

## **Minutes, ICoC Working Group #2: Briefing by Rachel Davis**

**Monday, 20 June 2011 via teleconference**

### **Attending :**

- Rachel Davis, Legal Adviser to UN Special Representative for Business and Human Rights
- Andy Orsmond, Human Rights First
- Whitney Grespin, New Century Consulting
- Michael Clarke, G4S
- Melike Yetkin, US Department of State
- Phill Rudder, WSI
- Ian McKay, US Department of State
- Sylvia White, Aegis
- Doug Brooks, ISOA
- Margaret Belof, UK FCO
- Anne-Marie Buzatu, DCAF
- André du Plessis, DCAF
- Michelle Hess, DCAF

**BEGIN 9 :00 DC / 14 :00 UK/ 15 :00 GENEVA**

### *4 main points :*

- History/Background of John Ruggie's mandate
- Guiding Principles on Business and Human Rights developed by John Ruggie
- Principle 31—effectiveness criteria for non-judicial grievance mechanisms
- Relationship between grievance mechanisms and other mechanisms

#### *1. History/Background of John Ruggie's Mandate*

- Established in 2005 by the Commission on Human Rights as a way to move beyond the polarized debate of the role of business in human rights
- Sought to achieve a consensus about what the respective roles & responsibilities of business and government are in respect of business & human rights
- In 2008, his Protect, Respect, and Remedy Framework was presented to the HRC and was unanimously welcomed — his mandate was extended for another 3 years and he was tasked with operationalizing this framework
- The Guiding Principles were finalized earlier this year after a period of public consultation and endorsed by consensus by the HRC on 16 June 2011

#### *2. Guiding Principles Developed by John Ruggie*

- The 3 pillars of the framework are:
  - State duty to protect against human rights abuses by third parties, including business;

- Corporate responsibility to respect human rights, which means that businesses should avoid infringing on others' rights, and address adverse human rights impacts with which they are involved;
- Access to an effective remedy for victims of business-related human rights abuses, including through judicial and non-judicial mechanisms.
- The Guiding Principles also follow this framework and elaborate on each of the three pillars.
- The Guiding Principles do not create new legal obligations—they build on well-known legal obligations that apply to states, and further explain the global expectation that business should respect human rights.
- For this Working Group, the principles on access to remedy are the most relevant. They recognize the leading role of the State in providing remedies and the complementary role of non-State-based grievance mechanisms, ranging from the company (or operational) level to mechanisms attached to collaborative initiatives.

### 3. Principle 31 —effectiveness criteria for non-judicial grievance mechanisms

- *Principle 30*—this states that Industry, multi-stakeholder and other collaborative initiatives that are based on international human rights standards should ensure that effective grievance mechanisms are available
- *Principle 31*—this then sets-out effectiveness criteria for non-judicial grievance mechanisms. There are 7 criteria, which can be summarized as follows (please refer to the text of the Guiding Principles for the authoritative version):
  - a) Legitimate—enabling trust and accountability for the fair conduct of grievance processes
  - b) Accessible—must be known to all relevant groups and help should be provided when there are particular barriers to access (e.g. language, cost)
  - c) Predictable—there should be a clear procedure with an indicative timeframe known in advance, and clarity on the types of possible processes and outcomes
  - d) Equitable—seeking to ensure that aggrieved parties have access to the information, advice and expertise that is needed for them to engage in a fair and informed process
  - e) Transparent—keeping parties informed about the progress of the complaint, building confidence in the mechanism and meeting any public interest that is at stake.
  - f) Rights-Compatible—the process should ensure that its processes & outcomes are in accordance with internationally recognized human rights standards
  - g) A source of continuous learning—the outcomes should help to identify needed improvements in respect of the grievance process itself as well as lessons for the prevention of future grievances.
- There is one additional criteria for operational-level mechanisms, namely that at this level they should be based on engagement and dialogue both in the design and implementation of such mechanisms.

### 4. The Relationship between non-State-based Grievance Mechanism and Other Mechanisms

- These mechanism are not intended as a replacement to state-based processes

- Further, company level and collaborative level mechanisms should not block access to or undermine state-based mechanisms
- In situations involving parallel proceedings in different fora, much depends on whether the collaborative mechanism is adjudication-based or mediation-based
- Note that having a mediation-based approach occurring at the same time as an adjudicative process isn't necessarily a problem (compare with similar processes at the national level)
- It is less common to have two adjudication-based proceedings occurring at the same time—in such instances, there will be a need to determine which one should take precedence:
  - Important Factors in determining this: how far advanced the parallel procedure is, how likely is it to address all relevant issues, whether all appropriate parties are involved, and whether the parallel procedure includes the power to summon witnesses, compel evidence etc.
- Confidentiality of information: agreements relating to non-disclosure in mediation-based processes tend to arise once one party makes an offer or the parties come to an agreement.

### Questions from attendees

- *What might be some of the actual public interest requirements mentioned in guiding principle 31(e) in the context of collaborative level mechanisms?*
  - Where there are heightened potential risks (or benefits) to human rights at issue;
  - Where public funding is involved;
  - In the final determination in individual cases (there may or may not be a relevant public interest in the detail of any agreement reached between the parties).
- *The relationship between company grievance processes and a MSI grievance process—how can these two work together?*
  - The earlier you address an issue, the more likely it can be resolved before it reaches the level of a “grievance”, so collaborative level grievance mechanisms do not obviate the need for robust mechanisms at the company level
  - Note that at the company level, the design of the mechanism should involve those who are likely to be affected by the company and are likely to use it. Note also the importance of having a dialogue-based process
  - The Guiding Principles recognize that not every company is able to set up such an internal mechanism – they may establish one in partnership with other companies, for example
  - The relationship between company and MSI-level processes should not, therefore, be too rigid
- *Did you look at any other grievance mechanisms in the context of MSI initiatives?*
  - Many were looked at. There is a 100 page report of the results available at [http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Report\\_28\\_Mapping.pdf](http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Report_28_Mapping.pdf). Rachel agreed to provide a summary of the main findings
  - In particular, the work of the Fair Labor Association is useful to consider.

**END 10:00 DC / 15:00 UK / 16:00 GENEVA**