved), Switzerland (involved)	Association SHERPA, European Center for Constitutional and Human Rights, Uzbek German Forum	Paul Reinhart AG (reponsible, violator; Switzerland); involved: Otto Stadlander, ECOM Agroindus-trial Corp. Ltd., Devcot S.A., Cargill Cotton, ICT Cotton Limited, Louis Dreyfus Commodities Suisse SA	pending	
102	ECCHR, Sherpa & UGF vs Otto Stadlander	10/2010	child labour in uzbek cotton trade	Uzbekistan	France, Germany (involved), Switzerland (involved)	Association SHERPA, European Center for Constitutional and Human Rights, Uzbek German Forum	Otto Stadlander (reponsible, violator; Germany); involved: Paul Reinhart AG, ECOM Agroindus-trial Corp. Ltd., Devcot S.A., Cargill Cotton, ICT Cotton Limited, Louis Dreyfus Commodities Suisse SA	filed	
103	Sherpa et al vs Intercultures	10/2010	environmental and labour violations in SOCAPALM in Cameroon	Cameroon	France, Belgium (involved), Luxemburg (involved)	Association SHERPA, Centre pour l'Environnement et le Développement, FOCARFE, Misereor Geschaeftsstelle	Compagnie Internationale de Cultures S.A. (reponsible, violator; France); involved: Bolloré S.A, Financière du champ de Mars S.A, Société financière Luxembourgeoise SA	filed	
104	Sherpa et al vs SOCFINAL	12/2010	environmental and labour violations in SOCAPALM in Cameroon	Cameroon	France, Belgium (involved), Luxemburg (involved)	Association SHERPA, Centre pour l'Environnement et le Développement, FOCARFE, Misereor Geschaeftsstelle	Société financière Luxembourgeoise SA (reponsible, violator; Luxemburg); involved: Bolloré S.A, Financière du champ de Mars S.A, Compagnie Internationale de Cultures S.A	filed	

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105	Sherpa et al vs Financière du champ de Mars	12/2010	environmental and labour violations in SOCAPALM in Cameroon	Cameroon	France, Belgium (involved), Luxemburg (involved)	Association SHERPA, Centre pour l'Environnement et le Développement, FOCARFE, Misereor Geschaeftsstelle	Financière du champ de Mars S.A. (reponsible, violator; Luxemburg); involved: Bolloré S.A, Société financière Luxembourgeoise SA, Compagnie Internationale de Cultures S.A	filed	
106	Sherpa et al vs Bolloré	12/2010	environmental and labour violations in SOCAPALM in Cameroon	Cameroon	France, Belgium (involved), Luxemburg (involved)	Association SHERPA, Centre pour l'Environnement et le Développement, FOCARFE, Misereor Geschaeftsstelle	Bolloré S.A (reponsible, violator; France); involved: Société financière Luxembourgeoise SA, Financière du champ de Mars S.A, Compagnie Internationale de Cultures S.A	filed	
107	ECCHR, Sherpa & UGF vs ICT Cotton	12/2010	child labour in uzbek cotton trade	Uzbekistan	UK	Association SHERPA, European Center for Constitutional and Human Rights, Uzbek German Forum	ICT Cotton Limited (reponsible, violator; UK); involved: Paul Reinhart AG, ECOM Agroindus-trial Corp. Ltd., Devcot S.A., Cargill Cotton, Louis Dreyfus Commodities Suisse SA, Otto Stadtländer	pending	
108	ECCHR, Sherpa & UGF vs Cargill Cotton	12/2010	child labour in uzbek cotton trade	Uzbekistan	UK	Association SHERPA, European Center for Constitutional and Human Rights, Uzbek German Forum	Cargill Cotton (reponsible, violator; UK); involved: Paul Reinhart AG, ECOM Agroindus-trial Corp. Ltd., Devcot S.A., ICT Cotton Limited, Louis Dreyfus Commodities Suisse SA, Otto Stadtländer	concluded	
109	ECCHR, Sherpa & Louis Dreyfus	12/2010	child labour in uzbek cotton trade	Uzbekistan	Switzerland, Germany (involved), UK (involved), France (involved)	Association SHERPA, European Center for Constitutional and Human Rights, Uzbek German Forum	Louis Dreyfus Commodities Suisse SA (reponsible, violator; Switzerland); involved: Paul Reinhart AG, ECOM Agroindus-trial Corp. Ltd., Devcot S.A., ICT Cotton Limited, , Otto Stadtländer, Cargill Cotton	pending	
110	FoE vs Arcelor Mittal	1/2011	mismanagement of community fund by Arcelor Mittal Liberia	Liberia	Netherlands	Friends of the Earth Europe, Sustainable Development Institute Liberia	ArcelorMittal	filed	
111	Amnesty International & FoE vs Shell	1/2011	Misleading disclosure of Shell on oil spills in Nigeria	Nigeria	Netherlands; UK (involved)	Amnesty International International Secretariat, FoE Nederland, Friends of	Royal Dutch Shell	pending	

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						The Earth International			
112	Mining Watch Canada et vs Barrick Gold Corporation	3/2011	HR violations at Barrick's Porgera JV mine in PNG	Papua New Guinea	Canada	Porgera SML Landowners Association, Akali Tange Association, Mining Watch Canada	Barrick Gold Corporation (CND)	filed	
113	Sherpa et al vs First Quantum Minerals	4/2011	Tax Evasion by Glencore and First Quantum Mining in Zambia	Zambia	Canada; Switzerland (involved)	Association SHERPA, Berne Declaration, Centre for Trade Policy and Devepment, L'Entraide Missionnaire, Mining Watch Canada	First Quantum Minerals Ltd (violator, responsible; Canada), Glencore International AG (involved, Switzerland)	filed	
114	Sherpa et al vs Glencore International AG	4/2011	Tax Evasion by Glencore and First Quantum Mining in Zambia	Zambia	Switzerland; Canada (involved)	Association SHERPA, Berne Declaration, Centre for Trade Policy and Devepment, L'Entraide Missionnaire, Mining Watch Canada	Glencore International AG (violator, responsible; Switzerland), First Quantum Minerals Ltd. (involved, Canada)	filed	
115	Ireland-Palestine Solidarity Campaign vs CRH	5/2011	CRH's involvement in construction activities in the OPT	Israel	Ireland	The Ireland-Palestine Solidarity Campaign	CRH	filed	
116	CNVTC vs J-Power	5/2011	HR violations at UCM's Wishbone hill coal mine	USA	USA; Japan (involved)	Chickaloon Native Village Traditional Council (CNVTC)	J-Power (violator, responsible; Japan), Usibelli Coal Mine Inc. (involved, USA)	filed	
117	CNVTC vs Usibelli Coal Mine	5/2011	HR violations at UCM's Wishbone hill coal mine	USA	USA; Japan (involved)	Chickaloon Native Village Traditional Council (CNVTC)	Usibelli Coal Mine Inc. (violator, responsible; USA), J-Power (involved, Japan)	filed	
118	CEDHA vs Xstrata Copper	6/2011	Xstrata's activities and their impact on glaciers in Argentina -	Argentina	Australia	Center for Human Rights and Environment	Xstrata PLC (violator, responsible; Switzerland)	filed	
119	UWUA & FWW vs United Water	6/2011	Labour and environmental violations in the USA by United Water	USA	USA, France (involved)	Food and Water Watch, Utility Workers Union of America	Xstrata PLC (violator, responsible; Switzerland)	filed	
120	FOCO et al vs Barrick Gold	6/2011	environmental pollution at Barrick's goldmines in Argentina	Argentina	Argentina	Foro para la Participación Ciudadana	Barrick Gold Corporation (violator, responsible; Canada)	filed	
121	CEDHA et al vs Nidera	6/2011	HR abuses of workers at Nidera plantation in Argentina	Argentina	Netherlands	Center for Human Rights and Environment, Novib Nederland, SOMO	Nidera (violator, responsible; NED)	filed	

### Appendix 3: Inspection Panel Cases (1994 – 2011)

Country	Number of complains	Request accepted	IP Recommendation	Recommendation approved by the Board	Panel's activity Type of Report (Follow-up report)
Albania	3 (April, July-August 2007)	(3) Yes	(3) Investigation	(3) Yes	(3) Eligibility Report & Investigation Report
Argentina	7 cases - 1996 with Paraguay - 1999 - (2) 2006 - 2007 - (2) 2011 (May, Sept.)	- (6) Yes - 2011 (Sept): No	- 1996: Investigation - 1999: No Investigation - (2) 2006: Investigation not recommended - 2007: Investigation - 2011 (May): Investigation not recommended - 2011 (Sept): -	- 1996: no (Management presented Action Plan; "a number of elements had to be further defined") - (5) Yes - 2011 (Sept): -	- 1996 Eligibility Report and Review of Present Project Problems and Assessment of Action Plans - 1999: Eligibility Report - 2006: Eligibility Report: para 9c (-) Res. 1999 - 2007: Eligibility Report; Investigation Report; Management Progress Report - 2011 (May): Eligibility Report: para 9 b) (-) Res. 1999 - 2011 (Sept): -
Bangladesh	2 (1996)	(2) Yes	- 1996 (Aug.): No Investigation - 1996 (Nov): Investigation not recommended	(2) Yes	- 1996 (August): Eligibility Report; Progress Report on Implementation of Action Plan - 1996 (Nov.): Eligibility Report (-), because near closing date
Brazil	5 cases - 1995 - 1997 - 1998 - 1999 - 2006	(5) Yes	- 1995: Investigation - 1997: Investigation - 1998: Investigation not recommended - 1999: Investigation not recommended - 2006: No investigation (mediation)	- 1995: No. in light of Action Plan and follow-up underway, Board concluded that an investigation should not be approved. - 1997: No. No further information. - 1998: Yes - 1999: Yes - 2006: Yes	- 1995: Eligibility Report, Additional Review report, and Review of Progress in Implementation - 1997: Eligibility Report and Action Plan review - 1998: Eligibility Report: no prima facie evidence of harm - 1999: Eligibility Report: consultation requirement (-) - 2006: (First) Eligibility Report and Final Eligibility Report (number of actions took place/ Grand Agreement)
Burundi	1 (2004)	No: related to procurement; outside the mandate	-	-	-
Cambodia	2 cases - 2005 - 2009	(2) Yes	(2) Investigation	(2) Yes	- 2005: Eligibility Report; Investigation Report and three Progress Reports - 2009: Eligibility Report, Final Eligibility Report, Investigation Report and Management Report
Cameroon	3 cases - 2002 - 2003 - 2007	- 2002: Yes - 2003: No, only one signatory - 2007: No, loan	- 2002: Investigation - 2003: - - 2007: -	- 2002: Yes - 2003: - - 2007: -	- 2002: Eligibility Report, Investigation Report and Management Report - 2003: - - 2007: -



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		closed			
Chad	1 (2001)	Yes	Investigation	Yes	Eligibility Report, Investigation Report and Management Report
Chile	2 cases - 1995 - 2010	- 1995: No, outside the mandate - 2010: Yes	- 1995: - - 2010: No Investigation	- 1995: - - 2010: Yes	- 1995: - - 2010: Eligibility Report, Management Progress Report and Panel's Final Report
China	1 (1999)	Yes	Investigation	Yes	Eligibility Report, Investigation Report and Management Report
Colombia	2 cases - 2004 - 2007	(2) Yes	- 2004: Investigation - 2007: Investigation not recommended	(2) Yes	- 2004: Eligibility Report, Investigation Report; One Progress Report - 2007: Eligibility Report: para. 9c) (-) Res. 1999
Democratic Republic of Congo	4 cases - 2005 - (3) 2009: Febr./March /December	(4) Yes	- 2005: Investigation - (3) 2009: No Investigation; (mediation progress) after Management's implementing of the Action Plan proposed in its Response, Panel deferred its recommendation to investigate because there is evidence of compliance	(4) Yes	- 2005: Eligibility Report, Investigation Report; Management Report and two Progress Reports; third Progress Report in March 2012 - (3) 2009: two Eligibility Reports, two Management's Progress Reports; third and final Eligibility Report
Ecuador	1 (1999)	Yes	Investigation	Yes	Eligibility Report, Investigation Report; Management Report: Action Plan implemented
Ethiopia	1 (1995)	No, does not refer to a project financed by the Bank	-	-	-
Ghana	1 (2007)	Yes	Investigation	Yes	Eligibility Report; Investigation Report and Management Report: implementing of Action Plan
Honduras	1 (2006)	Yes	Investigation	Yes	Eligibility Report; Investigation Report; Management Report and Progress Report: Implementation of Action Plan in progress
India	10 cases - 1997 - 1998 - 2000* - 2001	- 1997: Yes - 1998: Yes - 2000: Yes	- 1997: Investigation - 1998: Investigation - 2000: -	- 1997: Yes - 1998: No. No further information. - 2000: - - 2001: Yes	- 1997: Eligibility Report; Investigation Report on Desk Investigation; Management Report - 1998: Eligibility Report

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	- (2) 2004 - 2007 - 2009 - (2) 2010 *India second request from the one in 1997	No, loan closed - 2001: Yes - 2004: (2) Yes - 2007: Yes - 2009: Yes - 2010 (2): Yes	- 2001: Investigation - 2004: (2) Investigation - 2007: decision deferred - 2009: No Investigation - 2010 (2): No Investigation	- 2004: (2) Yes - 2007: Yes - 2009: Yes - 2010 (2): Yes	- 2000: - - 2001: Eligibility Report, Investigation Report; Management Report (Action Plan implemented) - 2004: (2) Eligibility Report, Investigation Report and five Progress Reports - 2007: Eligibility Report: para. 9c (-) Res. 1999, mediation process was continued - 2009: Eligibility Report - 2010 (2): Eligibility Report
Kazakhstan	2 cases - 2010 - 2011	- 2010: Yes - 2011: Yes	- 2010: No Investigation - 2011: No Investigation	- 2010: Yes - 2011: Yes	- 2010: Eligibility Report - 2011: Panel's Report
Kenya	2 cases - 1999 - 2009	- 1999: Yes - 2009: No, loan closed	- 1999: Investigation - 2009: -	- 1999: Yes - 2009: -	- 1999: Eligibility Report and Investigation Report - 2009: -
Lebanon	1 (2010)	Yes	Investigation ongoing	Ongoing	Panel will report on 2013 whether subsequent investigation is warranted
Lesotho	2 cases - 1998 with SA - 1999	(2) Yes	(2) Investigation not recommended	(2) Yes	- 1998: Eligibility Report: no prima facie evidence - 1999: Eligibility Report: no link between claimed harm and actions of the Bank
Liberia	1 (2010)	Yes	No investigation (mediation)	Yes	Eligibility Report: mediation/action plan
Mexico	1 (2004)	Yes	Panel did not recommend but await further developments emerging during workshop	Yes	Eligibility Report
Nepal	1 (1994)	Yes	Investigation	Yes	Eligibility Report and Investigation Report
Nigeria	2 cases - 1998 - 2006	- 1998: Yes - 2006: Yes	- 1998: Investigation not recommended - 2006: Investigation	- 1998: Yes - 2006: Yes	- 1998: Eligibility Report: no evidence of harm - 2006: Eligibility Report, Final Eligibility Report, Investigation Report three Progress Reports
Pakistan	2 cases: - 2004 - 2009	- 2004: Yes - 2009: Yes	- 2004: Investigation – 2009: No Investigation	- 2004: Yes - 2009: Yes	- 2004: Eligibility Report, Investigation Report, two Progress Reports - 2009: Eligibility Report
Panama	2 cases (2009)	(2) Yes	(2) Investigation	(2) Yes	(2) Eligibility Report and Investigation Report
Papua New Guinea	2 cases - 2001 - 2009	- 2001: Yes - 2009: Yes	- 2001: Investigation not recommended - 2009: Investigation	- 2001: Yes - 2009: Yes	- 2001: Eligibility Report: para. 12 and 19 Res. 1993(-) - 2009: Eligibility Report, Investigation Report
Paraguay	1 (2002 with Argentina) * Counts only	Yes	Investigation	Yes	- 2002: Eligibility Report, Investigation Report and Progress Report

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	one case				(Investigation was continued)
Peru	1 (2009)	Yes	Investigation	Yes	Eligibility Report, Investigation Report and Management Response
Philippines	1 (2003)	Yes	Investigation not recommended	Yes	Eligibility Report, para. 9 c) Res. 1999 (-)
Poland	1 (2010)	No. No nexus between Bank's actions and harm	-	-	-
Romania	1 (2006)	Yes	Panel did not make a recommendation, because of satisfactory resolution during eligibility phase	Yes	Eligibility Report (satisfactory resolution during eligibility phase)
South Africa	1 (2010)	Yes	Investigation	Yes	Eligibility Report and Investigation Ongoing
Tanzania	1 (1995)	Yes	Investigation not recommended	Yes	Eligibility Report: para. 12 Res. 1993 (-)
Uganda	2 cases - 2001 - 2007	- 2001: Yes - 2007: Yes	- 2001: Investigation - 2007: Investigation	- 2001: Yes - 2007: Yes	- 2001: Eligibility Report, Investigation Report - 2007: Eligibility Report, Investigation Report, Management Report and two Progress Reports
Uzbekistan	1 (2010)	Yes	Investigation not recommended	Yes	Eligibility Report: para. 9 b) Res. 1999 (-)
Westbank/ Gaza	1 (2011)	Yes	Investigation Ongoing	-	-
Yemen	1 (2009)	Yes	Panel deferred its recommendation to investigate after an Enhanced Action Plan. No Investigation.	Yes	Eligibility Report, Enhanced Action Plan, Management Progress Report and Final Eligibility Report
<b>TOTAL</b>	77	Total 77  Accepted = 68  Not accepted = 9	Total 77  - 34 investigated - 11 not investigated - 13 = no recommendation because Request failed to satisfy procedural criterion - Panel deferred/made no decision due to mediation = 7 - Eligibility/ Investigation ongoing = 2 - NA = 10	Total: 77  4 recommendations not approved by the Board  63 recommendations approved  NA = 10	

### Appendix 4: List of Interviews

NO.	NAME	ORGANISATION	EXPERT FOR	INTERVIEW DATE	MEANS	REFERENCE
1	Werner Kiene	Chairman of compliance review panel of the Inter-American Development Bank	World Bank Inspection Panel (former Chairman)	25 April 2012	Personal interview	Werner Kiene
2	Anonymous	Anonymous	GAP Complaint Mechanism	15 June 2012	Phone interview	Business Consultant
3	Patricia Feeney	Director of Rights and Accountability in Development (RAID), UK	OECD Guidelines	18 June 2012	Phone interview	Patricia Feeney
4	Anonymous	Anonymous	GAP Complaint Mechanism	19 June 2012	Questionnaire	Business Consultant II
5	Julio Severo	Director of HP Guadalajara, responsible for HP mechanism	HP Complaint Mechanism	2 July 2012	Phone interview	HP Mexico
5a	Iliana Ponce	Internal consultant responsible for social and environmental issues, including HP mechanism,, audits of the supply chain	HP Complaint Mechanism	2 July 2012	Phone interview	HP Mexico
6	Felipe Burgueno Gonzalez	Centro de Reflexión y Acción Laboral (CEREAL)	HP Complaint Mechanism	4 July 2012	Phone interview	CEREAL
7	Stephan Suhner	Arbeitsgruppe Schweiz-Kolumbien (ASK)	Cerrejón Complaint Mechanism	18 September 2012	Phone interview	Stephan Suhner
8	Anonymous	Member of a displaced community	Cerrejón Complaint Mechanism	26 September 2012	Questionnaire	Community Representative II
9	Carlos Franco	El Cerrjón, Manager for Social Standards and International Engagement	Cerrejón Complaint Mechanism	27 September 2012	Phone interview	Carlos Franco
10	Anonymous	Member of a community action board	Cerrejón Complaint Mechanism	27 September 2012	Questionnaire	Community Representative
11	Anonymous	Legal counsel of a community relocation committee	Cerrejón Complaint Mechanism	27 September 2012	Questionnaire	Lawyer