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Corporate Social Responsibility and Labor Dispute Remedies; An overview of existing non-judicial and non-governmental grievance
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Corporate Social Responsibility and Labor Dispute Remedies

An overview of existing non-judicial and non-governmental grievance mechanisms in relation to labor standards

Acknowledgments

This report was written upon the request of the World Legal Forum and its partners in the Hague Utilities for Global Organizations program on Corporate Social Responsibility (CSR) with a view to the establishment of a CSR Conflict Management Center in the city of The Hague, the Netherlands.

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1. Introduction

1.1 Introduction

The role of business enterprises in the international legal order and the concept of corporate social responsibility (**CSR**) have received renewed attention over the last decade.¹ CSR has been discussed within the framework of international organizations and forums – such as the Organization of Economic Co-operation and Development (**OECD**),² the International Labor Organization (**ILO**),³ the World Bank,⁴ the United Nations (**UN**),⁵ the European Union (**EU**),⁶ and the G8⁷ – as well as within national states.

¹ For initiatives undertaken in the 1970s, 1980s and 1990s, see, for example, S. Joseph, The Human Rights Accountability of MNEs, in: M.T. Kamminga, S. Zia-Zarifi (Eds.), *Liability of Multinational Corporations under International Law*, Kluwer Law International, The Hague, 2000, pp. 83-85; P. Muchlinski, Corporations in International Law, Max Planck Encyclopedia of Public International Law, at <www.mpepil.com>, para. 16.

² The OECD has dealt with CSR since the early 1970s and has facilitated, among other things, the drafting, updating and implementation of the Guidelines for Multinational Enterprises of the Organization of Economic Co-operation and Development (**OECD Guidelines**); Recommendations for Responsible Business Conduct in a Global Context, Adopted by the 42 adhering governments at the OECD's 50th Anniversary Ministerial Meeting of 25 May 2011, as annex to the OECD Declaration on Decisions on International Investment and Multinational Enterprises. Through <www.oecd.org>. Muchlinski quotes the OECD Guidelines 'General Policies' (which currently list 15 responsibilities of multinational enterprises) in order to define the term 'International Corporate Social Responsibility'. The General Policies make clear, according to Muchlinski, that social responsibility has economic, social and ethical dimensions. P. Muchlinski, Corporate Social Responsibility, in: P. Muchlinski, F. Ortino, C. Schreuer (Eds.), *The Oxford Handbook of International Investment Law*, Oxford University Press, Oxford, 2008, pp. 643-645.

³ The ILO has dealt with CSR since the late 1970s and has facilitated, among other things, the drafting and updating of the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (**Tripartite Declaration**), adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977), as amended at its 279th (November 2000) and 295th Session (March 2006). Through <www.ilo.org>.

⁴ The World Bank Group has dealt with CSR, among other ways, through the International Finance Corporate (**IFC**), which uses the Performance Standards on Social and Environmental Sustainability (**IFC Performance Standards**), 30 April 2006. Through <www.ifc.org>.

⁵ Within the United Nations framework, the human rights commission and the United Nations Commission on Transnational Corporations – United Nations Conference on Trade and Development (1970s till the early 1990s) dealt with CSR related issues. In 2000, the United Nations Global Compact was established by the United Nations and the business community to provide a 'policy framework for organizing and developing corporate sustainability strategies while offering a platform – based on universal principles – to encourage innovative initiatives and partnerships with civil society, governments and other stakeholders.' Its establishment was instigated by then UN Secretary-General Kofi Annan at the World Economic Forum in Davos on 31 January 1999 (SG/SM/6881 of 1 February 1999). Over 8700 corporations and other stakeholders from over 130 countries have adhered to it. See <www.unglobalcompact.org>. See also Business & Human Rights Initiative, *How to Do Business with Respect for Human Rights: A Guidance Tool for Companies*, Global Compact Network Netherlands, The Hague, 2010.

⁶ The EU has dealt with CSR at various levels since 2001. On 25 October 2011, the European Commission sent its most recent 'Communication to the European Parliament, the Council, the European Economic and Social

In 2005 the UN Human Rights Commission, which is the predecessor of the current Human Rights Council, requested the Secretary-General in 2005 'to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises'. His mandate was, among other things, '[t]o identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights'.⁸

Following his appointment as special representative on 25 July 2005, John Ruggie presented a 'conceptual and policy framework to anchor the business and human rights debate, and to help guide all relevant actors' on 7 April 2008.⁹ This Framework for Business and Human Rights (**Framework**) consists of three pillars: (1) the duty of states to protect human rights; (2) the responsibility of business enterprises to respect human rights; and (3) access to remedies for those affected by human rights violations.¹⁰ This framework currently appears to be the dominant paradigm for discussing CSR.¹¹

The first pillar focuses on the duty of states to protect people against human rights abuses.¹² This obligation follows from the general obligation of states to observe human rights obligations within their territories,¹³ following from their obligations under customary international as well as under relevant and applicable treaty law.

Committee and the Committee of the Regions, A renewed strategy 2011-14 for Corporate Social Responsibility, COM(2011) 681 final.' See also the non-governmental European Alliance for CSR and CSR Europe at <www.csreurope.org>.

⁷ See for example, G8 Summit 2007 Heiligendamm, Growth and responsibility in the world economy; Summit Declaration (7 June 2007), paras. 9, 24-26, 84-85, 96.

⁸ E/CN.4/2005/69 of 20 April 2005; Resolution of the Commission on Human Rights on Human Rights and transnational corporations and other business enterprises, para. 1.

⁹ A/HRC/8/5, 7 April 2008; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; 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, p. 1.

¹⁰ The foundation of this framework was established by the special representative's 2007 reports A/HRC/4/35, 19 February 2007; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Business and human rights: mapping international standards of responsibility and accountability for corporate acts; A/HRC/4/35/Add.1, 13 February 2007; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Addendum: State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries; A/HRC/4/35/Add.2, 15 February 2007; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Addendum: Corporate responsibility under international law and issues in extraterritorial regulation: summary of legal workshops.

¹¹ See, for example, the references provided by Backer: L.C. Backer, The United Nations' "Protect-Respect-Remedy" Project: Operationalizing a Global Human Rights Based Framework for the Regulation of Transnational Corporations, Conference Paper, Symposium: Corporations and International Law, Santa Clara Law, 2010, through: <law.scu.edu>, pp. 4-5.

¹² This duty is additional to the duty of states to respect, promote and fulfill human rights. See A/HRC/4/35, 19 February 2007; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Business and human rights: mapping international standards of responsibility and accountability for corporate acts, p. 5, fn 6.

¹³ A/HRC/8/5, paras. 18. On the extra-territorial application of human rights obligations, in particular the duty to protect people from human rights abuses, see A/HRC/4/35, para. 15. See, for example, the scope of the

The second pillar focuses on the responsibility of business enterprises to respect human rights,¹⁴ which, according to the Special Representative, means ‘not to infringe on the rights of others – put simply, to do no harm’.¹⁵ Business enterprises must show due diligence,¹⁶ which is ‘a process whereby companies not only ensure compliance with national law but also manage the risk of human rights harm with a view to avoiding it.’¹⁷ The substantive scope of the responsibility of business enterprises appears to be unlimited, because ‘there are few if any internationally recognized rights business cannot impact’.¹⁸ The formal scope of the responsibility to respect is limited to a company’s sphere of influence, which ‘depends on the potential and actual human rights impacts resulting from a company’s business activities and the relationships connected to those activities.’¹⁹ If companies fail to observe this responsibility, they can be subjected to the ‘courts of public opinion (...) and occasionally to charges in actual courts.’²⁰ Although this responsibility to respect exists ‘over and above compliance with national laws and regulations protecting human rights’²¹ and appears to be primarily a moral responsibility rather than a legal requirement, non-compliance may nevertheless have legal consequences.²²

The third pillar focuses on access to remedies for those who have been harmed by human rights violations. This pillar follows from the state duty to protect against human rights abuses and from the

International Convention on Civil and Political Rights (**ICCPR**) and the European Convention of Human Rights (**ECHR**), which are limited to the territory and jurisdiction of states parties (Article 2 ICCPR) respectively the jurisdiction of the states parties (Article 1 ECHR). See also, in this context, the recent Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights of 28 September 2011, through <www.maastrichtuniversity.nl>. Generally on extraterritorial application of human rights treaties: F. Coomans, M.T. Kamminga (Eds.), *Extraterritorial application of human rights treaties*, Intersentia, Antwerp, 2004.

¹⁴ A/HRC/8/5, para. 23. See also A/HRC/4/35, paras. 45-62. The Special Representative did not find sufficient evidence for the existence of responsibility of corporations under customary international law nor under treaty law (A/HRC/4/35, paras. 34-44).

¹⁵ A/HRC/8/5, para. 24.

¹⁶ According to the Special Representative, the scope of their due diligence depends on the rights involved and requires an integrated human rights policy, impact assessments and monitoring and auditing to track performance. A/HRC/8/5, paras. 56-64.

¹⁷ A/HRC/8/5, para. 25.

¹⁸ A/HRC/8/5, para. 52. For an overview of the potential human rights impact of transnational corporations, see A/HRC/8/5/Add.2, 23 May 2008; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development; Addendum; Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse, paras. 18 (labor rights impacted) and 23 (non-labor rights impacted).

¹⁹ A/HRC/8/5, para. 72.

²⁰ A/HRC/8/5, para. 54.

²¹ A/HRC/17/31, commentary to principle 11.

²² The possibilities and difficulties to instigate civil proceedings in the Netherlands were discussed by Van Dam in 2008, Castermans / Van der Weide in 2009, and Eijsbouts in 2010: A.G. Castermans, J.A. van der Weide, *De juridische verantwoordelijkheid van Nederlandse moederbedrijven voor de betrokkenheid van dochters bij schending van fundamentele, internationaal erkende rechten*, Leiden, 2009, TK 26 485, Nr. 81, Vergaderjaar 2009-2010; Bijlage bij brief van de Staatssecretaris van Economische Zaken van 18 december 2009; A.J.A.J. Eijsbouts, *Elementaire beginselen van Maatschappelijk Verantwoord Ondernemerschap*, in: *Maatschappelijk verantwoord ondernemen*, Preadviezen van A.J.A.J. Eijsbouts, F.G.H. Kristen, J.M. de Jongh, A.J.P. Schild, L. Timmerman, *Handelingen Nederlandse Juristen-Vereniging*, 140^e jaargang / 2010-I, Kluwer, Deventer, 2010; C. van Dam, *Onderneming en mensenrechten; Zorgvuldigheidsnormen voor ondernemingen ter voorkoming van betrokkenheid bij schending van mensenrechten*, Boom Juridische uitgevers, Den Haag, 2008.

business enterprises' responsibility to respect human rights and requires the establishment of effective grievance mechanisms, both by states and business enterprises.²³

According to the Special Representative, this three-pillar framework provides a coherent approach towards reducing the adverse human rights impact of transnational business operations. Because the Framework emphasizes the individual responsibilities of various stakeholders, in particular states and business enterprises, it aims to reduce the governance gaps, which are 'at the roots of the business and human rights predicament'.²⁴

The Human Rights Council welcomed this Framework on 18 June 2008 and decided to extend the Special Representative's mandate to operationalize it.²⁵ Ruggie subsequently presented his Guiding Principles on Business and Human Rights (*Guiding Principles*),²⁶ on 21 March 2011, which were welcomed and endorsed by the Human Rights Council on 16 June 2011.²⁷

1.2 Corporate Social Responsibility and Labor Standards

Although the Framework and complementary Guiding Principles are both related to 'Business and Human Rights', the responsibilities of states and business enterprises are extended to international labor standards.²⁸ This follows from Guiding Principle 12, which provides: 'The responsibility of business enterprises to respect human rights [as laid down in Guiding Principle 11] refers to

²³ A/HRC/8/5, paras. 26 and 82.

²⁴ A/HRC/8/5, 7 April 2008; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, para. 17.

²⁵ A/HRC/RES/8/7 of 18 June 2008; Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

²⁶ A/HRC/17/31, 21 March 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. 'The Guiding Principles are grounded in recognition of: (a) States' existing obligations to respect, protect and fulfill human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.' (General Principles).

²⁷ A/HRC/RES/17/4 of 16 June 2011; Human rights and transnational corporations and other business enterprises, para. 1. For a discussion of the historical development of the Framework, see: L.C. Backer, The United Nations' "Protect-Respect-Remedy" Project: Operationalizing a Global Human Rights Based Framework for the Regulation of Transnational Corporations, Conference Paper, Symposium: Corporations and International Law, Santa Clara Law, 2010, through: <law.scu.edu>.

²⁸ This responsibility of business enterprises to observe labor standards must be distinguished from the responsibility of business enterprises to create employment opportunities in host countries (see for example OECD Guidelines, General Policies, para A.4) and employ local community members (as identified in the draft General Memorandum of Understanding between Chevron Nigeria Limited and local communities (as represented by the Regional Development Council) and the State Government, on file with the author, and to be discussed further below. Similarly, this responsibility must be distinguished from the responsibilities undertaken by business leaders, among others, under the South African Peace Accord of September 1991, to curb politicized ethnic violence in South African townships. One of the conflict interventions was (unsuccessfully because of the model chosen) carried out by labor mediators from the Independent Mediation Service of South Africa. See D. Bremner, South African Experiences with Identity and Community Conflicts, Journal of Peace Research, Vol. 38/3, 2001.

internationally recognized human rights – understood, at a *minimum*,²⁹ as those expressed in the International Bill of Human Rights³⁰ and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work’ (emphasis added).³¹

The Declaration on Fundamental Principles and Rights at Work of the ILO was adopted in 1998 and identifies four core labor standards.³² These four principles concerning fundamental rights are:

- a. The freedom of association and the effective recognition of the right to collective bargaining;
- b. The elimination of all forms of forced or compulsory labor;
- c. The effective abolition of child labor; and
- d. The elimination of discrimination in respect of employment and occupation.

The existence of the responsibility of business enterprises to respect these four fundamental labor standards is confirmed by, among other instruments, the ILO Tripartite Declaration,³³ the OECD Guidelines³⁴ and the IFC Performance Standards.³⁵ While the voluntary nature of the responsibility of business enterprises in relation to these standards is stressed in both the Tripartite Declaration and the OECD Guidelines,³⁶ the responsibility of business enterprises (as lenders from the IFC) to observe the above-mentioned standards is obligatory under the IFC Performance Standards.

While states have a general duty to protect human rights, pursuant to Guiding Principle 1,³⁷ their duty to respect the above-mentioned four fundamental labor standards follows – for the majority of

²⁹ Other labor standards which are sometimes mentioned in CSR context are adequate housing (as part of employment arrangements) and occupational health and safety standards. See P. Muchlinski, Corporate Social Responsibility, in: P. Muchlinski, F. Ortino, C. Schreuer (Eds.), *The Oxford Handbook of International Investment Law*, Oxford University Press, Oxford, 2008, pp. 646-654. See, also, for example, Human Rights Watch, *Ripe with Abuse: Human Rights Conditions in South Africa’s Fruit and Wine Industry*, New York, NY, 2011, which includes an overview of ‘better practices on farms in South Africa (pp. 88-89).

³⁰ The International Bill of Rights consists of the 1948 Universal Declaration of Human Rights (*UDHR*), the 1966 ICCPR and the 1966 International Convention on Economic Social and Cultural Rights (*ICESCR*).

³¹ A/HRC/17/31, principle 12.

³² ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998, para. 2. In 2008, the International Labor Conference recognized the implementation of the four fundamental principles and rights at work as one of its four strategic objectives ‘through which the Decent Work Agenda is expressed’ in its Declaration on Social Justice for a Fair Globalization (para. A.iv).

³³ ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977), as amended at its 279th (November 2000) and 295th Session (March 2006), paras. 22, 36, 42, 44, 49, 51-55.

³⁴ OECD Guidelines for Multinational Enterprises; Recommendations for Responsible Business Conduct in a Global Context, Adopted by the 42 adhering governments at the OECD’s 50th Anniversary Ministerial Meeting of 25 May 2011, as annex to the OECD Declaration on Decisions on International Investment and Multinational Enterprises, Chapter IV.

³⁵ Performance Standards on Social and Environmental Sustainability of the International Finance Corporation, 30 April 2006, paras. 9-11, 14-15.

³⁶ Addendum II to the Tripartite Declaration stresses the ‘voluntary character or the meaning of the provisions’ of the Tripartite Declaration. This is echoed in para. I.1 of the OECD Guidelines which provides: ‘Observance of the Guidelines by enterprises is voluntary and not legally enforceable.’

³⁷ Guiding Principle 1 provides: ‘States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulation and adjudication.’

states – from their being party to the conventions which reflect these principles.³⁸ Furthermore, the International Labor Conference³⁹ submitted in the 1998 Declaration on Fundamental Principles and Rights at Work that all states – even those who have not become party to these ILO Conventions – must uphold these standards, by virtue of their membership of the ILO.⁴⁰ Furthermore, the four core labor standards also qualify as fundamental human rights⁴¹ which must be protected in any case pursuant to Guiding Principle 1.

1.3 Corporate Social Responsibility and HUGO

In view of the above-mentioned third pillar of the Framework and Guiding Principles – access to remedies – the World Legal Forum (**WLF**) and its partners in the Hague Utilities for Global Organizations (**HUGO**) program on CSR decided to establish a Conflict Management Center in the Hague.

According to the HUGO partners, the need for this center was confirmed by a study from David Kovick and Caroline Rees carried out in 2010 within the framework of the Corporate Social Responsibility Initiative of the John F. Kennedy School of Government of Harvard University,⁴² and

³⁸ (1) The freedom of association and the effective recognition of the right to collective bargaining: ILO Convention 87 concerning Freedom of Association and Protection of the Right to Organize of 1948 (150 ratifications); and ILO Convention 98 concerning the Right to Organize and Collective Bargaining of 1949 (160 ratifications). (2) The elimination of all forms of forced or compulsory labor: ILO Convention 29 concerning Forced or Compulsory Labor of 1930 (175 ratifications); and ILO Convention 105 concerning the Abolition of Forced Labor of 1957 (169 ratifications). (3) The effective abolition of child labor: ILO Convention 182 concerning the Worst Forms of Child Labor of 1999 (174 ratifications); and ILO Convention 138 concerning the Minimum Age for Admission to Employment of 1973 (161 ratifications). (4) The elimination of discrimination in respect of employment and occupation (ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation of 1958 (169 ratifications); and ILO Convention 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value of 1951 (168 ratifications). Through <www.ilo.org/ilolex>. See also ILO Helpdesk Fact Sheet No. 4 – Fundamental Principles, at <www.ilo.org/empent/areas/business-helpdesk>.

³⁹ The International Labor Conference is an organ of the ILO consisting of the representatives of all Member states. Article 2 and 3 ILO Constitution.

⁴⁰ The International Labor Conference recalled in this Declaration that by joining the ILO, all Members have endorsed the principles and rights as set out in the ILO Constitution and the 1944 Declaration of Philadelphia, which ‘have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.’ Subsequently, the International Labor Conference declared that ‘all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions’. ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, para. 2.

⁴¹ The four fundamental labor principles are also reflected in human rights treaties, such as the ICCPR (Articles 3, 8, 22, 24), the ICESCR (Articles 2, 3, 6, 7, 8), the Convention on the Rights of the Child, and the European Convention on Human Rights. See also FAQ 15 at <www.unglobalcompact.org>.

⁴² D. Kovick, C. Rees, International Support for Effective Dispute Resolution Between Companies and Their Stakeholders: Assessing Needs, Interests, and Models, Corporate Social Responsibility Initiative Working Paper No. 63, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2011. The report was the result of interview-based research, which was a deliberate bottom-up approach. See also C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, with similar recommendations for the establishment of a global ombuds function for business and

highlighted in the report and recommendations following the CSR expert meeting on 14 June 2011 in The Hague.⁴³

It is further understood that the Center will primarily:⁴⁴

- Provide information on available non-judicial grievance mechanisms in relation to CSR.
- Provide advice on appropriate non-judicial grievance mechanisms in case of an existing CSR dispute between a corporation and its stakeholders concerning abuse of human rights, environmental and labor standards.
- Facilitate dispute resolution in relation to CSR, in particular in relation to community-company grievances, by means of mediation.⁴⁵

1.4 Object and purpose report

This report is intended to provide a (non-exhaustive) overview of existing grievance mechanisms in relation to labor standards within the framework of CSR. This overview is limited to grievance mechanisms which are non-judicial, non-state/governmental, and non-company-based. This means that neither the grievance mechanisms established within the context of the OECD⁴⁶ and the ILO⁴⁷

human rights and to develop linked hubs for information and other resources on grievance mechanisms by global and academic institutions (recommendations 7 and 9). Rees refers to the fact that those companies who have committed to codes of conducts and accompanying grievance mechanisms are of good will leaving a large number of companies which have not committed to any form of grievance mechanism (p. 34).

⁴³ HUGO Conflict Management Facility on CSR, Report and Recommendations following the CSR expert meeting, 14 June 2011, at the offices of Pels Rijcken & Drooglever Fortuijn.

⁴⁴ This understanding follows from the Position Paper of 13 May 2011 on 'The CSR Conflict Management Facility The Hague'; the documentation (outline, slides, report) in relation to the CSR expert meeting in the Hague on 14 June 2011; the undated NIAS-HUGO 'Research Questions' paper; and the 'CSR Remedy Centre; Hub for CSR conflict remedies; A HUGO initiative' slides of September 2011; and meetings with HUGO-partners staff.

⁴⁵ Mediation is a form of Alternative Dispute Resolution (**ADR**) by which a third party assists disputants to solve their dispute. Kovick and Rees defined the term mediation as a form of dispute resolution which includes 'all forms of dialogue-based processes assisted by a neutral third-party, for all kinds of disputes, potentially at all stages of the relationship between businesses and affected stakeholders' in their above-mentioned report of 2011: D. Kovick, C. Rees, International Support for Effective Dispute Resolution Between Companies and Their Stakeholders: Assessing Needs, Interests, and Models, Corporate Social Responsibility Initiative Working Paper No. 63, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2011, p. 11. See also on the various forms of ADR: Corporate Social Responsibility Initiative, Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders, Corporate Social Responsibility Initiative, Working Paper 41, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 11-12. The presumed cost-effectiveness of mediation had led to renewed interest both under international law (see for example S/2009/189, 8 April 2009, Report of the Secretary-General on enhancing mediation and its support activities; the report relates to pursue sustainable peace within states and within regions) and national law. In 2007, a number of mediation and arbitration institutions founded the International Mediation Institute (**IMI**), which provides information and training on mediation and which facilitates mediation by providing online profiles of IMI certified mediators. IMI is internet-based with its main office in The Hague. See <www.imimmediation.org>.

⁴⁶ The Council of the OECD decided – in relation to the OECD Guidelines – that states adhering to the OECD Guidelines must establish National Contact Points to provide for a complaints procedure, among other things, relating to the implementation of the OECD Guidelines. See Decision of the Council on OECD Guidelines and Procedural Guidance, attached to the OECD Declaration on International Investment and Multinational Enterprises, as amended on 25 May 2011.

nor the grievance mechanisms established within business enterprises will be included in this overview.

This report is intended to be instrumental to the establishment of the Conflict Management Center in two ways:

1. It identifies existing grievance mechanisms in relation to labor disputes to which complainants may be referred to.
2. It identifies institutions and organizations with which the Conflict Management Center may cooperate.

Both aspects underlie Chapter 2 of this report and result in a number of recommendations in Chapter 3.

⁴⁷ For example, the grievance mechanism provided under the 'Procedure for the examination of disputes concerning the application of the Tripartite Declaration by means of interpretation of its Provisions, adopted by the Governing Body of the International Labour Office at its 232nd Session (Geneva, March 1986).' Pursuant to this procedure governments, national and international organizations of employers and workers may request the ILO Committee of Multinational Enterprises (**MNE Committee**) to interpret the Tripartite Declaration 'to resolve a disagreement on their meaning, arising from an actual situation, between parties to whom the Declaration is commended' (para. 1 Procedure). The procedure is separate from the general dispute resolution procedure under the ILO Constitution (Articles 24-26) involving the establishment of a Commission of Inquiry.

2. Non-judicial grievance mechanisms in relation to labor standards

2.1 Introduction

Access to remedies for those affected by human rights abuse constitutes the third pillar of the above-mentioned Framework and complementary Guiding Principles. It is intended to provide redress for individual victims and supplements the limited monitoring or verification capabilities of business enterprises or other stakeholders.⁴⁸ Although the third pillar appears to be primarily aimed at states, which ‘must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, (...) those affected have access to effective remedy’ (Guiding Principle 25),⁴⁹ the third pillar also entails responsibilities for other stakeholders.

First, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: ‘Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute’ (Guiding Principle 15(c), second pillar). This responsibility of business enterprises is subsequently elaborate in Guiding Principles 22 (second pillar) and 29 (third pillar). The former provides that business enterprises have an obligation ‘to provide for or cooperate in (...) remediation through legitimate processes.’ The latter provides that ‘business enterprises should establish or participate in effective operational-level grievance mechanisms⁵⁰ for individuals

⁴⁸ N. Ascoly, I. Zeldenrust, *Discussing key elements of monitoring and verification*, SOMO, Amsterdam, 2001, through <somo.nl>, pp. 7-8. Similarly N. Ascoly, I. Zeldenrust, *Considering Complaint Mechanisms: An Important Tool for Code Monitoring and Verification*, SOMO, Paper, 2003, through <BASESwiki.org>, p. 1; N. Ascoly, J. Oldenziel, I. Zeldenrust, *Overvie of Recent Development on Monitoring and Verification in the Garment and Sportswear Industry in Europe*, SOMO, Amsterdam, 2001, through <somo.nl>, p. 40.

⁴⁹ Guiding Principle 25 provides: ‘As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.’ In order to provide access to remedies, states must provide for state-based judicial and non-judicial grievance mechanisms (Guiding Principles 26 and 27) and should additionally, ‘consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms’ (Guiding Principle 28).

⁵⁰ According to the recently published interpretative guide to the Guidelines, the term grievance mechanism is used here as ‘a term of art to cover a whole range of mechanisms that address complaints and disputes involving enterprises and their stakeholders.’ Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights; An Interpretative Guide*, Advance unedited version (November 2011), at <www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx>, para. 12.3. See also on the differences in terminology between complaints, grievances, and disputes: Corporate Social Responsibility Initiative, *Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders*, Corporate Social Responsibility Initiative, Working Paper 41, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 12-13. The report does not distinguish between the terms grievance and complaint, and the term grievance mechanism is used to cover all situations. The Office of the Compliance Advisor / Ombudsman (CAO) of the World Bank Group defines a ‘company-community grievance mechanism’ as ‘A locally based, formalized way to accept, assess, and resolve community complaints concerning the performance or behavior of a company, its contractors, or employees.’ Office of the Compliance Advisor /

and communities who may be adversely impacted'.⁵¹ According to the Special Representative, business enterprises may provide for such grievance mechanism within the company (internal or company-based)⁵² or external, by means of third parties.⁵³

Second, '[i]ndustry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available' (Guiding Principle 30).

Business enterprises and other stakeholders have implemented this responsibility to provide for grievance mechanisms in various ways. This report intends to provide an (non-exhaustive) overview of the grievance mechanisms available for business enterprises and other stakeholders in relation to labor standards within the framework of CSR.⁵⁴ Internal grievance mechanisms or grievance mechanisms established by states – even when they are non-judicial in character – have not been included. In that sense, this report has a different scope than earlier reports published by the Center for Research on Multinational Corporations (SOMO), the World Bank, and the Corporate Social Responsibility Initiative of the John F. Kennedy School of Government of Harvard University.⁵⁵

Ombudsman (CAO), Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects, p. iv.

⁵¹ See also ILO Tripartite Declaration, para. 58; OECD Guidelines, Chapter IV.6; and the IFC Performance Standards, 2.13. The ILO Tripartite Declaration echoes the ILO Recommendation concerning the Examination of Grievances within the Undertaking with a View to Their Settlement, Adopted by the General Conference of the International Labour Organisation at its Fifty-first session, Geneva, 29 June 1967, in particular paras. 2, 3, 8. Recommendations are non-binding guidelines of the General Conference of the ILO decided upon with a two-thirds majority pursuant to Article 19 ILO Constitution. Recommendations must be considered by the competent legislative authorities of each Member State. Member States must subsequently report, upon request of the ILO Governing Body, the position of the law and the national practice in regard to the matters dealt with in the Recommendation (Article 19(6) ILO Convention).

⁵² Company-based grievance mechanisms may involve the help of third parties and may include 'hotlines for raising complaints, advisory services for complainants, or expert mediators.' A/HRC/8/5, para. 94.

⁵³ Such grievance mechanisms have the advantage that they would appear to be more impartial, since the company will not have to act as defendant and judge at the same time. A/HRC/8/5, para. 95. Zandvliet and Anderson appear to be of the opinion that companies should provide for both an internal and an external grievance mechanism, which they refer to as a 'recourse mechanism'. According to Zandvliet and Anderson, '[p]eople lodging a complaint need to have recourse if they are dissatisfied with the outcome of the investigation'. L. Zandvliet, M.B. Anderson, *Getting it Right; Making Corporate – Community Relations Work*, Greenleaf Publishing, Sheffield, 2009, p. 133.

⁵⁴ Please note that the above-mentioned fundamental labor standards also qualify as human rights and any grievances in relation thereto would thus fall within the scope of general human rights grievance mechanisms.

⁵⁵ N. Ascoly, I. Zeldenrust, *Considering Complaint Mechanisms: An Important Tool for Code Monitoring and Verification*, SOMO, Paper, 2003, through <BASESwiki.org>; The World Bank Group – Corporate Social Responsibility Practice, *Company Codes of Conduct and International Standards: An Analytical Comparison*, Part I and II, through <www.worldbank.org>; Corporate Social Responsibility Initiative, *Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders*, Corporate Social Responsibility Initiative, Working Paper 41, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008; C. Rees, *Overview of a Selection of Existing Accountability Mechanisms for Handling Complaints and Disputes*, Corporate Social Responsibility Initiative, Working Paper 37, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2007; C. Rees, *Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps*, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008; C. Rees, D. Vermijs, *Mapping*

The grievance mechanisms included in this (high-level) overview vary greatly in character. On the one hand, business enterprises have committed themselves to external grievance mechanisms as established by (multi-stakeholder) non-governmental organizations (**NGOs**) (sections 2.2 and 2.3 below distinguishing between mechanisms which are exclusively designed for labor disputes and those which are not). On the other hand, some business enterprises provide for external grievance mechanisms on the basis of ad hoc agreements (section 2.4 below).

2.2 Labor-only grievance mechanisms

2.2.1 Introduction

Currently a number of grievance mechanisms can be identified which are exclusively dedicated to solving labor-related disputes. Eight of these labor-only grievance mechanisms will be discussed in the subsequent paragraphs (section 2.2 – 2.9). These are the grievance mechanisms provided by: the Social Accountability International (**SAI**) and the Social Accountability Accreditation Services (**SAAS**) relating to the SA8000 standard, the Ethical Trading Initiative (**ETI**), the Business Social Compliance Initiative (**BSCI**), the Fair Labor Association (**FLA**), the Fear Wear Foundation (**FWF**), the Worker Rights Consortium (**WRC**), the Clean Clothes Campaign (**CCC**), and the International Council of Toy Industries (**ICTI**).

Three of these grievance mechanisms are not-sector specific (SAI/SAAS, ETI, BSCI); four grievance mechanisms are focused on the textile industry (FLA, FWF, WRC, CCC); and one mechanism is focused in the toy manufacturing industry. The textile and toy manufacturing industry have in common that they are both labor intensive and make use of supply chains originating in low-wage states in particular in Asia.

2.2.2 Social Accountability International / Social Accountability Accreditation Services complaint procedure

The complaint procedure of Social Accountability International (**SAI**) and the Social Accountability Accreditation Services (**SAAS**) is related to the SAI's SA8000 standard. SAI is a 'non-governmental, multi-stakeholder organization whose mission is to advance the human rights of workers around the world'. It was established in the mid-1990s. The SA8000 standard is an auditable certification standard based on 'international human rights norms and national labour laws that will protect and empower all personnel within a company's scope of control and influence, who produce products or provide services for that company, including personnel employed by the company itself, as well as by its suppliers/subcontractors, sub-suppliers, and home workers. (...) Its requirements apply universally, regardless of a company's size, geographic location, or industry sector.'⁵⁶

While SAI focuses on (local) capacity building (it provides compliance training and promotes social dialogue), SAAS is responsible for auditing and certification and provides for a complaint (as well as

Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008.

⁵⁶ At <www.sa-intl.org>. SAI has been a founding member of ISEAL Alliance. ISEAL Alliance was established in 2002 by eight social and environmental certification organizations in order to collaborate and increase the effectiveness of these standards, increase peer review and represent common interests in international forums. See <www.isealalliance.org>.

an appeals) procedure in the so-called SAAS Global Procedures Guideline 304 which primarily provides guidance to bodies or persons wishing to submit a complaint.

A complaint is defined as a 'formal expression of dissatisfaction (...) by any organization or person, with some matter related to a certification body, a certified facility, or SAAS and its staff, where a response is expected' (Article 2.1). The SAAS complaint procedure distinguishes between four types of complaints, including so-called 'Type 3' complaints, which may be '[r]eceived from interested parties about the performance of certified facilities' (Article 3.4). These claims must be first lodged with the relevant certification body and then, if necessary, with SAAS.

The complaints procedure provides for general guidance on making a complaint (Article 5). Complaints may be lodged anonymously, but must include contact information for follow-up. Complaints must first be lodged with the management representative who must be appointed by the certified facility pursuant to Chapter IV.9.11 of the SA8000. He is 'responsible for ensuring that there is a confidential, accessible system for workers to lodge complaints should workers find nonconformities to SA8000' (Article 6.1). According to SAAS, 'complaints are best handled at the lowest level'.⁵⁷ The complainant may be assisted by an SA8000 worker representative or trade union representative, if existing (Article 6.2). 'Management must respond within a reasonable, set period of time' (Article 6.3) and its response must include reference to possible root cause analysis, corrective action and preventive action.

Subsequently, if the complainant is not satisfied with the response or solution, he may lodge a complaint with the certification body responsible for the company or facility involved (Article 6.5 and 7) and is encouraged to send a copy of this complaint to SAAS (Article 7.2). This complaint may be lodged 'by any interested party (such as a worker, NGO, community group, teacher/professor or trade union)'. The certification body must protect the identity of the complainant unless the complainant chooses to expose his identity (Article 7.1). The complaint must be as detailed and substantiated as possible and must include documented evidence (Article 7.3). The certification body will review the complaint and may conduct an unscheduled audit during its investigation. The certification body's final report with its conclusions is sent to the complainant with a copy to SAAS. The SAAS will in due time review the certification body's investigation (Article 7.5 and 7.6).

Finally, if the complainant is not satisfied with the outcome of the investigation, it may lodge a complaint with SAAS (Article 7.6 and 5.5-5.8). Complaints lodged with the SAAS must be made in writing (hardcopy or e-mail) and must be fully detailed, including objective evidence. No format is prescribed but a form is available upon request (Article 5.5).⁵⁸

⁵⁷ At <www.saasaccreditation.org/complaints.htm>.

⁵⁸ See also on this grievance mechanism: C. Rees, Overview of a Selection of Existing Accountability Mechanisms for Handling Complaints and Disputes, Corporate Social Responsibility Initiative, Working Paper 37, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2007, pp. 18-20; C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 8, 18, 25; C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 45-47.

The complaint procedure provides for a grievance mechanism which is not sector specific. Its scope is limited to SA8000 certified companies, but extends to workers of all its suppliers, sub-suppliers and home workers all over the world. It appears to be multi-layered (local representative, certification body involved, SAAS) with exhaustion of each remedy before advancing to the next. The procedure appears to be accessible and transparent (apart from time limits) and can be used by workers (with consideration for their anonymity) and other interested parties, which includes NGOs and trade unions.

2.2.3 Ethical Trading Initiative code violation procedure

The ETI was established in 1998 by an alliance of companies, trade unions and NGOs in the United Kingdom and provides for a Base Code with labor standards to which ETI members must commit. Additionally, ETI provides for a grievance mechanism in relation to alleged noncompliance of this ETI Base Code⁵⁹ pursuant to the 2001 ETI Alleged Code Violation Investigation Guidelines. These Guidelines may be considered by members of ETI (corporations, trade unions and NGOs (Article 3.1))⁶⁰ and are intended ‘(a) to ensure that alleged code violations are brought to ETI member companies in a way that facilitates the investigation of the allegation, (b) to ensure that the investigation of the allegation, and any remediation found to be necessary, occurs expeditiously and transparently, (c) to encourage the sharing of information amongst ETI members about supply chain labour practices, and (d) to build positive working relationships and the confidence of stakeholder groups in each other’ (Article 2 Guidelines). Furthermore, the Guidelines are intended to produce a final result (Article 4.1). The alleged violations must be either ‘specific and very serious, requiring an instant response’ or ‘specific or on-going, requiring prompt investigation in line with these guidelines’ in order to fall within the scope of these Guidelines.

Allegations must be made after gathering as much information as possible and must be submitted in writing to the company involved with a copy to the ETI secretariat (Article 7 Guidelines). The submission should include, among other things, the identification of the supplier site, the alleged code breach, the scale of the breach, any parallel proceedings in relation to the allegations, any preferred solution of employees, the relationship between the affected employees and the entity making the allegation, any relevant local complexities (Article 7.4 Guidelines). Under certain circumstances the names of individual employees may be withheld; in case code breaches affect large numbers of people, names of individual employees are not necessary (Article 8.1-8.2 Guidelines).

After communicating the allegations, the relevant parties should meet as soon as possible and record their decisions in a Memorandum of Understanding (MoU). This MoU should include, among other things, whether or not the allegation triggers the Guidelines; which ETI members are affected; the degree of leverage of the company involved with respect to the supplier; degree of confidentiality; the way of investigation, including timetable, and evaluation of remediation (Article 9 Guidelines).

⁵⁹ The ETI Base Code also formed the basis of other codes of conduct, including the Code of Conduct of the Wine Industry Ethical Trade Association, see <www.wieta.org.za/>.

⁶⁰ Allegations may also be made by partners or affiliates of the trade union and NGO members, provided that the allegation is supported by an ETI member, which ‘should satisfy itself that the allegation is soundly based before approaching the company’ (Article 3.2 and 3.3).

The investigation is intended to establish the facts and may be carried out by 'specialist outside organisations'. 'The investigator should conduct off-site interviews with employees of the supplier where this is necessary for the employees to freely express themselves' (Article 10.2 Guidelines) and lay down his findings in an investigation report which should be shared with all relevant people and entities involved (article 12).

If the original complainants do not agree with the findings of the investigation, the ETI member company should take this into account and provide for further inquiry and may eventually engage 'an independent investigator agreeable to both sides' (Article 14.4 and 14.5 Guidelines). According to Rees and Vermijs this could be a mediator.⁶¹ In case the investigation confirms that a breach has taken place, the relevant ETI member company is responsible for negotiation a remediation plan with the supplier and for monitoring the implementation of remediation (Article 13 and 15 Guidelines).⁶²

The scope of the ETI code violation procedure is limited to breaches of the ETI Base Code, which is not sector specific. Further, access to this grievance mechanism is (formally) limited to ETI members, i.e. UK based corporations, unions and NGOs. The scope of ETI members' responsibilities is extended to include their supply chains, however. Individual workers, in particular the workers employed in the supply chain, are referred to other ways of redress. The procedure is relatively detailed, yet informal, and aims to achieve a mutually satisfactory solution, if necessary with the help of a third party (investigation or mediation). The ETI itself only plays a marginal role.

2.2.4 Business Social Compliance Initiative complaint mechanism

The BSCI was established in 2002 by the Fair Trade Association (**FTA**)⁶³ to provide a uniform and consistent social compliance system for the global supply chains of FTA members. A uniform system was necessary due to the 'proliferation of individual codes, varying audit procedures and diverging approaches'.⁶⁴ A large number of European companies and a few non-FTA members participate in the BSCI (small and large companies irrespective of production and dealing with suppliers from all

⁶¹ C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 43. Similarly C. Rees, Overview of a Selection of Existing Accountability Mechanisms for Handling Complaints and Disputes, Corporate Social Responsibility Initiative, Working Paper 37, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2007, p. 22; C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 25.

⁶² See also on this grievance mechanism C. Rees, Overview of a Selection of Existing Accountability Mechanisms for Handling Complaints and Disputes, Corporate Social Responsibility Initiative, Working Paper 37, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2007, pp. 21-23; C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 8; C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 42-45.

⁶³ The FTA is a European organization, established in 1977, 'to represent the foreign trade interests of European retailers and importers towards European and International institutions.' At <www.fta-intl.org/who-we-are/who-is-the-fta>.

⁶⁴ At <www.bsci-intl.org/about-bsci/why-bsci-exists>.

over the world), each of which has committed to implement the BSCI Code of Conduct (available in 27 languages)⁶⁵ in its supply chain relations.

As provided in the BSCI principles, compliance with the Code of Conduct is monitored through independent auditing companies (using a common and extensive database to prevent duplication), but does not lead to certification. The BSCI does encourage companies, however, to go further and 'achieve [the] best practice, the SA8000 social management system and certification developed by Social Accountability International (SAI).'⁶⁶

The BSCI Code of Conduct requires suppliers to provide for an internal grievance mechanism to deal with BSCI related complaints from employees or third parties,⁶⁷ for example by means of suggestion boxes of worker committees.⁶⁸ Additionally, as from 2010, BSCI auditors provide the workers they interview with contact details of local BSCI contacts if they would like to report a complaint against their company. The same information must be included in the posters which must be displayed in the factory. BSCI will then determine on a case-by-case basis whether or not to investigate the complaint, in which the BSCI member and the auditor will be involved. This complaint mechanism is currently only available in China and India but will be expanded to other countries.⁶⁹

The BSCI is not sector specific but the scope of its complaint mechanism is limited to (the supply chains of) BSCI participants and is currently only available for workers in India and China. Its complaint mechanism does not appear to be formalized yet and appears to be focused on complaints from local workers only and complementary to empowering of BSCI participants by training and engagement of local stakeholders.

2.2.5 Fair Labor Association Third-Party Complaint Procedure

The FLA is a 'non-profit organization [established in 1999 and] committed to protecting workers' rights and improving working conditions worldwide' in the apparel and footwear industry.⁷⁰ The FLA's mission is 'to combine the efforts of business, civil society organizations, and colleges and universities to protect workers' rights and improve working conditions worldwide by promoting adherence to international labor standards'.⁷¹ In order to fulfill its mission, the FLA will 'determine whether the Applicable Products of each Participating Company are produced in Compliance with the Fair Labor Association Standards' and 'continue to address questions critical to the elimination of unfair labor practices'.⁷² The FLA's standards have been laid down in the FLA Workplace Code of Conduct (first drafted in 1998) by those companies (and their suppliers) that have committed to the FLA (1900 companies and 185 colleges and universities).

⁶⁵ Business Social Compliance Initiative Code of Conduct, 2009.

⁶⁶ At <www.bsci-intl.org/about-bsci/principles-of-BSCI>.

⁶⁷ Business Social Compliance Initiative Code of Conduct, 2009, p. 5.

⁶⁸ BSCI Echo No. 7 – 2010, p. 1.

⁶⁹ BSCI Echo No. 7 – 2010, p. 1. BSCI Press Release of 9 November 2009, 'The Business Social Compliance Initiative strengthens its presence in China and India, at <www.bsci-intl.org/news-events/press-room-resources>.

⁷⁰ At <www.fairlabor.org>.

⁷¹ Charter Document of the FLA, 16 February 2010, preamble.

⁷² Charter Document of the FLA, 16 February 2010, preamble.

Pursuant to the FLA's Charter, Participating Companies (companies which have submitted to the FLA's program and whose participation has been approved by the FLA) are subject to monitoring and may be subjected to third-party complaints (Section XI). A third party is defined as 'any person or organization that has initiated a Complaint with respect to a Facility (...)', while a complaint must be related to 'any significant and/or persistent pattern of noncompliance, or any individual incident of serious noncompliance with the Workplace Code or Monitoring Principles (...)'.⁷³ According to the FLA, this procedure is not intended to undermine internal or local grievance mechanisms and 'is meant to be a tool of last resort when other channels have failed to protect workers' rights.'⁷⁴

The procedure for such third-party complaints is set out in Section XI of the FLA Charter, and consists of four steps. These steps are, in short:

1. Lodging the complaint. Complaints are lodged with the executive director of the FLA and must 'contain reliable, specific and verifiable evidence or information' that a (participating) company breached its responsibilities under the FLA code. A web-based complaint form (in English) is provided on the FLA website,⁷⁵ which can be sent by mail, e-mail or fax to the FLA or to other institutions which may be expected to pass on this information to the FLA. Complaints may also be lodged by phone. If the complainant wishes to remain anonymous, he must indicate so. The FLA will subsequently consult with the complainant and will assess whether or not the complaint will be dealt with. If the complaint will not be taken into consideration, then the executive director will inform the complainant in writing and explain the decision.
2. Informing the company involved. If the FLA decides to take the complaint into consideration, it will inform the company involved about the complaint and will give the company a preliminary indication of the standards which may be breached. The company involved will then have 45 days to investigate the complaint internally or to request that the complaint will be assessed by the FLA. If the company involved chooses to investigate the complaint internally, it must report its findings by the end of the 45-day period. The complainant then has the right to reply to these findings. If the FLA is satisfied with the end result it may terminate the proceedings and provide a summary report to the company and the complainant. The FLA has the right to take preliminary measures at any point during the proceedings.
3. Assessing of the complaint by FLA. If the FLA decides to further assess the complaint, it must determine whether to proceed through the use of an expert or an Independent External

⁷³ Charter Document of the FLA, 16 February 2010, Section I.

⁷⁴ Through <www.fairlabor.org>. Pursuant to Principle 4 of the Principles of Fair labor and Responsible Sourcing, each FLA affiliate must provide for a confidential reporting channel for workers. In 2003, Ascoly and Zeldenrust reported that FLA members had implemented this obligation in various ways, including 'through pre-paid mailers (Reebok), providing workers with (mobile) phone numbers and addresses of the (local) compliance staff via posters (LCI, Reebok), complaint boxes (PvH), by checking reports of meetings of worker-management communication committees (Reebok), or most commonly by having auditors leave their business cards with the workers after interviewing them (Adidas, Levi, Nike).' N. Ascoly, I. Zeldenrust, Considering Complaint Mechanisms: An Important Tool for Code Monitoring and Verification, SOMO, December 2003, through <BASESwiki.org>, p. 4.

⁷⁵ Through <www.fairlabor.org>.

Monitor, which is ‘a monitor which has been accredited by the Association (...)’. According to Rees, there is broad flexibility in the available approaches, which ‘frequently involve mediation, with the role of neutral mediator taken either by the FLA President or Executive Director or by local experts.’⁷⁶ The assessor must have access to all relevant information and must perform his work in a timely manner. He must report to the FLA in writing. The company involved will have to pay the FLA for the assessment. The company has the right to terminate the process at any time. In that case it would have to make a summary report for the company involved and the complainant.

4. Remediation. If the assessor concludes that a breach is likely, then the company involved will work with the FLA to develop an appropriate remediation plan. If the company involved decides to proceed with remediation, then it will make a remediation plan within 30 days. The FLA will make a Tracking Chart on its website within 90 days after the assessment made in step 3, and which will include all remediation steps. The FLA will make summary reports as long as necessary and will submit a final report when the remediation has been completed.

Pursuant to Section XI(B) all parties involved may disseminate public information as to the complaint while the FLA may disclose information necessary to correct any misrepresentations.⁷⁷

It appears therefore that the FLA provides for a detailed, formalized, and well-developed grievance mechanism in relation to labor standards in the textile industry. Its scope extends to workers in the supply chain of FLA member or affiliated companies. The FLA third-party complaint procedure is intended to be a remedy in last resort, to be complementary to local and internal grievance mechanisms and to deal only with significant cases of noncompliance (either individual cases or a pattern of noncompliance). It appears that the FLA provides for an accessible (apart from the complaint form which is only available in English) and transparent procedure for workers and organizations. Complaints are investigated by the FLA and/or third-parties, which may include mediators.

2.2.6 Fair Wear Foundation complaints procedure

The FWF was established in 1999 and intends to improve labour conditions in the garment industry. It has about fifty member companies and is governed by trade unions, NGOs and business

⁷⁶ C. Rees, Overview of a Selection of Existing Accountability Mechanisms for Handling Complaints and Disputes, Corporate Social Responsibility Initiative, Working Paper 37, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2007, p. 21; C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 25. Similarly C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 28.

⁷⁷ See also on this grievance mechanism: C. Rees, Overview of a Selection of Existing Accountability Mechanisms for Handling Complaints and Disputes, Corporate Social Responsibility Initiative, Working Paper 37, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2007, pp. 20-21; C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 6-7, 18, 25; C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 27-29.

associations.⁷⁸ FWF member companies have committed to the FWF Code of Labour Practices which was drafted in 2009.

The Fair Wear Foundation Charter provides for a complaints procedure as part of the FWF's verification process (Section 5). The FWF verification process further consists of country studies, factory audits, management system audits and reporting. The complaint procedure is intended as a measure of last resort, 'in case an internal grievance mechanism of the factory failed or is absent.'⁷⁹

The complaints procedure of the Fair Wear Foundation may be invoked by a number of stakeholders, including the workers involved, NGOs (such as the Clean Clothes Campaign),⁸⁰ trade unions and may relate to individual complaints from an employee or a collective complaint from the workforce in relation to the general labor circumstances, including core labor standards. It consists of eight steps.

1. Operationalization of the procedure in the countries involved. This is carried out by publication of the procedure at the FWF website and by informing the workers and partner organizations in the relevant countries.
2. Reception of the complaint. Complaints may be submitted to FWF directly or to the 'local complaints handler' (a person or an organization) who has been appointed by FWF in the relevant countries or regions and who must speak the local language. Complaints may be made in writing (e-mail, letter) or verbally (telephone, personal contact) and must be passed on to FWF immediately if made with the local complaints handler. Complainants may remain anonymous. Costs at this stage will be paid for by FWF.
3. Admissibility of the complaint. The FWF shall make a decision on the admissibility of the complaint within six days and inform the complainant accordingly. This decision cannot be appealed. The admissibility of the complaint will be assessed by FWF by reference to the subject matter and the company involved. Complaints must relate to the FWF Code of Labour Practices and must be addressed to a member company or a supplier of a member company. Costs will be borne by FWF at this stage. The member company will be informed about the complaint and its admissibility.
4. Investigation of the complaint. If admissible, the FWF will make an investigation plan and will, with input of the member company involved, follow the regular audit procedure⁸¹ as to the number of sources consulted. The FWF will make a proposal for corrective action and FWF will bear the costs. A member company may decide on additional investigations (at its own costs). All parties involved will be informed about the decision of the FWF. At this stage, the

⁷⁸ At <fairwear.org/about>.

⁷⁹ Fair Wear Foundation Charter, 2009.

⁸⁰ FWF Complaint Report of 23 May 2011 regarding Jack Wolfskin Indonesia (freedom of association among other things).

⁸¹ See Fair Wear Foundation Charter, section 5(2).

FWF may involve third parties, such as the FLA,⁸² or expert mediators, according to Rees and Vermijs.⁸³

5. Remediation of the complaint. The member company and the 'accused party' will, together with the complainant and / or their representatives draft a corrective action plan and ensure its implementation. The FWF will verify the progress with the settlement.
6. Monitoring of remediation. The member company will monitor corrective action.
7. Verification and reporting of remediation. The FWF is responsible for execution of the complaints procedure and will verify that remediation is implemented. FWF will publish the details of every complaint on its website and in its newsletters.
8. Appeal. If a party is not satisfied with the outcome of the procedure, he may lodge an appeal with the Executive Board of the FWF. The Executive Board will consider the advice of the FWF Committee of Experts.⁸⁴

The FWF provides for a complaints procedure for workers in the textile industry. The scope of this complaints procedure is limited to workers of FWF member companies and in particular to workers who are part of FWF's supply chain. The complaints procedure is intended to be used as a means of last resort. The procedure is well-developed and formalized and appears to be accessible (easy access by various means, preferably through a local contact and no costs for the complainant) and transparent for workers and interested parties. FWF involves a network of local staff ('conflict handlers') and third parties for conflict resolution and cooperates with other organizations in this field.

2.2.7 Worker Rights Consortium complaint mechanism

The WRC was established in 2000 by a group of 'university administrators, students, and international labor rights experts'⁸⁵ in order to improve the working conditions and labor standards of the workers who manufacture the clothing and merchandize which bear college and university indicia. The WRC promotes socially responsible initiatives and awareness in this area and surveys compliance with labor standards (based on its Model Code of Conduct)⁸⁶ which universities and their licensees⁸⁷ need to observe. The WRC surveys compliance by conducting independent and in-depth

⁸² FWF Complaints Report of 13 July 2011 regarding JC Rags Turkey (freedom of association; collective bargaining and non-discrimination).

⁸³ C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 31.

⁸⁴ Fair Wear Foundation – Complaints Procedure, 2009. Generally also on this grievance mechanism C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 30-32.

⁸⁵ At <www.workersrights.org/about/history.asp>.

⁸⁶ At <www.workersrights.org/about/>. See also the Bylaws of the Worker Rights Consortium.

⁸⁷ The WRC Model Code of Conduct defines licensees in Section I.C as 'all persons or entities which have entered into a written 'License Agreement' with the University manufacture 'Licensed Articles' (as that term is defined in the License Agreement) bearing the names, trademarks and/or images of one or more Member Institutions.'

investigations and publicly disseminates this information.⁸⁸ Currently 181 North American colleges and universities are affiliated with WRC (they are not members of WRC) which means that they have accepted the responsibility to hold licensees accountable for the treatment of the workers used.⁸⁹ 'It is the responsibility of the licensee to ensure that workers are not exploited.'⁹⁰

In order to observe its responsibility to survey compliance, the WRC provides for a complaint mechanism. The WRC investigates working conditions when it receives complaints from workers or when it receives information from other sources, such as local NGOs and trade unions with which the WRC is in contact (most commonly). Complaints may also be submitted directly to the WRC through an online form, which is available in English and nine other languages. Complainants must provide information regarding the country of operation and the name of the factory as well as a 'detailed description of worker rights violation/s' and a telephone number. The WRC will keep name and contact information confidential unless indicated otherwise.

A complaint may lead to an investigation⁹¹ which may include interview with workers and the gathering of relevant documentation. According to Rees, the WRC 'is more of an advocacy or campaign-based organisation' and investigates complaints in case of 'a particularly serious problem and where the WRC estimates that their intervention could lead to remediation and wide systemic change.' Investigations are carried out by 'teams composed of local community representatives and experts, who are independent of the factory and workers, as well as WRC staff.' By doing so, the WRC may 'increase the prospects for effective locally-led grievance processes in the future.'⁹²

If a breach of labor standards is identified, 'the WRC develops recommendations for remedial action, in consultation with workers', which may involve mediation between the parties involved,⁹³ and outreach to the communities where the workers live.⁹⁴

⁸⁸ Bylaws of the Worker Rights Consortium, section 1.2 and at <www.workersrights.org/about/>.

⁸⁹ At <www.workersrights.org/about/as.asp>. Affiliation is done by means of a letter from the college or university president in which the decision to affiliate is expressed as well as the recognition of the obligation of affiliation: 'maintaining a manufacturing code of conduct, providing the WRC with factory disclosure information and paying affiliation fees.' At <www.workersrights.org/faq.asp>.

⁹⁰ Bylaws of the Worker Rights Consortium, Annex I, Key WRC Principles, 1, 2.

⁹¹ According to Ascoly and Zeldenrust, WRC 'calls for maximum participation of local and regional actors, as they see to concurrently empower and strengthen the investigative capacity of local and regional actors.' N. Ascoly, I. Zeldenrust, Considering Complaint Mechanisms: An Important Tool for Code Monitoring and Verification, SOMO, Paper, 2003, through <BASESwiki.org>, p. 10. Similarly C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 39.

⁹² C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 16-17.

⁹³ At <www.workersrights.org/contact/complaints.asp>. See, for example, WRC Investigation Re: Complaint against Kukdong (Mexico); Report and recommendations, June 20, 2001, Recommendation 9 (in section on Mechanisms of Internal and External Accountability). Ascoly and Zeldenrust suggest that mediators can be involved in solving disputes. N. Ascoly, I. Zeldenrust, Discussing key elements of monitoring and verification, SOMO, Amsterdam, 2001, through <somo.nl>, p. 9. However, the WRC report they refer to shows that the mediator involved (a Mexican attorney, named Arturo Alcalde Justiniani, contacted by the International Labor Rights Fund at the request of Nike) conducted an investigation as well as a mediation attempt, prior to the involvement of WRC. WRC Investigation re Complaint against Kukdong (Mexico); Preliminary Findings and

The WRC provides for a grievance mechanism for workers in the textile sector. Its scope is limited to workers who work at companies which supply to companies licensed to use WRC affiliated university or college indicia. The procedure is easily accessible for workers and other interested parties and often triggered by local contacts of the WRC, such as NGOs and trade unions. The procedure does not appear to be as formalized as the above-mentioned procedures. A complaint triggers an inquiry by the WRC after which the WRC, aided by third parties, if necessary, attempts to strive for a solution which is satisfactory to all parties involved.

2.2.8 Clean Clothes Campaign Urgent Appeals System

The CCC was established in 1989 and is an alliance of trade unions and NGOs in 15 European countries relying on a partner network consisting of more than 200 organizations. It intends to educate and mobilize consumers and lobby companies and governments.⁹⁵ The CCC Code of Labour Practices for the Apparel Industry Including Sportswear was adopted in 1998 and is intended for retailers as well as manufacturers and all other companies in the supply chain. The Code assumes the existence of a complaint mechanism⁹⁶ involving the Foundation, which is the CCC's monitoring body (Section IV, under Monitoring Basic Principles). The Board of the Foundation consists of representatives from multiple stakeholders (trade unions and NGOs as well as companies). The Foundation must provide for 'a means by which workers and any others can report on a confidential basis observance of the code' (Section IV, of the Code under Introduction).

Additionally, the CCC provides for an 'Urgent Appeals System'.⁹⁷ The Urgent Appeals System is characterized by the CCC as a 'direct solidarity action' and will lead to various forms of actions by the CCC upon the request of garment workers and their representatives whose rights have been violated. These actions include the writing of letters of protest, public e-mail or fax campaigns and awareness

Recommendations, January 24, 2001, pp. 1-3. WRC Investigation Re: Complaint against Kukdong (Mexico); Report and recommendations, June 20, 2001, p. 24.

⁹⁴ WRC Investigation re Complaint against Kukdong (Mexico); Preliminary Findings and Recommendations, January 24, 2001, recommendation 5, p. 7. Rees and Vermijs also refer to the WRC's outreach programs to trade unions and NGOs in apparel-exporting countries. C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 38. Generally on this grievance mechanism C. Rees, Overview of a Selection of Existing Accountability Mechanisms for Handling Complaints and Disputes, Corporate Social Responsibility Initiative, Working Paper 37, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2007, pp. 35-36; C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 7; C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 38-40.

⁹⁵ At <www.cleanclothes.org/about-us>.

⁹⁶ The importance of a grievance mechanism is confirmed in the CCC's Reference Guide on Code Implementation & Verification, which provides in Section 4: 'For a system that monitors and verifies compliance with a code of labour practices to be complete, it must include a mechanism to handle complaints. Such a complaint mechanism or procedure would be used to bring workplace concerns to the attention of multi-stakeholder monitoring and verification initiatives or sourcing companies.'

⁹⁷ The Clean Clothes Urgent Appeals System leaflet, 2008, at <www.cleanclothes.org/resources/ccc/urgent-appeals-system>.

raising events.⁹⁸ Some actions, however, may ‘never make it to the public; instead at the request of the workers or their organizations the CCC works behind the scenes to help create a space so that workers’ concerns are heard by local management, public authorities, brand-name garment companies and retailers, and others who have a responsibility to ensure compliance with good labor standards throughout international garment industry supply chains.’⁹⁹ The workers and their representatives will eventually decide which actions are undertaken in view of their knowledge of the local circumstances and the risks involved.

Requests for actions must be addressed to the CCC International Secretariat and the local CCC appeal coordinator and must include, among other things, a description of the rights violated, a summary of the workers’ demands, and the names and contact information of the factory involved, the owner of the factory and the organizations and unions involved.

The CCC has taken on about 30 appeals per year over the last few years, in particular in relation to violations of the four core labor standards.

Different from the previous grievance mechanisms, the Urgent Appeals System of the CCC is informal and does not appear to be limited to companies affiliated with the CCC. The procedure appears to be accessible to anyone who claims to have an interest. In consultation with the complainants, the CCC will undertake action, which includes public campaigning. However, if necessary, the CCC will act silently, behind the scenes, which may involve third-parties, such as expert mediators. The regular CCC complaints mechanism involving the Foundation is not clear.

2.2.9 International Council of Toy Industries CARE Foundation Hotline

The ICTI was established in 1975 and is composed of national toy industry associations from 20 states. It was founded to ‘act as a center of discussion and information exchange on trends and issues important to the toy industry, to promote safety standards, to reduce or eliminate barriers to trade, and to advance social responsibility in the industry with programs to address environmental concerns, fair and lawful employment practices and workplace safety.’¹⁰⁰ In order to promote worker safety and health, ICTI drafted a Code of Business Practices¹⁰¹ in 1995, which includes labor standards, which each member company is expected to observe.

Section 3(a) of the Code provides that the ‘purpose of this Code is to establish a standard of performance, to educate, and to encourage commitment to responsible manufacturing, not to punish.’ ICTI member companies must evaluate their own facilities and those of their contractors and statements of compliance must be signed by officers of each manufacturing companies or contractors. (Section 3(b) and (c)).

⁹⁸ For a public CCC campaign which eventually required mediation by Ruud Lubbers when the conflict affected diplomatic relations between the Netherlands and India, see: T. Lambooy, Case study: the international CSR conflict and mediation; Supply-chain responsibility: western customers and the Indian textile industry, *Nederlands-Vlaams tijdschrift voor mediation and conflictmanagement*, Vol. 13/2, 2009.

⁹⁹ The Clean Clothes Urgent Appeals System leaflet, p. 4.

¹⁰⁰ At <www.toy-icti.org/about/whatis.html>.

¹⁰¹ ICTI Code of Business Practices, 1995 at <www.toy-icti.org/info/codeofbusinesspractices.html>.

The Code also provides that it ‘should be posted or [made] available for all employees in the local language’ (final sentence) by means of posters or cards. These posters and cards include a hotline telephone number which workers may use to submit complaints.

In 2002, ICTI set up a program in order to ensure implementation of ICTI’s codes which is carried out by ICTI’s Caring, Awareness, Responsible, Ethical (**CARE**) Foundation. CARE aims to set one standard for toy manufacturing and oversees monitoring for compliance with the codes, including the auditor qualification and certification processes. Since 80% of the world’s toys are manufactured in China, ICTI CARE is focused on China.¹⁰² This is also apparent from the hotline number on the cards and posters which each factory needs to publish, which is monitored by a Chinese NGO.¹⁰³

The ICTI CARE program includes an informal grievance mechanism for workers in the toy manufacturing industry. It is limited to workers in China who work for ICTI-member suppliers. It appears to be accessible (phone), informal and not adversarial (in view of the object and purpose of the Code as expressed in Section 3 of the Code). Any grievances appear to be addressed within the context of the audit and certification processes.

2.3 Labor-inclusive grievance mechanisms

2.3.1 Introduction

In addition to labor-only grievance mechanisms, a number of organizations or initiatives include labor disputes within the scope of their grievance mechanisms. Two examples of labor-inclusive grievance mechanisms – UTZ Certified and the Rain Forest Alliance – are discussed in subsequent paragraphs (section 3.2 and 3.3).

Both organizations have in common that they are focused on sustainability of business operations, which includes compliance with social/labor standards, and that they provide for certification.

2.3.2 UTZ Certified Complaint Handling Procedure

UTZ Certified was established in 1999 by two business partners (a coffee grower and a coffee roaster) in order to improve the sustainability of the coffee industry by means of certification on the basis of codes of conduct.¹⁰⁴ Sustainability models for tea and cocoa were added in subsequent years. According to UTZ, one-third of all coffee is UTZ certified, and global market leaders have committed to the program. UTZ Certified is sponsored by a number of private and public organizations, including the Postcode Loterij and Agentschap NL.

¹⁰² At <www.toy-icti.org/about/whatis-icticare.html>.

¹⁰³ Also on this grievance mechanism C. Rees, *Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps*, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 7, 17; C. Rees, D. Vermijs, *Mapping Grievance Mechanisms in the Business and Human Rights Arena*, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 33-34.

¹⁰⁴ Through: <www.utzcertified.org/>. Together with SAI, UTZ Certified is one of the eight members of the above-mentioned ISEAL Alliance.

In order to achieve sustainability of the coffee, tea and cocoa sectors, UTZ Certified provides field training through a field support network and provides standards, certification monitoring and traceability services. UTZ Certified provides for separate codes of conduct for coffee,¹⁰⁵ cocoa,¹⁰⁶ and tea (both for tea farms and factories as well as rooibos producers and processors).¹⁰⁷ These codes of conduct have been developed on the basis of multi-stakeholder discussion and are continuously reviewed and updated.¹⁰⁸ The UTZ Certified codes of conduct are generally focused on sustainable harvesting and environmental aspects, but some parts deal with worker rights, including the four core labor standards.

Compliance with these codes is checked on an annual basis through independent auditors. Additionally, UTZ Certified provides for a complaint mechanism,¹⁰⁹ which allows any person or organization to complain or express suspicions about producers, traders, roasters and others about alleged noncompliance with 'the regulations and/or the spirit of the UTZ CERTIFIED program and requirements.' Complaints must be substantiated with documentary evidence and UTZ Certified will deal with the complaint as it deems necessary depending on the nature of the complaint and in consultation with the complainant.¹¹⁰

The UTZ Certified complaint procedure is as transparent as possible and consists of various steps:¹¹¹

1. Submission of complaint form with evidence by e-mail or fax to UTZ Certified. UTZ Certified registers the complaint form under a unique registration number; indicates a responsible case manager, and confirms receipt to the complainant within five working days of receipt of the form. UTZ Certified also informs the complainant about the responsible case manager.
2. UTZ Certified will contact the complainant, if necessary, within ten working days after receipt of the complaint form, for further clarification or proof.
3. UTZ Certified proposes a solution and/or action plan to the complainant by fax or by e-mail within twenty working days after receipt of the complaint form or within twenty days after receipt of further requested evidence.
4. If the complainant does not agree with the solution, he informs UTZ Certified within ten working days in writing, after which UTZ Certified again contacts the complainant. It appears that the previous steps are then repeated.

UTZ Certified keeps records of all documentation in relation to complaints for five years. It will engage a third party if the objectivity of UTZ Certified is at stake. UTZ Certified will not accept claims

¹⁰⁵ UTZ Certified Good Inside Code of Conduct; For Coffee (Version 1.2 – November 2010).

¹⁰⁶ UTZ Certified Good Inside Code of Conduct; For Cocoa; For Individual Certification (Version 1.0 – December 2009).

¹⁰⁷ UTZ Certified Good Inside Code of Conduct; For Tea Farms (Version 1.0 – July 2009) and For Tea Factories (Version 1.0 – July 2009). UTZ Certified Good Inside Code of Conduct; For Rooibos Production (Version 1.0 – February 2011 and For Rooibos Processing (Version 1.0 – February 2011).

¹⁰⁸ Code development procedure for an UTZ Certified product code (January 2011 version).

¹⁰⁹ UTZ Certified Complaint Handling Procedure, 2010.

¹¹⁰ UTZ Certified Complaint Handling Procedure, section B.

¹¹¹ UTZ Certified Complaint Handling Procedure, paras. 1-7.

for financial compensation but always strives to reach a solution which is acceptable to all parties involved.

UTZ Certified appears to be well-organized and provides for a complaints procedure. The scope of this procedure is limited to complaints in relation to noncompliance with provisions and/or the spirit of the UTZ Certified codes of conduct by UTZ Certified companies. The procedure is accessible, formalized and transparent (including clear time lines, but unclear as to when the 'respondent' is engaged), and may be seized by any interested party. UTZ Certified may involve third-parties and strives for a solution which is acceptable to all parties involved and is thus not adversarial in character.

2.3.3 Rain Forest Alliance

The Rain Forest Alliance, which is also a member of the ISEAL Alliance, was established in 1986 after a major conference in New York City on the worldwide destruction of rain forests.¹¹² Currently Rain Forest Alliance provides certification services to companies which conduct their operations in a sustainable manner – in particular in the timber industry, agriculture, cattle ranching and tourism.¹¹³ In order to be rewarded with one of Rain Forest Alliance's certificates, companies need to meet both social (labor) and environmental standards.¹¹⁴

With respect to its work on sustainable agriculture, Rain Forest Alliance's certification is based on the environmental and social standards of the Sustainable Agriculture Network (**SAN**), which is a coalition of five conservation groups (including Rain Forest Alliance) and which was founded in 1997.¹¹⁵ The SAN standards¹¹⁶ are based on ten guiding principles,¹¹⁷ one of which relates to working conditions. With respect to sustainably forestry, Rain Forest Alliance's certification is based on the standards of the Forest Stewardship Council (**FSC**), which was established in 1993 by a group of timber users, trader and environmental and human rights organizations in the United States.¹¹⁸ Some of the FSC's standards provide for worker rights.¹¹⁹

Complaints in relation to Rain Forest Alliance certification for sustainable agriculture may be lodged with Sustainable Farm Certification, International (**SFC**), which is the Rain Forest Alliance/SAN's certification body.¹²⁰ Complaints about a farm or an appeal against a certification decision may be lodged by a 'person or organization' by means of a complaints/appeals form. In this complaints form, which may be submitted by e-mail or fax or mail, the complainant (whose information will remain

¹¹² At <www.rainforest-alliance.org/about/history>.

¹¹³ At <www.rainforest-alliance.org/about> and <www.rainforest-alliance.org/about/approach>.

¹¹⁴ Rain Forest Alliance's certification system is based on the three pillars of sustainability, namely environmental protection, social equity and economic viability. At <www.rainforest-alliance.org/work/agriculture>.

¹¹⁵ Through: <sanstandards.org>. For a recent critical report on Rain Forest Alliance's certification of Unilever tea, see: S. van der Wal, Certified Unilever Tea; Small cup, big difference?, SOMO, Amsterdam, 2011.

¹¹⁶ SAN Sustainable Agriculture Standards, 2010, through <sanstandards.org>.

¹¹⁷ Sustainable Agriculture Network Principles, through: <sanstandards.org>.

¹¹⁸ At <www.fsc.org/history.html>.

¹¹⁹ See for example principle 4 of the FSC International Standard; FSC Principles and Criteria for Forest Stewardship, FSC-STD-01-001 (version 4-0) EN, 1993, as last amended in 2002, which deals with community relations and worker's rights.

¹²⁰ At <www.sustainablefarmcert.com/index.cfm>.

confidential, must explain the nature of his complaint.¹²¹ Although the SFC refers to a 'Procedure to handle complaints', no further documentation can be found on the SFC's website.¹²²

Complaints and appeals in relation to Rain Forest Alliance certification for sustainable forestry, must be addressed to SmartWood, the Rain Forest Alliance's forestry certification program since 1989.¹²³

Complaints can be made by relevant stakeholders. Complaints may be made in writing or verbally (in which case the SmartWood staff member will put the complaint in writing), and an internal log is made on the internal computer drives. SmartWood will respond in writing within 14 days.

SmartWood will subsequently inform the certified operation within seven days after receipt of the complaint, but will keep the name of the complainant confidential if so requested or if this is deemed necessary by SmartWood. The certified operation may then respond, preferably in writing. Within 14 days after receiving the complaint, SmartWood will respond to the complainant, with or without comments from the certified operation or relevant third parties. SmartWood shall investigate the complaint within three months of the date on which the complaint was received. If the complainant is not satisfied with the outcome of the investigation, he may request in writing the opportunity to lay his claim before a third party responsible for resolving grievances made against Rain Forest Alliance and SmartWood, for example the Rain Forest Alliance Chief of Agriculture. If, at that stage, no resolution is found, then the complainant may submit his complaint, in writing, to the Director of SmartWood or to the relevant standard setting body, such as the FSC. If a resolution is reached, such resolution will be included in a memorandum for closure which shall be distributed to the relevant entities involved.¹²⁴

Rain Forest Alliance apparently provides for a complaint mechanism in relation to its certification of sustainable agriculture and sustainable forestry. Both areas are subjected to different codes (and are therefore limited to those companies which are certified on the basis of these codes) and the grievance mechanisms involved are dealt with by different organizations. In view of the complex interrelationship between Rain Forest Alliance and the various organizations involved, the mechanisms do not appear to be very accessible or transparent. The threshold for making a complaint does not appear to be high though.

2.4 Ad hoc agreements

2.4.1 Introduction

Apart from labor-only and labor-inclusive grievance mechanisms provided by NGOs/multi-stakeholder initiatives, also ad hoc agreements may provide for grievance mechanisms in relation to labor. Two examples will be discussed further below: agreements between companies and local communities (section 4.2); and high-level agreements between companies and global trade unions or federations (section 4.3). Both agreement categories are relatively new phenomena in international business relations.

¹²¹ At <www.sustainablefarmcert.com/processes.cfm>.

¹²² At <www.sustainablefarmcert.com/processes.cfm>.

¹²³ At <www.rainforest-alliance.org/forestry/certification>.

¹²⁴ At <www.rainforest-alliance.org/forestry/certification/transparency/dispute-resolution>.

2.4.2 Company – community agreements

In 2005 and 2006, Chevron Nigeria Limited and Shell Petroleum Development Company introduced a new approach in their working with local communities with respect to their investments in local development projects. Whereas in the past, they concluded large numbers of bilateral development agreements with individual communities in the Niger Delta, since 2005 and 2006 both oil companies have now entered into agreements with groups or clusters of communities. In these agreements, so-called Global Memorandums of Understanding (**GMoUs**),¹²⁵ the oil companies and these clusters of communities, represented by a board or council, regulate the investments of Chevron and Shell in social projects and programs. These boards or councils then make key decisions – in cooperation with NGO¹²⁶ and local and state government representatives – on the way the investments are allocated, which aims to promote cohesion and cooperation as well as increased local ownership, accountability and participation in development activities. Shell has reportedly entered into GMoUs with 24 clusters, covering 244 communities in the Niger Delta; Chevron reportedly entered into eight GMoUs in five states in the Niger Delta reaching more than 400 communities.¹²⁷

GMoUs do not appear to be legally binding. This is confirmed by the text of a draft GMoU between Chevron Nigeria Limited and local communities (as represented by the Regional Development Council) and the State Government, which is on file with the author. Article 10 of this GMoU provides: ‘Each Party acknowledges that this MOU is intended to be an expression of mutual intent and understanding, and is not intended to be a legally binding agreement between the Parties. Accordingly, this MOU may be terminated at any time by any Party hereto by giving written notice of such termination to the other Parties. In the event that this MOU is not so terminated, the term of this MOU shall be for a period of 4 years (...).’

Conflict prevention plays an important role in this new GMoU approach of Chevron and Shell. In the above-mentioned draft GMoU of Chevron, it is provided that the purpose of the GMoU is ‘to work together to create a climate of understanding between the Parties so as to achieve’ the objectives of participatory partnership, transparency and accountability, capacity building, safety, security and rule of law, community empowerment and sustainable development.¹²⁸ Article 4.1.4 of the GMoU provides for the establishment of a Conflict Resolution Committee (**CRC**), which is composed, among others, of representatives of the Regional Development Council, Chevron, the State and NGOs. The main function of the CRC is to assist Chevron to resolve conflicts which arise in the implementation of

¹²⁵ The scope and implementation of GMoUs are evaluated by the African Centre for Corporate Social Responsibility, which is led by Austin Onuoha. See <www.acrafrica.org>. See also, for example: ‘GMoU Participatory Stakeholder Evaluation; A Joint Evaluation of the Global Memoranda of Understanding between Chevron, Community Organizations and State Governments in the Niger Delta, October 2008 (RTI International, Search for Common Ground, Consensus Building Institute) through <cbuilding.org>.’

¹²⁶ Niger Delta Professionals for Development (NIDPRODEV), which operates in the Niger Delta since 1999, is an NGO which helps implementing these GMoUs, among other things by providing training and manuals. See <nidprodev.org/programmes/current-projects/global-memorandum-of-understanding-gmou-deployment>.

¹²⁷ Shell Briefing Note on Global Memorandum of Understanding, April 2011, at <www.shell.com.ng/home/content/nga/environment_society/shell_in_the_society/gmou/>; and <www.chevron.com/globalissues/corporateresponsibility/2010/healthinnigeria/empoweringcommunities/>.

¹²⁸ Draft Global Memorandum of Understanding between Chevron Nigeria Limited (on behalf of the NNPC/Chevron joint venture and the Regional Development Council and the State Government, preamble.

the GMoU and which cannot be resolved by Chevron through its internal grievance mechanism (Article 4.1.4(c) and 6.3 GMoU).

Conflicts may arise in relation to various issues, including to labor and employment. The nature of these conflicts is different than the nature of the conflicts dealt with by the above-mentioned grievance mechanisms, however. Pursuant to Article 2.1 GMoU, Chevron has committed itself to make sure that contractors which carry out work for Chevron hire as many workers from the local communities (represented by the Regional Development Council) as the contract may require. The Article further regulates termination of contracts of community workers, compensation rates, safety regulations and work codes and practices, and strikes; contracting and sub-contracting of work (Articles 2.2 and 2.3); company employment (Article 2.4; providing for the recognition that Chevron is an equal opportunity employer); and the provision of scholarships and contribution to teachers' programs by Chevron (Article 2.5). There is no reference to the contents of labor standards or the four core labor standards.

The scope of the above-mentioned grievance mechanism in the GMoU between Chevron and local communities is limited to grievances related to the implementation of the GMoU. As far as labor is concerned this means that grievances are limited to the employment responsibilities of Chevron and not to working conditions of Chevron's workers. The procedure before the multi-stakeholder CRC is a procedure of last resort and appears to be accessible. The GMoU does not provide for procedural rules and the character of the procedure may be informal, due to the composition of the CRC.

2.4.3 Company – trade union agreements

Since 1988, over fifty multinational enterprises from various industries have entered into agreements with international trade unions to provide for a framework for constructive negotiations. These agreements, also known as global framework agreements (**GFAs**), international framework agreements (**IFAs**) or transnational company agreements (**TCAs**)¹²⁹ are instruments intended 'to establish an ongoing relationship between the parties and ensure that the company respects the same standards in all the countries where it operates'.¹³⁰ These agreements reflect the commitment of companies towards respect of labor principles, in particular the core labor standards, in all countries in which they operate, irrespective of national legislation (which may be very restrictive or

¹²⁹ The term transnational company agreement is used within the context of the European Union and their scope is therefore limited, see COM(2008) 2155, 2 July 2008, Commission Staff Working Document, 'The role of transnational company agreements in the context of increasing international integration'. An analysis of TCAs is provided by: European Commission – Employment, Social Affairs and Equal Opportunities DG, Mapping transnational texts negotiated at corporate level, 2 July 2008. For more information, see the webpage of the European Commission, Employment, Social Affairs and Inclusions on Employee Involvement: <ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214>.

¹³⁰ Dominique Michel, ILO Team Leader of the ILO's Multinational Enterprises Program, at <www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_080723/lang--en/index.htm>. See also <www.unglobalcompact.org/Issues/Labour/Global_Framework_Agreements.html>. See also <baseswiki.org/en/International_Framework_Agreements>; C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 10, 19-20, 28; and C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, p. 92.

very liberal).¹³¹ These agreements do not substitute for labor negotiations between companies and workers at the national level, however.

Most GFAs provide for implementation, dissemination monitoring and informing all subsidiaries and suppliers. In case a subsidiary or supplier does not respect the terms of the GFA, the multinational enterprises' headquarters may be involved to look for a solution through dialogue.¹³²

The global union federations which have entered into such agreements are the Building and Woodworkers' International (**BWI**), the International Federation of Chemical, Energy, Mine and General Workers' Unions (**ICEM**), Public Services International (**PSI**), the International Metalworkers' Federation (**IMF**), UNI Global Union (**UNI**), and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (**IUF**). An overview of existing GFAs or IFAs is provided by the Council of Global Unions (**CGU**), which was established in 2007 and of which almost all global union federations have become members.¹³³ A database with all TCAs is provided by the European Commission.¹³⁴

Some of these GFAs / IFAs provide for basic dispute resolution clauses in relation to the interpretation or implementation of the agreement. The IFA between Royal Volker Wessels Steven NV and the BWI, for example, provides in one of its final clauses that '[s]ignatories agree that any difference arising from the interpretation or implementation of this agreement will be examined jointly, for the purpose of making recommendations to the signatory concerned.'¹³⁵

Similar provisions can be found in the UNI-Telefónica Code of Conduct (penultimate section),¹³⁶ and the Worldwide agreement on fundamental labour rights within the France Telecom Group (Article 4).¹³⁷ The GFA between GDF Suez and various global unions goes further since it specifically provides for mediation between the signatories (in last resort when a complaint from a worker cannot be solved otherwise)¹³⁸ in Article 5.1(e) and general joint examination in case of disagreement (Article 5.2).¹³⁹ And the IFA between AB Electrolux and global unions provides that the right to initiate

¹³¹ J. Baker, *Global Agreements and Protect, Respect, Remedy*, Council of Global Unions, 2011, pp. 1-2, through: <www.business-humanrights.org>.

¹³² Dominique Michel, ILO Team Leader of the ILO's Multinational Enterprises Program, at <www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_080723/lang--en/index.htm>.

¹³³ At <www.global-unions.org/framework-agreements.html>.

¹³⁴ At <ec.europa.eu/social/main.jsp?catId=978&langId=en>.

¹³⁵ International Framework Agreement signed between Royal Volker Wessels Stevin NV (VolkerWessels) and the Building and Wood Workers International (BWI) to promote and protect worker's rights, 26 January 2007, at <www.bwint.org/default.asp?index=573&Language=EN>.

¹³⁶ UNI-Telefónica Code of Conduct, 12 March 2001, through: <www.uniglobalunion.org>.

¹³⁷ Worldwide agreement on fundamental labour rights within the France Telecom Group, between France Telecom and UNI, 21 December 2006, through: <www.uniglobalunion.org>.

¹³⁸ Rees and Vermijs appear to suggest that such worker complaints under GFAs are not exceptional. C. Rees, D. Vermijs, *Mapping Grievance Mechanisms in the Business and Human Rights Arena*, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008, pp. 92-93.

¹³⁹ Global Framework Agreement on Fundamental Rights, Social Dialogue, and Sustainable Development, GDF Suez, 16 November 2010, through <www.icem.org>.

discussions in case of incidents may involve involvement of 'external expertise' (penultimate paragraph).¹⁴⁰

Considering the high-level nature of these agreements, their scope (sometimes involving supply chains), and the parties involved, the above-mentioned GFAs generally prescribe the parties to find a common and mutually acceptable solution. It appears that any grievances related to working conditions at the local level will only be discussed at the GFA-party level in last resort.¹⁴¹

¹⁴⁰ International Framework Agreement between AB Electrolux and employee representatives of IF Metall, Unionen, IMF and the KFD of the Electrolux Board of Directors, through <www.imfmetal.org>.

¹⁴¹ TCAs usually 'provide for the creation of joint committees to deal with interpretation of the text and empowered to draw up recommendations or arbitrate' but they also provide for fact-finding by means of common examination and conciliation. European Commission – Employment, Social Affairs and Equal Opportunities DG, Mapping transnational texts negotiated at corporate level, 2 July 2008, pp. 24-25.

3. Summary and recommendations

3.1 Summary

The role of business enterprises in the international legal order and the concept of corporate social responsibility are currently interpreted by reference to the Framework and complementary Guiding Principles of the Special Representative of the UN Secretary-General presented to the Human Rights Council in 2008 and 2011. This Framework consists of three pillars: (1) a duty of states to protect human rights; (2) a responsibility of business enterprises to respect human rights; and (3) access to remedies for those affected by human rights violations.

The normative framework for states and business enterprises includes – as a minimum – the four core labor standards as identified by the ILO in 1998 in the ILO Declaration on Fundamental Principles and Rights at Work:

- a. The freedom of association and the effective recognition of the right to collective bargaining;
- b. The elimination of all forms of forced or compulsory labor;
- c. The effective abolition of child labor; and
- d. The elimination of discrimination in respect of employment and occupation.

Any business enterprise would need to observe these four core labor standards, which also qualify as fundamental human rights, and can be held accountable for noncompliance with these standards. This general responsibility is confirmed by, among other instruments, the ILO Tripartite Declaration, the OECD Guidelines and the IFC Performance Standards.

According to the Special Representative, states, business enterprises, and stakeholders have the responsibility to provide for access to remedies for those affected by human rights violations. Business enterprises and stakeholders have observed this responsibility in various ways. Chapter 2 provides an overview of existing non-judicial and non-governmental grievance mechanisms for labor-related disputes.

First, a number of NGOs currently provide for grievance mechanisms in order to supplement their monitoring and verification capabilities with respect to their respective codes of conduct (labor-only as well as labor-inclusive). These grievance mechanisms are accessible for workers and/or interested parties if their grievances relate to business enterprises who have committed to these NGOs and their respective labor standards. Eight grievance mechanisms with an exclusive focus on labor disputes were discussed in chapter 2.2. These are the grievance mechanisms provided by SAI/SAAS, ETI, BSCI, FLA, FWF, WRC, CCC and ICTI. Further the grievance mechanisms provided for within the framework of Utz certified and RFA and which focus on social/labor standards in addition to environmental standards were discussed in chapter 2.3.

Second, business enterprises and stakeholders have agreed to a number of grievance mechanisms within the framework of ad hoc agreements, such as company – community grievances and company

– trade union agreements. One example of a grievance mechanism within the context of a company-community agreement was discussed in chapter 2.4, namely the responsibility of the CRC under the GMoU between Chevron and local Nigerian communities. Five examples of grievance mechanisms within the context of company – trade union agreements (GFAs/IFAs/TCAs) were discussed in the same section, involving Royal Volker Wessels Steven, Telefónica, France Telecom Group, GDF Suez, AB Electrolux).

The NGO based grievance mechanisms – whether labor-only or labor-inclusive – included in the overview above, vary in scope, sector, access (complainant and complaint), character and form of dispute resolution.

- All grievance mechanisms appear to be focused on labor-intensive industries. Some grievance mechanisms are exclusively focused on the textile industry (FLA, FWF, WRC and CCC); others are not limited to a specific industry although they are often used within the framework of the textile industry. The labor-inclusive mechanisms are focused on the agriculture/forestry sector.
- Apart from CCC, the formal scope of all grievance mechanisms is limited to companies who have committed to these NGOs by means of membership or affiliation/participation (BSCI, ETI, FLA, FWF, and WRC) or certification (SAI/SAAS, Utz Certified, and RFA). Their responsibility generally extends to their supply chains.
- Apart from the ‘Urgent Appeals System used by CCC, the material scope of all grievance mechanisms is limited to the codes of conduct which have been established within the framework of the NGOs involved. WRC requires its affiliates to set up codes of conduct on the basis of the WRC Model Code.
- All but ETI, BSCI and ICTI allow interested parties / organizations / stakeholders to submit complaints. ETI only allows inter-member complaints, although NGOs and trade unions are among ETI’s members. BSCI and ICTI only allow worker complaints, limited to workers in China and India (BSCI) and China (ICTI).
- All but FLA require mere (alleged) noncompliance with the prescribed labor standards. Only FLA requires the existence of a significant and/or persistent pattern or noncompliance or a serious incident of noncompliance.
- The degree of procedural detail and level of formalization of the procedure varies from no detail and informal (CCC) to highly detailed and very formal (SAI/SAAS, FLA and FWF) with multiple layers and intended as a means of last resort (SAI/SAAS FLA and FWF).
- Finally, most grievance mechanisms have in common that their method of dispute resolution is primarily inquiry resulting in a remediation plan which sometimes requires the assistance of a third party.

The individual grievance mechanisms provided for in ad hoc agreements between companies and communities and companies and trade unions appear to have in common that they strive for high-level solutions for individual or systemic problems. The Chevron GMoU provides for access for signatories to the GMoU or interested parties to a multi-stakeholder conflict resolution body in last resort. The GFAs generally prescribe negotiations, sometimes with the help of a third party, in case of a dispute between one of the signatories (likely instigated by the relevant international trade union)

in relation to the implementation of the GFA (likely at the level of one of the company's subsidiaries or suppliers).

An overview of the differences and similarities between the various grievance mechanisms has been included in the table below.

TABLE

	Sector	Formal scope	Material scope	Complainant	Complaint	Character	Conflict resolution and third-party involvement
SAI/SAAS	General	SA8000 certified companies; supply chain	SA8000 standard	Any interested organization or person	Performance of certified facilities in view of SA8000 standard.	Detailed and formalized	Local inquiry. Then complaint to certification body and appeal to SAAS.
ETI	General	ETI members; supply chain	Base Code	ETI members (formally)	Noncompliance Base Code	Detailed but relatively informal	Negotiations and inquiry, including specialist third parties, such as mediators.
BSCI	General	BSCI participants; supply chain	BSCI Code of Conduct	Local workers in China and India	Noncompliance BSCI Code of Conduct	Not detailed; informal	BSCI contacts in China and India decide if inquiry involving BSCI auditor and BSCI member is required.
FLA	Textile	FLA members; supply chain	Workplace Code or Monitoring Principles	Any interested person or organization	Significant and/or persistent pattern or serious incident of noncompliance with Workplace Code or Monitoring Principles	Detailed and formalized	Inquiry by FLA involving FLA member involved and possibly external experts, such as a (local) mediator.
FWF	Textile	FWF members; supply chain	FWF Code of Labor Practices	Any interested person or organization	Individual or collective complaints in relation to noncompliance with FWF Code of Labor Practices	Detailed and formalized	FWF or local contact will decide in inquiry involving all relevant parties, including external parties, such as mediators.
WRC	Textile	WRC members / affiliates; supply chain	Labor standards modeled on WRC Model Code of Conduct	Any interested person (worker) or organization	Noncompliance with labor standards modeled on WRC Model Code of Conduct	Not detailed; not formalized	Inquiry by WRC which may include external parties to mediate between parties involved.
CCC	Textile	Unlimited; supply chain	CCC Code of Labour Practices or good labor standards	Any interested person (worker) or organization	Noncompliance with the CCC Code of Labour Practices and general noncompliance with good labor standards (Urgent Appeals System)	Not detailed; not formalized; activist	Inquiry by the CCC Foundation or public (or private) solidarity action by the CCC and the local CCC appeal coordinator in consultation with local workers and their representatives which may involve third parties (Urgent Appeals System)

ICTI	Toys	ICTI members; supply chain	ICTI's Code of Business Practice	Workers in China	Likely noncompliance with ICTI's Code of Business Practice	Not detailed; not formalized	It appears that any complaints received by local NGO (hotline) / ICTI CARE Foundation are dealt with within the audit and certification processes.
UTZ Certified	Agriculture	UTZ certified companies; supply chain (involving producers, traders, roasters and others)	UTZ Certified regulations and requirements	Any interested person or organization	Noncompliance with the terms or spirit of UTZ Certified regulations and requirements by UTZ Certified companies	Detailed; not formalized	UTZ Certified strives for a solution which is acceptable to all parties involved. This appears to require inquiry involving the respondent. A third party may be involved when the objectivity of UTZ Certified is at stake.
Rain Forest Alliance	Agriculture / forestry	RFA certified companies; supply chain	SAN standards or certification decision	Any interested person or organization / relevant stakeholders	Noncompliance with SAN standards or certification decision	Not detailed (agriculture); detailed and formalized (forestry)	Likely inquiry by SFC (certification body). Inquiry by SmartWood (certification program for forestry) involving relevant parties, and third parties if complainant is not satisfied with the outcome of the inquiry.
GMoU (Chevron)	General - extractive	Signatories; (sub) - contractors	GMoU	Signatory / interested party	Implementation GMoU	Detailed and relatively formalized	Multi-stakeholder Conflict Resolution Committee will attempt to resolve the conflict if internal grievance procedure is unsuccessful.
GFA	General	Signatories; MNE group members / subsidiaries and often suppliers	GFA	Signatory	Implementation GFA	Not detailed and generally not formalized	Negotiation between the signatories sometimes involving a third party, such as a mediator; high-level; last resort.

3.2 Recommendations

If the CSR Conflict Management Center chooses to facilitate dispute resolution in relation to labor disputes relating to CSR, the following should be considered.

It is to be recommended that the CSR Conflict Management Center partners with the existing NGOs and bodies which currently provide for labor-related grievance mechanisms, including an umbrella organization such as ISEAL Alliance.¹⁴² These partnerships should include the NGOs referred to in chapter 2 and gradually extend to all existing NGOs and institutions in the area of labor standards. Such partnership will create a network – possibly with the CSR Conflict Management Center in the middle – with the following benefits for all parties involved:

- Clarification of the number of players in this particular field.
- Clarification of the number of business enterprises which have committed to grievance mechanisms and identify the business enterprises which have not (yet) committed to any institutionalized grievance mechanism.
- Facilitation of the exchange of know-how.¹⁴³
- Facilitation of efficient deployment and use of (local) staff and networks.

Such network may particularly benefit the CSR Conflict Management Center:

- The CSR Conflict Management Center will start from scratch (staff, know-how, network).
- If the CSR Conflict Management Center will act as a first portal for aggrieved parties, it may then be able to direct these parties to the appropriate institutions. Such direction or forwarding may occur on the basis of prior commitment of the business enterprise involved or, if possible, on the basis of ad hoc commitment of the business enterprise involved.
- If no institution is available, the CSR Conflict Management Center may then suggest the use of a third-party expert to facilitate dialogue – by means of mediation – in order to find a mutually acceptable solution. A list of third-party experts or mediators may be assembled with the help of the existing NGOs and bodies which currently provide for labor-related grievance mechanisms and with whom the CSR Conflict Management Center should partner.¹⁴⁴ The experience of these NGOs in this area and their likely experience with the use

¹⁴² See <www.isealalliance.org>.

¹⁴³ See for example the suggestion of Sabel: C.F. Sabel, Rolling Rule labor standards: Why their time has come, and why we should be glad of it, in: G.P. Politakis (Ed.), *Protecting Labour Rights as Human Rights: Present and Future of International Supervision*, Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24-25 November 2006, International Labour Organization, Geneva, 2007, p. 271.

¹⁴⁴ The suggestion to develop an international roster of mediators ‘to be available as a resource to help resolve conflicts in the areas of ILO concern particularly in implementation of the Core 8 Standards, if the sponsors of Corporate Codes of Social Responsibility were to establish grievance procedures within their Corporate Codes to permit individuals and groups to challenge whether a Corporation is indeed living up to its proclaimed standards of compliance with national law and ILO Conventions’ was made, among others, by Zack: A.M. Zack, Seeking workplace fairness and the rule of law through ADR, in: R. Clavet et al., *Governance, International Law & Corporate Social Responsibility*, International Institute for Labour Studies, Research Series 116, International Labour Organization, Geneva, 2008, p. 204. One may even think of the development of a ‘Standby Team of Mediation Experts’ similar to the one established in 2008 by the Norwegian Refugee Council as a service to the

of third-party experts (as indicated above) will be invaluable. Such third-party experts may also be involved by international trade unions and business enterprises in case of a dispute on the interpretation or implementation of a GFA.¹⁴⁵

In order to develop its own know-how, as well as the know-how of its partners and possibly the third-party experts/mediators, it is recommended that the CSR Conflict Management Center cooperates with a number of governmental and non-governmental institutions with particular knowledge of international labor law. These institutions include:

- The ILO Helpdesk and the ILO International Institute for Labor Studies for training.
- National Human Rights Institutes, such as the Danish Human Rights institute / CSR section¹⁴⁶ and the recently established Netherlands Human Rights Institute.¹⁴⁷
- International and national trade unions through the International Trade Union Confederation and the Council and Global Unions.¹⁴⁸ The involvement of (international) trade unions may be of particular importance in order to make sure that CSR Conflict Management Center staff members, partners, and affiliated third-party experts/mediators are aware of the activities of trade unions worldwide and the importance of collective solutions for labor conflicts.

In order to develop and improve general dispute resolution skills of third-party experts, it is recommended that the CSR Conflict Management Center cooperates with established institutions and people with experience in the field, and with knowledge of local customs. These include:

- The Amsterdam ADR Institute.¹⁴⁹
- The International Mediation Institute.¹⁵⁰
- The recently established Company/Community Dialogue Facilitators Forum (CCDFF).
- The Africa Centre for Corporate Social Responsibility.¹⁵¹
- The Consensus Building Institute.¹⁵²
- Shift, a recently established independent, non-profit center for business and human rights practice.¹⁵³
- Kreddha International.¹⁵⁴

Mediation Support Unit of the UN Department of Political Affairs (peace and security). See: <www.nrc.no>, under Emergency/NORCAP and MSU.

¹⁴⁵ Hepple suggests that the ILO should play a role in this area: B. Hepple, Does law matter? The future of binding norms, in: G.P. Politakis (Ed.), Protecting Labour Rights as Human Rights: Present and Future of International Supervision, Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24-25 November 2006, International Labour Organization, Geneva, 2007, pp. 230-231.

¹⁴⁶ See <www.humanrightsbusiness.org>.

¹⁴⁷ Wet van 24 november 2011, houdende de oprichting van het College voor de rechten van de mens (Wet College voor de rechten van de mens), Stb. 2011, 573.

¹⁴⁸ See <www.ituc-csi.or> and <www.global-unions.org>.

¹⁴⁹ See <www.adrinstituut.nl>.

¹⁵⁰ See <imimmediation.org>.

¹⁵¹ See <accrafrica.org>.

¹⁵² See <cbuilding.org>.

¹⁵³ See the press announcement at <www.business-humanrights.org/media/documents/shift-board-announcement-oct-2011.pdf>.

¹⁵⁴ See <www.kreddha.org>.

- The Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems and the Innovating Justice initiative of The Hague Institute for the Internationalization of Law.¹⁵⁵
- The International Development Law Organization and the Van Vollenhoven Institute of Leiden University's Law School.¹⁵⁶
- Individuals like David Kovick, Austin Onuoha,¹⁵⁷ Luc Zandvliet,¹⁵⁸ and Davin Bremner.¹⁵⁹

Further it is recommended that the CSR Conflict Management Center informs other institutions which are active in the area of CSR about its establishment. These institutions include:

- National Contact Points as established pursuant to the Decision of the OECD Council in relation to the OECD Guidelines.
- Working Group and Forum on the issue of human rights and transnational corporations and other business enterprises as well as the Forum on Business and Human Rights as established by the Human Rights Council on 16 June 2011.¹⁶⁰
- The UN Global Compact.¹⁶¹
- CSR Europe.¹⁶²
- The Center for Research on Multinational Corporations (SOMO).¹⁶³
- Business and Human Rights Documentation Project.¹⁶⁴

¹⁵⁵ See <www.tilburguniversity.edu/research/institutes-and-research-groups/tisco>; <www.innovatingjustice.com> and <www.hiil.org>.

¹⁵⁶ See <www.idlo.int> and <law.leiden.edu/organisation/metajuridica/vvi/>. See, for example, their common report on customary justice: J. Ubink, T. McNerney (Eds.), Customary Justice: Perspectives on Legal Empowerment, Legal and Governance Reform: Lessons Learned, No. 3/2011, International Development Law Organization, Universiteit Leiden Faculty of Law, Van Vollenhoven Institute for Law, Governance and Development, Rome, 2011.

¹⁵⁷ See <www.nias.nl> under Current Fellows.

¹⁵⁸ Consultant at Triple R Alliance, Inc. and co-author of L. Zandvliet, M.B. Anderson, Getting it Right; Making Corporate – Community Relations Work, Greenleaf Publishing, Sheffield, 2009.

¹⁵⁹ Independent conflict resolution professional and author of D. Bremner, South African Experiences with Identity and Community Conflicts, Journal of Peace Research, Vol. 38/3, 2001.

¹⁶⁰ A/HRC/17/4. See <www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>. The Working Group will hold its first session from 16-20 January 2012 in Geneva.

¹⁶¹ See <www.unglobalcompact.org>.

¹⁶² See <www.csreurope.org>.

¹⁶³ See <somo.nl>.

¹⁶⁴ See <www.bhrd.org>.

4. Literature, Reports and Documents

Literature and Reports

N. Ascoly, J. Oldenziel, I. Zeldenrust, Overview of Recent Development on Monitoring and Verification in the Garment and Sportswear Industry in Europe, SOMO, Amsterdam, 2001, through <somo.nl>.

N. Ascoly, I. Zeldenrust, Discussing key elements of monitoring and verification, SOMO, Amsterdam, 2001, through <somo.nl>.

N. Ascoly, I. Zeldenrust, Considering Complaint Mechanisms: An Important Tool for Code Monitoring and Verification, SOMO, Paper, 2003, through <BASESwiki.org>.

L.C. Backer, The United Nations' "Protect-Respect-Remedy" Project: Operationalizing a Global Human Rights Based Framework for the Regulation of Transnational Corporations, Conference Paper, Symposium: Corporations and International Law, Santa Clara Law, 2010, through: <law.scu.edu>.

J. Baker, Global Agreements and Protect, Respect, Remedy, Council of Global Unions, 2011, pp. 1-2, through: <www.business-humanrights.org>.

M. Barendrecht, In Search of Microjustice: Five Basic Elements of a Dispute System; TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 002/2009, December 2008, at <www.tilburguniversity.edu/research/institutes-and-research-groups/tisco/>.

M. Barendrecht, Best Practices for an Affordable and Sustainable Dispute System: A Toolbox for Microjustice, TISCO Working Paper Series on Civil Law and Conflict Resolution Systems No. 003/2009, January 2009, at <www.tilburguniversity.edu/research/institutes-and-research-groups/tisco/>.

M. Barendrecht, Courts, Competition and Innovation; Inaugural Lecture by Maurits Barendrecht, Hague Visiting Chair on the Rule of Law, 27 September 2011, at <www.hiil.org>.

K. Boonstra, Negentig jaar Internationale Arbeidsorganisatie; negentig jaar roeien tegen de stroom in?, in: K. Boonstra (Red.), Negentig jaar Internationale Arbeidsorganisatie, reeks Vva 38, Kluwer, Deventer, 2010.

D. Bremner, South African Experiences with Identity and Community Conflicts, Journal of Peace Research, Vol. 38/3, 2001.

Business & Human Rights Initiative, How to Do Business with Respect for Human Rights: A Guidance Tool for Companies, Global Compact Network Netherlands, The Hague, 2010.

A.G. Castermans, J.A. van der Weide, De juridische verantwoordelijkheid van Nederlandse moederbedrijven voor de betrokkenheid van dochters bij schending van fundamentele, internationaal erkende rechten, Leiden, 2009, TK 26 485, Nr. 81, Vergaderjaar 2009-2010; Bijlage bij brief van de Staatssecretaris van Economische Zaken van 18 december 2009.

C. Cedillo, Better Access to Remedy in Company-Community Conflicts in the field of CSR: A Model for Company-Based Grievance Mechanisms, Institute for Environmental Security, in the context of HUGO / CSR Initiative, September 2011, available at <www.envirosecurity.org>.

Corporate Social Responsibility Initiative, Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders, Corporate Social Responsibility Initiative, Working Paper 41, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008.

A.J.A.J. Eijsbouts, Elementaire beginselen van Maatschappelijk Verantwoord Ondernemerschap, in: Maatschappelijk verantwoord ondernemen, Preadviezen van A.J.A.J. Eijsbouts, F.G.H. Kristen, J.M. de Jongh, A.J.P. Schild, L. Timmerman, Handelingen Nederlandse Juristen-Vereniging, 140^e jaargang / 2010-I, Kluwer, Deventer, 2010.

B. Hepple, Does law matter? The future of binding norms, in: G.P. Politakis (Ed.), Protecting Labour Rights as Human Rights: Present and Future of International Supervision, Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24-25 November 2006, International Labour Organization, Geneva, 2007.

HUGO, Summary Report of the Expert Consultation on Enhancing International Capacity for Dialogue-Based Resolution of CSR-Related Disputes, The Hague, 7 October 2010.

HUGO Conflict Management Facility on CSR, Report and Recommendations following the CSR expert meeting, 14 June 2011, at the offices of Pels Rijcken & Drooglever Fortuijn, on file with the author.

HUGO Position Paper of 13 May 2011 on 'The CSR Conflict Management Facility The Hague', on file with the author.

HUGO-NIAS 'Research Questions' paper, undated, on file with the author.

HUGO, CSR Remedy Centre; Hub for CSR conflict remedies; A HUGO initiative, slides of September 2011, on file with the author.

Human Rights Watch, Ripe with Abuse; Human Rights Conditions in South Africa's Fruit and Wine Industry, New York, NY, 2011.

S. Joseph, The Human Rights Accountability of MNEs, in: M.T. Kamminga, S. Zia-Zarifi (Eds.), Liability of Multinational Corporations under International Law, Kluwer Law International, The Hague, 2000.

D. Kovick, C. Rees, International Support for Effective Dispute Resolution Between Companies and Their Stakeholders: Assessing Needs, Interests, and Models, Corporate Social Responsibility Initiative Working Paper No. 63, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2011.

T. Lambooy, Case study: the international CSR conflict and mediation; Supply-chain responsibility: western customers and the Indian textile industry, *Nederlands-Vlaams tijdschrift voor mediation and conflictmanagement*, Vol. 13/2, 2009.

P. Muchlinski, Corporations in International Law, *Max Planck Encyclopedia of Public International Law*, at <www.mpepil.com>.

P. Muchlinski, Corporate Social Responsibility, in: P. Muchlinski, F. Ortino, C. Schreuer (Eds.), *The Oxford Handbook of International Investment Law*, Oxford University Press, Oxford, 2008.

C. Rees, Overview of a Selection of Existing Accountability Mechanisms for Handling Complaints and Disputes, Corporate Social Responsibility Initiative, Working Paper 37, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2007.

C. Rees, Access to Remedies for Corporate Human Rights Impacts: Improving Non-Judicial Mechanisms; Report of a Multi-Stakeholder Workshop 20-21 November 2008, Report No. 32, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008.

C. Rees, Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps, Corporate Social Responsibility Initiative, Working Paper No. 40, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008.

C. Rees, D. Vermijs, Mapping Grievance Mechanisms in the Business and Human Rights Arena, Corporate Social Responsibility Initiative Report No. 28, John F. Kennedy School of Government, Harvard University, Cambridge, MA, 2008.

C.F. Sabel, Rolling Rule labor standards: Why their time has come, and why we should be glad of it, in: G.P. Politakis (Ed.), *Protecting Labour Rights as Human Rights: Present and Future of International Supervision*, Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24-25 November 2006, International Labour Organization, Geneva, 2007.

C.F. Sabel, D. O'Rourke, A. Fung, Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace, Social Protection Discussion Paper No. 11, World Bank, Washington, D.C., 2000, at: <nature.berkeley.edu/orourke/pub.html>.

B. Slob, J. Oldenziel, *Coffee & Codes; Overview of Codes of Conduct and Ethical Trade Initiatives in the Coffee Sector*, Somo, Amsterdam, 2003, through <somo.nl>.

J. Ubink, B. van Rooij, Towards Customary Legal Empowerment: An Introduction, in: J. Ubink, T. McInerney (Eds.), *Customary Justice: Perspectives on Legal Empowerment, Legal and Governance Reform: Lessons Learned*, No. 3/2011, International Development Law Organization, Universiteit Leiden Faculty of Law, Van Vollenhoven Institute for Law, Governance and Development, Rome, 2011.

C. van Dam, *Onderneming en mensenrechten; Zorgvuldigheidsnormen voor ondernemingen ter voorkoming van betrokkenheid bij schending van mensenrechten*, Boom Juridische uitgevers, Den Haag, 2008.

S. van der Wal, Certified Unilever Tea; Small cup, big difference?, SOMO, Amsterdam, 2011.

The World Bank Group – Corporate Social Responsibility Practice, Company Codes of Conduct and International Standards: An Analytical Comparison, Part I and II, through www.worldbank.org.

A.M. Zack, Seeking workplace fairness and the rule of law through ADR, in: R. Clavet et al., Governance, International Law & Corporate Social Responsibility, International Institute for Labour Studies, Research Series 116, International Labour Organization, Geneva, 2008.

L. Zandvliet, M.B. Anderson, Getting it Right; Making Corporate – Community Relations Work, Greenleaf Publishing, Sheffield, 2009.

Documents

European Union

COM(2001) 366 final, 18 July 2001, Green Paper, “Promoting a European framework for Corporate Social Responsibility” (presented by the commission).

COM(2001) 416 final, 18 July 2001, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, “Promoting core labour standards and improving social governance in the context of globalization”.

COM(2006) 30 final, 25 January 2006, Communication from the Commission to the Spring European Council, “Time to move up a gear; The new partnership for growth and jobs”.

COM(2006) 136 final, 22 March 2006, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, “Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility”.

COM(2006) 249 final, 24 May 2006, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, “Promoting decent work for all; The EU contribution to the implementation of the decent work agenda in the world”.

COM(2008) 2155, 2 July 2008, Commission Staff Working Document, “The role of transnational company agreements in the context of increasing international integration”.

COM(2011) 681 final, 25 October 2011, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, “A renewed strategy 2011-14 for Corporate Social Responsibility”.

European Commission – Employment, Social Affairs and Equal Opportunities DG, Mapping transnational texts negotiated at corporate level, 2 July 2008.

International Labor Organization

ILO Recommendation concerning the Examination of Grievances within the Undertaking with a View to Their Settlement, Adopted by the General Conference of the International Labour Organisation at its Fifty-first session, Geneva, 29 June 1967.

ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998.

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977), as amended at its 279th (November 2000) and 295th Session (March 2006).; including Procedure for the examination of disputes concerning the application of the Tripartite Declaration by means of interpretation of its Provisions, adopted by the Governing Body of the International Labour Office at its 232nd Session (Geneva, March 1986).

ILO Declaration on Social Justice for a Fair Globalization, Adopted by the International Labour Conference at its Ninety-seventh Session, Geneva, 10 June 2008.

Organization for Economic Co-operation and Development

OECD Declaration on Decisions on International Investment and Multinational Enterprises, with the following annexes (1) OECD Guidelines for Multinational Enterprises; Recommendations for Responsible Business Conduct in a Global Context; and (2) Decision of the Council on OECD Guidelines and Procedural Guidance, Adopted by the 42 adhering governments at the OECD's 50th Anniversary Ministerial Meeting of 25 May 2011.

Decision of the Council on the OECD Guidelines for Multinational Enterprises, adopted by the Council at its 982nd session on 26-27 June 2000 (C(2000)96).

United Nations

A/HRC/RES/8/7 of 18 June 2008; Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

A/HRC/RES/17/4 of 16 June 2011; Human rights and transnational corporations and other business enterprises.

A/HRC/4/35, 19 February 2007; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Business and human rights: mapping international standards of responsibility and accountability for corporate acts.

A/HRC/4/35/Add.1, 13 February 2007; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Addendum: State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries.

A/HRC/4/35/Add.2, 15 February 2007; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John

Ruggie; Addendum: Corporate responsibility under international law and issues in extraterritorial regulation: summary of legal workshops.

A/HRC/8/5, 7 April 2008; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; 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.

A/HRC/8/5/Add.2, 23 May 2008; Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie; Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development; Addendum; Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse, paras. 18 (labor rights impacted) and 23 (non-labor rights impacted).

A/HRC/17/31, 21 March 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/Add.1, 24 May 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; Addendum; Piloting principles for effective company/stakeholder grievance mechanisms: A report of lessons learned.

A/HRC/17/31/Add.2, 23 May 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; Addendum; Human rights and corporate law: trends and observations from a cross-national study conducted by the Special Representative.

A/HRC/17/31/Add.3, 25 May 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; Addendum; Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators.

E/CN.4/2005/69 of 20 April 2005; Resolution of the Commission on Human Rights on Human Rights and transnational corporations and other business enterprises.

SG/SM/6881 of 1 February 1999, Press release Secretary-General on global compact.

S/2009/189, 8 April 2009, Report of the Secretary-General on enhancing mediation and its support activities.

Office of the High Commissioner for Human Rights, The Corporate Responsibility to Respect Human Rights; An Interpretative Guide, Advance unedited version (November 2011), at <www.ohchr.org/EN/Issues/Business/Pages/Tools.aspx>.

World Bank Group

Office of the Compliance Advisor / Ombudsman (CAO) for the International Finance Corporation (IFC) Multilateral Investment Guarantee Agency (MIGA) Members of the World Bank Group, Operational Guidelines, at <www.cao-ombudsman.org>.

Office of the Compliance Advisor / Ombudsman (CAO) for the International Finance Corporation (IFC) Multilateral Investment Guarantee Agency (MIGA) Members of the World Bank Group, Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects, Washington, D.C., 2008, at <www.cao-ombudsman.org>.

Performance Standards on Social and Environmental Sustainability of the International Finance Corporation, 30 April 2006.

International forums

G8 Summit 2007 Heiligendamm, Growth and responsibility in the world economy; Summit Declaration (7 June 2007).

The Netherlands

Wet van 24 november 2011, houdende de oprichting van het College voor de rechten van de mens (Wet College voor de rechten van de mens), Stb. 2011, 573.

Non-Governmental Organizations documentation

Business Social Compliance Initiative, Code of Conduct, 2009.

Clean Clothes Campaign Code of Labour Practices for the Apparel Industry Including Sportswear, 1998.

Clean Clothes Campaign Reference Guide on Code Implementation & Verification; Section 4, Complaints mechanisms, 2006.

Clean Clothes Urgent Appeals System leaflet, 2008.

Ethical Trading Initiative Base Code, 1998.

Ethical Trading Initiative Alleged Code Violation Investigation Guidelines, 2001 (under review).

Fair Labor Association, Charter Document of the Fair Labor Association, 16 February 2010.

Fair Labor Association, Workplace Code of Conduct and Compliance Benchmarks of the Fair Labor Association, 2011.

Fair Wear Foundation Code of Labour Practices, 2009.

Fair Wear Foundation Complaints Procedure, 2009.

Fair Wear Foundation Charter, 2009.

International Council of Toy Industries, Code of Business Practices, 1995.

Rain Forest Alliance; Sustainable Agriculture Network, Sustainable Agriculture Standards, 2010.

Rain Forest Alliance; Forest Stewardship Council, International Standard; FSC Principles and Criteria for Forest Stewardship, FSC-STD-01-001 (version 4-0) EN, 1993, as last amended in 2002.

Social Accountability International, SA8000 Standard, 2008.

Social Accountability Accreditation Services, Global Procedures Guideline 304, 2008.

UTZ Certified Good Inside Code of Conduct; For Coffee (Version 1.2 – November 2010).

UTZ Certified Good Inside Code of Conduct; For Cocoa; For Individual Certification (Version 1.0 – December 2009).

UTZ Certified Good Inside Code of Conduct; For Tea Farms (Version 1.0 – July 2009) and For Tea Factories (Version 1.0 – July 2009).

UTZ Certified Good Inside Code of Conduct; For Rooibos Production (Version 1.0 – February 2011 and For Rooibos Processing (Version 1.0 – February 2011).

UTZ Certified Code development procedure for an UTZ Certified product code (January 2011 version).

UTZ Certified Complaint Handling Procedure, 2010.

Worker Rights Consortium, Bylaws, 2010.

Worker Rights Consortium, Model Code of Conduct.

Global Memorandums of Understanding

Global Memorandum of Understanding between Chevron Nigeria Limited (on behalf of the NNPC/Chevron joint venture and the Regional Development Council and the State Government (draft), on file with the author.

Global Framework Agreements

International Framework Agreement signed between Royal Volker Wessels Stevin NV (VolkerWessels) and the Building and Wood Workers International (BWI) to promote and protect worker's rights, 26 January 2007, at <www.bwint.org/default.asp?index=573&Language=EN>.

UNI-Telefónica Code of Conduct, 12 March 2001, through: <www.uniglobalunion.org>.

Worldwide agreement on fundamental labour rights within the France Telecom Group, between France Telecom and UNI, 21 December 2006, through: <www.uniglobalunion.org>.

Global Framework Agreement on Fundamental Rights, Social Dialogue, and Sustainable Development, GDF Suez, 16 November 2010, through <www.icem.org>.

International Framework Agreement between AB Electrolux and employee representatives of IF Metall, Unionen, IMF and the KFD of the Electrolux Board of Directors, through <www.imfmetal.org>.