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Reforming the Global Value Chain through Transnational Private Regulation

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I. INTRODUCTION

In many industries, corporations have changed the organization of their production from a vertically integrated model to a model that is often characterized by outsourcing—shifting business activities to external parties —and offshoring, where production occurs at sites overseas.[1] The global value chain (GVC) for an American corporation often involves several tiers of suppliers.[2] One end of the GVC is often occupied by a multinational buyer (MNB), such as a large brand name corporation.[3] At the opposite end of the value chain are the factories, farms, and other production sites that supply multinational corporations with their goods.[4]

This organization of production poses several risks to the different actors involved in a value chain. It is true that inclusion within these chains can offer developing countries and their citizens a range of benefits. A developing economy's integration into a value chain can provide it with a pathway to economic development and growth.[5] However, value chains can also be sites for exploitation of workers from

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[1] *See* Ronald J. Gilson et al., *Contracting for Innovation: Vertical Disintegration and Interfirm Collaboration*, 109 COLUM. L. REV. 431, 434 (2009).

[2] Kishanthi Parella, *Outsourcing Corporate Accountability*, 89 WASH. L. REV. 747, 753 (2014); *see also* Victoria Curzon Price, *Some Causes and Consequences of Fragmentation*, FRAGMENTATION 88, 88 (Sven Arndt & Henry Kierzkowski eds., 2001).

[3] Parella, *supra* note 2, at 753.

[4] *Id.*

[5] Org. for Coop. and Dev., interconnected economies: benefiting from global value chains 33 (2013) p.33-34.

developing economies.[6] In fact, many human rights violations occur in value chains, including forced labor, child labor, and environmental contamination.[7] Shell and Chevron face accusations of dumping oil into local waterways in Nigeria and Ecuador respectively.[8] Apple is criticized for its pollution problems in its global supply chain, including using Chinese factories that fail to comply with regulations, discharge toxic metals, ignore the health concerns of local communities, and disposing of hazardous waste in problematic ways.[9] Labor activists similarly criticize Disney for using child labor and contracting with factories that impose work conditions contrary to law.[10]

At the other end of the value chain, corporations are exposed to negative publicity, reputational costs, and potential litigation as a result of human rights abuses in the value chain. As a result of these concerns, at least some of these corporations are incentivized to reform the value chain; the challenge is how to do it. The fragmentation of production across a variety of different countries does not make reform easy. This Article discusses three related approaches: codes of conduct, due diligence, and grievance mechanisms. Many corporations adopted each of these approaches, sometimes in collaboration with their stakeholders. Each of these approaches also helps to improve the flow of information between multinational buyers and their suppliers, facilitating the ability of corporations to do more to prevent abuses because they know more. These approaches can also improve the flow of information between corporations and consumers concerning conditions in the value chain.

Unfortunately, these approaches have their own limits. Moreover, the weaknesses of one approach often precipitate the adoption of another. In combination, these approaches may offer prospects for improving conditions in the value chain.

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[6] Int. Labour Org., improving working conditions through value chain development (2009) p.2.

[7] Parella, *supra* note 2 at 753.

[8] Laura Smith-Spark, Farmers sue oil giant Shell over Niger Delta pollution, CNN (Oct. 24, 2012); Clifford Krauss, Big Victory for Chevron over Claims in Ecuador, N.Y. Times (Mar. 4, 2014).

[9] Xie Xiaoping, *Apple wakes up to Chinese pollution concerns*, THE GUARDIAN (Oct. 4, 2011); David Barboza, *Apple Cited as Adding to Pollution in China*, N.Y. TIMES (Sept. 1, 2011).

[10] Gethin Chamberlain, *Disney factory faces probe into sweatshop suicide claims*, THE GUARDIAN (Aug. 27, 2011) (reporting that Disney's toys from the movie *Cars* were made with child labor).

II. FIRST GENERATION RESPONSE: CODES OF CONDUCT

Several decades ago, it may have been difficult to imagine that corporate giants would willingly bind themselves to maintaining standards when it was often believed that they were motivated to go abroad because of the lack of such standards. The combined pressure of the media, NGO watchdogs, and consumers changed corporate calculations of self-interest. Since the 1990s, the media has relentlessly exposed "sweatshop conditions" and other human rights abuses in the supply chains of some of North America's most trusted and beloved brand names.[11]

The ensuing consumer condemnation and public scrutiny led a number of corporations to adopt corporate codes of conduct as a means to redeem themselves and potentially prevent future violations.[12] Companies also resorted to private codes of conduct as a means of forestalling government regulation, believing that the ability to author a code affords a corporation more flexibility than under a state-led approach.[13] There is now an abundance of corporate statements, policies, and codes that governs the types of behavior that consumers and policymakers expect from these firms. Corporations can either choose to draft their own internal code of conduct or adopt

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[11] See, e.g., Eleanor Bloxham, Chocolate and child labor: A hurdle for Hershey, FORTUNE (Nov. 16, 2012), Steven Greenhouse, Retailers Split on Contrition After Collapse of Factories, N.Y. TIMES (Apr. 31, 2013).

[12] Li-Wen Lin, *Corporate Social Accountability Standards in the Global Supply Chain: Resistance, Reconsideration, and Resolution in China*, 15 CARDOZO J. INT'L & COMP. L. 321, 330 (2007): ("Corporate social accountability standards are a tool for multinational companies to manage risks arising from socially irresponsible conduct by their suppliers in the global supply chain. . . . [F]rom the multinational companies' perspective, the basic function of corporate social accountability standards is to assure that labor rights are respected in the process of production and to control legal and reputation risks. The assurance process may be done internally by the employee auditors of multinational companies or externally by third parties, such as auditing firms or non-governmental organization").

[13] See Mark B. Baker, Promises and Platitudes: Towards a New 21st Century Paradigm for Corporate Codes of Conduct?, 23 CONN. J. INT'L L. 123, 130 (2007).

an external code, such as those set by non-governmental organizations.[14]

Many codes of conduct are included in supply contracts between a retailer based in the United States and its overseas manufacturers. For example, HP's Supplier Social & Environmental Responsibility Agreement states that suppliers are "responsible for identifying any areas of its operations that do not conform to HP's Supplier Code of Conduct and HP's General Specification for the Environment," as well as "implementing and monitoring improvement programs designed to achieve" these standards.[15]

Unfortunately, a significant limitation of private codes of conduct is that multinational buyers did not adequately monitor compliance with their own codes.[16] In one study of 246 corporate codes, less than 50% of the codes included active internal monitoring procedures, and only 18% included on-site inspections.[17] This "enforcement shortage" is further compounded when these codes do not have a formal complaint body or when violations of a code do not result in sanctions.[18]

In addition to lack of sanctions, a multinational corporation may only concern itself with its primary, or first level, suppliers, while failing to observe and monitor its upstream suppliers. For instance, Nestle, the chocolate giant, has a supplier code of conduct, but the Fair Labor Association (FLA), an independent auditor, found "multiple serious violations" of this code.[19] The FLA reported that the major

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[14] See Richard M. Locke, Ben A Rissing and Timea Pal, Complements or Substitutes? Private Codes, State Regulation and the Enforcement of Labour Standards in Global Supply Chains, British J. of Industrial Relations 1, 6 (2012).

[15] HP Supplier Social & Envtl. Responsibility Agreement, (Oct. 22, 2008), http://www.hp.com/hpinfo/globalcitizenship/environment/pdf/supagree.pdf.

[16] *See generally Doe v. Walmart Stores*, 572 F.3d 677 (9th Cir. 2009) ("Plaintiffs allege that Wal-Mart does not adequately monitor its suppliers and that Wal-Mart knows its suppliers often violate the Standards"); Mark B Baker, *Promises and Platitudes: Towards a New 21st Century Paradigm for Corporate Codes of Conduct?*, 23 CONN. J. INT'L L. 123, 134 (2007). Fn12, p.133, p.680.

[17] *See* Baker, *supra* note 13, at 134.

[18] *Id.*

[19] Humphrey Hawksley, *Nestle 'failing' on child labour abuse, says FLA report,* BBC NEWS (June 29, 2012), http://www.bbc.com/news/world-africa-18644870.

weakness of Nestle's supplier compliance system was that even though Nestle required its primary suppliers, often other multinationals, to sign Nestle's supplier code, Nestle did not require anyone else, to sign,—despite knowing that there were other non-primary suppliers involved in its procurement chain.[20]

Finally, private codes that emerged as a response to public pressure–often from consumer bases in the developed world–are also limited by that same pressure.[21] Therefore, large corporations dependent on public image and brand loyalty experience a greater impetus to adopt and perhaps abide by such codes.[22] It is not surprising, therefore, that private codes have been prevalent in the consumer goods industry.[23] However, public pressure is a limited tool—even within this industry— as smaller firms may not be as visible and therefore do not experience the same public pressure to comply.[24]

III. SECOND GENERATION: DUE DILIGENCE THROUGH INCREASED MONITORING

The weaknesses with corporate codes of conduct precipitated examination of the causes of the failures.[25] There are two dominant narratives that potentially explain the abuses in the global value chains that can be found in the headlines: asymmetries of information and asymmetries in rent and risk.[26] These narratives are important because they give priority to different voices in the value chain and affect the solutions that corporations adopt.[27]

The first explanation attributes the problems in the value chain to asymmetries of information. The multinational corporation is not aware of everything that the supplier is doing; as a result, the

[20] See *id.*

[21] Lin, *supra* note 12, at 336.

[22] Baker, *supra* note 13, at 134; Lin, *supra* note 12, at 336.

[23] *See* Baker, *supra* note 13, at 134.

[24] *Id.*

[25] *See* Baker, *supra* note 13, at 134–37 (citing examples of corporate scandals and how these scandals led to increased regulation and monitoring of corporate codes).

[26] *See* Parella, *supra* note 2, at 769–70.

[27] *See* Parella, *supra* note 2, at 770–71 (explaining problems that arise in the value chain when there is a lack of information between buyer and supplier and describing methods to ameliorate these problems).

supplier can exploit the situation to engage in practices that are not in the best interests of the corporation, such as maintaining poor work conditions.[28] This is yet another manifestation of the agency cost problem that is familiar from other areas of corporate activity.[29]

According to this diagnosis of the problem, the supplier is the principal bad actor who must be controlled.[30] The supplier's actions are harmful because it injures workers, which causes reputational damage for the brand name or retailer.[31] The solution is for the supplier to act in accordance with the principal's interests, as stated in its policies and corporate codes of conduct.[32] This solution involves overcoming the asymmetries of information between buyer and supplier through better monitoring by the multinational buyer.[33]

This diagnosis gives rise to a second generation of responses: due diligence. When corporate codes of conduct failed to improve the situation, stakeholders—from the UN to the state of California—adopted initiatives to encourage multinational buyers to improve due diligence in their value chains.[34] The hope is that increased audits, factory inspections, and other tools can improve transparency in the value chain.[35] For example, social audits involve a combination of

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[28] *See* George S. Geis, *Business Outsourcing and the Agency Cost Problem*, 82 NOTRE DAME L. REV. 955, 973–75 (2007).

[29] *Id.*

[30] *See id.* at 977–78 (describing business outsourcing projects and how vendors may "cut corners" in its business activities due to the fact that the "entity that controls a business activity does not ultimately 'own' the economic result").

[31] *See id.* at 974–75 (detailing examples of when an agent's behavior may cause a poor outcome for the principal).

[32] *See* Baker, *supra* note 13, at 130.

[33] *See* Geis, *supra* note 28, at 989–91.

[34] California Transparency in Supply Chains Act, CAL. CIV. CODE § 1714.43(a)(1) (West 2012) (requiring covered firms to disclose "its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale"); U.N. Secretary-General's Special Representative for Business and Human Rights, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework*, U.N. Human Rights Council, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie).

[35] *See* Sasha Courville, *Social Accountability Audits: Challenging or Defending Democratic Governance?*, 25 L. & POL'Y 269, 272–73 (2003); *see*

interviews, document review, and visual inspection to evaluate how well a corporation's suppliers complied with applicable standards.[36]

The problem with audits is that they are susceptible to manipulation by suppliers. This audit evasion takes many forms and undermines efforts to improve transparency and reform the global value chain. Audit evasion can include hiding workers, often children, when monitors arrive.[37] Pre-announced audits only facilitate this kind of behavior. For example, Wal-Mart and JC Penney were criticized for their use of child laborers in Harvest Rich, a Bangladeshi factory.[38] The factory used child labor, including eleven-year-old children, who were expected to work extremely long hours.[39] Harvest Rich was inspected and even certified by the Worldwide Responsible Apparel Production Group (WRAP) for its compliance with labor and worker rights laws.[40] The corporate monitors did not catch the use of child laborers because the owners hid the children when the monitors came.[41]

Other examples of audit evasion include: maintaining double-books and controlling communication between workers and auditors.[42] Audit evasion is one example of resistance from upstream suppliers to the corporate social responsibility (CSR) initiatives introduced above. The reason that audit evasion occurs relates to the second narrative, asymmetries in rent and risk, that potentially explains abuses in the value chain. According to suppliers, abuses do not occur because of

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also California Transparency in Supply Chains Act, CAL. CIV. CODE §1714.43(c).

[36] Courville, *supra* note 36, at 273.

[37] Charles Kernaghen, The Nat'l Labor Comm., Child Labor is Back: Children are Again Sewing Clothing for Major U.S. Companies 1, 12 (2006), http://www.globallabourrights.org/reports/child-labor-is-back.

[38] *Id.* at 3.

[39] *Id.* at 37.

[40] *Id.*

[41] *Id.* at 51.

[42] *E.g.*, Peter Lund-Thomsen, *The Global Sourcing and Codes of Conduct Debate: Five Myths and Five Recommendations*, 39 DEV. & CHANGE 1005, 1013 (2008); Daniella Gould, *The Problem with Supplier Audits: Understanding How and Why Chinese Factories Circumvent Codes of Conduct*, 2 CORP. RESP. MGMT. 24, 28 (2005); Ngai-Ling Sum & Pun Ngai, *Globalization and Paradoxes of Ethical Transnational Production: Code of Conduct in a Chinese Workplace*, 9 COMPETITION & CHANGE 181, 194 (2005).

asymmetries in information only, but, also, because of the sourcing practices of multinational buyers, such as exerting extreme downward pressure on prices, short lead times, and temporary contracts.[43] For example, even if the CSR department adopts a particular policy, the procurement department may not follow this policy and instead award contracts to suppliers based on different criteria.[44] The result is that the benefits accrue to the buyer, but the risks—such as coping with large volumes in short order at increasingly declining prices—are borne by the suppliers.[45] Given the suppliers' slim margins, some claim that they cannot afford to implement the improvements that the buyers demand.[46] As a result, suppliers engage in audit evasion that undermines the efforts at transparency in due diligence initiatives.[47]

Improving the quality of due diligence requires incentivizing the entire global value chain to cooperate.[48] The limitation with current initiatives is that they do not offer incentives that address the interests of upstream suppliers. The incentives for cooperation that "pull" on multinational buyers do not apply as equally to their suppliers. For example, suppliers are not affected directly by regulation and associated threats from the home States of multinational corporations. Suppliers are also not directly affected by reputational consequences of their practices—they do not have a brand to protect and they do not sell directly to a consumer base.[49]

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[43] *See* Stephanie Barrientos, *Contract Labour: The 'Achilles Heel' of Corporate Codes in Commercial Value Chains*, 39 DEV. & CHANGE 977, 982 (2008); Sum & Ngai, *supra* note 42, at 195.

[44] *See* Xiaomin Yu, *Impacts of Corporate Code of Conduct on Labor Standards: A Case Study of Reebok's Athletic Footwear Supplier Factory in China*, 81 J. BUS. ETHICS 513, 523 (2007); *see also* Stephanie Barrientos & Andrienetta Kritzinger, *Squaring the Circle: Global Production and the Informalization of Work in South African Fruit Exports*, 16 J. INT'L DEV. 81, 85 (2004); Suk-Jun Lim & Joe Phillips, *Embedding CSR Values: The Global Footwear Industry's Evolving Governance Structure*, 81 J. BUS. ETHICS 143, 144 (2008).

[45] *See* Barrientos, *supra* note 44, at 982.

[46] Sum & Ngai, *supra* note 42, at 195.

[47] See *id.*

[48] Parella, *supra* note 2, at 754.

[49] *See, e.g.*, David Barboza, *Apple Cited as Adding to Pollution in China*, N.Y. TIMES, Sept. 1, 2011, at B6 ("Supply chain experts say brand-name companies generally do a better job of monitoring and auditing their suppliers than smaller companies in China.").

To accomplish supply chain reform, the assumption that the buyer has the only relevant interests must be discontinued.[50] Such assumptions produce CSR initiatives that primarily address the interests and cost-benefit calculations of downstream buyers but have limited relevance for upstream firms.[51] While downstream firms may hold significant influence, they are unable or unwilling to ensure that suppliers comply.[52] In order to improve the situation, corporations and other stakeholders must design incentives that are appropriate to the various segments of the value chain.[53]

These supplier incentives take the form of either increasing the costs of audit manipulation or rewarding cooperative behavior.[54] Regulators can increase the costs of audit evasion by requiring buyers to disclose their counter-manipulation efforts.[55] Many audit standards disclosure requirements do not identify audit manipulation as a problem.[56] The standards encourage firms to list how many facilities they have audited but do not probe far enough concerning the quality of these audits.[57] One change is to require firms to disclose what they are doing in order to guard against the activities that suppliers practice to undermine audits.[58]

The problem with this approach is that there are significant limits to imposing costs.[59] Suppliers claim that they choose to provide the appearance of compliance rather than actual compliance because of slim profit margins that make the latter impossible.[60] Sanctioning suppliers for audit manipulation may improve transparency and the effectiveness of monitoring.[61] Unfortunately, this improved transparency may only reveal that suppliers cannot afford to conform to the codes imposed by multinational buyers.[62]

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[50] *See* Parella, *supra* note 2, at 787.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.* at 783, 787.
[55] *Id.* at 804.
[56] *Id.*
[57] *See* Parella, *supra* note 2, at 803–04.
[58] *Id.* at 804.
[59] *See id.* at 777–91.
[60] *See id.* at 789.
[61] *Id.*
[62] *Id.*

An alternative is to focus on rewards instead of costs.[63] For example, due diligence requirements could emphasize disclosures beyond the audit.[64] If crises in overseas facilities are the effects of purchasing policies developed by buyers then disclosures should illuminate the practices of the entire value chain and not just the supply side.[65]

A number of buyer-driven value chains adopt market governance approaches to managing their value chains.[66] Under a market governance approach, multinational buyers use the market to manage their suppliers.[67] This facilitates competition between suppliers and fosters downward pressure on prices.[68] Therefore, market governance may make it difficult for suppliers to achieve sustainability goals set by the multinational buyers.[69]

For example, Nike only observed an improvement in compliance with its corporate code when it switched from a market-based form of governance to a collaborative model that emphasized goodwill and trust.[70] Under this new collaborative model, selected contractors received "an exclusive production relationship and guaranteed monthly orders. . . .This contracting model provided greater certainty that Nike and the [selected contractors] would maintain a relationship through good and bad times."[71]

A second rewards-based approach involves shifting from unilateral to bilateral CSR strategies.[72] Many CSR policies of multinational corporations are implemented in a unilateral, top-down manner.[73] One problem with this approach is that suppliers object to

[63] *See id.* at 790.

[64] *See id.* at 792.

[65] See *id.*

[66] *See id.* at 804.

[67] *Id.* at 805.

[68] *Id.*

[69] *Id.*

[70] *Id.* at 806.

[71] Suk-Jun Lim & Joe Phillips, Embedding CSR Values: The Global Footwear Industry's Evolving Governance Structure, 81 J. Bus. Ethics 143, 144 (2008).

[72] *See* Parella, *supra* note 2, at 808–15.

[73] *See* Bin Jiang, *Implementing Supplier Codes of Conduct in Global Supply Chains: Process Explanations from Theoretic and Empirical Perspectives*, 85 J. BUS. ETHICS 77, 86 (2008); Parella, *supra* note 2, at 808.

their exclusion in the formulation and implementation of codes.[74] Another problem is that multinational corporations concentrate on setting standards through corporate codes and monitoring through audits without providing local managers with the support to implement the necessary improvements.[75] In order to address these concerns, corporations should adopt an alternative model that rejects a unilateral buyer-driven, top-down approach and, instead, applies a partnership model between suppliers and multinational corporations.

IV. TOWARDS A THIRD GENERATION: GRIEVANCE MECHANISMS

A grievance mechanism is "any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought."[76]

Corporations are creating grievance mechanisms for a variety of reasons. John Ruggie, a United Nations Special Representative for Business and Human Rights, proposed the "Protect, Respect and Remedy Framework" which emphasizes access to remedies.[77] This

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[74] Helle Bank Jorgenson et al., The World Bank, Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains, 26 (2003), available at http://www.wds.worldbank.org/externaldefault/WDSContentServer/WDSP/1B/2005/12/19/000090341200512190939 57/Rendered/PDF/346640Strengthening1Implementaiton.pdf [hereinafter Strengthening Implementation].

[75] Daniella Gould, The Problem with Supplier Audits; Understanding How and Why Chinese Factories Circumvent Codes of Conduct, 2 Corp. Resp. Mgmt. 24, 26 (2005).

[76] United Nations Human Rights Office of the High Comm'r, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, 27, U.N. Doc. HR/PUB/11/04 (2011) [hereinafter Guiding Principles].

[77] *See* Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corps. and Other Bus. Enters., *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Human

Framework preceded the United Nations Guiding Principles ("Guiding Principles"), which intended to guide stakeholders with implementing the Framework.[78] Article 29 of the Guiding Principles states that "[t]o make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted."[79] Corporations are creating operational-level grievance mechanisms in order to demonstrate their willingness and capacity to address accountability concerns and provide remedies.[80] They may also create grievance mechanisms in order to obtain financing or secure certain forms of certification.[81]

In addition to these external drivers, it may benefit corporations to design and implement credible grievance mechanisms. As discussed in Section III, *supra*, one of the biggest challenges in the global value chain concerns information.[82] Multinational corporations can sustain significant reputational damage resulting from the actions of their suppliers.[83] Due diligence may improve information between buyers and suppliers regarding conditions in the value chain, but due diligence is limited by the supplier practices discussed in Section III,

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Rights Council, ¶¶ 82–103, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008) (by John Ruggie) [hereinafter *Framework*].

[78] *See* Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corps. & Other Bus. Enters., *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Human Rights Council, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie) [hereinafter *Implementing the Framework*].

[79] *Id.* at 25.

[80] See Implementing the Framework, supra note 80, at 25; Framework, supra note 80, at ¶ 82.

[81] See Natalie L. Bridgeman & David Hunter, Narrowing the Accountability Gap: Towards a New Foreign Investor Accountability Mechanism, 20 GEO. INT'L ENVTL. L. REV. 187, 210 (2008).

[82] *See* Parella, *supra* note 2, at 770.

[83] *See, e.g.*, Lim & Phillips, *supra* note 44, at 146–47 (illustrating the pressure Nike received from the media and the public when its suppliers used unethical business practices that violated the rights of its workers).

supra.[84] Alternatively, multinational buyers can learn of conditions in the value chain—including risks that could expose them to reputational harm—through grievance mechanisms.[85] A grievance mechanism allows a corporation to learn of issues early on and address those issues before they develop into larger conflicts.[86]

In order for a corporation to obtain these benefits, the potential users of the mechanism must trust the mechanism to use it. The challenge is determining how corporations foster this trust. Much of the available guidance on grievance mechanisms focuses on the characteristics of a grievance mechanism at its operational stage.[87] However, the operational stage is only one of three important stages in the development of grievance mechanisms. The operational stage is also preceded by the stages of standard-setting and institutional design. Each of these stages are important because it allows the affected parties to foster trust between each other in relation to the grievance mechanism that is created. Each stage offers opportunities for trust building between the parties. Therefore, corporations should not exclusively focus on the operational stage of a grievance mechanism and neglect the other two stages.

V. CONCLUSION

Factors including media exposure, reputational risks, litigation threats, and production interruptions caused corporate actors to look into the conditions of their value chains.[88] Corporate codes of conduct offered a modest beginning. Due diligence requirements increased the likelihood of monitoring and compliance through codes and standards.[89] Due diligence improves the information flow along the value chain, which includes improving public access to information on conditions in the value chain.[90] However, monitoring thorough audits is limited by the risk of audit evasion by suppliers.

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[84] *See Implementing the Framework*, *supra* note 80, at 16–18.

[85] See Guiding Principles, supra note 78, at 27–28.

[86] *See* Int'l Inst. for Env't & Dev., Dispute or Dialogue? Community Perspectives on Company-Led Grievance Mechanisms 29 (Emma Wilson & Emma Blackmore eds., 2013).

[87] *See Implementing the Framework*, *supra* note 80, at 26–27 (listing the effectiveness criteria for grievance mechanisms).

[88] *See* Baker, *supra* note 13, at 133–35.

[89] See *id.*

[90] *See generally* Geis, *supra* note 28, at 971–72.

Corporate codes of conduct and monitoring do not offer sufficient incentives for cooperation by suppliers.[91] As a result, it can be difficult for a corporation to obtain credible information. Instead, grievance mechanisms can alert corporate actors to risks and potential crises in the value chain.[92] These mechanisms are intended to provide access to remedies for the communities and individuals that were negatively affected by transnational corporate conduct.[93] They also offer corporate actors an alternative means to improve the information flow between themselves and their suppliers.[94] Hopefully, the improved transparency that results from these approaches—and stakeholder pressure for corporate action—can improve conditions in the value chain.

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[91] *See* Baker, *supra* note 13, at 133–35.
[92] *See id.* at 143.
[93] *See id.* at 159–60.
[94] See *id.*