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Grievance mechanisms of ETI and SAI fail to benefit young women and girls in the South Indian textile industry

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Colofon

Authors:

Homeworkers Worldwide - HWW

India Committee of the Netherlands - ICN (Marijn Peepercamp)

Centre for Research on Multinational Corporations - SOMO (Pauline Overeem, Martje Theuws)

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Homeworkers Worldwide

Office 14, 30-38 Dock Street,
Leeds, LS10 1JF

United Kingdom

Tel: + 44 (0)113 320 32 14

info@homeworkersww.org.uk

www.homeworkersww.org.uk/



**India Committee
of the Netherlands**

Landelijke India Werkgroep

Mariaplaats 4e

3511 LH Utrecht

Nederland

Tel: +31 (0)30 232 13 40

info@indianet.nl

www.indianet.nl



**Stichting Onderzoek Multi-
nationale Ondernemingen
Centre for Research on
Multinational Corporations**

Sarphatistraat 30

1018 GL Amsterdam

The Netherlands

Tel: + 31 (20) 63 912 91

info@somo.nl

www.somo.nl

About the authors

Homeworkers Worldwide

Homeworkers Worldwide is a UK based organisation established in 1998 to support the organisation of women homeworkers and other informal women workers around the world, and to raise public awareness about their situation. We work to support homeworkers and their organisations in their struggle for rights and respect by supporting organising, building networks; campaigning for change, conducting research and sharing knowledge and experience.

The India Committee of the Netherlands

The India Committee of the Netherlands (ICN) is an independent non-governmental organisation campaigning and doing advocacy work on human rights issues. Central to the work of ICN are the issues of caste-based discrimination, labour rights and child labour & education. ICN co-operates with organisations in India and elsewhere in combating discrimination, poverty, oppression, exploitation and lack of education, focusing on the role of policy makers and companies. ICN is an active member of networks like the Clean Clothes Campaign, the Stop Child Labour campaign, the International Dalit Solidarity Network and the Dutch MVO Platform.

Centre for Research on Multinational Corporations

The Centre for Research on Multinational Corporations (SOMO) is a critical, independent, not-for-profit knowledge centre on multinationals. Since 1973 we have investigated multinational corporations and the impact of their activities on people and the environment. We provide custom-made services (research, consulting and training) to non-profit organisations and the public sector. We strengthen collaboration between civil society organisations through our worldwide network. In these three ways, we contribute to social, environmental and economic sustainability.

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1 Introduction

This paper investigates how Social Accountability International (SAI) – a social certification organisation for factories and organisations, and the Ethical Trading Initiative (ETI) – an alliance of companies, trade unions and voluntary organisations working to improve the lives of workers – have dealt with concrete complaints about abusive labour conditions in the textile and garment industry in South India.

ETI aims to improve working conditions in global supply chains by implementing the ETI Base Code of labour practice.¹ SAI aims to empower workers and managers at all levels of businesses and supply chains, using the SA8000® Standard.² Both ETI and SAI have grievance mechanisms in place to deal with breaches of the ETI Base Code and the SA8000® standard. For this paper the Centre for Research on Multinational Corporations (SOMO), the India Committee of the Netherlands (ICN) and Homeworkers Worldwide (HWW) assess the effectiveness of these complaints procedures – specifically when it comes to improving the working conditions and labour rights of young women and girl workers in Tamil Nadu.

The authors draw general conclusions about the quality of these grievance mechanisms, using the United Nations Guiding Principles on Business and Human Rights (UNGP) as an evaluative frame of reference. ICN and SOMO conclude that the ETI and SAI complaint mechanisms do not provide the needed remedy to the affected workers. The mechanisms do not meet the requirements of the UNGP. Both mechanisms need to improve procedures in terms of accessibility, legitimacy, predictability, equitability, transparency and rights-compatibility.

The parties to the complaints – namely the buying companies, ETI and SAI and the certification bodies Registro Italiano Navale (RINA) and Bureau Veritas Certification (BVC) – were given the opportunity to respond to the findings at key points during the research process.³

The factories and spinning mills where the violations were reported are not mentioned by name in this paper but are referred to as Factory 1 etc.

2 Background

The state of Tamil Nadu in South India is a major production hub for yarn, fabrics and garments, supplying many big name clothing brands and retailers in Europe and the USA including Primark, Tesco, Gap, Migros, Asda, C&A, Mothercare and Sainsbury's. For several years, local and international civil society organisations have been investigating abusive labour conditions in this region. Since 2010, SOMO and ICN have been working together to publish a series of reports calling on corporate and governmental actors to address serious labour rights violations in the textile industry in South India.⁴ Homeworkers Worldwide (HWW) has also reported on these abuses.⁵ (See Box 1 for a list of publications.)

These reports presented a particularly grim picture for workers in the textile and garment industry in and around the city of Tirupur in Tamil Nadu – especially for women and girls. In *Flawed Fabrics* (October 2014)⁶ and *Fabric of Slavery* (December 2016)⁷, for example, SOMO and ICN reported that working conditions in a number of spinning mills and garment factories amounted to modern slavery and the worst forms of child labour.

Research found that women and girls as young as 14 were recruited from marginalised Dalit communities in impoverished rural areas in South India. They were lured to the city with promises of decent jobs, good pay and a lump sum payment after completion of a three-year contract. In reality, however, workers were expected to work for long hours of forced overtime in unhealthy conditions without any contracts or payslips. The promised lump sum was not a bonus but consisted of withheld wages or unlawfully deducted social security contributions. The lump sum was only paid out if the contract period was completed, which effectively tied workers to the factory. Freedom of movement was also found to be severely restricted as workers were living in very basic company-run hostels and were hardly ever allowed to leave the company compound. Trade unions and labour rights organisations were ignored – or repressed – leaving workers with no outlet to raise their grievances. Corporate inspections were also failing to detect these serious labour rights violations and were often only carried out at end-manufacturing units, leaving workplaces further up the supply chain out of sight.

In response to reports by SOMO, ICN and HWW and other organisations, some garment brands, retailers and improvement initiatives – including ETI and Fair Wear Foundation (FWF) – began to take action. A number of clothing brands and retailers started mapping their supply chain and addressing conditions beyond their direct suppliers. ETI set up the Tamil Nadu Multi-Stakeholder (TNMS) working group, involving 17 brands and retailers sourcing from Tamil Nadu. Later, Primark, C&A and H&M got together with a number of civil society expert organisations in an even more informal platform, dubbed the 'Amsterdam Coalition'.

In spite of these initiatives, however, problems still persist. In January 2018, The Guardian published an article by investigative reporter Peter Bengtsen showing modern forms of slavery and female workers being held captive in dormitories at Best Corporation, a supplier of Hugo Boss, Next, Mothercare and others.⁸

Companies should provide access to remedy

Under the United Nations Guiding Principles for Business and Human Rights (UNGP), companies not only have the responsibility to respect human rights, they also need to provide access to remedy to address any grievances that are raised. Guiding Principle 30 of the UNGP states: “Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.” In addition, the Commentary to this Guiding Principle states: “Such collaborative initiatives should ensure the availability of effective mechanisms through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met. [...] These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts.” Principle 31 sets out effectiveness criteria for non-judicial grievance mechanisms.⁹

Evaluation of effectiveness

This current report aims to evaluate the effectiveness of two complaints mechanisms that are available to workers in Tamil Nadu – those of SAI and ETI. Both these complaints mechanisms were activated in response to complaints triggered by research into labour rights abuses in the South Indian textile and garment industry carried out by ICN in cooperation with SOMO and by HWW.

SAI and ETI are relevant initiatives in the context of the garment sector in Tamil Nadu. A significant number of ETI member brands are sourcing from the region.¹⁰ A considerable number of garment manufacturers in Tamil Nadu are SA8000® certified.¹¹

This report describes the steps taken by SAI and ETI to deal with the complaints and compares these steps against the formal procedures outlined by their respective initiatives. It also goes on to assess whether the way these mechanisms are handling complaints actually meets the criteria set out in the UNGP.

Box 1: A chronological overview of publications by SOMO, ICN, HWW and others on forced labour in India's garment and textile industry

- ❑ Captured by Cotton: Exploited Dalit girls produce garments in India for European and US markets, SOMO and ICN, May 2011
- ❑ Bonded (child) labour in the South Indian Garment Industry: An Update of Debate and Action on the 'Sumangali Scheme', SOMO and ICN, July 2011
- ❑ Maid in India: Young Dalit Women Continue to Suffer Exploitative Conditions in India's Garment Industry, SOMO and ICN, April 2012
- ❑ Slavery on the high street: Forced labour in the manufacture of garments for international brands, Anti-Slavery International, June 2012
- ❑ Small Steps, Big Challenges: Update on (tackling) exploitation of girls and young women in the garment supply chain of South India, Mondiaal FNV and ICN, July 2014
- ❑ Forced labour in the Tamil Nadu garment industry: Briefing note, HWW, September 2013
- ❑ Flawed fabrics – The Abuse of Young Women in the South Indian Textile Industry, SOMO and ICN, October 2014
- ❑ Forced Labour in Tamil Nadu's textile and garment industry: An investigation into the working conditions of young women making clothes for the UK high street, HWW, November 2014
- ❑ Fabric of Slavery: Large-scale forced (child) labour in India's spinning mills, ICN, December 2016

3 Non-judicial grievance mechanisms

Individuals, workers or communities that are negatively affected by certain business activities and operations can, in principle, start a complaint procedure. Also, civil society organisations can do so, on behalf of those affected. Grievance mechanisms come in different forms: they may be formal, legal or non-legal (or ‘judicial/non-judicial’). When taking legal action to hold companies accountable for their misconduct, victims are often confronted with weak public governance, inadequate legal frameworks, and/or poor implementation of regulation and court decisions. Moreover, legal procedures are costly and therefore not easily accessible for victims. In such cases, victims of corporate misconduct may take recourse to non-judicial grievance mechanisms (NJGM). These mechanisms exist at many different levels – from project level through to company, sector, national, regional and international levels. These non-legal grievance mechanisms are not a substitute for legal action such as court cases.¹² However, in the absence of viable judicial avenues for obtaining remedy for business-related harm, non-judicial grievance mechanisms have the potential to offer recourse for victims.

The UNGPs set standards in this area and mentions two functions that NJGMs can perform: adjudicative (compliance) and dialogue-based (mediation).¹³ Mediation provides the opportunity for complainants and affected parties to engage in dialogue to find mutually agreeable solutions. Adjudicative-based processes usually only result in an investigative report with findings on whether relevant standards were met in the activities raised by the complaint.

Guiding Principle 31 sets out criteria for the effectiveness of non judicial grievance mechanisms. In order to ensure their effectiveness, NJGMs should be legitimate, accessible, predictable, equitable, transparent and rights-compatible. The definitions of these criteria are derived from the UNGPs¹⁴.

- Legitimate: enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust.
- 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. Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal.
- Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation. In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Timeframes for each stage should be respected wherever possible.

- ❑ **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. Affected stakeholders frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;
- ❑ **Transparent:** keeping parties to a grievance regularly 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. Providing transparency about the mechanism's performance to wider stakeholders can be important to demonstrate its legitimacy and retain broad trust;
- ❑ **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognised human rights. Grievances are frequently not framed in terms of human rights. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognised human rights.
- ❑ **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms. Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm.
- ❑ **Based on engagement and dialogue:**¹⁵ consulting stakeholders for whose use they are intended on their design and performance and focussing on dialogue as the means to address and resolve grievances. Engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

In the following paragraphs, the authors discuss the complaint mechanisms of ETI and SAI in more detail. The authors also describe the steps taken during the complaints procedures initiated by ICN and HWW. Subsequently, an assessment is provided of whether SAI and ETI handled the complaints in accordance with the UNGPs effectiveness criteria for non-judicial grievance mechanisms.

3.1 Social Accountability International (SAI)

Social Accountability International (SAI) aims to advance the human rights of workers around the world. SAI has developed the SA8000® standard – a voluntary standard for socially responsible employment practices. This standard includes labour provisions contained in the Universal Declaration of Human Rights and International Labour Organization (ILO) conventions. Since October 2010, SAI has been encouraging companies to coordinate with local stakeholders to take action against abuses related to forced labour practices in South India.

Social Accountability Accreditation Services (SAAS) is the accreditation body that oversees and gives licences to qualified organisations to audit and grant certification to manufacturers that demonstrate compliance with SA8000®. These organisations are called Certification Bodies (CB). Registro Italiano Navale (RINA) and Bureau Veritas Certification (BVC) are two of the CBs that SAAS works with.

Table 4 Overview of factories and relevant stakeholders involved in the complaint procedures under review

Factories/ Spinning mills	SAI	ETI	Buyers	Research	Complaint
Factory 1	Bureau Veritas Certification (BVC)			Flawed Fabrics	Initiated by SAI
Factory 2	RINA			Flawed Fabrics	Initiated by SAI
Factory 3		x	Five ETI members including Sainsbury's, Asda	Flawed Fabrics, HWW research, Anti-Slavery research	Submitted by HWW and ICN
Factory 4		x	Five ETI members including Sainsbury's and Asda	HWW research	Submitted by HWW and ICN

SAI/SAAS complaint procedure

Concerns regarding a certified factory's implementation of the SA8000® standard can be reported to SAAS. A complaint received by SAAS will be reviewed, investigated and appropriate action will be taken to resolve the concern.¹⁶ SAAS states that complaint procedures and grievance mechanisms are essential as they provide a means for workers and other interested parties to address problems in the workplace directly.

The SAI/SAAS complaint procedure requires the Certification Body that has granted SA8000® certification to a specific production location to investigate a complaint. The investigation should cover the elements identified in the complaint and may be supplemented by an unannounced audit and interviews with external stakeholders. The procedure requires Certification Bodies to report to the complainant regarding the conclusion of its investigation. The complaint report should describe the complaint's resolution and it should summarise the documented evidence, including the response, if any, from the certified factory's management. The complaint report should also include an overview of the corrective actions that the factory may have agreed to take.¹⁷

The SAI/SAAS complaint procedure sets the following actions and timelines for a Certification Body:

- ❑ Report a plan of action to SAAS within 10 days and submit subsequent reports every 30 days after that point.
- ❑ Establish contact with the complainant as part of the investigation.
- ❑ Complete the investigation within 90 days or less, unless agreed otherwise with SAAS.¹⁸

3.1.2 Complaints about two SA8000 certified spinning mills

ICN and SOMO's 2014 report *Flawed Fabrics* portrayed the situation in the spinning units of five textile and garment enterprises in Tamil Nadu.¹⁹ Two out of the five spinning mills described in *Flawed Fabrics* were SA8000® certified. The research found serious labour rights violations at these two certified spinning mills, including forced labour of young women and girls. In September 2014, SAI was asked to provide feedback on a draft version of the research report. The feedback given was incorporated in the final report, which was published on 30 October 2014.

The day after publication of the report, SAI publicly stated that it "considered the report to be a complaint against the two SA8000® certified mills identified in the report". SAI referred the complaint to SAAS, following the internal complaint management procedures.²⁰

SAI also stated that SAAS had initiated an investigation into the situation to determine whether the charges could be verified and what improvements would be needed for the mills to retain their certification. Additionally, SAI said it would aim to assess whether the SA8000® system's accreditation performance and procedures were being implemented effectively. In line with the standard requirements of the SAI complaint procedure, the two mills were due to be investigated in December 2014. SAI also planned to send SAAS auditors to both mills to oversee the performance of the Certification Body's auditors.

In March 2016, ICN eventually received a message from SAAS – 17 months after the complaint was taken up by SAI. Following this message, ICN sent some questions. SAI replied to these questions in June 2016. SAI then also shared reports of unannounced audits at one of the mills, and a report of a stakeholder consultation that was held with three NGOs on 10 June 2016. According to these reports, audits at the mills took place in December 2014 and February 2015.

3.1.3 SAAS response regarding SA8000® certified manufacturers

Factory 1

Factory 1 was certified by Bureau Veritas Certification (BVC). In December 2014, SAAS was present at a surveillance audit conducted by BVC that looked into the allegations brought up in the ICN and SOMO report. According to SAAS, the audit team identified a number of similar concerns as flagged by ICN and SOMO in their report. The 'non-conformities' identified during the December 2014 audit included: excessive working hours for most employees, no premium rate for overtime work or weekly time off for temporary workers, and health and safety issues. According to SAAS, since the standard re-audit, Factory 1 had taken some action to address these non-conformities, under the close supervision of BVC.

BVC determined that the factory had successfully addressed the following issues: excessive working hours, the provision of weekly time off, and health and safety issues related to emergency preparedness and response and workplace hygiene. However, BVC also identified unaddressed issues, including the lack of premium rates for overtime work for migrant workers and improper health and safety conditions related to personal protective equipment. As a result, BVC suspended the mill's SA8000® certification.

Originally, a follow-up audit was planned for June 2016 to assess whether the spinning mill had addressed the outstanding issues and to encourage ongoing improvements. According to SAI's certified facilities list, certification of Factory 1 was withdrawn in July 2016.²¹

The measures taken by SAAS with regard to Factory 1 are in line with SAAS procedures, which require immediate suspension of the SA8000® certification in case of a critical non-conformity to the SA8000® standard.²² However, not all steps in the grievance procedure were followed. ICN and SOMO were never contacted by BVC. In addition, SAAS did not provide ICN or SOMO with a summary of the documented evidence.

While Flawed Fabrics documented bonded and forced labour and the worst forms of child labour – all serious human rights violations – the response to the complaint only addressed working hours, overtime payment and health and safety. The response mentioned some corrective actions taken, but did not detail those actions. From the response, it seems that working hours were reduced, but it is still not clear how many working hours there are in a standard working week.

SAAS informed ICN that it worked with BVC to identify areas of improvement at BVC in order to pick up on issues more accurately during the SA8000® audits in future.

Factory 2

This factory was certified by Certification Body RINA. RINA conducted a re-audit at Factory 2 in February 2015 and did not find any evidence of the issues noted in the Flawed Fabrics report. In fact, SAAS stated that RINA found Factory 2 to be well-organised and “committed to the intent of the SA8000® standard”. It is remarkable that no non-conformities were found at all by RINA. Primark, a buyer at the same factory, wrote in response to Flawed Fabrics that “there remain some serious concerns in relation to working practices at this site”.²³

It is not clear if workers were able to talk to the auditors without management present during the re-audit. The report on the unannounced audit stated that the general manager was present throughout the audit visit. However, in a later response SAAS mentioned that worker interviews were carried out with no management present.

In this case, not all steps of the SAAS grievance procedure were followed. ICN and SOMO were not contacted by RINA. The reply by SAAS did not include a summary of the documented evidence. While Flawed Fabrics clearly documented bonded and forced labour and the worst forms of child labour, the response was restricted to lack of freedom of movement, excessive overtime and poor health and safety conditions.

3.2 The Ethical Trading Initiative (ETI)

The Ethical Trading Initiative (ETI) is a multi-stakeholder initiative that involves brands, retailers, non-governmental organisations (NGOs) and trade unions. ETI has a Base Code, based on the ILO Core Conventions, which it expects members to adhere to. From October 2010, ETI started to encourage collaboration among its members regarding forced and bonded labour schemes in South India.

The Tamil Nadu Multi-Stakeholder (TNMS) working group was set up as a result and currently consists of 17 brands and retailers.

3.2.1 ETI Alleged Code Violation Procedure

The ETI Code Violation Procedure aims to provide a formal avenue for raising and addressing breaches of the ETI Base Code in the supply chains of ETI member companies. The procedure identifies four stages:

Stage 1: A complaint is filed and the company responds within 10 days. If the parties agree, the complaint progresses to stage 2.

Stage 2: A remediation plan is developed and implemented. Where the parties are unable to agree on developing a plan, the complaint will progress to mediation under stage 3.

Stage 3: Mediation seeks to place the parties in a position where they can agree on developing a remediation plan.

Stage 4: Where mediation fails, either party can request an ETI recommendation on the complaint.²⁴

Only ETI members can file a complaint. However, workers or an organisation that is not a member may approach an ETI member to secure its support to take a complaint forward. ETI's Alleged Code Violation Procedure states that, "in the first instance, the parties to the complaint are the complainant and the relevant ETI member company. However, the procedure will seek to involve other parties including the direct workforce, the supplier/s in question and other companies or organisations, where relevant"²⁵.

3.2.2 Complaints

HWW and ICN submitted two complaints that documented evidence of breaches of all nine clauses of ETI's Base Code in the supply chains of ETI members Sainsbury's and Asda. The complaints were based on SOMO and ICN's report *Flawed Fabrics*²⁶ and on research by HWW that also showed evidence of forced labour and other labour violations. Both sets of research found several ETI members to be sourcing from the investigated manufacturers. Concerns about forced labour and other labour rights violations at the one factory investigated by HWW had also been brought forward by Anti-Slavery International in 2012, so the concerns raised at this specific supplier were already known.

ICN and HWW approached the relevant ETI members in September 2014 to urge them to increase their efforts to comply with the ETI Base Code and to address forced labour and other base code violations at their suppliers. ETI members Sainsbury's and Asda did not respond to this approach and did not appear to take any steps to address the identified issues at their suppliers. Sainsbury's was not a member of the TNMS group, although they were sourcing from multiple suppliers in the region. Asda was a member of the TNMS group, but was not actively engaged at the time. In May 2015, ICN and HWW decided to file joint complaints against these ETI members. The complaint alleged that Sainsbury's and Asda had both failed to address forced labour and other major labour rights violations raised by ICN and HWW.

In this case HWW, as an ETI member, filed the complaints. HWW also filed the complaints on behalf of ICN. Both HWW and ICN cooperated with local NGOs to address concerns at spinning mills in Tamil Nadu. Workers did not have any access to remedy at all, so HWW and ICN filed a complaint on their behalf.

HWW and ICN proposed several steps to remedy the labour rights violations, including:

- ❑ Conducting a proper human rights due diligence procedure on South Indian garment and yarn suppliers.
- ❑ Working on eliminating forced and bonded labour throughout their supply chains within a specific timeframe and with specific reportable targets.
- ❑ Supporting labour rights training as a first step to freedom of association.
- ❑ Creating a space for organising by guaranteeing access to the workplace for independent local trade unions and labour NGOs.
- ❑ (For Sainsbury's): engaging with the ETI TNMS working group programme or another initiative in the sector.

The full Code Violation Procedure details that step 1 (an initial written response by the company) should take no longer than 10 days. However, the companies did not adhere to this timeframe. The progress of the complaint continued at a slow pace. The complaint was submitted in May 2015, but initial meetings with the first company were not held until four months later; with the second company, initial meetings were not held until seven months after the complaint was submitted. ETI did not seem to be in charge of the process, but only reacted when HWW asked them to do so.

The complaint does not appear to have been handled in accordance with the stages as set out above (see Section 3.2.1). As far as the authors are aware, there has not been any agreement on the presence of forced or bonded labour at the sites in question (Stage 1) and no joint remediation plan has been agreed (Stage 2/3). Given that there does not seem to have been any agreement on the existence of conditions amounting to forced labour in the factories concerned, a third-party investigation of the factory and mills – including discussions with workers – would have been valuable to establish the facts before remediation could start. This was suggested during the complaint procedure, but it was not taken up by ETI until very late in the process and then subsequently did not take place.

The procedure also states, “At the conclusion of a complaint, the ETI will publish a statement agreed by the parties or a short summary of the complaint and the outcome. The ETI will communicate, via its website, how many complaints it has received, the parties involved, and the outcomes of complaints”. This did not happen either. While the procedure was closed in February 2017, ETI only published a blog about the procedure in July 2017, coincidentally, after receiving a draft version of this current report. There was no evidence that the direct workforce, the suppliers in question or other relevant stakeholders had been involved.

3.2.3 Company responses

Sainsbury's

Sainsbury's was found to be sourcing from one manufacturer described in SOMO and ICN's Flawed Fabrics report (Factory 3) and from one manufacturer investigated by HWW (Factory 4).

Following the submission of the complaint, Sainsbury's replied in June 2015 through the ETI alleged code violation company response form. Sainsbury's stated that, since January 2014, the company was no longer sourcing from Factory 4. Sainsbury's said it was working with Factory 3 and that this factory had provided audit information of their spinning unit and had allowed a third-party auditor to visit the

spinning unit to understand the issues facing the site. Sainsbury's also said it had obtained further information from a fellow ETI member and an additional supplier that had visited the site. Sainsbury's admitted to having found issues around working hours, health and safety and freedom of association at the site, which they claimed to have addressed.

Some basic information was also given about corporate social responsibility (CSR) activities in their supply chain in South India. However, insufficient information was given to determine whether the activities of Sainsbury's were credible interventions in line with the ETI Base Code. Following further correspondence regarding what specific actions had been taken, it was agreed that a meeting between ETI, HWW and Sainsbury's would be held. The meeting took place in September 2015 but did not have any clear outcomes apart from the fact that a future meeting was planned when Sainsbury's had decided what action to take. Sainsbury's stated their general commitment to tackling issues in their supply chains in India.

There was further correspondence via ETI with Sainsbury's, in which the company stated that they intended to join the ETI TNMS Working Group. However, no further meeting took place. Sainsbury's stated that, in their opinion, the main problem that they had identified in Tamil Nadu was in the smaller mills. HWW responded to this by raising a number of more specific questions that were still unanswered. ETI indicated that these issues could best be dealt with by direct liaison between Sainsbury's and HWW, without any need for further involvement by ETI. Eventually Sainsbury's joined the ETI TNMS Group in August 2016.

In its initial response to the draft of this paper, ETI did not mention Factory 3, one of the mills that was the subject of the complaint. In ETI's public communications regarding the complaint procedure, Factory 3 was also not mentioned.

Asda

In July 2015, Asda responded to the complaint. A meeting took place in December 2015, attended by ETI, HWW and Dalit Solidarity Network UK (DSN-UK).²⁷ During this meeting Asda expressed their commitment to addressing the issues raised. In addition, Asda committed to becoming actively involved in the ETI TNMS working group. Asda confirmed that they were sourcing from Factory 4 and that they had some concerns about conditions in the factory. HWW and DSN stated that they would need more evidence of improved conditions in order to close the complaint procedure. As a result, in February 2016, a second meeting was arranged by Asda and was attended by ETI and HWW. The outcome of this meeting was the active participation of Asda in the ETI TNMS group in the UK. However, there was no evidence provided that conditions had improved substantially for workers at the mills in question.

3.2.4 Closing of the procedure

When ICN sent a draft of this analysis for review to ETI, Asda and Sainsbury's in April 2016, a teleconference was planned where ETI, HWW and ICN agreed to an independent investigation at Asda's suppliers to assess labour conditions there. HWW submitted a proposal for this research. More than a year later, this investigation had not taken place. According to ETI the procedure was officially closed in February 2017. ETI wrote on its website: "In January 2017, Asda queried the need for a separate study, given

their and Factory 4's engagement with TNMS. ETI agreed, and HWW concurred, that given the positive dialogue that had been established within the TNMS programme the study need not go ahead."²⁸

However, ETI and HWW have different readings about the closure of the procedure. HWW has publicly taken another position. On its website the organisation states: "HWW did not agree that a satisfactory solution was found to resolve the complaint. Given that there were disagreements about the presence of forced or bonded labour in both supply chains concerned, an independent investigation was needed, in the opinion of HWW, to establish the facts of the matter. This was discussed at some length and a proposal made for how this should be carried out. In spite of these discussions, in the end there was no agreement on the need for this investigation. HWW agreed to close the complaint process, which had already taken nearly two years, because we did not see a solution coming from it. Although we welcomed the participation of the companies concerned in the Tamil Nadu working group of the ETI, we did not consider this adequate to addressing the problem."²⁹

4 Analyses against the UNGP effectiveness criteria for non-judicial grievance mechanisms

UNGP Principle 31 sets out criteria for the effectiveness of grievance mechanisms. In order to ensure their effectiveness, non-judicial grievance mechanisms should be: i. legitimate; ii. accessible; iii. predictable; iv. equitable; v. transparent; vi. rights compatible, vii. a source of continuous learning; and iix. based on engagement and dialogue (for further information on the effectiveness criteria see paragraph 3).

In the following paragraphs the complaint procedures of SAI and ETI will be assessed against these criteria. (As the three complaints do not provide sufficient material to assess whether the mechanisms are a source of continuous learning, this criterion has been omitted from the analysis.)

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

During the SAI complaint procedure, the same audit organisations that had previously visited the spinning mill where labour violations were reported (and had not found any major concerns) were engaged to carry out the re-audit of the supplier. This means that the independence of the audit cannot be guaranteed.

SOMO and ICN reports had flagged concerns regarding the limitations of the audit procedures – finding that these often did not identify complex labour rights issues like forced labour, sexual harassment and restrictions on freedom of association.³⁰ And yet these concerns were not acted upon.

ETI does not have a designated complaints' committee. The complaint was handled by the person who heads the ETI TNMS programme – the programme that was eventually presented as the solution to the problem.

In both instances, the complaints were not dealt with in a way that guarantees independence. Additionally, different stakeholder groups were not represented in the process.

4.2 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

The SAI complaint mechanism is open to all stakeholders. However, SAI only accepts complaints in English and Spanish. Information about the complaint procedure is available in English only. It is not clear if and how information about the procedure is made known at the factory level. For workers from Indian garment factories or spinning mills who do not speak English, this constitutes a barrier to access.

Stakeholder groups that are not members of ETI cannot file a complaint with ETI, nor can workers themselves do so. However, according to the UNGP, grievance mechanisms should be open to the affected parties or their legitimate representatives. The way the ETI Code Violation Procedure is designed, it is working as an internal dispute resolution mechanism, instead of an external complaints mechanism.

4.3 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

The procedure followed by SAAS was mostly in line with its own guidelines. However, SAAS did not stick to its own timeframe at all. The procedure took more than 20 months in the case of Factory 1 (28 October 2014 to July 2016).

Several extensive documents set out the SAAS complaint procedure. However, not all of these are publicly available. With regard to expected outcomes SAAS procedure 304 for making a complaint or appeal states: “The prime purpose of a complaint investigation is to ascertain whether or not the allegation is accurate, and if accurate, to elicit root cause analysis, corrective action and action to prevent recurrence.”³¹

The ETI complaint procedure has four distinct stages, summarised in the public “ETI Code Violation Procedure”. A clear timeframe is only set out for the first step. In this case, parties did not adhere to the given timeframe. The progress of the complaint has continued at a slow pace. The complaint was submitted in May 2015, but meetings with the companies were not held until several months later. The procedure was closed in February 2017. The Code Violation Procedure sets out a quite clear process. However, the complaint was not handled in accordance with the stages as set out by ETI. At a certain stage, ETI even withdrew itself from the process, leaving it to HWW and Sainsbury’s to settle the grievance. The ETI’s Code Violation Procedure aims for the parties to develop a joint remediation plan. Ever since HWW and ICN filed a complaint more than two years ago, neither Asda nor Sainsbury’s has developed such a plan.

4.4 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

Neither of the mechanisms provided any detailed information about audit findings at the concerned suppliers. SAAS did provide some information afterwards, but only in general terms. In both cases, complainants were not consulted on developing (corrective) action plans.

4.5 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

Both processes failed in terms of transparency. ICN and HWW only received information on the process after sending several reminders. SAI did share a report on the audit carried out at one of the two spinning mills and brief information on the audit carried out at the other spinning mill with ICN. Information provided by ETI and SAI was not detailed enough to establish whether the corrective actions (if any) were effective.

The two organisations did not publish the complaints and the outcomes on their websites, even though the ETI Code Violation Procedure states, "At the outcome of a complaint, the ETI will publish a statement agreed by the parties or a short summary of the complaint and the outcome". Eventually ETI published a blog post that covers only one factory that was part of the complaint and a spinning mill that was not part of the complaint. Furthermore, outcomes as presented in this blog were not agreed to by HWW, the complainant.

4.6 Rights-compatibility: ensuring that outcomes and remedies accord with internationally recognized human rights

According to SAAS some improvements were made at Factory 1. Improvements were implemented regarding working hours, emergency preparedness and workplace hygiene. However, due to the factory's inaction on other identified infringements, the certification was eventually withdrawn. While SAAS acted in line with its own procedures by suspending certification for Factory 1, the procedure did not address the most serious labour rights concerns, including violations of the ILO core conventions on forced labour and freedom of association.

At Factory 2, SAAS and RINA did not find any non-conformities at all and concluded that the mill was well organised.

SAAS engaged BVC, which had not detected labour rights concerns at Factory 1 during the first audit, but did detect non-compliances in a re-audit. However, SAAS did not further engage with RINA to verify if their audits at Factory 2 were independent and reliable enough.

The SAAS procedure may potentially address labour rights issues. However, since the system relies on audits that do not always detect labour rights issues like forced labour and harassment, it does not necessarily identify concerns. In one case certification was withdrawn, leaving the most critical issues unaddressed.

The ETI Code Violation Procedure expects the complainant and the member company to develop a joint remediation plan that aims to remedy the ETI Base Code violation. However, no such plan was developed, and ETI did not take any steps to enforce membership obligations. The ETI complaints did lead to some results: Sainsbury's joined the ETI TNMS Group and Asda (which was not an active member at the time of the complaint) restated its commitment to the group. However, it is impossible to tell if this has also led to an improvement for workers at the spinning mills in their supply chain.

ETI only works in a few mills and the TNMS programme has so far not focussed on improving the labour rights of spinning mill workers; instead it addresses health and hygiene. The second stage of this programme started in 2017; in this phase the aim is to also address labour rights issues.

Academic research has looked into the TNMS programme and concludes that "the lack of deep collaboration with local NGOs and unions by ETI (and other MSIs [multistakeholder initiatives] working on the issue) has limited the impact on local and transnational business behaviour". Furthermore, the research concludes that the health and hygiene trainings "may be of some benefit, [but] it is hard to see how it and the other aspects of the ETI's Tamil Nadu programme will make it possible for the young women employed in the mills to overcome the power differential between themselves and management in order to claim the rights set out in the ETI Base Code, including the rights to freedom of movement, freedom of association and living wages".³²

One of the factories where HWW and ICN identified forced labour (Factory 4) is one of the suppliers that participates in ETI's Tamil Nadu programme. This supplier was also approached by other ETI member brands before ICN and HWW filed the complaints, when they received the findings of the HWW research. Therefore, it is unclear whether the involvement of this company is a consequence of the engagement of other brands or of the engagement of Asda and/or Sainsbury's. Results of the ETI intervention at this supplier are unknown to HWW and ICN. Furthermore, it is unclear if the ETI TNMS programme also includes other second-tier suppliers of Sainsbury's and Asda.

4.7 Based on engagement and dialogue: consulting stakeholders for whose use they are intended on their design and performance, and focussing on dialogue as the means to address and resolve grievances

This criterion applies to operational-level mechanisms, but seems relevant here as well. RINA, the organisation that audited Factory 2, consulted with local NGOs. The notes of this consultative meeting mainly describe overall developments in the garment sector in Tirupur. One of the local labour rights organisations was also invited to visit Factory 2. This visit did take place, but the NGO did not agree with the visit's report made by RINA.

At the beginning of the process, SOMO and ICN stated that the desired outcome of the process was cooperation between local NGOs and the mills concerned to address labour rights concerns. However, this never happened.

ETI did not consult with workers. Auditors interviewed a number of workers on behalf of SAAS, but did not provide a safe space outside the workplace where workers could freely express themselves without fear of reprisals. Neither ETI nor SAI consulted local trade unions.

The SAAS complaint procedure in itself aims to settle complaints internally, while ETI's procedure aims to foster cooperation between the parties to a complaint.

In both these two cases, active steps to involve stakeholders and rights holders and to enable their trust seem to be lacking from the procedures.

Conclusion

Based on the above analysis, ICN and SOMO conclude that the ETI and SAI complaint mechanisms do not provide the needed remedy to the affected workers. The mechanisms do not meet the requirements of the UNGP. Both mechanisms need to improve procedures in terms of accessibility, legitimacy, predictability, equitability, transparency and rights-compatibility.

SOMO and ICN conclude that the outcomes of both procedures are not rights-compatible. In the case of the SAI complaints, re-auditing was undertaken as part of the complaints handling. This partly confirmed labour rights concerns expressed by SOMO, ICN and HWW. However, it did not help to address those concerns. SAI decided to withdraw certification, which shows that the mechanism's escalation mode can be activated. This lends some credibility to the scheme. However, withdrawing of certification does not result in any improvement of the situation. In other words, workers have not benefitted from this process.

The ETI Code Violation Procedure claims to provide remedy for those parties affected. In practice, in the cases under discussion, the procedure did not properly define the responsibilities of ETI as an improvement initiative on the one hand, and the responsibilities of the involved ETI member companies on the other hand. While the aim of the procedure is clearly to resolve violations of the ETI Base Code that cannot be resolved via an informal approach, ETI did not take a leading role in settling the complaint. Instead, it was mostly left to the complainant and the ETI member company to resolve the complaint. In both cases, there is no evidence that the grievance procedure improved labour conditions or benefitted workers in the spinning mills and factory concerned.

Both mechanisms failed to engage workers in a meaningful manner. Initiatives that aim to improve conditions for workers – like the ones currently under review – cannot be effective if there is no central role for workers and their representatives in monitoring workplace conditions, expressing grievances and finding solutions to the problems they face.

It is most important to note that the complaints procedures of both mechanisms were initiated in response to severe labour rights violations, including forms of forced and bonded labour, restricted freedom of movement and the worst forms of child labour. The complaint procedures of ETI and SAI did not agree on the occurrence of forced labour.

Providing fair, tangible and lasting remedy to all affected workers should be the highest priority for any grievance mechanism. SOMO and ICN would argue that the most vulnerable workers – including children and young workers from the Dalit communities in South India who have little access to (legal) recourse – deserve to receive the most support. Unfortunately, however the long and drawn out way complaints have been handled by both ETI and SAI has led to little tangible change for the girls and young women whose deplorable working conditions were highlighted in reports by SOMO, ICN and HWW as early as 2010.

Endnotes

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