CORPORATIONS AND HUMAN RIGHTS: ACCOUNTABILITY MECHANISMS FOR RESOLVING COMPLAINTS AND DISPUTES

Report of 2nd Multi-Stakeholder Workshop
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On 19-20 November 2007, the Corporate Social Responsibility Initiative at Harvard University's Kennedy School of Government hosted a multi-stakeholder workshop as part of its project 'Corporations and Human Rights: Accountability Mechanisms for Resolving Complaints and Disputes'. This was the second of two such events organized in 2007, which brought together a core group of expert stakeholders to consider how to improve the effectiveness of extra-judicial grievance/dispute resolution mechanisms in the business and human rights arena. Participants included experts from NGOs, government, business, multi-stakeholder initiatives, financing institutions, lawyers, mediators, investment funds and academia.

Discussion was divided between two levels of non-judicial grievance mechanism:
   a) those located in institutions at the national, industry/multi-industry and international levels;
   b) those located at the operational level, specific to a corporate project or site.
The debate also considered how mechanisms at these two levels do and/or should relate to each other, and what new mechanisms might be needed to fill gaps or supplement the growing 'system' of extra-judicial grievance processes.

Discussions were founded on the following starting assumptions:
- Effective judicial processes are of fundamental importance in any society to the accountability of non-state actors for the respect of human rights. They should be supported.
- However, these institutions remain weak in many states, and even in societies with strong rule of law institutions many grievances do not raise clear legal issues providing a basis for litigation; and court processes may be too long and expensive for complainants to see them as a viable avenue for remedy.
- Moreover, parties often have a shared interest in addressing grievances as early as possible before they escalate to the point of litigation.
- So extra-judicial mechanisms have an important, complementary role to play in the context of business and human rights, whilst they must be careful not to undermine the continuing crucial role and development of judicial processes.

The following documents were on the table as a platform for discussions:
   - "Mapping Grievance Mechanisms in the Business and Human Rights Arena" – a compendium of factual descriptions of different mechanisms from the corporate to international levels.
   - "Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps" – an analysis of how certain existing mechanisms from the industry level up to the international level handle grievances, with conclusions and recommendations.
   - "Principles for Effective Human Rights-Based Grievance Mechanisms" – draft principles for the design of rights-based grievance mechanisms at the company level.

Discussions at the workshop were conducted under the Chatham House Rule of non-attribution. This report is designed to capture the key issues and ideas that emerged.

SESSION I: Enhancing the network of extra-judicial grievance mechanisms in the business and human rights arena: how can existing mechanisms be made more effective, what are the gaps between them and how can these best be addressed?

In this session, discussion groups looked separately at the role and experience of:
(a) national-level mechanisms (National Human Rights Institutions, OECD National Contact Points, industrial relations dispute bodies etc);
(b) multi-stakeholder and industry initiatives (e.g. Fair Labor Association, Social Accountability International, the Voluntary Principles on Security and Human Rights, the Equator Principles etc); and
(c) multilateral institutional initiatives (within the World Bank Group, regional development banks etc) as well as the links and gaps between these tiers.

National level

Role of government
There was broad agreement on the need for greater attention to the role of government and judiciaries in addressing disputes between companies and their stakeholders at the national level. Strong judicial systems were essential to accountability. They could also provide useful incentives for non-state actors to resolve disputes directly, without going to litigation. Equally, extra-judicial grievance processes should where possible involve those government officials with responsibility for overseeing the relevant standards, in order to reinforce their role.

One of the roles identified for state institutions was to help redress imbalances in power that typically characterised conflicts between communities or workers and companies. Yet there was scepticism from some that the state could be an effective arbiter of disputes. Government was not monolithic, but represented different views and interests across departments and even individuals. In the context of disputes, a government might variously be a convener of other actors, a defendant, a promoter of investment etc. In this context, some felt that most OECD National Contact Points carried fundamental design flaws: the often partial role of government; a resulting reticence to deliver clear findings of non-compliance; and a lack of incentives or requirements for companies to engage in the NCP process.

Collaborative approaches
One discussant reported that of the 65 cases of alleged corporate human rights abuse surveyed in the first report of the SRSG on business and human rights, 38 had related to the extractives sector. While they ranged from situations entirely within the company's control to those entirely beyond its control, a study had shown that nearly all sat in the middle, with shared responsibility. So a key question had to be how to get different actors – corporate, government and civil society – working together in the national context to address disputes.

Another participant noted that disputes in the extractives sector frequently related to communities' concerns that they were not benefiting from an investment. Multilateral institutions, governments (host and donor) and companies needed to work together to align local social investment strategies and build local government capacity such that fiscal revenues were managed in a positive and participatory manner.

Cultural preferences

A participant from one developing country noted that their history under dictatorship had left the legal system widely discredited. The democratic government of today was therefore more interested in ombudsman approaches to dispute handling. 80% of cases going to one ombuds office had been resolved through mediation. The ombudsperson could, of course, not bind parties. A participant from another developing country noted that the adversarial win/lose nature of lawsuits sat ill with their culture. Experience suggested they could worsen both the dispute and relations between those involved. It was better to start with grievance mechanisms at the company level, moving on to locally-based multi-stakeholder initiatives (MSIs) and then up the line from there before going to national courts.

Industry/Multi-Stakeholder Initiative level

Risks
Some participants felt that multi-stakeholder initiatives were inherently sub-optimal arrangements. In a worst-case scenario, host governments wanted them to substitute for necessary regulation; home governments promoted them in patronising ways; companies exploited them to enhance image and keep litigation at bay; and international NGOs wished them to fail to prove a need for global regulation, even though local NGOs often wanted the quick, local remedy they might provide.

Bridging roles
Others noted that while MSI and industry initiatives had their limitations, they provided an important bridging role where government-driven checks on compliance with standards were absent or deficient. Some thought they were not necessarily a temporary bridge: as national capacity expanded, their bridging role might evolve to address different needs. Another participant noted that in a post-conflict environment there was little state capacity to provide for dispute resolution and some southern governments were naturally reluctant to take prescriptions from northern governments and multi-stakeholder initiatives. So NGOs and companies may have no option but to step in collaboratively to build mechanisms that could address grievances.

One discussion group suggested that MSIs provided important platforms to advance both standards and grievance handling, but needed to move to a new level. It could be a deepening – pushing individually for higher standards and tighter accountability – or a broadening – bridging between existing MSIs or even bringing them under a single, common tent. There at least needed to be greater cross-learning between these initiatives, going beyond the limited experiment of the Jo-In project linking six MSIs in Turkey. The FLA's grievance process was suggested by some as a best practice model.

Another challenge was to look at cultural transferability. The basic model of bringing actors with different interests together to find answers to common problems was relevant to different cultures. But existing MSIs and industry initiatives were largely European and American and needed to bridge to other regions.

Multilateral/international level

Leverage
Some thought World Bank and regional development bank grievance processes would have a declining role in light of the surge in investment from sovereign wealth funds, other emerging economy investors and private equity. As the multilateral banks became

decreasingly competitive financiers, their leverage to oversee and enforce compliance with standards would equally reduce.

Others stressed that these institutions still retained significant strategic leverage but needed to do more to use it to achieve remedy. Whilst it was true that, for instance, World Bank grievance processes could handle only a limited number of disputes a year, the outcomes of those processes were carefully watched by many actors and often had a much wider impact and value. One participant suggested that the outcomes of World Bank grievance processes should have validity in other fora. It was positive that Equator Principle banks were buying into the International Finance Corporation's performance standards, helping them become the norm. But the same parallel in terms of compliance and remedy was yet to develop.

<u>Awareness-raising</u>
A particular challenge for multilateral/international level grievance mechanisms (though others as well) was spreading awareness about their existence and tackling the lack of capacity among local actors to access them effectively. It was suggested these institutions should take a stronger role at the local level – where many carried credibility – in building such awareness and capacity. Some suggested this challenge would be easier if the banks converged round some common principles and practices. They might also support the development of intermediate mechanisms such as ombuds functions.

Cross-cutting Linkages/Deficits/Gaps

<u>Understanding the options</u>
One participant noted that the spirit of people the world over was to challenge the way things worked. The voice of local people was increasing, so absent relationships of trust, conflicts were inevitable. Grievance mechanisms were an opportunity to address this, but expectations had to be clear: was a mechanism going to provide a judgement on compliance or a mediated agreement to a dispute? If both were combined in one mechanism, this could create competing and incompatible expectations. Parties to a dispute needed to know all their options and what they could deliver. People chose to mediate only where they thought it better than the alternatives. So those alternatives must be known – including judicial options.

Various participants emphasised the need for education on the different mechanisms, to raise awareness about what was available and how it worked and could be accessed. One participant underlined the importance of consumer awareness and markets in helping raise the bar not only on standards, but also on responsible dispute handling processes. This would then create an opportunity for business to respond to consumer demand. There might be a particular role for MSIs in educating customers/consumers. Governments also had a communication role in this regard. Some participants stressed the need to address all parties in raising awareness and capacity with regard to grievance processes. Empowering workers to claim their rights without building the capacity of management to understand their roles and responsibilities and respond appropriately could raise expectations without raising the ability to meet them.

<u>Adopting rights-based approaches</u>
Various participants argued for a rights-based approach to grievance mechanisms. This would place the focus on integrating human rights norms, standards and principles into the process of grievance mechanisms, whether or not the issues in dispute raised

substantive human rights. It would emphasise principles of equality, equity, accountability, empowerment and participation. It was suggested that a rights-based approach could help make grievance mechanisms both more scalable and more culturally transferable. One participant underlined the importance of making the human individual central to grievance processes – rights-based approaches could be important in this regard.

Using multiplicity to advantage
The benefits of a diversified, multi-layered approach to grievance handling was stressed by one participant, drawing on the precedent of the labour rights arena, where processes provided by the ILO, International Framework Agreements, national labour mediators and tribunals, multi-stakeholder initiatives and civil society processes had all contributed to providing remedy and embedding rights in different and complementary ways. The question was how to transfer this experience across to other rights issues such as economic and social rights that were less widely accepted internationally.

It was stressed that the key question was not necessarily which level of mechanism was more appropriate or effective, but how to get the different levels to connect or work together to maximise their impact by combining their different leverage points. MSIs had the advantage of independence from governments but were insufficient on their own because too many governments and consumers did not care about their work. Banks had another type of leverage and angle on grievance processes. One speaker commented that grievance mechanisms that provided an immediate local point of access for complainants were important, but there needed to be a second point of recourse if they failed, with more of an appellate, fact-finding role.

Setting out clear standards
A number of participants noted that extra-judicial mechanisms suffered where there was a lack of clarity as to the human rights and other standards that applied. Even some institutions with their own codes and standards left them at a level of generality that made it difficult for companies to know exactly what was expected and for complainants to know when they had a real case for complaint. Another participant argued that disputes involving indigenous peoples often raised different rights issues and needed particular attention. These communities tended to focus less on a desire for remedy through compensation and more on their right to preserve their cultural identity.

Achieving scale
The challenge of achieving scale was emphasised across all kinds of mechanisms. They all had limited capacity to address grievances. Some speakers stressed that the scope for grievance mechanisms to scale up correlated with their simplicity of process. Companies and others could neither execute nor engage effectively with a process that was poorly devised or excessively complex. Some participants took the view that combating scale constraints was a lesser concern than achieving legitimacy and effectiveness. Where these latter goals were achieved, the mechanisms could still provide added value, whatever scalability they offered.

Measuring effectiveness
The absence of means to measure the effectiveness of these mechanisms was raised repeatedly. Some argued for a common set of substantive human rights standards as a necessary starting point to measure effectiveness.   Some suggested that the draft Principles for operational-level grievance mechanisms (see below) could usefully be

adjusted as process standards for these other levels in the system. Measurable performance indicators could then be further developed and assessed.

SESSION II PART I: Company-based Human Rights Grievance Mechanisms: What purpose could and should a tool for company-level grievance mechanisms serve? What are the potential and the limitations of such mechanisms?

Purposes
Various participants stressed the need to improve how grievances were handled at the factory/company level. The focus had for too long been on top-down systems of monitoring and auditing. Bottom-up grievance processes were key not only to empowering aggrieved parties to raise their voice but also to making them part of the solution. Since there were scale limits on what MSIs and other institutional mechanisms could offer in addressing grievances, resolving the majority at the local level was also crucial for the whole 'system' to function.

Another discussant noted that many major companies would say they already took a transparent, accountable, consultative approach to addressing grievances and disputes. The deficit was often in getting them to mainstream these principles into their management systems so that they weren't compromised at the first serious challenge or tension in their own interests. It would help in this regard to have a set of guiding principles as a tool. The value of a grievance system was precisely in its being systematic, providing robust and predictable processes for all. Ad hoc responses to disputes were much weaker procedurally and therefore often substantively.

A couple of participants suggested that process benchmarks for grievance mechanisms could be important for socially responsible investors as indicators of human rights performance, and could be combined with indicators on human rights impact assessments and transparency as a much better guide to performance than the existence or content of a human rights policy alone.

Potential and Limitations
A number of participants noted distinctions between compliance, adjudication and dispute resolution. One suggested that where a company was working to clear standards, it was well-placed to assess compliance when someone alleged a breach. But disputes may not relate to any predefined standards – they may rather reflect needs and desires. This required more innovative processes built by communities and companies together – project mechanisms more than company mechanisms. Other participants took the view that companies shouldn't be the last word even on compliance – they were judging themselves. And a grievance might reflect human rights considerations even where specific standards were not in place or had not been agreed.

One participant stressed the need to use terminology carefully. The vindication of rights belonged in an adjudicative process rather than a problem-solving one. This could not be delivered at the company level but required an independent external body. However, adjudicative processes were not able to recognise the legitimate conflicting forces that were often at play in a complex problem. Another participant suggested the key question was how to articulate the relationship between the two types of process – how could one make this relationship between problem-solving and adjudication work as part of a continuum or a system.

It was agreed that mechanisms at this operational/project-level had to be part of a wider system, wherever possible backstopped by effective judicial mechanisms. They had value in themselves if done right, but could only be one part of the answer to the need for remedy. Most agreed they could not provide a solution where they could not deliver a fair process, and the appearance of fairness. This was the case where disputes raised questions of criminal liability. It may also be the case where the safety of individuals was at risk or in zones of bad governance or conflict (see 'government role', p.8).

Management systems
It was noted that some company management systems inevitably led to more grievances by providing inappropriate reward structures to staff. For instance, they might reward high numbers of MOUs signed with communities rather than measures of the quality and inclusiveness of engagement. This encouraged hasty and questionable deals with local individuals. Another comment was that some management systems failed to hold responsible those in a company who generated grievances e.g. an accounting department that delayed paying land compensation to locals. The Community Relations Department therefore became a firefighter for other departments' errors, the same grievances recurred, and there was no institutional learning. There was a case for reviewing management systems through a grievance perspective to remove such obstacles to effective stakeholder engagement.

One participant stressed that any grievance mechanism that did not prioritise and mainstream relationships would not work. On the company side, a single individual with the right skills could make the difference in building relations with a community. But where every complaint or disagreement was run through the legal department, relations rarely worked.

Clarity, predictability and transparency of process
Many participants stressed the need for any mechanism to provide clarity as to what function it could and would provide, what it could not do, and what alternatives were available. This was essential to enable informed decisions and avoid false expectations. The process offered must be timely, predictable and transparent in order to be fair. An appropriately-constituted local multi-stakeholder group to oversee the mechanism and its funding was crucial for credibility.

Representation
Some participants noted the challenge of identifying who should be involved in a dispute resolution process and who represented what groups or interests. It was suggested that this could only be answered in the specific context. And the parties had to take responsibility for who represented them – nobody should play kingmaker. Others noted that community leaders at times failed to take account of gender, caste or other inequities, so it could be too culturally relativistic to expect that existing local leadership would be fairly representative. There was a risk of incorporating and compounding local prejudices within the process. Another participant recalled experience of communities being highly susceptible to outside influence in their choice of advice and representation, bringing in individuals with their own agendas who could hijack the process. Ideally there should be safeguards to prevent this.

SESSION II PART II: Draft Principles for Effective Company-based Human Rights Grievance Mechanisms: what further changes or additions should be made to the draft principles to ensure they provide a useful and beneficial tool for companies,

a rights-enhancing process for companies' stakeholders, and an effective guide to performance for third party observers

This session focused discussion specifically on the draft Principles developed under the project, which had been circulated to workshop participants prior to the meeting.

<u>Viability</u>
Many participants thought that the Principles – or an amended version of them – had a valuable contribution to make. They could help companies see how to incorporate appropriate grievance processes into their management systems and help socially responsible investment funds institute benchmarks of good practice for assessing companies.

Some participants proposed that the Principles should be presented as a tool for all stakeholders, not just companies. Communities and other affected groups could equally use them to demonstrate what they expected of companies and to help them in the joint design process. As such, they could be an empowering tool for these groups. At the same time, it was stressed that grievance mechanisms were not stakeholder engagement writ large. Rather, grievance mechanisms were a single, coherent part of a larger set of strategies for responsible engagement and risk management.

While some queried whether the Principles could gain purchase beyond western companies and, indeed, beyond the 'usual suspects' within the West, others felt that they could also be of interest e.g. to Chinese companies as a model of international best practice. While the Principles could be presented as rights-focused, through another lens they were about relationship-building and addressing problems before they became acute. This latter perspective may have traction beyond states that were receptive to rights terminology.

Various people suggested that the Principles should be cast as guidance, for risk of being seen as a set of rigid standards as against guidelines for a design process. Others noted a concern that they not be used as a tick-box exercise or manipulated such as to abuse power differentials. Some kind of quality check was needed (see 'accountability', p.9).

One participant noted that most disputes arose in a situation of pre-existing distrust, which made it hard to work together. Building a platform for collaboration might be a prerequisite to addressing a dispute. Another noted that this argued for having a grievance process in place from the start of an investment or project, before problems arose. Proposing a jointly-created grievance mechanism may itself help build trust.

<u>Framing the scope of application</u>
Various participants suggested that the framing of the draft Principles might be broadened in one or more of three directions: (a) from a focus on substantive human rights disputes to a broader rights-based approach to handling any kind of dispute; (b) from a focus on specific sectors to a broader application across other sectors; (c) from the company level to other levels of grievance mechanism, including MSIs and industry initiatives and multilateral/international mechanisms.

There was broad support for focusing the document on rights-based approaches to handling all grievances, including but not limited to those that raised substantive human rights issues.

Views differed on the Principles' applicability across wider sectors. Some felt they might be less applicable in sectors where the safety of complainants was often at stake or where disputes frequently reflected irreconcilable conflicts of interest between parties, such as a community rejecting the very presence of a company in its midst. Others suggested that it was certain kinds of grievance that could not be handled at the company level, rather than sectors themselves that were excluded. However, SMEs, SOEs and the informal sector might face particular practical challenges in implementing the Principles. Some felt there was good potential for applying the Principles to grievance mechanisms above the operational level and that this should be explored in discussion with MSIs and others. One discussion group suggested that the Principles might apply differently at different stages of a dispute or conflict, or that different types of mechanism might be needed at the different stages. This might be examined through some road-testing.

Government role

A common theme was the need to bring out more clearly in the draft Principles the potential role of government, while acknowledging that the document could not be too prescriptive since government in some places was a potential part of solutions and in other places an entrenched part of the problem. However, mechanisms should not ignore or undermine state responsibility with regard to the implementation of human rights.

A distinction was drawn between states with weak governance and states with bad governance. In the former, there were opportunities to enhance the state's role by involving relevant officials in a grievance process, even if just as observers. This could influence policies and build capacity in the medium term. In zones of bad governance characterised by systematic abuses the challenge of engaging government was greater as it required shifting their entire approach. Interestingly, some felt company/operational level mechanisms were least likely to be viable in these setting, while others felt that this was where they were most essential.

Power imbalances

The challenge of appropriately addressing power imbalances between the company and other stakeholders was a recurring point of discussion. There was broad agreement on the need for particular attention to redressing this disparity. One participant noted that conflict was sometimes the only leverage communities had and it would be problematic if a local grievance mechanism neutralised that with a technical fix. Another suggested that the first Principle, requiring joint design of the grievance mechanism by all stakeholders was fundamental to addressing power imbalances as well as to building legitimacy.

Measuring effectiveness

Many participants stressed the importance of good Key Performance Indicators (KPIs), both from the perspective of the company and of external observers. Most felt that it was dangerous to include a KPI on the number of complaints received – a high number of complaints may well be a sign of a good mechanism that provided access and carried confidence. This should be encouraged, not discouraged in any indicators. That said, some thought that combining a quantitative measure of a decline in grievances *over time*

with a qualitative survey of stakeholder satisfaction with the mechanism could be a good indicator of effectiveness. Whilst stakeholder satisfaction with outcomes might be one measure, some suggested it was even more important to test complainants' satisfaction with the process – getting this right was essential to a mechanism's credibility. Other suggested measures were a reduction in 'incidents' – i.e. manifestations of a grievance outside the mechanism; a reduction in complaints taken to other mechanisms; and reduced recurrences of similar grievances.

Cultural preferences
It was suggested that the Principles acknowledge explicitly that local cultures may have their own dispute resolution mechanisms, cultures or approaches. It was important not only to avoid undermining local legal mechanisms, but also to work in collaboration with, or at least in a manner consistent with, local non-judicial mechanisms where possible. This reinforced the need to design any mechanism jointly with local stakeholders. Again, this was caveated by the need to place cultural specificity within overarching principles of fair process and inclusion of the vulnerable.

Accountability
Some flagged the risk that the Principles might be manipulated by a powerful corporate actor – whether consciously or unconsciously. It was suggested there should be an accountability mechanism for the Principles, testing whether they were being applied appropriately and in good faith.

Where grievances involved substantive issues of human rights, it was seen as important to involve human rights expertise to ensure that these processes did not reinterpret or undermine basic human rights standards. Not all mediated agreements would otherwise pass the test of international human rights standards. And there was a risk that the Principles might otherwise be taken to imply that implementing human rights standards was a negotiable option, which it clearly was not. Again this was a point where governments should ideally be guarantors. If they couldn't or wouldn't take this role, other means of assurance would be needed.

Resource limits
A number of participants noted that the demands of applying the Principles might limit their application to large, well-resourced companies. But one group thought it might be possible to produce a version that could reasonably be implemented by smaller enterprises. At root the principles should be the same, but how they were applied would differ according to size and resource. One participant reflected that multiple small or medium-sized enterprises such as supply factories could form a collective grievance mechanism in line with the Principles, sharing resources and reducing costs. The Principles could be particularly helpful for designing such joint approaches.

Next steps
Many felt it important now to do some form of road-testing and then revisit the Principles with that learning in mind. This could help test the universality of the Principles' applicability across countries and sectors as well as different rights issues. It was suggested it would also be useful to test the Principles against companies' existing practices and to develop examples of some best practices, which would help to show that the Principles were practicable and good for business.

One participant underlined the importance of being able to 'sell' the Principles to companies. Grievance mechanisms couldn't be done on the cheap – they linked to the fundamental question of how a company engaged with its affected stakeholders on a day-to-day basis. The Principles document was potentially very useful for companies, but should bring out clearly and simply what concrete first steps they would need to take to move forward.

SESSION III: What institutional innovations might be offered in this space of grievance mechanisms that could advance the agenda and address some of the current challenges of scale?

Global Ombuds Function
One discussant highlighted the potential added value of a global ombuds function as a higher-level grievance mechanism. It would have to carry wide legitimacy and so could not be politically-driven. It should ideally be based on a common set of standards, which experience showed was hard to achieve. Key questions that would have to be answered in its creation were:
 ➢ Could you establish such a function without common standards – could part of its role be to lay the groundwork for their development?
 ➢ Could you establish such a function without a treaty, or would you need treaty backing for it to have authority? If so, that could take a couple of decades.
 ➢ What kind of institutional setting would help make it legitimate?
 ➢ How would it be resourced? Could you get industry to resource it? Would that compromise its integrity?
 ➢ How could you ensure it innovated rather than becoming a stale, litigious body able only to handle a couple of cases a year?

Institute for Business and Human Rights
Another discussant noted that certain key initiatives in the business and human rights arena were coming to an end in the next two years, including the Business Leaders Initiative on Human Rights and the current SRSG mandate. They had produced a lot of outputs, on which future work should build. An Institute on Business and Human Rights might help take up the reins in advancing the agenda. Consultations were currently underway to explore thinking on the best role for such a body and how to build a multi-stakeholder framework for its work. One idea was that it provide a forum for stakeholders to debate human rights dilemma situations involving companies. It might also support the creation of information networks around grievance mechanisms.

Resource hubs
A third discussant reflected that there was a lack of information on how grievances were handled in practice, what the outcomes were and what good performance looked like. There were few qualitative or quantitative analyses in this area, of either judicial or alternative dispute resolution processes. As a result, one often ended up in rhetorical conversations about the options. Dispute cases remained very much in the private domain, as if they were something to be concealed. A resource hub or hubs might help people to share information on grievances and processes, create a space for innovation and learning among different grievance mechanisms, and take a data-driven approach to analysing the different frameworks for monitoring and evaluating performance.

Foreign Investment Accountability Mechanism

One discussant presented a proposal for a Foreign Investor Accountability Mechanism (FIAM). This would focus on situations where multinational corporations had signed up to particular norms and standards but there was no mechanism to check compliance and hold them to account to communities affected by their operations. The FIAM would receive complaints of non-compliance and provide an independent investigation and public reporting. Its membership would include companies, NGOs and other stakeholders, with care to avoid it being institutionally 'captured' by any one group. Its rules and procedures would be decided collectively. For companies, it would provide a risk management tool, but one that was not a box-ticking exercise. Initiatives such as the Equator Principles or the Voluntary Principles could benefit from this kind of external mechanism.

Privatised National Contact Points
Another discussant focused on the prospect of privatising OECD National Contact Points, as recently done by the Dutch Government. Currently, nobody really noticed the OECD Guidelines for Multinational Corporations. NGOs hardly knew they existed and companies knew but were not bound by them. In the Netherlands, ownership of the NCP had been passed to a quadripartite group whose members were from a labour union, NGO, academia and the private sector respectively. They could mediate complaints and promote the guidelines, not least as a means to dispute prevention. Furthermore, the 2007 G8 Summit at Heiligendamm had appealed for the OECD, ILO and Global Compact to converge their efforts. Principles for effective grievance mechanisms could help support such a convergence and bring new cohesion across these mechanisms.

Linking existing mechanisms
One participant noted the deficit of many existing mechanisms in terms of linking up with other parts of their home institutions and with each other. The Compliance/Advisor Ombudsman of the World Bank might audit a project, but the Board of Directors had no way of checking whether its findings had been addressed when they made their decisions. In one complaint to an NCP the case had been closed based on the fact that the company had signed the Global Compact, but without any check as to what that meant in practice. The Equator Principle Banks followed the IFC's Performance Standards but not its compliance assessments, which were internal documents to the World Bank Group. These lines of communication needed to be fixed.

Supporting learning and building capacity
Another participant noted that there was a good amount of analysis of where companies were undermining human rights, but little on where they were helping to strengthen them. This gap could usefully be filled for positive learning purposes. Another deficit identified was in capacity-building, whether of a community, local government, company management or workers. Might there be scope for an equivalent of the Investment Climate Facility in the human rights arena to support country-level capacity-building, funded by companies, governments, donor agencies and working with local universities or other entities? One participant noted a lack of follow-through once grievances were nominally resolved. Individuals often didn't know how to access compensation funds or understand how they might best invest and use these resources. Experience showed such opportunities for development were often squandered for lack of such knowledge.

Open-source networking
One risk that was highlighted with regard to some of the above proposals was that they

would replicate existing 'ghettoes' of the usual western actors, whilst talking predominantly about problems that occurred in non-western countries. Building on the suggestion for resource hubs, a number of comments revolved around the potential for 'wiki'-style/open source networks, developing a collaborative space or architecture that broke out of current elite conversations and set a low threshold for interested actors around the world to get engaged and move the debate beyond western paradigms. Many participants felt this could be more nimble than institutionalised processes with the politics they usually carried. One participant saw this kind of development as inevitable to some degree as new technologies stimulated horizontal communications. Others saw need for impetus from existing institutions to help promote this kind of network. There was a broad sense that combining the idea of resource hubs and networks with this kind of organic/open-source approach offered one of the areas of greatest potential going forward.

Conclusions

The project leader concluded that she would:
a) prepare and circulate a report of the workshop discussions. This would aim to capture participants' main comments and ideas on meta-level mechanisms, which would provide food for continuing thought, discussion and analysis of how these mechanisms might best evolve. It would also cover comments on the draft Principles.
b) revise the draft Principles in light of the comments received and circulate a new version to workshop participants prior to posting it on the CSRI and Business and Human Rights Resource Centre websites. Based on this version – which would still be a work in progress – the project would look at collaborating with various organisations to road-test and further refine the Principles in the course of 2008.
c) reflect on ideas for institutional innovations to address gaps in the current multi-level architecture of grievance mechanisms. Some were already being taken forward. The project might have a role to play in supporting 'virtual' resource hubs and networks working in collaboration with other institutions.
The project would continue to be driven by broad consultations across stakeholder groups and regions, with key documents posted on the CSRI and the Business and Human Rights Resource Centre websites.