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# **Farmworker Grievances in the Western Cape, South Africa**

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## **ACKNOWLEDGEMENTS**

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## **Farmworker Grievances in the Western Cape, South Africa**

*In 2009, the UK-based retailer Tesco launched a pilot project on operational-level grievance mechanisms that convened stakeholders in the agricultural sector of the Western Cape of South Africa. It culminated in a model grievance mechanism for farm labourers in the fall of 2010 that was piloted in some agribusinesses. While South African parties were all acutely aware of the broader structural issues in the industry and the mistrust they faced, the process they followed was not structured to address these at the table. This in retrospect undermined commitment to the process and the utility of the eventual outcomes. This case story reflects on the value of engagement to build trust that can help address key drivers of conflict and human rights violations. It also reflects on how pre-defined agendas and externally-imposed deadlines can be fatally disruptive of the trust building process necessary to deal with such fundamental issues and concerns.*

### **Introduction**

South Africa is a key component in the agricultural supply chain of Tesco, a UK-based retailer. Tesco purchases fruit – most of this being produced on some 600 farms across the Western Cape – for sale in the UK and Northern European markets. In 2009, Tesco participated in a pilot project on operational-level grievance mechanisms being undertaken by the Corporate Social Responsibility Initiative (CSRI) of Harvard University's Kennedy School. This case story refers to this project (as local stakeholders did) as the Tesco pilot.

The purpose of the Tesco pilot from the CSRI and Tesco perspective was to “road-test” the practical application of a set of effectiveness criteria for operational-level grievance mechanisms on behalf of the former Special Representative of the United Nations Secretary-General (SRSG) for Business and Human Rights, Professor John Ruggie, as part of the process of developing the Guiding Principles on Business and Human Rights. The Pilot, involving stakeholders in the Western Cape region of South Africa, started in 2009. It culminated in the promulgation of a grievance mechanism for farm labourers in the fall of 2010, with implementation of the mechanism piloted in some agribusinesses beginning in 2011. A first case study (Rees, p. 63) focused on the success of the South African Oversight Stakeholder Body (OSB) in agreeing on the model mechanism; the need to support implementation; and the importance of external backing. A later case study (SHIFT, p. 41), taking into account subsequent implementation challenges, presented as a key lesson the need to ensure that local stakeholders own and drive initiatives to implement such grievance mechanisms, and described steps Tesco was taking to do so.

In November 2012 a number of the South African participants in the Tesco pilot had an opportunity to participate in a conversation about their experience. On everyone's mind was the severe labour unrest over wages and working conditions in the Western Cape. In August 2012, widespread strikes and protest actions by farm labourers erupted on wine and

fruit farms. This spread to at least 16 towns in the Region. Protest action, often violent in nature, carried on sporadically until about March 2013. This resulted in at least 3 deaths, many injuries and widespread destruction of property. This case story draws on that discussion, supporting interviews, and previously published materials.

What emerges from this retrospective view by South African stakeholders is a story distinct from that told by international actors. It begins as a story of promise, reaffirming the value of engagement. It was noted that CSRI and Tesco had succeeded in bringing together diverse interests groups who, though sharing common interests in the farming industry, had not been speaking with each other and were entrenched in age old positions.

But it is also a story of lost opportunities. Local stakeholders all recognized serious sectorial problems and a need for stakeholder discussion to go further than the grievance mechanism proposed by CSRI and Tesco. Yet the OSB terms of reference remained to design a model operational level grievance mechanism and to complete the process by a specific deadline. It appears that this had a decisive impact on the value of the process. Broader issues that stakeholders wanted to engage on were left off the agenda. Many people lost interest and ceased effective participation. A model grievance mechanism emerged on paper, but in the assessment of many can demonstrate little incremental benefit to farmworkers.

South African stakeholders emphasize that, by prioritizing the needs and interests of the international parties, the process initiated but then interrupted the critical task of building trust. They reflect that, by not prioritizing time and space for trust-building and buy-in to a common agenda, the process had little prospect of effecting real change in the conflict dynamics or human rights of farmworkers that ostensibly brought parties together in the first place.

### **Distrust in the agricultural sector**

The farming industry in the Western Cape has a notoriously bad history of social problems and labour relations. The industry was founded in a time of slavery. Though this was formally abolished in 1838, many regard the system that followed as de facto slavery. It involved, for example, payment of wages in kind with liquor, known as the “dop” system. This system continued on many farms until the end of the twentieth century, and has resulted a plethora of social problems (Viall, James & Gerwel 2011).

In August 2011, Human Rights Watch published a detailed report on conditions in the Western Cape farming region. It notes that, “Out of South Africa’s nine provinces, the greatest number of farmworkers – 121,000 – live in the wealthy and fertile Western Cape. Despite their critical role in the success of the country’s valuable fruit, wine, and tourism industries, farmworkers benefit very little, in large part because they are subject to exploitative conditions and human rights abuses without sufficient protection of their rights. These abusive practices, which occur to varying degrees on a wide array of farms, are perpetrated by farm owners or farm managers who are subject to regulation by the South

African government. Yet the government has failed to protect the rights of farmworkers and farm dwellers, or to ensure that farmers throughout the province comply with national law” (HRW, pp. 4-5).

Tesco and the other participants were well aware of structural issues in the industry that affected trust levels. Tesco had previously identified some of the key problems in the Region related to patterns of adverse social impacts attributable to discriminatory hiring and employment practices by farm managers and owners; a lack of trust and communication between farm managers and workers; and conditions on farms that caused workers to be concerned about their health and safety (SHIFT, p. 42). Local and international NGOs identified many of the same issues, including also abuses enabled by widespread use of farm labour brokers and lack of a living wage, and characterized them as being both on-going and pervasive in the local supply chain. The fact that, despite the promise of a new South Africa, little real transformation can be seen in the sector heightened mistrust and tensions among farmworkers, labour advocates and industry players.

Other engagement processes also impacted the trust levels of participants in the Tesco pilot. The industry association Fruit SA, the multi-stakeholder ethical trade initiative WIETA, rooted in the wine industry, and the South African government were also engaged from July 2009 to the end of 2010 in a formal National Agricultural Marketing Council Section 7 process looking at establishing a multi-stakeholder body for ethical trade for agriculture (NAMC). Colleen Chennells of Fruit SA noted the low levels of trust being played out at the national level had an impact. They negatively “influenced the degree of commitment and trust of many of the participants to the Ruggie process.”

### **The beginning of a trust building process**

The CSRI initiative came at a time when Tesco had identified a need to re-engage with South African stakeholders. From Tesco’s perspective the project, centred around the development of a model grievance mechanism, provided both Tesco and the local South African stakeholder community with a focus for engagement. It could air diverse perspectives about social impacts in Tesco’s South Africa supply chain (Rees, p. 67).

Tesco created an Oversight Stakeholder Body (OSB) comprised of representatives from business, government, trade unions, and other civil society organizations. Despite the lack of direct farm worker representation in the OSB, most of the oppositional views in the industry were present and represented.

At the time, the fruit supply chain in the Western cape was marked by poor communication and mistrust between key stakeholders: farmers, exporters, retailers, and civil society organizations; and their representatives. These very real structural problems were reflected on the OSB, and participants found it difficult to put aside historical differences and institutional agendas.

Linda Lipparoni of WIETA noted that, “At an early stage there was already an apparent lack of trust in the process from a lot of participants” in the Tesco pilot, “particularly from labour and the civil society.” In the end union representatives only agreed to participate if a third-party mediator helped to facilitate the process. Tesco then engaged Bill Thompson, a neutral third-party facilitator, who helped participants find common ground and ultimately develop the grievance mechanism.

Bill Thompson observed that, “There were severe trust issues around the project. People doubted what Tesco’s real agenda might be, which was probably part of general distrust of big multi-nationals. Past history between stakeholders also played a role.”

Linda Lipparoni notes, however, that, “This was a critically important process. The initial conversations were valuable in that we started talking to each other, and hearing each others’ perspectives.” This was in a very real breakthrough in an industry where previously people were generally not talking at all.

### **Questions over the agenda**

“The initial agenda for the Tesco Pilot was fairly narrow and focussed,” said Bill Thomson. The context was defined by the project on operational-level grievance mechanisms being undertaken by Harvard University’s Corporate Social Responsibility Initiative on behalf of the former Special Representative of the United Nations Secretary-General (SRSG) for Business and Human Rights, Professor John Ruggie. Its purpose was to work with companies in different industries and regions to test the development or adaptation of such complaints-handling mechanisms, based on draft effectiveness criteria. This was the mandate given to Tania Moodley, Tesco’s local Ethical Trading Manager who was driving the process on behalf of Tesco.

Yet among South African stakeholders, as observed by Linda Lipparoni, “When the OSB got started there was a broad view that something more than just a narrow farm based, labour focused, mechanisms was needed. There was recognition that there are broad sectoral issues that could not be resolved at farm level, that needed some mechanism. The discussion was around the creation of a sectoral alternative dispute resolution mechanism that could take up such broader issues and resolve them. We wanted to explore how you start and maintain a conversation between producers and workers, in an industry where these groups do not normally talk to each other.”

Other stakeholders felt that grievance mechanisms ought to be placed within the larger context of employer-workforce communication systems and that the pilot project ought not to be focused narrowly on a grievance mechanism. To do otherwise, they argued, would be to skew priorities identified by audits that had been conducted to assess compliance with the Ethical Trading Initiative’s base code and the broader objectives of many stakeholders invited to participate in the OSB’s deliberations.

Stakeholders perceived there to be a number of needs facing the workforce in the agricultural sector in South Africa, a sector known historically for labour rights abuses. Trade union representatives to the stakeholder group argued, for example, for the need for unionization of farms as a key objective (Rees, page 67). A narrow focus on a farm-level grievance mechanism, it seemed, would not encompass these issues.

### **Trust building interrupted**

“Tesco did come into this project with an open mind, and did try to set up an inclusive process,” says Bill Thomson, the independent mediator brought in as a facilitator. In implementing the pilot, Tesco initially sought to have the local stakeholder community maintain as much ownership over the grievance mechanism design and development process as possible through the creation of the OSB. Tesco viewed its role initially as being a facilitator of the OSB’s functions, and elected to become a non-voting member of the body. This was the start of a difficult trust building process among the South African stakeholders.

The process of launching the OSB and undertaking its work took longer, however, than Tesco anticipated. This was in large measure “due to the complex conversations that took place within the Oversight Stakeholder Body over whether or not to focus its engagement exclusively on the Ruggie Principles for effective grievance mechanisms” (Rees, p. 65).

As implementation unfolded more slowly than planned for by the external actors, Tesco played a more active role than it had initially envisioned. It eventually acted as a de facto project manager and administrator. Tesco made decisions to accelerate the pace of project implementation as it had previously conceptualized and defined it in terms of the narrower goal of developing a grievance mechanism (SHIFT, pp. 43-44).

Linda Lipparoni says the result is that: “The project agenda was very much driven by Tesco. They set the agenda, appointed consultants, drafted the scope of reference for the consultants, prepared the pilot training material, etc.”

Bill Thomson explains that Tesco “didn’t foresee the challenges that arose in getting a stakeholder group together and formulating a grievance mechanism. The difficulties resulted in them running into the deadlines imposed by the Ruggie project.” He reflected that, “Tesco’s mandate was probably not to address structural issues in the sector – they are a business. The extent of their involvement is defined by the requirements of their ethical trading commitments, and in this case by the mandate of the pilot project, which was to develop an operational level grievance mechanism.”

According to Linda Lipparoni, this had a serious impact on the stakeholders. “Some of the participants may have felt that the OSB was only established to try and give credentials to a process that had already been decided on. This feeling came about because some OSB members felt that their views were not fully listened to, and that the outcomes were much narrower than what they felt was required.”

Bill Thompson has little doubt that the commitment to an external mandate and deadlines had a major impact on the process: “There were some doubts as to why the OSB needed to be involved in what was a fairly narrow process – developing an operational level grievance mechanism. Attendance at OSB was very sporadic, and soon only a small core group of people attended.”

Even though the South African stakeholders had started to engage, and had mutually recognised the need to address the serious problems in their industry, they did not do so. When it became clear that the OSB’s agenda would be limited to the objectives of the Ruggie project, many lost interest and stopped talking with each other.

### **Limited outcomes of the process**

The Tesco pilot did result in the design of a model operational level grievance mechanism that could be voluntarily adopted by farmers. Colleen Chennells of Fruit SA added, “While some of the outcomes of the Ruggie project might be criticized by some stakeholders, for the fruit industry the toolkit that was developed has added value and is included in the capacity-building programme materials currently being rolled out in the industry and it is also included in the industry Complaints Protocol as one of the steps in a broader process for resolving issues on farms.”

There is some question, however, about the additive value of the model grievance mechanism that was developed. Bill Thomson noted, “The end product didn’t really differ from what had already been developed in South Africa as grievance mechanisms in the farming sector, as far back as the 1980s. In fact the toolkit was moulded on these developments. South Africa could probably have informed developments elsewhere with rights-based grievance mechanisms that had already been developed.” Linda Lipparoni added, “What was developed was a toolkit very much focused on addressing farm level grievances. The subsequent training material for this was based on the standard CCMA grievance process training.”

As noted in the SHIFT case story and by the South African stakeholders, there was also a lack of any real momentum in taking the model grievance mechanism into the field. Bill Thomson commented that, “Though the mechanism that was developed might be good, it needs to be trusted. For the mechanism to work, there has to be complete buy-in from the parties, and for this they have to be engaged.” Desmiline Minyi, who represented the Women on Farms Project on the OSB, noted that, “If you involve a multi-stakeholder body you have to start the process with them and end the process with them. Otherwise you put mistrust back on the table.” Mistrust of Tesco and within the OSB meant that there was no interest by OSB members to seeing the model grievance mechanism implemented as a multi-stakeholder initiative as originally envisaged by the international actors.



## **A grievance mechanism divorced from the larger context**

The CSRI case study found that the Tesco pilot provided evidence that the principles for effective grievance mechanisms (as proposed by CSRI) served as an informative, constructive, and comprehensive guidepost for the development of a grievance mechanism in the fruit sector in South Africa. But in view of the subsequent violent protests by farmworkers in 2012 and 2013, it appears clear to South African stakeholders that the grievance mechanism produced by the Tesco pilot did not serve as a viable channel for farmworkers to air the simmering grievances underlying these protest actions.

Hennie Claassens, Market Access Manager for Kromco, a fruit packing facility, points out that none of the actions during the Tesco pilot were aimed at addressing conflict between farming communities and organised agriculture, a key source of farmworker grievance. Bill Thompson notes that, “There are very real structural problems in this sector like power imbalances between workers and employers that lead to silence, the lack of real unionization, and no access to the CCMA.” (The Commission for Conciliation, Mediation and Arbitration, or CCMA, is South Africa’s mechanism for resolving labour disputes and enforcing labour rights.) “The grievance mechanism could not address these issues: It’s like offering a painkiller for cancer. We probably need a decade or so of structural changes before a mechanism like this will have real use and value in the farming sector.”

There were some faltering attempts to broaden the focus. Tanya Moodley notes that members of the OSB acknowledged the need for developing broader industry mechanisms, and at one point asked an expert to prepare proposals for a broader community ADR intervention. But this work stream failed to gain the commitment of the OSB members. Colleen Chennells also reflects that the members of the OSB could have obtained the mandate for a broader Terms of Reference from their own organizations and advocated for it more strongly at the table. If members wanted to extend the Terms of Reference, “It was up to them to get this mandate.” She continues, “Simply shifting responsibility to Tesco does not take into account the independence of the stakeholder members of the OSB.” Yet in hindsight it appears that such agency on the part of OSB members had not been provided sufficient time or space for it to emerge.

Tesco’s intentions were also implicated. The company’s articulated goal was to have the local stakeholder community maintain as much ownership over the grievance mechanism design and development process as possible. But even in that goal was imbedded every indication that the operations-level grievance mechanism was central and other stakeholder concerns peripheral. And in retrospect, some wonder whether this framing of human rights challenges in the farming sector as grievances to be settled between farmers and farmworkers was designed to avoid addressing structural issues. Issues such as the lack of sufficient revenues to pay a living wage that would have directly brought into question the prices paid for fruit from the Western Cape, for example, would not be on the table.

The end result of the failure of the process to explicitly acknowledge and deal with these dynamics and concerns was that the multi-stakeholder platform did not develop a sustainable identity or purpose. Tanya Moodley of Tesco said that, “There were very specific responsibilities in terms of the OSB role and once these were achieved OSB members were invited to expand the role of the OSB. Despite a request for a meeting to discuss the future of the OSB, there was no response and as a result the project ended.” Trust – either among South African OSB members or between those OSB members and Tesco – had not been nurtured long enough for it to gain its own momentum.

### **Empty chairs at the table**

One of the dynamics of the violent farmworker protests of 2012 and 2013 is that they were driven by farmworkers as result of a range of employment and social related issues, rather than being organised by unions or political groups. “If anything, the initial strikes were reminiscent of the first Marikana miners' strike, in the sense that they were a product of workers being gatvol [fed up] of employers, political parties and the major labour unions,” says Petrus Brink, Citrusdal-based representative of the Surplus People Project, a rural development NGO (Christie).

Trade unions played a limited role, at least initially. Only about 4% to 5% of the estimated 200,000 farm workers in the province belong to unions. While union leaders claimed to speak on behalf of farm workers, they also acknowledged that they could not control the strikes as the workers do not belong to their unions. Many workers denied that the Congress of South Africa Trade Unions or the other organisations spoke on their behalf. It also seemed that the permanent workers on the fruit farms largely rejected attempts to instigate them to participate in the violent labour actions and also resist being organised by some of the organisations now active in the area (Terblance).

In light of these subsequent events Bill Thomson reflects that, “Given that farm workers are almost not unionized at all, and that there was no real direct farmworker representation on the OSB, farmworkers – one of the key stakeholders – were under-represented in the OSB.” Linda Lipparoni explains that, at the time, “There were not too many worker representative structures that could have been involved. Civil society organisations who worked on farms were present, as they at least had some insight into conditions on the farms.” Farm labourers did not have a structured and organised voice. Tanya Moodley noted that the OSB did initially have representation of farm employees, but because they came from an exporter owned farm, trade unions felt that business was over-represented and asserted that they instead would represent worker interests.

It is speculative to imagine what impact more direct farmworker representation would have had on the process of trust building and definition of the agenda for the international and South African participants in the process. But it does seem counterproductive that a process meant to result in a grievance mechanism for farmworkers did not seek to make those

workers more central to the process. The lack of farmworker representation appears to have contributed to the misaligned expectations between what some OSB members wanted the mechanism to address (broad systemic issues in the supply chain) and the more narrow objectives and tight timeframes of the pilot project (focused on site-specific dispute resolution processes at the farm level) (SHIFT, p. 44), a major factor in the mistrust and ultimate dysfunction of the OSB.

Linda Lipparoni reflects that, “In essence, one wonders whether a broader sectoral stakeholder engagement strategy was appropriate for a project which sought to address grievances at the farm level.” The process appears on the one hand not to have had the right parties at the table for the purposes it defined, nor to have been flexible enough to accommodate the needs and aspirations of the parties who were in fact at the table.

### **Analytic conclusion: opportunities lost**

The violent strikes and protest actions of farm workers in 2012 and 2013 were momentous events for the fruit producing region of the Western Cape. Long-simmering grievances were vocalised and found sufficient support and traction to ensure that a prolonged and effective protest action was mobilised.

At the centre of the basket of issues raised was the sectoral wage determination for agricultural workers. The minimum wage was one of the lowest in the country, at R69 a day (roughly \$7.00). Workers demanded a wage increase to R150 a day (just over US \$15.00). The protest actions led to the announcement of a new legally enforced national wage of R105 a day (just over US \$10.50) from 1 March 2013 – effectively a 52% wage increase (BBC). There are questions, however, about whether these increases will be effective in a sector where workers in any case are often not paid the statutory minimum wage, and where the relationships among fruit prices, wage levels, employment levels, and the ratio of permanent workers with better working conditions to casual labour more subject to abuses are multiple and complex.

Additionally, adjustment in wages alone will not resolve the human rights issues farmworkers face. Agri SA president Johannes Möller says, “There's a lot of socio-economic problems that we have to address at some point and it's not just about wages. It's about service delivery, people living in abject poverty in the rural areas, and too little job opportunities. We've got to take a holistic view of this. Not just agriculture but government will have to lead and we'll have to tackle this problem of rural poverty in a rural way to try to solve it. It's not just going to go away. R100 a day won't fix it either” (Parker). In view of these events and their underlying dynamics, it seems even more critical that stakeholders in this industry should engage across the broad range of issues that concern them all.

The one positive lesson of the Tesco pilot appears to be its demonstration that external parties – such as CSRI and Tesco – can play a meaningful role in bringing interest groups together. It shows that when stakeholders come together, they will engage. It shows that as

difficult as the process may be, genuine engagement – talking about the issues that matter most – does serve to build trust.

Yet South African parties emphasize in this story the lost opportunities to engage in dialogue where it had been absent before, to define a common picture of the challenges faced, and to build commitment to meaningful solutions within their specific context. They are critical of a process that in the end served to undermine trust and agency, rather than to build it, and which could in the end demonstrate little incremental change in the conflict dynamics or human rights of farmworkers that ostensibly brought parties together in the first place.

The lessons to be drawn in the design and implementation of rights-compatible, interest based conflict resolution mechanisms for human rights issues are in the end no different than those that are well-established for peacebuilding and development interventions more generally. If local stakeholders are to participate effectively, and to trust and commit to the outcomes of the process, they need to own the process. International parties must be careful of over-commitment to specific agendas and timelines on such a process of engagement. These external actors need to be sensitive to – and trust – the perspectives of the stakeholders they engage, and need to respect the process as it organically unfolds. They need to acknowledge their own role in the process as well as in the underlying issues and solutions. External parties who drive the agenda and deadlines may achieve their narrow objectives. But by losing out on building trust, they lose out on the opportunity of bringing about real change for the people that matter.

RESOURCES SPECIFICALLY DRAWN ON IN ADDITION TO INTERVIEWS AND TRANSCRIPTS:

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