

Distr.: General
24 May 2011
Arabic
Original: English



مجلس حقوق الإنسان

الدورة السابعة عشرة

البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الممثل الخاص للأمين العام المعني بمسألة حقوق الإنسان والشركات عبر الوطنية وغيرها من مؤسسات الأعمال التجارية، السيد جون روجي

إضافة

مبادئ تجريبية لآليات التظلم الفعالة في المنازعات بين الشركات وأصحاب المصلحة: تقرير عن الدروس المستفادة**

موجز

يعرض هذا التقرير الدروس الرئيسية المستفادة من مشروع تجريبي نُفذ في الفترة ٢٠٠٩-٢٠١٠ لاختبار مدى إمكانية التطبيق العملي لمجموعة من المبادئ الخاصة بآليات التظلم غير القضائية التي تعالج الشكاوى أو المنازعات بين المشاريع التجارية وأصحاب المصلحة المستفيدين منها. ووضع هذه المبادئ الممثل الخاص للأمين العام المعني بمسألة حقوق الإنسان والشركات عبر الوطنية وغيرها من مؤسسات الأعمال التجارية وعرضها

* تأخر تقديم هذا التقرير لكي يتضمن أحدث المعلومات.

** يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق الموجز، فيعمم باللغة التي قدم بها فقط.

في تقريره المقدمين إلى مجلس حقوق الإنسان في عام ٢٠٠٨ (A/HRC/8/5) وعام ٢٠٠٩ (A/HRC/11/13).

وُفِّد المشروع تحت إشراف الممثل الخاص بهدف المساعدة على تحسين هذه المبادئ قبل دمجها في مجموعة أوسع من المبادئ التوجيهية المتعلقة بالأعمال التجارية وحقوق الإنسان (A/HRC/17/31) سيقدمها الممثل الخاص إلى مجلس حقوق الإنسان في حزيران/يونيه ٢٠١٠. وقد ركز المشروع على آليات التظلم على المستوى التنفيذي - أي الآليات التي تضعها الشركات مع أصحاب المصلحة المتأثرين بعملياتها أو لفائدتهم. وكانت الشركات التي شاركت في التجارب الرئيسية الأربع لتصميم آليات التظلم أو تنقيحها وفقاً للمبادئ التي وضعها الممثل الخاص هي كاربونس ديل كوريجون Carbones del Cerrejón، وهي منجم فحم في كولومبيا؛ ومجموعة إسكويل Esquel Group، وهي شركة ملابس مقرها في هونغ كونغ وتعمل مع موردها الخاضع لسيطرتها كلياً في فييت نام؛ وشركة سخالين المحدودة للاستثمار في الطاقة Sakhalin Energy Investment Company Ltd.، وهي شركة نفط وغاز في الاتحاد الروسي؛ وشركة تيسكو Tesco Stores Ltd، وهي سلسلة متاجر كبرى متعددة الجنسيات مقرها في المملكة المتحدة وتعمل مع موردين في جنوب أفريقيا. وُفِّد مشروع مساعد مع هيوليت باكارد Hewlett-Packard واثنين من مورديها في الصين، وحلّل هذا المشروع تحليلاً رجعيّاً ما تبذله هذه الشركات من جهود تعاونية في سبيل تعزيز آليات تظلم الموردين واستعراضها في ضوء مبادئ الممثل الخاص.

وتوخى المشروع التجريبي اختبار فوائد آليات التظلم المتسقة مع مبادئ الممثل الخاص، واستخلاص الدروس بشأن كيفية المضي في كيفية صقل المبادئ بحيث تعكس واقع التنفيذ ويتسنى تطبيقها العملي. وقد استغرقت عملية تصميم آليات التظلم أو تنقيحها وقتاً طويلاً فلم يُتَحَ لرصد تنفيذها العملي سوى وقت قصير. وسيستلزم أي استعراض من هذا القبيل المزيد من العمل في المستقبل. غير أن العمليات المنجزة مكنت من استخلاص دروس جوهرية. وتلخّص الدروس الأهم في هذا التقرير الجامع، في حين ترد الدروس الأكثر تحديداً وتفصيلاً في تقارير فردية عن كل مشروع، وتتاح في شكل مرفقات بهذا التقرير، بصيغته الكاملة^(١).

ويخوض الفرع الأول من هذا التقرير في خلفية المشروع وهدفه، ويُعرّف المقصود بعبارة "آليات التظلم على المستوى التنفيذي"، ويعرض المبادئ التي خضعت للاختبار. أما الفرع الثاني فيصف منهجية التجارب الرئيسية الأربع (يرد وصف منهجية المشروع المساعد في التقرير الخاص بهذا المشروع^(٢)). ويتناول الفرع الثالث الدروس المستخلصة الشاملة،

(١) يُتاح التقرير والمرفقات على العنوانين

http://www.business-humanrights.org/SpecialRepPortal/Home

و http://www.hks.harvard.edu/m-rcbg/CSRI/pub_reports.html

(٢) انظر الحاشية ١.

ويعرضها في إطار كل مبدأ على التوالي، ثم يجتم بشرح الكيفية التي عدل بها المبدأ كي يعكس الدرس المستفاد (اقتصر في إجراء التعديلات على كونها قابلة للتطبيق لا على الآليات التنفيذية فحسب بل أيضاً على أنواع أخرى من الآليات غير القضائية المشمولة بالمبادئ). ويتضمن الفرع الرابع خاتمة موجزة ويعرض المبادئ بصيغتها المنقحة.

Annex

Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises: Piloting principles for effective company-stakeholder grievance mechanisms: a report of lessons learned

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–11	5
A. Project background.....	1–7	5
B. What are operational-level grievance mechanisms?.....	8–11	6
II. Project methodology.....	12–20	8
III. Lessons learned.....	21–75	10
A. Legitimacy.....	22–29	11
B. Accessibility.....	30–37	12
C. Predictability.....	38–43	15
D. Equitability.....	44–48	16
E. Rights-compatibility.....	49–52	18
F. Transparency.....	53–57	19
G. Dialogue and engagement.....	58–70	21
H. Continuous learning.....	71–75	23
IV. Conclusion.....	76–80	24

List of boxes

Box A: Principles tested in the pilot project.....	7
Box B: Relationship between the Special Representative’s grievance mechanism principles and the Guidance Tool for Rights-Compatible Grievance Mechanisms.....	9
Box C: Principles for effective grievance mechanisms, as revised following the pilot project.....	25

I. Introduction

A. Project background

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

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

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

(a) Numerous existing standards that companies commit to meet already require that those companies have operational-level grievance mechanisms in place.³ Clarity is needed on what makes such grievance mechanisms meaningful in practice;

(b) Operational-level grievance mechanisms face particular challenges given that companies themselves are closely involved in their design and administration, which can make the mechanisms vulnerable to critiques of being biased or illegitimate sources of remedy for harms. Robust criteria for effectiveness are important in addressing this risk;

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

² For example, the principles have been drawn on in the review process of the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development, with regard to the role of OECD National Contact Points in handling complaints; they are reflected in the ISO 26000 standard on corporate social responsibility; and they have been referred to by various companies, international, industry and multi-stakeholder organizations that are developing their own grievance mechanisms.

³ These include the Performance Standards of the International Finance Corporation, which are mirrored in the Equator Principles followed by 70 financial institutions; the ISO 14000 standard; and initiatives such as Social Accountability International, the Fair Labor Association and Ethical Trading Initiative. The International Council on Mining and Metals has also developed guidance for its members on the development of grievance mechanisms.

(c) The corporate responsibility to respect human rights set out in the guiding principles requires that business enterprises should establish or participate in effective, operational-level grievance mechanisms for affected stakeholders. Enterprises need clarity on how to achieve this in a manageable and sustainable way.

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

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

(a) Carbones del Cerrejón Ltd. in Colombia – a coal mining joint venture of Anglo American, BHP Billiton and Xstrata Coal;

(b) Esquel Group in Hong Kong – piloting a mechanism at its apparel facility in Viet Nam;

(c) Sakhalin Energy Investment Corporation in the Russian Federation – an oil and gas joint venture of Gazprom, Royal Dutch Shell, Mitsui & Co. Ltd. and Mitsubishi Corporation;

(d) Tesco Stores Ltd. – a major United Kingdom supermarket working with a group of its fruit suppliers in South Africa;

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

(a) To test the benefits that mechanisms aligned with the principles can have as a means of remedy for impacted stakeholders, and as a means of risk management and accountability for companies;

(b) To learn how the principles can be further refined to reflect operational realities and enable their practical application by companies.

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

B. What are operational-level grievance mechanisms?

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

access other means of recourse, and they must not preclude access to State-based judicial or non-judicial mechanisms.

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

(a) First, they support the identification of adverse human rights impacts as a part of an enterprise's ongoing human rights due diligence.⁴ They do so by providing a channel for those directly impacted by the company's operations to raise concerns when they believe they are being or will be harmed. By analyzing trends and patterns in complaints, companies can also identify systemic problems and adapt their practices accordingly;

(b) Second, these mechanisms make it possible for grievances, once identified, to be addressed, and for harms to be remediated early and directly by the company, whether alone or in collaboration with others involved, thereby preventing harms from compounding, and grievances from escalating.

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

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

Box A: Principles tested in the pilot project

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

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

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

⁴ The Special Representative has articulated the process of "human rights due diligence" as a key process that business enterprises need to have in place in order to know and show that they are meeting their responsibility to respect human rights. Human rights due diligence was reflected in the Protect, Respect and Remedy Framework that the Human Rights Council unanimously welcomed in 2008. It is further elaborated in the Guiding Principles for Business and Human Rights that the Special Representative submitted to the United Nations Human Rights Council in March 2011 (document A/HRC/17/31). Identifying and assessing the adverse impacts with which a business enterprise may be involved is the first step in human rights due diligence.

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

(d) **Equitable:** ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms;

(e) **Rights-compatible:** ensuring that its outcomes and remedies accord with internationally recognized human rights standards;

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

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

II. Project methodology

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

(a) To participate in full collaboration toward the project's objectives of devising and testing a grievance mechanism in line with the principles;

(b) To share with the facilitator and project director, on a confidential basis, all information necessary to understand existing grievance-handling mechanisms or processes, and relevant systems and data;

(c) To take the lead in design of the grievance mechanism, building on their existing systems and experience.

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

⁵ The project director was Caroline Rees of the Corporate Social Responsibility at Harvard Kennedy School. The facilitator for the pilots with Sakhalin Energy Investment Corporation and Carbones del Cerrejón was Luc Zandvliet, formerly with CDA Collaborative Learning Projects and now Triple R Alliance. The facilitator for the pilots with Esquel Group and Tesco was Doug Cahn of The Cahn Group. The adjunct project was led by Stephan Sonnenberg, Clinical Instructor and Lecturer in Law at the Harvard Negotiation and Mediation Clinical Program. The separate methodology for this adjunct project, which was a retrospective review of processes that had been completed, is described in the specific report on that project, which can be accessed at <http://www.business-humanrights.org/SpecialRepPortal/Home>; and http://www.hks.harvard.edu/m-rcbg/CSRI/pub_reports.html.

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

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

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

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

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

The first is that the guidance tool does not include a principle on rights-compatibility since the entire tool is framed in terms of designing rights-compatible grievance mechanisms; that is, mechanisms that can provide processes and outcomes that are in line with human rights standards. The pilot projects were not in a position to assess the rights-compatibility of individual outcomes from the grievance mechanisms developed. However, discussions of other principles frequently reviewed their role in ensuring that the mechanisms should (a) be capable of delivering rights-compatible outcomes; and (b) provide processes that reflect rights-based principles such as inclusion, participation, non-discrimination, transparency, accountability and attention to vulnerable groups.

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

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

(a) During visits, with those stakeholders formally involved in the process; and

(b) Through ad hoc conversations with wider stakeholders, where this was possible and offered a good chance of getting open and honest feedback (language, cultural and other barriers were considered in making this assessment).

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

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

19. Individual reports on each of the four main pilots and on the adjunct project with HP and its suppliers are available as annexes to this report on the Special Representative's web portal and the website of the CSR Initiative.⁶ The reports were written by the project facilitators and the HP project team respectively. They were sent to the participating companies for fact-checking only. Their aim is not to rate the work done by the participating companies nor the resulting grievance mechanisms, but to set out the mutual learning gained from the process; that is, learning for the participating companies, which will also be relevant for many other companies seeking to implement the principles in their own operations, and learning for the Special Representative's mandate. The learning for the Special Representative's mandate is set out in this overarching report and is reflected directly in the revision of the grievance mechanism principles themselves.

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

III. Lessons learned

21. This section of the report draws together some of the key lessons learned from all the pilots in terms of the Special Representative's principles for non-judicial grievance mechanisms. The lessons are organized under the various principles. Each begins by restating the principle that was being tested. This is followed by an overview of some of the key learning points that emerged from across the various pilots with regard to that principle.

⁶ See <http://www.business-humanrights.org/SpecialRepPortal/Home>; and http://www.hks.harvard.edu/m-rcbg/CSRI/pub_reports.html.

Given the inter-relatedness of the principles themselves, some learning points are inevitably relevant to more than one principle. The closing box summarizes the lessons that have led to specific revisions to the principle, and then sets out the principle, as revised.

A. Legitimacy

Principle tested

An operational-level grievance mechanism should be:

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

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

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

24. Experience from the pilots underlined that while upwards accountability for an operational-level grievance mechanism could provide formal legitimacy and important incentives to ensure that the mechanism worked effectively, the ultimate test was whether its intended end-users trusted it enough to use it. In other words, the perception of its legitimacy among those users was the more essential factor.

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

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

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

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

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

Summary of learning

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

Therefore, the focus of this principle has shifted towards the objective of achieving trust – or perceived legitimacy – rather than suggesting that formal, independent oversight is always a necessary and sufficient means to gain legitimacy. Nevertheless, the provision of accountability – internal and, where appropriate, external – for the mechanism's performance remains important and relates also to other principles, including predictability and transparency.

Revised principle

An operational-level grievance mechanism should be:

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

B. Accessibility

Principle tested

An operational-level grievance mechanism should be:

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

30. Operational-level grievance mechanisms often have the advantage of being close to those whose grievances they are designed to address. In these cases, it is typically easier to ensure that the intended user groups are aware of the mechanism than in the case of more

remote mechanisms, for instance those run by a government agency or international organization.⁷

31. In practice, challenges remain. For Cerrejón, the communities affected by its operations are not just around its mine but also along the 150-km railroad it owns between the mine and the port. There are around 25,000 individuals in nearly 250 affected communities. Although the Grievance Office now has five full-time staff members, the ratio of staff to community members is still challenging. However, the company has developed multiple access points for contractors, employees and communities to raise complaints by phone, email or in person. Its main innovation has been to train Cerrejón staff who are in constant contact with communities to receive complaints. Cerrejón has engaged Wayu'u advisors who can communicate with indigenous communities in their own language, and the company's new processes for social engagement with communities along the railroad will provide further access points for the mechanism. These measures in part respond to a wish on the part of the indigenous Wayu'u communities to have access points to the mechanism in the community rather than at a Cerrejón-associated facility, and their preference for in-person communication over other means.

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

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

34. At Sakhalin Energy and Cerrejón, there are various ways in which individuals can access the grievance mechanisms, including community liaison officers or roving grievance officers. At EGV – a much smaller enterprise – management had also made efforts to broaden the range of avenues of access. While workers indicated in a survey that the

⁷ The concept of closeness as used here does not simply indicate physical proximity, though that may be the case, in particular with regard to employees or communities around a company's operations. It refers more generally to a relative ease of direct interaction between the administrators of the mechanism and the affected stakeholder groups for whose use it is intended. This could be the case, for example, where an information and communications technology company has the ability to use the same technologies it provides to users in order to receive and respond to many of their concerns or complaints.

favoured person to whom to take complaints was often their immediate supervisor, the management is adding monthly Open Talk sessions with groups of workers and is opening a notice board specifically for grievances by the bicycle parking area, outside the factory – an area where workers typically spend their leisure time. At one of the HP supply factories involved in the adjunct project, the use of a counsellor as a trusted individual that workers could go to with problems, including grievances, about the workplace, seemed to be working well. The other HP supplier is now putting a similar system in place, but had also developed a hotline process as part of its collaboration with HP. While a local NGO initially ran the hotline, it has now been handed over to a mix of workers and managers and has become a centrepiece of the factory's revised grievance process.

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

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

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

Summary of learning

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

The pilots confirmed the importance of hearing from a mechanism's intended user groups about what kind of access points they are most likely to use, and recognizing that these may vary between indigenous and non-indigenous communities, men and women, permanent and migrant workers and so on. It can be important to look creatively at different access points, which need not be highly formal or onerous to be effective.

Revised principle

An operational-level grievance mechanism should be:

Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.
 [Note: the commentary to this principle will retain the list of barriers previously included in the principle itself, to give clarity on the kind of barriers that require attention.]

C. Predictability

Principle tested

An operational-level grievance mechanism should be:

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

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

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

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

41. For a number of participant companies, the question arose as to when a grievance needs to be entered into a formal mechanism and when it can be handled informally and

immediately. There can clearly be disadvantages to over-formalizing the resolution of simple issues, including unnecessary bureaucracy and delayed solutions. There can also be disadvantages to de-formalizing processes to the extent that there is no accountability for the appropriateness of solutions, and no ability to identify patterns of repeat complaints and address any systemic problems they reflect.

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

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

Summary of learning

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

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

Revised principle

An operational-level grievance mechanism should be:

Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.

D. Equitability

Principle tested

An operational-level grievance mechanism should be:

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

44. Initially, for most pilot companies, the idea of ensuring access to sources of information, advice and expertise for complainants was a challenge conceptually, and therefore difficult to justify internally as a financial proposition. However, affected stakeholders are often at a considerable disadvantage dealing with a company in terms of the expertise they have available to them on issues, such as their rights, scientific data, and other relevant information. If individuals accept the outcome of a grievance process because they are ignorant of key information, that outcome is unlikely to be sustainable and may lead to even greater grievances and protest in the future. At the same time, the proposition is not that the company must itself fund extensive advisory services; indeed, those services may be seen as compromised if it were to do so in situations where relationships are somewhat distrustful. The ideal is that the providers of advice, training or expertise to affected stakeholders should be respected and trusted by the company as well as by the beneficiaries.

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

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

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

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

Summary of learning

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

into agreeing to an inadequate outcome, thereby renewing and even escalating the grievance.

The providers of this external assistance may include NGOs, academic institutions or state or statutory agencies, and funding from companies themselves may or may not be necessary. It is ideal when the sources of advice and expertise to affected stakeholders are not only trusted by those stakeholders but also respected by the company. Where this is achieved, the benefits can be striking.

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

Revised principle

An operational-level grievance mechanism should be:

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

E. Rights-compatibility

Principle tested

An operational-level grievance mechanism should be:

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

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

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

51. At Cerrejón, prior to the pilot project, grievances were being received by a relatively new human rights office. As it became increasingly well known outside the company, the office soon became a conduit for many complaints, including those that did not raise human rights issues. The effect within the company was that many departments became anxious, since any complaint handled under the rubric of human rights implied serious consequences.

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

Summary of learning

This principle remains pivotal to the effectiveness of these grievance mechanisms. In practice, many of the issues raised through the mechanisms are not presented in terms of human rights and do not represent allegations of human rights abuse. However, it is by addressing them seriously, and in line with all the other principles, that a company can help ensure that they are sustainably resolved and do not escalate, leading potentially to serious human rights impacts.

The principle is unchanged.

Revised principle

An operational-level grievance mechanism should be:

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

F. Transparency

Principle tested

An operational-level grievance mechanism should be:

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

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

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

revealing levels of financial compensation would compromise individuals and legitimate processes.

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

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

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

Summary of learning

The first priority must be transparency to the aggrieved individual or group about how the complaint is being handled as well as any proposed solutions. Beyond this, the wise company will recognize that the more information it can provide about outcomes – even if anonymized and generalized – the more it can demonstrate that the mechanism is working, effective and can be trusted. While legitimate considerations may limit the provision of transparency in some cases, where public interests are at stake it is particularly important that outcomes be made public in an appropriate form.

Revised principle

An operational-level grievance mechanism should be:

Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.

G. Dialogue and engagement

Principle tested

An operational-level grievance mechanism should be:

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

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

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

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

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

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

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

64. For the Tesco pilots, the ultimate recourse under the law is to the Commission for Conciliation, Mediation and Arbitration of South Africa (CCMA). However, the Oversight Stakeholder Body's members all agreed that it would be preferable to have an interim point of recourse before going to the CCMA. They are exploring the possibility of having

recourse to mediation through the Africa Centre for Dispute Settlement at the University of Stellenbosch as a first default before the CCMA.

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

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

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

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

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

70. For EGV, involving workers' perspectives in the review and redesign of the grievance mechanism was a particular challenge since the State-recognized union representative is herself part of management. EGV also conducts exit interviews with workers leaving the factory. The challenge is that the incentive for such workers to be open about their reasons for leaving is often limited. EGV has therefore looked for other ways to get additional feedback. For instance, Esquel Group was able to benefit from its membership in the Fair Labor Association (FLA), and the FLA's employment of a Viet Nam representative around the start of the pilot, in order to use its independent processes for surveying workers' perceptions of the existing grievance mechanism. EGV plans to conduct periodic surveys in future to test workers' perceptions over time.

Summary of learning

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

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

Revised principle

An operational-level grievance mechanism should be:

Based on dialogue and engagement: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

[Note: the commentary to this principle retains the specific point that where adjudication is needed, it should be provided by a legitimate, independent third-party mechanism.]

H. Continuous learning

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

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

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

74. For the Tesco pilots, the lengthy time needed for the design phase, given that it was a greenfield mechanism, meant that implementation was only about to begin as the pilots

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

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

Summary of learning

Some pilots had identified key performance indicators by the end of the pilot period, while others were in the process of doing so. Three key points emerged:

First, a reduction in the number of grievances was only meaningful if other indicators showed that this reduction was due to stakeholders having fewer grievances and not due to a lack of trust in, or access to, the mechanism. Indeed, an increase in registered grievances, at least initially, was seen as a positive sign that people trusted it and chose to use it over other means of expressing their concerns.

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

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

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

New principle

An operational-level grievance mechanism should be:

A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

IV. Conclusion

76. **The range of sectors (oil and gas, mining, garment manufacturing, food, electronics), geographical and political contexts (Russian Federation, Colombia, Viet Nam, South Africa, China) and the scale of companies (major transnationals, factory**

with around 3,400 workers, supply farm with less than 50) in which these pilot projects took place was extremely valuable in ensuring that the Special Representative's principles for non-judicial grievance mechanisms were well tested. Clearly, there are other contexts in which the principles could also usefully be tested, including pharmaceutical and ICT companies, and there are still lessons to be gained from how the mechanisms in this pilot work in practice in the months and years to come.

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

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

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

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

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

- (a) **Legitimacy:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessibility:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

(c) **Predictability:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

(d) **Equitability:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

(e) **Transparency:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

(f) **Rights-compatibility:** ensuring that outcomes and remedies accord with internationally-recognized human rights;

(g) **Dialogue and engagement:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances

(h) **Continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.
