Minutes, ICoC Working Group #2 Meeting—Tuesday, 26 July 2011 via teleconference

Attending :

- Tara Lee, DLA Piper (USA) – co-chair

- Ian Ralby, ADS Security in Complex Environments Group (UK)
- Ian McKay, US Department of State (USA)
- Margaret Belof, UK Foreign & Commonwealth Office (UK)
- Hanspeter Heinrich, Safestainable (Switzerland)
- Christopher Beese, Olive (UK)
- John Lea, UK Ministry of Defence (UK)
- Rachel Davis (USA)

- Thomas Haueter, DCAF (Switzerland)
- Anne-Marie Buzatu, DCAF (Switzerland)
- André du Plessis, DCAF (Switzerland)

BEGIN 09:00 DC time/ 14:00 London time/ 15:00 Geneva time

The Chair introduced the meeting as an opportunity to discuss how the final report would be prepared and structured, as well as opinions on the report's content.

The Chair informed participants that Ian Ralby, Ian McKay and herself would be meeting the next day (27th July) in Washington DC to prepare an early draft of the potential report. Any members of WG#2 were invited to attend or dial-in and should simply inform the Chair if they wanted to do so. In particular, Civil Society was invited to attend.

It was noted that some participants had circulated their thoughts in advance of the meeting. Individual participants then made several points and there was discussion on these. The points raised included:

- Any grievance mechanism should aim to effectively address adverse impacts on human rights. There are a lot of other initiatives that can provide some useful pieces.
- There was discussion on the issue of cost, noting that while it is a very important element it also needs to be balanced with what would actually make an effective mechanism.
- Of the five proposed functions, there seemed to be emerging consensus that referral and mediation should play an important role. There seemed to be little support for arbitration. There was further discussion on fact-finding and the special audit function.
- On the question of fact finding, several participants noted that this may be an important element when referral and mediation do not work and there is a need to establish the facts on the ground. For Civil Society this was particularly important, expressing that this was necessary to keep the process legitimate.
- On special audits, there was some consideration whether this might tie-in better with the certification work of Working Group #1.

- There was discussion on whether a shared robust grievance mechanism could not actually turn-out to be more cost effective for companies since it could potentially replace more expensive individual company mechanisms.
- Some participants noted that awareness-raising of any mechanism developed should be a key element to make affected parties aware of it.
- The question was raised if the referral function needs to automatically refer grave breaches of human rights to the necessary law enforcement authorities.
- There was discussion on whether complainants should be required to have exhausted a company-level mechanism first, with several participants highlighting that a complainant may understandably not trust the company mechanism and so this should not be a requirement.
- It was highlighted that any mechanism should be hypothetically tested against real-life scenarios. It was noted that externally, any mechanism will be "tested" in the public eye as to how it actually deals with a serious/grave violation of the Code.
- Keeping the mechanism simple could be valuable. Simplicity could help bring about a robust, reliable and credible mechanism. Therefore the structure and scope should be constrained to something that is achievable.
- One participant suggested using the interim report submitted to the TSC as a basis for the final report.
- The WG reminded itself that it is not the final decision maker and that not all the issues should be resolved by it. Rather, the approach should be to identify different options, questions and problems for the TSC, setting-out the consensus and points of disagreement as fully as possible.
- The WG also noted that the TSC had asked it to consider some issues specifically: when is participation in a particular grievance mechanism voluntary and when is it compelled; what should be the role of the IGOM in providing guidance as to what is an effective or credible internal grievance mechanism; and how do key employment law issues relate to the mechanism, for example whistleblower protection or personnel members not being paid.
- It was several times mentioned that civil society inclusion in the process is very important. However it was noted that civil society is not homogenous and there are lots of different opinions about the process within that group as with others.
- On this note it was also mentioned that civil society is broader than just NGOs, and that so far the "client" element has been missing: MNCs who are also clients may be an important stakeholder group to reach out to more.
- There was a call for more "thinking outside the box" for simple but effective solutions, for example requiring companies to publicise their address for service of legal process.
- Other types of mechanisms were mentioned: "Ethical Auditing", which reportedly has been effective over the last 10 years or so looking at anti-corruption in South Africa; and the work of the International Humanitarian Fact Finding Commission, which could be useful to learn from particularly in respect of fact-finding and special audits.

The next call will be held on Tuesday August 2nd, and is anticipated to last for only 30min.

END 09:45 DC time/ 14:45 London time/ 15:45 Geneva time