

# 2013 MSI EVALUATION REPORT

Working Draft

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Common Code for the Coffee Community (4C)



**IHRC**

INTERNATIONAL HUMAN  
RIGHTS CLINIC  
HUMAN RIGHTS PROGRAM  
AT HARVARD LAW SCHOOL

**COMMON CODE FOR THE COFFEE COMMUNITY (4C):**  
**EVALUATION REPORT**

*Core Documents:* Unless otherwise noted, information in this report is derived from the 4C Code of Conduct (4C's standards). All 4C documents are located on its website: [4c-coffeeassociation.org](http://4c-coffeeassociation.org).

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## 4C's MANDATE AND RELATIONSHIP TO HUMAN RIGHTS

### **Impetus for 4C's Creation**

In 2001-2002, the coffee industry faced what is now referred to as “the coffee crisis”. Having steadily dropped in price since 1997, by 2001 coffee plummeted to its lowest real prices in 100 years. This was largely because of an oversupply of coffee, combined with the introduction of free market trading of the commodity.<sup>1</sup> Coffee-producing countries received less than half the amount that they would have received a decade earlier.<sup>2</sup> The impact of this crisis on the world's estimated 10 to 25 million coffee producers was considered catastrophic and led to extreme poverty for many involved in coffee production.<sup>3</sup>

During the crisis, the price of coffee did not cover total production costs for growers and, in some regions, as little as 60 percent of production costs were recuperated.<sup>4</sup> This had specific negative social and economic consequences, as well as human rights implications, for different actors involved in coffee production. Unlike other internationally traded commodities, which are produced by large plantations, approximately 70 percent to 80 percent of the world's coffee supply is produced by smallholder farmers.<sup>5</sup> As coffee growers struggled with the financial crisis, concerns about human rights emerged, such as children being forced to leave school, the spread of disease and declining health care and replacement of coffee crops with coca crops (the raw material for cocaine).<sup>6</sup> These problems were particularly acute for smallholder farmers, especially those that are

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<sup>1</sup> Néstor Osorio *The Global Coffee Crisis: A Threat to Sustainable Development* (Submission to the World Summit on Sustainable Development, International Coffee Organization, 2002); Néstor Osorio *Action to Address the Coffee Crisis* (Submission to the G-8 Summit, International Coffee Organization, 2003). The roots of this imbalance go back many decades, and a full discussion is beyond the scope of this report. The first International Coffee Agreement was signed in 1962 to ensure reasonable market prices of coffee by stabilizing supplies. The agreement established the International Coffee Organization, which set export quotas for producing countries. By 1989 it was difficult to reach agreement on quotas, leading to an indefinite suspension of quotas and eventual collapse of the system. With the introduction of unrestricted trade, coffee prices began to fall. In 1994, weather conditions in Brazil, the world's largest coffee producer, stunted supply and coffee prices rose sharply, inducing impoverished farmers to plant more trees. However, demand did not grow quickly enough to the marked increase in supply that occurred when the trees matured. By 1997 prices began to steeply decline. The sharp increase in supply was exacerbated by investments in Vietnam that allowed it to double production over five years, combined with new advances in technology across the coffee production sector. Between 1990 and 2002, production increased at twice the rate as consumption. See Matthew J. Foli, “International Coffee Agreements and the Elusive Goal of Price Stability,” *Minnesota Journal of Global Trade* (1995) at 80; Emmy B. Simmons, “Linking Trade and Sustainable Development: Keynote Address,” *American University International Law Review* (2003) at 1277; John Baffes, Bryan Lewin, and Panos Varangis “Coffee: Market Setting and Policies” in M. Ataman Aksoy and John C. Beghin (eds.) *Global Agricultural Trade and Developing Countries* (The World Bank, Washington, 2005) 297; Brian Natrass and Mary Altomare *Dancing with the Tiger: Learning Sustainability Step by Natural Step* (New Society Publishers, Gabriola Island, 2002) at 106.

<sup>2</sup> For several coffee-dependent developing countries, it was estimated that losses in coffee earnings more than nullified total foreign aid inflows. Osorio *Action to Address the Coffee Crisis*.

<sup>3</sup> Oxfam International *Mugged: Poverty in your coffee cup* (2002) <<http://www.oxfamamerica.org/files/mugged-full-report.pdf>>. A report by the International Coffee Organization (ICO) submitted a report outlining the causes and effects of the coffee crisis that was largely consistent with the findings of the Oxfam report. See Osorio, “The Global Coffee Crisis.”

<sup>4</sup> Oxfam International *Mugged* at 9.

<sup>5</sup> Smallholders are defined as farms of less than 25 acres. Of this, the majority comes from family plots of less than 12.5 acres. Ans Kolk “Corporate Social Responsibility in the Coffee Sector: The Dynamics of MNC Responses and Code Development” *European Management Journal* (2005) at 229. Oxfam International *Mugged* at 6.

<sup>6</sup> Oxfam International *Mugged* at 10-13. Specific human rights implicated by Oxfam International's report include the right to food (UDHR art. 25; ICESCR art. 11; CRC art. 24), the right to education (UDHR art. 26; ICESCR art. 13; CRC arts. 28, 29), the right to health (ICESCR art. 12; CRC art. 24), the right to work (ICESCR arts. 6, 7, 8) and the right to information (ICCPR art. 19).

family-based, who may not have the financial reserves or access to credit that larger producers may utilize to absorb losses from year to year.

A 2002 report by Oxfam International that focused on low-income small-scale farmers drew particular attention to seasonal workers and permanent employees, listing the specific challenges they faced that were worsened by the crisis: significantly lower wages for women (up to 30 percent less than men), the use of child labor, the difficulty of unionizing and the existence of working and living conditions that often violated international law.<sup>7</sup>

All these effects were — and continue to be — further amplified by the fact that coffee is produced exclusively in developing countries, some of which are highly dependent on coffee as an export.<sup>8</sup> For example, in Burundi, Rwanda and Ethiopia, coffee accounts for more than half of all exports.<sup>9</sup> Therefore, plummeting coffee prices had a devastating effect on economies, as well as families, already struggling to survive.

While the price of coffee has risen since 2005, it remains highly volatile. This volatility, coupled with the structure of the coffee industry, means that people who harvest coffee beans remain seriously disadvantaged. Smallholder farmers individually lack the bargaining power to negotiate fair prices,<sup>10</sup> which has led to some farmers banding together in cooperatives and other associations to achieve better access to financing and improve their bargaining positions.<sup>11</sup> In many cases, coffee farmers who work their own land are only paid once a year and must take out interest-bearing loans to meet costs.<sup>12</sup> The cost of financing these loans can counter any profits earned.

The coffee supply chain can be long and complex, with the lowest value in the chain being the production of coffee beans:<sup>13</sup> it is estimated that coffee growers receive about 6 percent of the price of retail coffee, and less than 1 percent of the price of brewed coffee.<sup>14</sup> By comparison, retailers and roasters receive the largest portion of retail prices, and are some of the world's largest companies, such as Proctor & Gamble, Nestlé and Sara Lee.<sup>15</sup>

In response to the coffee crisis of 2001-2005, and in recognition of the problems inherent in the coffee production business, the European Parliament adopted a resolution in 2003 that it “[b]elieve[d] that coffee roasters and traders ought to adopt codes of conduct for the coffee sector which should be independently monitored and implemented in cooperation with the relevant stakeholders . . . ”.<sup>16</sup> The same year, the German Agency for International Cooperation partnered

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<sup>7</sup> Oxfam International *Mugged* at 11–12.

<sup>8</sup> The tropical conditions required to grow coffee are typically only found in developing countries. Baffes et al. at 297.

<sup>9</sup> Baffes et al. at 297.

<sup>10</sup> Jill Draeger “Perking Up the Coffee Industry Through Fair Trade” *Minnesota Journal of Global Trade* (2002) at 343.

Draeger also discusses how small farmers may turn to selling to “coyotes”, for example because they don’t produce enough to sell directly to exporters. Coyotes may pay farmers—who are largely unaware of market prices and without recourse—prices that are significantly below the market rate.

<sup>11</sup> Michelle Weissman *God in a Cup: The Obsessive Quest for the Perfect Coffee* (John Wiley and Sons, Hoboken, 2008) at 246.

<sup>12</sup> Weissman, *God in a Cup*, 246.

<sup>13</sup> Nina Luttinger & Gregory Dicum *The Coffee Book: Anatomy of an Industry from Crop to the Last Drop* (The New Press, New York, 2006).

<sup>14</sup> Oxfam International *Mugged* at 20.

<sup>15</sup> These are all Fortune 500 companies in 2012 (see <http://money.cnn.com/magazines/fortune/fortune500/index.html>).

<sup>16</sup> European Parliament *Crisis in the international coffee market* (2003) <[http://dev.ico.org/crisis\\_pdfs/europeane.pdf](http://dev.ico.org/crisis_pdfs/europeane.pdf)>. Similarly, in December 2002, the Dutch Parliament adopted a resolution requesting that the government “assume a proactive role for the purpose of bringing about transparent and independently verified behavioral codes within the coffee industry in a framework of socially responsible undertakings . . . ” Dutch Parliament *Resolution* (2002) <[http://dev.ico.org/crisis\\_pdfs/dutch.pdf](http://dev.ico.org/crisis_pdfs/dutch.pdf)>.

with the German Coffee Association to create the Common Code for the Coffee Community (4C) project.<sup>17</sup>

Today, smallholders continue to face significant standard of living issues such as food security, access to education and health care and market access.<sup>18</sup> Similarly, workers at plantation and estates continue to experience labor abuse, poor living conditions and low minimum wages, even when the industry as a whole is profitable.<sup>19</sup>

**Evaluation: Do 4C's standards adequately address the human rights issues that led to its creation and/or exist in the industry?**

**1. 4C's mandate selectively addresses some, but not all, of the human rights implicated by the coffee crisis**

4C was established because “[t]he coffee crisis of 2001-2002 resulted in a prolonged period of very low prices, which threatened the sustainability of coffee production generally and caused major hardship for coffee farming communities”.<sup>20</sup> 4C operates by prohibiting 10 unacceptable practices and setting 28 progressively realizable standards that relate to improving economic, social and environmental conditions.<sup>21</sup> While the 10 unacceptable practices apply to all members, the 28 progressively realizable standards apply only to “4C units” involved in coffee production. See **Monitoring of Compliance with Standards**, below. Once these producers are deemed in compliance by an external evaluator, they may sell “4C compliant coffee” to the trade and industry members of 4C. 4C members that are retailers and roasters agree to buy “increasing volumes” of 4C coffee over time.<sup>22</sup>

4C expressly prohibits some, but not all, of the human rights violations implicated by the coffee crisis and the persistent challenges of coffee production. The 10 unacceptable practices directly incorporate certain international human rights standards, such as International Labour Organisation conventions and articles of the International Covenant on Economic, Social and Cultural Rights. From a human rights perspective, direct incorporation of international human rights standards is an important starting point for an MSI. 4C has also designated two environmental prohibitions, the cutting of protected forests and other natural resources and the use of certain banned pesticides.<sup>23</sup> In comparison, only some of the 28 progressively realizable standards implicate human rights. It is unfortunate that these standards do not expressly incorporate the terms of accepted human rights laws, even where they are directly relevant (see **4C's Standards**, below).

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<sup>17</sup> 4C Coffee Association “History of the 4C Association” <<http://www.4c-coffeeassociation.org/about-us/history.html>> (accessed January 10, 2013); 4C Coffee Association “FAQs: The 4C Association and its members” <<http://www.4c-coffeeassociation.org/about-us/faqs/the-4c-association-and-its-members.html>> (accessed January 10, 2008); Deutsche Gesellschaft für Internationale Zusammenarbeit “Common Code for the Coffee Community (4C)” <<http://www.giz.de/Themen/de/SID-E968962F-6AFC9677/dokumente/giz2011-en-kenya-common-code-coffee.pdf>> (accessed January 10, 2013).

<sup>18</sup> Tropical Commodity Coalition *Coffee Barometer 2012* (2012) <[http://www.newforesight.com/sites/default/files/newforesight/TCC\\_CoffeeBarometer2012.pdf](http://www.newforesight.com/sites/default/files/newforesight/TCC_CoffeeBarometer2012.pdf)> at 9.

<sup>19</sup> Tropical Commodity Coalition *Coffee Barometer* at 9.

<sup>20</sup> 4C Association “FAQs”.

<sup>21</sup> 4C Association *The 4C Code of Conduct* (version valid from 2010 onwards) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_001a\\_Code\\_of\\_Conduct\\_v1.3\\_en.pdf](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_001a_Code_of_Conduct_v1.3_en.pdf)> (accessed January 11, 2013).

<sup>22</sup> 4C Association *Rules of Participation* (confirmed version 2006) <<http://www.4c-coffeeassociation.org/document-library/documents/4c-policies-and-statutes/rules-of-participation.html>> at 5 (accessed 10 February 2013).

<sup>23</sup> While it is positive that 4C understands that all rights are relevant to coffee production, it would be helpful if 4C acknowledged the link between environmental and human rights. In particular, its environmental standards could incorporate human rights principles.

No reasons are provided for why 10 human rights violations were specifically selected as “unacceptable”, to the exclusion of all the other relevant human rights concerns in the coffee industry. 4C does not purport to thematically address a specific human rights issue, such as being an initiative dedicated to child labor. To the contrary, 4C has a broad vision of improving the “economic, social and environmental conditions of coffee production and processing” and ensuring the sustainability of the coffee sector.<sup>24</sup> Its incomplete and selective approach to human rights is problematic and inconsistent with the *Guiding Principles on Business and Human Rights*, which states that “[b]ecause business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights”.<sup>25</sup> To be consistent with the *Guiding Principles*, 4C should revise its standards to clarify that businesses have a general responsibility to respect human rights, or justify and publicly acknowledge its narrow mandate.

## **2. 4C’s standards do not impose stringent enough obligations to resolve the human rights concerns they seek to address**

4C’s 28 progressively realizable standards are presented in a traffic light system, which identifies current practices that must be discontinued within three years (red), acceptable practices (yellow) and desirable practices (green). As discussed in more detail in **4C’s Standards**, below, while there are firm time frames to eliminate red practices and move to “average yellow”, there is no requirement to meet average green or advance to more rigorous certification schemes. Additionally, there are not clear sanctions or incentives designed to encourage such continuous progression (see **Incentive Regime**, below). In other words, producers may remain at, or only slightly above, “average yellow”.

Requiring producers to meet these yellow acceptable practices does little to guarantee basic human rights threatened by poverty. Some of 4C’s yellow practices permit breaches of both domestic and international law. For example, within the “working conditions principle”, yellow expressly provides that “[o]vertime is not paid according to national law”.<sup>26</sup>

Furthermore, many of the yellow practices establish only weak substantive obligations, or simply require processes to be established, without guidance as to the content or timeline of those processes. This may allow human rights breaches to continue. For example, the yellow indicators for the freedom of bargaining principle include that the results of collective bargaining are only “partially” applied.<sup>27</sup> In such instances, a producer would have failed to respect the principles contained in the ILO Right to Organise and Collective Bargaining Convention.<sup>28</sup> Another example is 4C’s discrimination standard, which permits a producer to reach yellow by demonstrating “awareness to secure equal rights” and “concrete steps to develop an action plan”. A producer who has simply taken steps to develop a plan — but has neither finalized nor implemented it — has not effectively protected the right to be free from all forms of discrimination guaranteed by the International Covenant on Civil and Political Rights.<sup>29</sup> Furthermore, a producer would achieve

<sup>24</sup> 4C Association “Our Mission and Our Vision” <<http://www.4c-coffeeassociation.org/about-us/mission-and-vision.html>> (accessed January 11, 2013).

<sup>25</sup> United Nations Office of the High Commissioner for Human Rights *Guiding Principles on Business and Human Rights* Principle 12 at 13.

<sup>26</sup> *Code of Conduct* at 9. See also ILO Hours of Work (Industry) Convention of 1919, which requires states to pass regulations establishing an hourly overtime pay amounting to at least 1.25 times the regular rate.

<sup>27</sup> *Code of Conduct* at 5.

<sup>28</sup> International Labour Organisation Right to Organise and Collective Bargaining Convention (No. 98) 96 UNTS 257 (entered into force July 18, 1951) <<http://www2.ohchr.org/english/law/organise.htm>> (accessed January 11, 2013).

<sup>29</sup> International Covenant on Civil and Political Rights 999 UNTS 171 (entered into force March 23, 1976), art. 26 (ICCPR) <<http://www2.ohchr.org/english/law/ccpr.htm>> (accessed January 11, 2013).

yellow status for treatment of seasonal and piece-rate workers, even if the producer does not provide payment proportional to other workers. This is in direct contradiction with the ILO Equal Remuneration Convention,<sup>30</sup> as well as the Universal Declaration of Human Rights, which guarantees the right to equal pay for equal work.<sup>31</sup> These are the very types of issues that 4C was created to address; now, it essentially condones them. It is also problematic that some of the green practices do not go far enough in ensuring that the issues that prompted 4C's development are addressed.<sup>32</sup>

4C acknowledges that it establishes the most basic standards, compared to the many other MSIs and certification regimes that operate in the coffee industry, such as Fair Trade, Organic, UTZ and Rainforest Alliance certified coffee.<sup>33</sup> As a mainstream initiative, 4C aims to attract the largest global coffee roasters<sup>34</sup> and “move towards a sustainable mainstream coffee community through sector compliance to at least baseline standards and progressively move beyond this”.<sup>35</sup> However, a baseline standard should not permit violations of domestic law or international standards, or inconsistencies with the *Guiding Principles*, as 4C's “average yellow” rule does. To address this, 4C should look at imposing firm requirements on continuous progression from yellow standards.

### **3. 4C fails to differentiate and thus provide for the inclusion of vulnerable coffee producers that are not already part of a larger supply chain or cooperative. This may increase poverty among farmers and frustrates 4C's ability to address one dimension of the human rights violations that led to 4C's development**

4C was not formed with an express theory of change, however one possibility appears to be that if producers follow 4C's standards and utilize its Internet-based resources, not only will there be improved human rights outcomes associated with meeting its standards, but producers will grow coffee more efficiently and have access to the growing market for sustainable coffee.<sup>36</sup> This is supported by 4C's trade and industry members' pledge to buy “increasing volumes” of 4C coffee.<sup>37</sup>

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<sup>30</sup> International Labour Organisation Right to Equal Remuneration (No. 100) 165 UNTS 303 (entered into force May 23, 1953) <<http://www2.ohchr.org/english/law/equalremuneration.htm>> (accessed January 11, 2013).

<sup>31</sup> *Universal Declaration of Human Rights*, Article 23 (1948) Accessed 11 January 2013.

<http://www.un.org/en/documents/udhr/index.shtml>. Further examples include 4C's occupational health and safety principle and 4C's standard governing pesticides. A producer may achieve yellow status where a health and safety program exists, but it is both unused and unmonitored, or where some hazardous pesticides are still used. Such a program does not adequately protect the workers' human right to health, including the prevention of occupational disease.

<sup>32</sup> For example, 4C's indicators for the green principles of market access is that “[t]he Managing Entity provides access to services at market rates such as fertilizers, pesticides, equipment, credit, planting material/seedlings and technical assistance”: 4C Association *Code of Conduct* at 24. Credit is simply mentioned in a string of factors associated with market access, yet credit and access to finance are issues that were at the forefront of the coffee crisis and have a continuing effect on poverty in coffee growing communities. In this particular example, 4C might consider separating the market access principle into two principles: market access and access to finance, so that each can be adequately addressed.

<sup>33</sup> Compared to fair trade certified coffee, organic certified coffee, UTZ certified coffee, and Rainforest Alliance certified coffee, 4C acknowledges it provides the most basic standard. 4C Mgmt. Unit, *The 4C Initiative – A Common Code for Increasing Sustainability in the Mainstream Coffee Sector*, Paper Prepared for the Seminar on Fair Trade (Oct. 5, 2006).

<sup>34</sup> 4C Mgmt. Unit, *The 4C Initiative – A Common Code for Increasing Sustainability in the Mainstream Coffee Sector*, Paper Prepared for the Seminar on Fair Trade (Oct. 5, 2006).

<sup>35</sup> 4C Association “UTZ Certified Becomes a Member of the 4C Association” (press release, June 23, 2011) <<http://www.4c-coffeeassociation.org/news/current-news/article/utz-certified-becomes-a-member-of-the-4c-association.html?PHPSESSID=d1ucusvrnvgsjk5n3ipekf51i7>> (accessed January 11, 2013).

<sup>36</sup> 4C Association “For Producers” <<http://www.4c-coffeeassociation.org/become-a-member/membership-benefits/for-producers.html>> (accessed January 11, 2013).

<sup>37</sup> *Rules of Participation* at 5.

However, when examined closely, it is unclear whether 4C will in fact improve human rights or working conditions or reduce poverty for small-scale producers.

Producers must make costly changes to their production operations to fully comply with 4C standards. Producers also need to pay for the cost of the evaluation to become a licensed entity and sell 4C coffee. The cost of the evaluation may be prohibitive or unduly burdensome for smallholders or small- to medium-sized cooperatives seeking to be licensed. Over time, if these smaller producers are crowded out from the market benefits of producing 4C coffee, this may make small farmers even more susceptible to poverty and the associated human rights abuses that prompted 4C's creation. It is not clear whether the added income small producers receive after becoming licensed to sell 4C coffee is enough to compensate for the cost of participating in 4C.<sup>38</sup> Thus, human rights issues that 4C explicitly hopes to improve, such as the rights to an adequate standard of living and to education, may in fact be frustrated by furthering the poverty of farmers.<sup>39</sup> This seems to be consistent with the results of the preliminary impact assessment on small-scale farmers that 4C commissioned shortly after its launch, which found that membership in 4C had not produced any increase in income for farmers, and that in one of the three sample countries, 4C farmers were “performing worse” than non-4C farmers.<sup>40</sup> This may have downstream human rights implications for workers, as increased costs for small-scale farmers may lead to farmers who hire employees or seasonal workers, paying lower wages or lessening working conditions in order to remain financially feasible.

By comparison, aside from ceasing to engage in the 10 unacceptable practices, trade and industry members are not required to make any significant changes in their business operations. Participating in 4C does not guarantee that a member's supply chain meets additional standards. They must simply commit to purchasing increasing volumes of 4C coffee over time. But even that commitment is limited: 4C does not define any specific numerical or percentage increase, or time frame for this increase, and there is little certainty or incentive for buyers to purchase substantial amounts of coffee. In addition, 4C does not publish the amounts of 4C coffee that each member purchases and it is unclear whether members who fail to purchase increasing amounts are sanctioned in practice.<sup>41</sup> As explained further in **Incentive Regime**, below, there is no reward for purchasing large quantities of 4C coffee, as a company that requires all of its coffee to be 4C compliant would receive the same market benefit as a company that purchases 1 percent of its coffee as 4C compliant. In fact, 4C had to fundamentally alter its business model in 2011 because of the lack of demand for 4C coffee (see **Development of 4C**, below). For example, in 2009-2010, the production potential of 4C members was 8 million bags; only 386,000 bags of 4C coffee were

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<sup>38</sup> In respect of smallholders, there are many standards that would lead to immediate benefits to prevent poverty, such as pre-harvest financial management and support, guaranteed access to credit, debt refinancing or forgiveness, incentivizing crop diversification (to minimize the harm) or mandating increased prices or premiums, yet none of these are included in the standards. While these approaches are not the only means of addressing poverty and human rights issues, and 4C may reasonably have chosen to address any number of factors that contribute to poverty, its current theory of change to improve economic and social conditions remains clouded: it is unclear whether the purported efficiency gains of following 4C's standards would offset participation costs for smallholders, or whether any extra income is generated for smallholders because of the improved quality and value of producing 4C compliant coffee.

<sup>39</sup> ICESCR, arts 11 and 13. Need to do first citation

<sup>40</sup> 4C Association *Assessing 4C implementation among small-scale producers* (December 2010) <[http://www.4c-coffeeassociation.org/uploads/media/4C\\_Impact\\_Assesment\\_Outcome\\_Summary.pdf](http://www.4c-coffeeassociation.org/uploads/media/4C_Impact_Assesment_Outcome_Summary.pdf)> at 4-5.

<sup>41</sup> While there are provisions that permit members to be expelled for failing to purchase increasing amounts, it is unclear whether this provisions has been used. This is discussed further in **Accountability**, below.



purchased and received by final buyers.<sup>42</sup> It is unclear why 4C did not address the problem by mandating or incentivizing increased purchases.

These issues raise the concern that 4C may be inadvertently exacerbating poverty, therefore further frustrating the ability of rights holders to enjoy their social, economic and cultural rights. 4C must urgently assess its impact on vulnerable smallholders, workers and other affected communities (see **4C's Capacity to Evolve Over Time**, below).

In general, 4C has taken a one-size-fits-all approach to its standards, whereas the coffee crisis clearly indicated that different producers, workers and community groups experienced different human rights impacts. Given the different types of concerns that were raised in the coffee crisis depending on the nature of the individual or producer involved, from food security to discrimination,<sup>43</sup> 4C should differentiate its expectations based on whether a producer is a family smallholding, a smallholder employer or a large farm employer.<sup>44</sup> 4C should also take into account the needs of vulnerable groups within these different producer types, for example different worker groups, women and indigenous populations, and refer to relevant international law to reflect this.<sup>45</sup> To do this effectively, 4C would need to conduct an analysis of the communities and groups whose rights are affected by coffee production, and the vulnerable groups within these communities, and perform a rights assessment of the needs of these groups: both when prices were depressed during the coffee crisis, and today. This is discussed further in **The Level of Community Involvement in 4C**, below. 4C could use the outcomes of the analysis to create different substantive standards, as well as expected progression rates. 4C could then also target its existing capacity building and support services to benefit the most vulnerable affected communities and those producers struggling to meet 4C's standards.

*Updated information provided by 4C:*<sup>46</sup> During an in-person meeting with the Institute for MSI Integrity, 4C staff reported that there were anecdotal observations of a price premium for 4C coffee, but there is no concrete evidence of a price premium or the value of any such a premium. Furthermore, it is unclear whether there is a significant trickling down of the price premium to the individual farmers. Staff acknowledged that a feature of the industry's market mechanism for pricing coffee is that increased supply of 4C coffee would cause any existing price premium to shrink, unless demand was to rise commensurately.<sup>47</sup>

4C staff explained that, in practice, final buyers of coffee are predominantly only interested in purchasing 4C coffee from producers within their pre-existing supply chain. Consequently, under 4C's previous business mode, which was supply-driven, independent producers who joined 4C and

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<sup>42</sup> 4C Association *Annual Report 2010* (2010) <[http://www.4c-coffeeassociation.org/uploads/media/4C\\_AnnualReport2010\\_web\\_en.pdf](http://www.4c-coffeeassociation.org/uploads/media/4C_AnnualReport2010_web_en.pdf)> at 9.

<sup>43</sup> See generally, Christopher M. Bacon, Martha Caswell and V. Ernesto Méndez "Food Security and Smallholder Coffee Production: Current Issues and Future Directions" Agroecology & Rural Livelihoods Group - Policy Brief 1; Bacon, C. M, V. E Méndez, S. R Gliessman, D. Goodman and J.A. Fox *Confronting the Coffee Crisis: Fair Trade, Sustainable Livelihoods and Ecosystems in Mexico and Central America* (Cambridge, The MIT Press, 2008).

<sup>44</sup> See, for example, the approach taken by the Better Cotton Initiative.

<sup>45</sup> For example, the Declaration on the Rights of Indigenous People and the Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>46</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

<sup>47</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C's comment period.

produced 4C compliant coffee would risk not being able to sell it to the final buyer members, unless they could feed it into the final buyers' existing supply chain. This imbalance contributed to the surplus of 4C coffee produced each year. It appeared to 4C industry members and staff to make little sense to encourage the production of coffee that was not to be purchased.

In 2012, 4C moved to a demand-driven model. This model seeks to reflect the commercial reality that final buyers are motivated to buy 4C coffee from their existing suppliers, but not from independent suppliers, owing to concerns of quality and reliable volume. Consequently, to be commercially viable, 4C had to shift to focusing on what coffee was demanded, rather than supplied. Under the demand-driven model, the cost of running 4C is significantly reduced, as the evaluation cost is borne by coffee producers, whereas previously 4C itself covered that cost. In practice, independent producers without 4C buyers will likely be deterred from joining, because the cost of evaluation must now be borne by them, without any certain payoff in terms of increased premium or access to a new buying market by way of the 4C final buyer members. By comparison, most producers that are already a part of a 4C supply chain will effectively have their evaluation costs covered, as the managing entity of each 4C unit will ordinarily be affiliated to a final buyer, who will pay for that cost, or is large enough to absorb the cost itself.<sup>48</sup> The new demand-driven business model has been successful in reducing the surplus: 4C staff stated that the gap between supply and demand has shrunk from a ratio of 18:1 to 9:1. The staff aims to achieve a ratio of 3:1 in the long term.

While the commercial viability of 4C is paramount, it is concerning that the revision of its existing model appears to have been driven solely by commercial concerns. As an environmental and human rights instrument, an analysis of the human rights and environmental impacts of such a decision should have been conducted prior to a structural change being adopted. As this did not occur, it is unsurprising that 4C staff do not appear to be aware of the significant adverse human rights impacts that this modification may entail. Small, unaffiliated producers that are not part of large cooperatives or existing buyer supply chains are likely the most vulnerable and marginalized coffee producers in the world. However, it is these very producers who will be most disadvantaged by 4C and its move to a demand-driven model, as the costs of creating a group of producers to join do not appear to be compensated by any clear price premium or access to a new market of final buyers. Over time, these producers may only find themselves further prevented from becoming competitive as they are unable to enter the supply chains of large final buyers or become eligible to join a 4C member cooperative, as they are not producing 4C compliant coffee. This may push these producers deeper into the very poverty that 4C was formed to help them escape.

The failure to consider the human rights implications of this change is perhaps unsurprising given that, despite being founded in 2003, staff confirmed during the engagement that 4C does not have a

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<sup>48</sup> During the engagement and ongoing dialogue after 4C's comment period, 4C staff clarified that "4C units" seeking verification commonly take three main forms. First, they may be headed by a global trade and industry member (e.g. Nestlé), who serves at the unit's managing entity and bears the cost of evaluating the producers and other members of its supply chain. Second, a cooperative may form a unit, with the cooperative's administrative body bearing the evaluation cost of its members. Third, a unit may consist of a large estate or plantation, which is able to bear its own evaluation cost. In each of the three common forms of 4C units, 4C staff claim that the cost of evaluation does not pose a problem. Aside from these common forms of units, there are also other forms of units, such as units headed by other members of the supply chain such as collectors or local exporters, who also bear the evaluation cost. While smallholders are a part of some of these 4C units, there are currently no units comprising loose collections of small-scale producers. This suggests that the cost of evaluation is prohibitive for small-scale producers who do not belong to a large supply chain or collective, and cannot pass the evaluation cost up the supply chain. Similarly, the cost of evaluation may pose a barrier to entry for small- to medium-sized cooperatives seeking to be verified as a unit.

formally defined theory as to its specific goals or how it intends to achieve them. The 4C secretariat noted that 4C is currently in the final stages of the process of defining its theory of change, which has been drafted and is pending final approval by the 4C council at its June 2013 meeting.<sup>49</sup> Overall, the demand-driven model effectively prevents any ground-up improvement of the overall supply of coffee by giving effective and meaningful access to *any* coffee farmer to improve human rights. Many other options would have been open to 4C that would have allowed it to retain its commercial viability. For example, it could have chosen to require that final buyers buy increasing amounts of 4C coffee, prioritizing the sale of coffee that was delivered with the strongest levels of 4C compliance (e.g. “average green”) while meeting the quality and volume requirements necessary for final buyers to fulfill their expectations to consumers.

#### Recommendations:

- To be relevant as a human rights initiative, 4C should:
  - Ensure its standards are consistent with human rights law. In particular, 4C should:
    - Impose a general responsibility to respect human rights that is tied to international human rights law, rather than selectively choosing standards that must be respected.
    - Strengthen the rigor of its progressively realizable standards to comply with international law. For example, ensure that “average yellow” amounts to a position where human rights are protected in accordance with international and domestic law, and require continuous improvement beyond “average yellow” within mandatory time frames. To do this, 4C should explicitly reference international human rights law where it is applicable to its standards.
  - Identify the different producer groups and affected communities, and ensure that these stakeholders are represented in 4C and benefit from its implementation. In particular, 4C should:
    - Conduct an analysis of the vulnerable populations within producers and affected communities.
    - Ensure its standards appropriately differentiate among these groups and adequately protect and promote the human rights of the different affected communities.
  - Ensure that 4C does not exacerbate poverty for particular producers and therefore frustrate the ability to fulfill human rights. In particular, 4C should:
    - Develop and publish a formal theory of change that explains how the 4C operational model serves to encourage the participation of all producers, paying special attention to the involvement of the most vulnerable producers and the impact on their rights.
    - Further differentiate between producers based on their size and structure to ensure the most vulnerable producers can participate in, and benefit from, 4C. For example, 4C could refund evaluation fees for family smallholders who are not part of a final buyer member’s supply chain.
    - Increase the obligations imposed on roasters, retailers and others higher in the supply chain of coffee. For example, 4C could require a minimum percentage of increase in annual 4C coffee purchases and incentivize greater purchase amounts.

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<sup>49</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C’s comment period.

## DEVELOPMENT OF 4C

4C was founded in 2006 after a three-year development period. During this period, more than 70 representatives from more than 20 countries came together to develop 4C's standards, participation rules and governance structure.<sup>50</sup> During this time, the standards were tested in various producer countries.<sup>51</sup> This included a pilot project in Santander, Colombia, "aimed at analyzing the viability" of 4C's monitoring system and "gauging the resulting continuous improvement".<sup>52</sup> Six agricultural experts trained 360 farmers, improving their infrastructure and providing technical support.<sup>53</sup>

The first version of 4C's standards was prepared in 2004.<sup>54</sup> However, it was difficult to find parties to join 4C as founding members. To address this, 4C allowed organizations to pre-register as founding members, on the condition that membership would only become official if the three constituent groups (producers; trade and industry; and civil society) all joined within a specific time frame.<sup>55</sup> The plan was successful and, in December 2006, 4C's initial development phase ended when 37 producers, trade and industry and civil society representatives officially established the 4C Association.<sup>56</sup> In April 2007, 4C met for its first general assembly, where its key decision-making bodies were formed.

Prior to 2011, 4C operated on a supply-driven model, focused on encouraging producers to join 4C to sell compliant coffee. However, as mentioned in **4C's Mandate and Relationship to Human Rights**, above, supply of 4C coffee has outpaced demand. Consequently, 4C adopted a demand-driven approach in order to "make the 4C system much more commercially viable".<sup>57</sup> There is little material available about what changes this new model will entail. It appears that the MSI will only provide core services, which it defines as developing 4C's standards and monitoring systems, and "providing producers with access to tools and information on sustainability practices, acting as a multi-stakeholder exchange platform and actively promoting all sustainability standards in the market".<sup>58</sup> Activities to support producers that are beyond this, such as "trainings, communication services or personalized guidance on verification requirements", will now only be provided for an additional fee.<sup>59</sup>

*Updated information provided by 4C:* During the engagement, it was made known that 4C began as the Common Codes of the Coffee Community and aimed at harmonizing the various codes being developed by industry participants. 4C staff also provided the list of participants of the working group meetings during 4C's formation from 2003 to 2004.<sup>60</sup> While unions, such as the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations

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<sup>50</sup> 4C Association "History".

<sup>51</sup> 4C Association "History".

<sup>52</sup> 4C Association *Annual Report 2007* (2007) at 12.

<sup>53</sup> *Annual Report 2007* at 12.

<sup>54</sup> *Annual Report 2007* at 4.

<sup>55</sup> *Annual Report 2007* at 4.

<sup>56</sup> 4C Association "History".

<sup>57</sup> 4C Association "The 4C Association Kicks-off its New Business Model" (press release, March 23, 2011)

<<http://www.4c-coffeeassociation.org/news/current-news/article/the-4c-association-kicks-off-its-new-business-model.html>> (accessed January 11, 2013).

<sup>58</sup> 4C Association "Association Kicks-off".

<sup>59</sup> 4C Association "Association Kicks-off".

<sup>60</sup> Information provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Rutten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

(IUF) and Unión Nacional Agroalimentaria de Colombia, participated, small-scale farmers, estate workers and other rights holders were not represented.<sup>61</sup>

4C staff will be releasing more information on its new demand-driven business model to the public in June 2013. It was clarified in an internal document circulated among 4C members that core services include access to tools and information such as the online 4C Tool Library, whereas field implementation activities, including training in implementing 4C standards, will require an additional fee.<sup>62</sup>

#### Evaluation:

4C should be commended for the large number of representatives and geographic diversity in its formation, especially its stated inclusion of coffee producers, as they are the targets of 4C's efforts. Unfortunately, it is not known who the decision-makers were or what the decision-making process was. Specifically, it is troubling that the most vulnerable groups, such as small-scale farmers and estate workers, were not involved. As explained in **The Level of Community Involvement in 4C**, below, 4C should ensure that all relevant affected communities are meaningfully involved in 4C's future development.

The pilot program in Colombia appears to be a good means of testing the viability and impacts of 4C's standards. However, there is very little information available about its results or methodology. If more information were to be made available about the critical processes and outcomes, such as the metrics of success, level of impact and feedback received, the pilot could serve as a learning tool for other MSIs.

While 4C needs to be commercially viable, the details of why the "demand-driven" model was chosen, including the theory of change behind the model, remain murky. It is unclear why 4C does not expressly require buyer members to make concrete purchase commitments, even though this would appear to be the most direct solution to the demand gap. To the contrary, the user-pays approach of the new model might preclude resource-deprived farmers from seeking these services and act as a deterrent to producers otherwise interested in joining 4C. Given that 4C seeks to address poverty of coffee growers, it seems counterintuitive to have moved toward a model of imposing costs on growers, rather than buyers, as this may exclude producers who are unable to pass on the costs to final buyers (see **4C's Mandate and Relationship to Human Rights**, above). 4C should clarify as soon as possible this change's consequences, which remain difficult to decipher. In particular, 4C should evaluate the differentiated impact of the new model of the most vulnerable rights holders, such as small-scale producers.


#### Recommendations:

- In order to meet minimum standards, 4C should:
  - Include all affected communities, taking care to differentiate among communities, in future development activities, including structural reviews. In particular, 4C should be sure to include the most vulnerable communities, such as smallholder employers, family smallholder farmers, workers and seasonal laborers, as discussed in **The Level of Community Involvement in 4C**, below. 4C should also ensure that it is feasible for these communities to participate, such as by bearing the costs of participation.

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<sup>61</sup> 4C Association, List of participants of 4C working group meetings from 2003 to 2004, received on 8 Feb. 2013 as part of 4C's comment period.

<sup>62</sup> 4C Association "Q&As: New 4C Business Model" received on 8 Feb. 2013 as part of 4C's comment period.

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- Be more transparent about the decision-making processes involved in its formation processes.
  - Even if the above minimum standards are met, to be more relevant as a human rights instrument, 4C should:
    - Conduct a human rights impact assessment and take special care to include affected communities in that assessment. The results of this assessment should be used to inform the expansion of its mandate with regard to human rights.
    - Make its theory of change and the implications of the new demand-driven model clear and publicly available, particularly as to how it will impact affected communities.

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## 4C'S STANDARDS<sup>63</sup>

4C's standards are contained in two of its foundational documents, (1) "Rules of Participation – The Business Code" and (2) the "4C Code of Conduct". The standards cover three dimensions of sustainability: (1) society, (2) environment and (3) economy. These standards consist of 10 mandatory standards and a set of 28 progressively realizable standards.

4C's mandatory standards, known as "4C Unacceptable Practices", prohibit all members from practicing "the worst forms of social, environmental and economic practices in the production, post-harvest processing and trading of green coffee".<sup>64</sup> All prospective members must exclude the 10 practices prior to joining. All the mandatory standards are contained in a list with express reference to international conventions and standards. For example, the first unacceptable practice is simply to exclude the "Worst forms of child labor (ILO Convention 182)".<sup>65</sup> 4C has produced a list of indicators to demonstrate whether these standards are in violation.<sup>66</sup>

The 28 progressively realizable standards are presented in a traffic light system, which identifies current practices that must be discontinued within three years (red), acceptable practices (yellow) and desirable practices (green). In order to sell 4C coffee, members have to be evaluated, and their practices must reach an average of yellow (see **Monitoring of Compliance with Standards**, below). For the first three years following the evaluation, 4C will tolerate a member's red practices if at least the same number of green criteria in the same dimension (social, environment or economic) are met, giving the member an average yellow status in that dimension. After the three-year grace period, all red practices must be eliminated for the member to be successfully evaluated. An improvement plan must then be developed, where the member selects which yellow practices it will "gradually" replace with green ones, and within what time frame.<sup>67</sup>

In addition to the three dimensions of sustainability covered under 4C's mandatory standards, Sangana Commodities Ltd and the German Technical Cooperation developed a set of voluntary standards aimed at climate change adaptation and mitigation for 4C members.<sup>68</sup>

Apart from the 10 unacceptable practices, 4C does not have mandatory standards for trade and industry members. Instead, there is a general participation requirement that these members must purchase increasing volumes of coffee over time. Furthermore, 4C has no system to monitor or evaluate the compliance of trade and industry members with the 10 unacceptable practices. 4C's standards are reviewed every five years. Proposals for revisions and clarifications may be submitted by interested parties at any time and will be taken into consideration during the next review.

*Updated information provided by 4C:* The revision of the 4C standards originally scheduled for 2014 will commence in 2013. It was communicated during an in-person meeting with 4C staff that, when revising 4C's code, they will take into consideration (a) the arbitrary selection of "unacceptable"

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<sup>63</sup> Information in this section is taken from *The 4C Code of Conduct* (version valid from July 2010 onwards), unless otherwise noted.

<sup>64</sup> *Code of Conduct* at 2

<sup>65</sup> *Code of Conduct* at 2

<sup>66</sup> 4C Association *Table of indicators for 4C Unacceptable Practices* (2010) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_036a\\_TableIndicatorsUAPs\\_v1.0\\_en.pdf?PHPSESSID=9edcsuk5rqne8e85lk95v1cn3](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_036a_TableIndicatorsUAPs_v1.0_en.pdf?PHPSESSID=9edcsuk5rqne8e85lk95v1cn3)> (accessed January 11, 2013).

<sup>67</sup> "Yellow practices must gradually be replaced by green practices. 4C Units decide on which yellow practice is to be improved to green and by when, depending on their available resources. It is NOT required that all existing yellow practices be replaced by green ones within three years." 4C Association *Verification Regulations* at 17.

<sup>68</sup> The "Climate Module" contains progressively realizable standards, which use the same "traffic light" system as the 4C Code Matrix, sensitization and trainings for producers and verifiers, verification instruments and a climate database.

human rights violations, (b) the lack of incentive for 4C units to move from average yellow to an average green and (c) the lack of certainty or incentive for buyers to purchase substantial amounts of coffee.<sup>69</sup> 4C staff expressed that, in line with the new ISEAL-compliant standard-setting procedure, the final scope of the standards will be determined based on a needs and risk assessment.<sup>70</sup>

During the engagement, 4C staff said that currently, although not explicitly stated, any standard within the Code of Conduct, and its interpretation, may be challenged at any time. 4C staff then further clarified that while challenges are accepted at any time, these challenges are collected over a period of time and addressed together as part of the standard-setting process that occurs every five years.<sup>71</sup>

#### Evaluation:

4C's 10 mandatory standards demonstrate good practice, as they are clearly stated, expressed in mandatory terms for all members and explicitly refer to international conventions. However, it is disappointing that 4C does not incorporate international law in its 28 progressively realizable standards, even though it is directly applicable. While the notion of continuous improvement is a practical tool for promoting the integration of human rights norms into industry practice, 4C should expressly reference international law within its standards. For example, 4C's standard regarding discrimination could directly refer to ILO conventions 100 and 111, which address discrimination, or at the very least, should incorporate the wording from such provisions. Doing so would eliminate the ambiguity of the definition of discrimination, and make the standard itself more robust, legitimate and consistent with global norms. The absence of direct incorporation of international law compounds the problems of establishing a sub-baseline, identified in **4C's Mandate and Relationship to Human Rights**, above.

It is problematic that many of the standards set out a process, rather than substantive human rights norms, without providing guidance as to the adequacy of different processes. For example, one of the yellow indicators under the "freedom of association" category is that "[a] process has been started to enable workers, producers and representatives of independent organizations to freely join independent organizations for the purpose of protecting their interests".<sup>72</sup> It is unclear what kind of "process" is sufficient and what degree of development adequately constitutes "start[ing]" such a process. 4C provides no measures to ensure the quality of this process. As a result, tokenistic or minimal efforts could be deemed compliant, even though workers are unlikely to ever have freedom of association. This is again compounded by the problems set out in **4C's Mandate and Relationship to Human Rights**: the lack of incentive to move beyond this yellow standard. Similarly, within the "discrimination" category, a member meets the standards provided "policy and procedures including grievance mechanisms for equal rights are being developed" and "incidents of discrimination ... are being addressed."<sup>73</sup> Again it is unclear what "policies and procedures" are deemed sufficient, and what "being developed" and "being addressed" entail. Without establishing

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<sup>69</sup> Information provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Rutten-Suelz, Director Sustainability Innovations, Annette Penschel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

<sup>70</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of an ongoing dialogue after 4C's comment period.

<sup>71</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C's comment period.

<sup>72</sup> *Code of Conduct* at 4.

<sup>73</sup> *Code of Conduct* at 6.



detailed indicators or baseline requirements for these process-based standards, members are unlikely to achieve the level of compliance and protection of human rights that 4C envisioned.

In addition, the green practices are, in effect, not truly mandatory. The lack of time frame for progressing to compliance with green practices, and permission that it be a gradual process, has the practical consequence that to remain compliant, only one yellow practice needs to be replaced every three years, as explained in **Incentive Regime**, below. Given the lack of rigor in the yellow and red standards, discussed in **4C's Mandate and Relationship to Human Rights**, above, this is highly problematic.

Finally, many of these standards, such as the right to freedom of association and collective bargaining, seem clearly targeted to larger farms with permanent employees. A one-size-fits-all approach may not be appropriate for many family smallholdings, as explained in **4C's Mandate and Relationship to Human Rights**, above. Conversely, the obligations for employees may not be sufficiently rigorous for larger plantations. For example, the yellow standard regarding living conditions is merely that an assessment of living conditions has been done and an improvement plan is "being defined".<sup>74</sup> As a baseline standard, much more should be expected from larger producers with numerous on-site employees than simply a process being underway.

4C has a relatively robust procedure for reviewing its standards, which allows members to propose amendments every five years, discussed further in **4C's Capacity to Evolve Over Time**.<sup>75</sup> However, while 4C accepts challenges to the validity of standards or their interpretation at any point in time, these challenges are not addressed immediately and are only considered as part of the standard-setting process every five years. This is problematic since, in the interim, which can span a number of years, inappropriate standards may still be applied and have harmful rights impacts.


#### Recommendations:

- In order to meet minimum standards, 4C should:
  - Ensure that all standards are both obligatory and verifiable.
  - Establish mandatory timelines for compliance where standards are not obligatory.
- To improve its existing standards, 4C should:
  - Tie its standards or principles to international law where possible.
  - Establish detailed indicators or baseline requirements for process-based standards.
  - Differentiate its standards based on producer structure, to encourage participation from the most vulnerable affected communities, while ensuring that larger producers are held to sufficiently rigorous standards.
  - Require continuous improvement beyond "average yellow" standards, with mandatory time frames for compliance. These time frames could differentiate based on the size or structure of the producer.
  - Establish a timeline for addressing challenges to the validity of standards or their interpretation outside of the standard-setting process.
- To be more relevant as a human rights initiative, 4C should improve the sufficiency of its standards by ensuring: that they are consistent with international human rights law; that they appropriately differentiate between different producer groups and affected communities; and that they do not exacerbate poverty for particular producers and therefore frustrate the ability to

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<sup>74</sup>*Code of Conduct* at 14.

<sup>75</sup> 4C Association *Standard setting procedure* (version June 2011) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_050\\_Standard\\_setting\\_procedure\\_v1.0\\_en.pdf](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_050_Standard_setting_procedure_v1.0_en.pdf)> at 3.



fulfill human rights as explained in **4C's Mandate and Relationship to Human Rights**, above.

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## IMPLEMENTATION OF 4C'S STANDARDS

### **Incentive Regime**

#### *Producers*

4C incentivizes coffee producers to join by offering the potential to sell 4C compliant coffee to its final buyers. In order to become licensed to sell 4C coffee, producers must be evaluated by a third party (as explained further in **Monitoring of Compliance with Standards**, below), which incentivizes members to meet its standards by requiring that they remove red practices within three years of joining, to reach average yellow, and continuously “improve” themselves.

4C also believes the adoption of its standards will serve as “a tool to assist farmers as they apply better agricultural, processing and management practices”, and will contribute toward “increased net income for coffee farmers through quality improvement, cost reduction, increased efficiency and optimization of the supply chain”.<sup>76</sup> 4C also offers informal incentives such as access to online resources.<sup>77</sup>

#### *Trade and industry*

4C allows members to use a membership statement that can be displayed on a company’s entire range of products and brands.<sup>78</sup> The membership statement can be used regardless of the quantity of coffee purchased, or whether that coffee is actually in the product being branded. However, 4C prohibits the use of product logos, labels or certification marks that brand products as containing 4C compliant coffee.<sup>79</sup> Thus, members can publicly advertise membership status on their products, but cannot promote their coffee products as being 4C compliant.

#### Evaluation:

#### *Producers*

Once a member, a coffee producer has a strong incentive to comply with standards up to “average yellow” because licensing is tied directly to this compliance. However, this is somewhat weakened by the absence of stringent requirements to move to average green. 4C could address this by incentivizing improved compliance with standards. This could take the form of informal incentives, such as acknowledging at annual meetings those producers who made the fastest improvements or have reached average green, through to highly regularized incentives, such as encouraging roasters or retailers to pay a premium for 4C coffee produced under average green conditions. These incentive regimes could also take account of the varying size and nature of producers.

It should also be noted that access to educational and informational materials may be diminished in the wake of 4C’s switch to a demand-driven model (see **Development of 4C**). Although producers will still have access to online resources, it is unclear whether more thorough and targeted trainings will become cost-prohibitive for smallholder farmers. In addition, it may be difficult for any

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<sup>76</sup> 4C Association “For Producers.”

<sup>77</sup> Membership entails free access to resources like information tools on good agricultural practices, as well as opportunities to engage with other members to discuss solutions to sustainability challenges and share best practices (see **Stakeholder Learning and Engagement**, below). 4C asserts that its regional sustainability forums and meetings provide opportunities to make connections within the coffee industry, that may ultimately provide financial gain.

<sup>78</sup> The official text for the statement is: “We are a member of the 4C Association and support its sustainability approach [www.4c-coffeeassociation.org](http://www.4c-coffeeassociation.org)”. 4C Association *4C Communication Guidelines* (December 2011) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_003\\_CommunicationGuidelines\\_v3\\_2\\_en.pdf?PHPSESSID=9edcsuk5rqnne8e85lk95v1cn3](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_003_CommunicationGuidelines_v3_2_en.pdf?PHPSESSID=9edcsuk5rqnne8e85lk95v1cn3)> at 15.

<sup>79</sup> *Communication Guidelines* at 15, §3.2.

smallholder farmers, who are often located in developing countries, to access the Internet. This is discussed further in **Stakeholder Learning and Engagement**, below.

### *Trade and industry*

For trade and industry members, it is extremely problematic that there is no requirement or incentive to go beyond the vague requirement to buy “increasing amounts” of 4C compliant coffee (see **4C’s Mandate and Relationship to Human Rights**, above). Fulfilling this requirement imposes a negligible burden on members, yet it leads to an immediate market benefit for them. Because all trade and industry members are permitted to display the 4C membership statement regardless of how much 4C coffee they purchase, there is no reason to increase coffee purchases. For example, a company that purchases 1 percent 4C compliant coffee receives the same market benefit as a company that shifts to 100 percent. This is still more problematic in light of the ambiguity surrounding sanctions for members who fail to purchase increasing amounts of coffee (see **Accountability**, below). An incentive regime that differentiates between the quantity of coffee purchased would motivate companies to buy significantly more coffee, which would in turn address the problem of insufficient demand that 4C is currently facing. For example, 4C could require retailers or roasters to include the proportion of 4C coffee compared to total coffee purchased in any consumer-facing statement or create a tiered statement system based on proportion of 4C coffee purchased (e.g. bronze, silver, gold).

### Recommendations:

- To be more effective as a human rights instrument, 4C should:
  - Consider creating incentives for trade and industry members to purchase substantial amounts of 4C coffee or otherwise support the implementation of standards for producers. For example, 4C might consider differentiating rewards based on the proportion of coffee purchased.
  - Consider developing an incentive regime to motivate producer members to move beyond average yellow, step up to a more rigorous certification regime or exceed other minimum standards. This regime could be differentiated based on producer size or structure if appropriate, as explained in **4C’s Mandate and Relationship to Human Rights**, above.
- Even if the above recommendations are adopted, to be effective as a human rights initiative, 4C’s incentive regime will need to be based upon compliance with adequate human rights standards. Therefore 4C should improve the sufficiency of its standards by ensuring: that they are consistent with international human rights law; that they appropriately differentiate between different producer groups and affected communities; and that they do not exacerbate poverty for particular producers and therefore frustrate the ability to fulfill human rights as explained in **4C’s Mandate and Relationship to Human Rights**, above.

## **Monitoring of Compliance with Standards<sup>80</sup>**

### *Monitoring: Evaluations*

Evaluations are conducted of “4C units”.<sup>81</sup> A managing entity is appointed by the unit and is responsible for the overall evaluation process. A unit must first conduct self-assessments according

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<sup>80</sup> Information in this section is taken from *Verification Regulations*, unless otherwise noted.

<sup>81</sup> In practice, this means one 4C member may have multiple units in different geographic zones. For example, Nestle has multiple units in Thailand, Vietnam, Brazil, and Mexico. A 4C unit can be a group of small-scale farmers who agree to register jointly, an already organized group such as a cooperative or a farmers’ association, a collecting station, a mill, a

to the 4C Verification Regulations, after which it is evaluated externally. After receiving its initial license to sell 4C coffee following a successful evaluation, the unit remains subject to ongoing evaluation, including a re-evaluation every three years.

*(a) Self-assessment*

The managing entity is required to identify and record all of the unit's business partners, and specify basic functions such as the number of workers and production size and yield. A business partner is any actor within the unit who has physical contact with coffee cherries or beans.<sup>82</sup> The managing entity must assess business partners' performance against 4C's standards and identify areas for improvement.<sup>83</sup>

*(b) External evaluation*

If the aggregated self-assessment demonstrates an average yellow level (as described in **4C's Standards**, above), the unit can apply for an external evaluation. The managing entity solicits proposals from a list of approved 4C evaluators, and submits the aggregate self-assessment and other documents to its chosen evaluator.<sup>84</sup> The unit must pay for the evaluation.

The external evaluators are required to declare conflicts of interest certifying that they have not provided services to implement the 4C system to the unit within the last three years or evaluated the unit on more than two consecutive visits, and that they do not have a business interest in the unit.

Evaluations must be conducted in teams of at least two people, with at least one female evaluator.<sup>85</sup> The team as a whole must also have knowledge of applicable local legislation and international conventions, the local context and the language spoken by the majority of producers in the unit.<sup>86</sup> The team should also include members with experience in auditing other management systems. Evaluators show compliance with these rules either by accreditation with a certifying board or by self-declared compliance.<sup>87</sup>

The evaluators send the managing entity a plan for the evaluation. The evaluation plan must at least include: (1) when and where the evaluation will start, (2) amount of time allotted for each evaluation activity and (3) who is going to attend which part of the evaluation and where.

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local trader, an export organization, or even a roaster (as long as it is based in a country where coffee is produced). A 4C unit must be able to supply a minimum of one container of green coffee (20 tons).

<sup>82</sup> This would include coffee farmers, collectors, warehouses, mills, chemical sprayers, and labor service providers.

<sup>83</sup> *Verification Regulations* at 20, §7.11. Part of the evaluation is to establish an internal set of documents termed an internal management system (IMS). Depending on the level of sophistication, the IMS may be deemed basic, intermediate, advanced, or integrated. 4C only requires basic IMS to be deemed in compliance. Increasing the level of the IMS to advanced appears to be entirely voluntary: while units are "expected to incorporate more elements of a more effective IMS over time", there is no provision that failing to do so would lead to any sanction. *Verification Regulations* at 17, §7.7.

<sup>84</sup> More specifically, the unit submits a request for proposals, and after five days, will select the evaluator based on proposals received. *Verification Regulations* at 24, §8.2.

<sup>85</sup> If there are circumstances where this is not possible, the team must justify this in a report.

<sup>86</sup> If the language requirement is not met within the team, the team may hire an independent interpreter who must not work for any business partner within the unit.

<sup>87</sup> More specifically, the evaluator companies should normally be accredited by ISO/IEC Guide 65 or ISO 17021, but in interest of working with locally available evaluators who are not always accredited, they can also be self-declared ISO/IEC Guide 65 or ISO 17021 compliant evaluators. *Verification Regulations* at 9, no. 28. Each time the accredited evaluators renew their accreditation certification, they must send a copy to the 4C secretariat. Self-declared compliant evaluators must send results of regular internal audits and management reviews (with corrective actions in case of any non-conformity) to the 4C secretariat. *Verification Regulations* at 46, §9.3.

The evaluators assess a sample of the business partners.<sup>88</sup> The names of the sampled business partners are announced two days before the evaluation. The selection must take a risk-based approach; evaluators must sample business partners who they think have a greater risk of not following 4C's standards in accordance with 4C's guidance.<sup>89</sup>

4C establishes a step-by-step process that individual evaluators must follow on site. This includes interviewing the people in charge of the unit and 4C implementation, checking documents and records and interviewing "relevant employees" of the managing entity.<sup>90</sup> Evaluators then visit business partners while accompanied by an escort from the managing entity; the managing entity must not answer the questions posed to the business partners, and may be asked to leave "to prevent unsolicited interventions and maintain confidentiality".<sup>91</sup> On the visit to the business partners, the evaluators must interview business partners, farmers and workers; conduct a physical farm/facility inspection; and review documents and records. If the evaluators believe it necessary to verify certain information, the methodology provides that they may interview other local stakeholders, such as teachers, union representatives or chemical salespeople.

The evaluator presents the initial results to the managing entity in person, and both parties make final clarifications. 4C produces a reporting template for evaluators to use; however, the template is not publicly available. If the parties agree with the report, the results are signed and a final report is sent by the evaluator to the unit and the 4C secretariat.<sup>92</sup> If the unit disagrees, it may be asked to provide evidence to support its claims. Where disagreement remains, the unit may contact the secretariat to initiate a complaint process. If this cannot be resolved at the secretariat level, the complaint may ultimately be forwarded to the mediation board (see **Grievance Mechanism**).

Should the evaluation confirm an average yellow performance and compliance with other 4C requirements (see **4C's Standards**), the evaluator will recommend 4C licensing to the secretariat, who will issue a decision within 10 working days. If the unit fails the evaluation, it will not receive a license and must undergo a short follow-up visit within 180 days from the last day of the evaluation.<sup>93</sup> A 4C unit that fails its initial evaluation has only one chance to rectify its failings through the re-evaluation process. During the follow-up visit, evaluators examine whether the non-compliance has been corrected and if improvements have been made in areas that were already in compliance at the initial evaluation.

#### *(c) Ongoing evaluation*

Within six weeks of being licensed, a unit must develop an improvement plan addressing the evaluation results. The improvement plan details how the unit intends to eliminate red practices and

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<sup>88</sup> At least 50% of the square root of all business partners and the managing entity must be evaluated.

<sup>89</sup> Evaluators are directed to ensure that 80% of the sample covers the business partners who are high risk according to this matrix, if applicable. Evaluators identify risk factors among different types of business partners, and also evaluate them according to a risk assessment matrix that considers the severity of the risk if realized (i.e. "if it occurs, how great will its effect be on the 4C Unit's overall performance?") with the probability of risk. These risk factors include: large size of unit, long supply chain, location in conflict or disaster zones, inexperienced personnel, illiteracy on farms, intensive farming practices, etc. The sample must include at least one business partner of each type that the unit has (farmer, collector, processor, etc.).

<sup>90</sup> *Verification Regulations* at 32, §8.4.2.

<sup>91</sup> *Verification Regulations* at 33, §8.4.2.

<sup>92</sup> The evaluator has fifteen working days from the date of the closing meeting to finalize and send the evaluation report to both the managing entity and the 4C secretariat. The managing entity then has another five working days to review, sign, and return the report to the evaluators and the 4C secretariat. This report must be kept by for at least six years by all involved parties (i.e., the managing entity, the evaluators, and the 4C secretariat).

<sup>93</sup> A license may be issued if the critical non-conformity is cleared during the follow-up visit.

gradually shift its yellow practices to green practices. The unit must also update the secretariat on its implementation of 4C's standards annually. There is no on-site evaluation of these updates. The unit's list of business partners and their basic data and performance must be reviewed and updated annually following verification.<sup>94</sup>

A unit must be re-evaluated within three years to keep its licensed status and at least either the initial or subsequent evaluation must occur at harvest, when additional seasonal employees may be present. A re-evaluation is very similar to the initial evaluation but emphasizes improvement, and compares with a unit's yearly updates its progress against its own improvement plan.<sup>95</sup> In the re-evaluation sample, evaluators must include business partners from the previous evaluation sample with weaker performance. Evaluators also conduct unannounced field visits and checks, though it is not clear how extensive these are or how frequently they are conducted. A unit that wishes to include new business partners during the three-year cycle must request an "addendum" evaluation.<sup>96</sup>

An independent organization also conducts unannounced visits to evaluators themselves (see **4C's Capacity to Evolve Over Time**). Evaluators face sanctions if they fail to meet 4C's requirements for them; for example, if they fail to participate in 4C's refresher workshop or online training, report late, evaluate without reviewing completed documents from the relevant units and if there is obvious evidence of conflict of interest.<sup>97</sup>

#### *Monitoring: Reporting*

A producer must conduct self-assessments on a yearly basis and send the results to the 4C secretariat.

4C members who are final buyers must also report on commercial activities related to their 4C compliant coffee every year.<sup>98</sup> Only 4C's executive director has access to individual data (for "plausibility checks").<sup>99</sup> The data is aggregated on total reporting volumes, and the aggregated data is released publicly.<sup>100</sup>

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<sup>94</sup> This update includes: completed annual data form, updated aggregated self assessment, updated list of business partners, updated improvement plan with progress and updated organizational chart (if there has been any change over the past year).

<sup>95</sup> Evaluators will also evaluate continuous improvement during addendum evaluation and re-evaluation, though non-conformity or findings on continuous improvement will only be issued during re-verification. The documents used for evaluating improvement activities include: the previous evaluation report, the improvement plan by the 4C Unit with yearly updates, the unit's latest self assessment and the unit's IMS documents and records. At 16, § 7.7.

<sup>96</sup> The "addendum" evaluation samples the new business partners a sample of those from the initial evaluation.

<sup>97</sup> The main sanction is that 4C members will be informed of the failure via email and the website, and the evaluator will be removed from the list of 4C approved evaluators.

<sup>98</sup> This reporting is confidential and submitted through an online platform. Units must report actual, real production volumes of 4C Compliant Coffee, volumes thereof certified under other sustainability standards and volumes shipped as 4C Compliant Coffee. 4C Association *Commercial Reporting Procedures* (2011) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_034\\_CommercialReportingProcedures\\_v3.0\\_en.pdf](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_034_CommercialReportingProcedures_v3.0_en.pdf)> at 7, §4.1. Final buyers must report total volumes of 4C Compliant Coffee received, total volumes of 4C Compliant Coffee received per 4C Unit license number and total volumes of 4C Compliant Coffee (re)sold to other 4C final buyer members. 4C Association *Commercial Reporting Procedures* at 4.2.

<sup>99</sup> *Commercial Reporting Procedures* at 12, §6.

<sup>100</sup> *Commercial Reporting Procedures* at 12, §6.

*Updated information provided by 4C:*<sup>101</sup> 4C staff explained that 4C units commonly take three forms. First, 4C units are often headed by a global trade and industry member (e.g. Nestlé), who serves as the unit's managing entity and bears the cost of evaluating the producers and other members of its supply chain. Second, a cooperative may form a unit, with the cooperative's administrative body bearing the evaluation cost of its members. Third, a unit may consist of a large estate or plantation, which bears its own evaluation cost. Aside from these three forms, there are also other forms of units, such as units headed by different members of the supply chain such as collectors or local exporters, who also bear the evaluation cost.<sup>102</sup> While the cost of an evaluation to be licensed is publicly stated to be approximately €2,800 (US\$3,650), the 4C staff explained that the cost ranges from €700 to €15,000 depending on the size of the unit, the level of dispersion of unit members and the level of cost in the given country.<sup>103</sup>

In each of the three common forms of 4C units, 4C staff claim that the cost of evaluation does not pose a problem since it is borne either by the global member, the cooperative administration or a large producer. Even in the alternative forms of units headed by other members of the supply chain, the evaluation cost is still passed up along the supply chain to the relevant member heading the unit.<sup>104</sup> While there may be smallholders in these 4C units, there are currently no units comprising loose collections of small-scale producers.<sup>105</sup> This suggests that the cost of evaluation is prohibitive for small-scale producers who do not belong to a large supply chain or collective, and cannot pass the evaluation cost up the supply chain. Similarly, the cost of evaluation may pose a barrier to entry for small- to medium-sized cooperatives seeking to be evaluated as a unit. Thus, 4C may have the perverse effect of being financially feasible only to producers who are members of a supply chain headed by a large trade and industry member, belong to large cooperatives or are themselves large plantations or estates. This model may serve to exclude the smallest and least connected producers, who are often most vulnerable to poverty and related human rights violations, and thus fails to address the very human rights issues that prompted 4C's formation (see **4C's Mandate and Relationship to Human Rights**, above).

During the engagement, 4C staff provided us with templates for: business partner mapping, self-assessment, the framework contract between 4C units and evaluators, evaluators' reports, improvement plans and annual self-assessment for reporting purposes.<sup>106</sup> The self-assessment template and the business partner mapping template are available on 4C's website; the other templates are not publicly available.<sup>107</sup> During the meeting, 4C staff committed to making the evaluator report template publicly available. However, evaluator reports will not be made publicly available, on the basis that they belong to the respective 4C units under evaluation. A list of

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<sup>101</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Penschel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

<sup>102</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C's comment period.

<sup>103</sup> See also 4C Association "Q&As: New 4C Business Model" received on 8 Feb. 2013 as part of 4C's comment period.

<sup>104</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C's comment period.

<sup>105</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C's comment period.

<sup>106</sup> All templates were received on 7 Feb. 2013 as part of 4C's comment period.

<sup>107</sup> Information provided by 4C staff in an email dated 3 Apr. 2013, as part of ongoing dialogue after 4C's comment period.



evaluated units is now available on the 4C website. However, the list does not identify units that have failed an evaluation versus those awaiting an evaluation.

4C staff clarified that, in practice, evaluators are instructed during training sessions to interview the most vulnerable stakeholders, as well as to protect the confidentiality of interviewees, even though they are not express requirements.<sup>108</sup>

Although 4C requires that evaluators will conduct unannounced field visits and checks on 4C units seeking an evaluation, 4C staff confirmed that, in practice, unannounced evaluations are not being undertaken. Also, while it is stated that an independent organization conducts unannounced visits to evaluators themselves, the secretariat has only monitored evaluators through an unannounced audit once thus far. According to 4C staff, unannounced field visits and checks on both 4C units and evaluators will be conducted by the secretariat and an independent organization that conducts system oversight of 4C as part of a quality management system that will be implemented in 2013.

### Evaluation:

#### *Monitoring: Evaluation*

4C's evaluation process is generally strong, requiring ongoing monitoring in accordance with a comprehensive methodology. The methodology for external evaluations is a particular positive feature. It reflects 4C's awareness of the importance of impartial, credible and standardized evaluations. The emphasis on evaluators' knowledge of the local legislation, context and language is good practice. In addition, the gender balance requirement is excellent. 4C appropriately recognizes that "millions of women work in the coffee sector" and that "in many cases, due to socio-cultural reasons, male [evaluators] are not always able to conduct in-depth interviews with female farmers or workers and [evaluate] their living conditions effectively".<sup>109</sup> This is a very important recognition, and other MSIs should be proactive about gender-related concerns as well. To improve, 4C should clarify how it monitors whether evaluators meet these requirements.<sup>110</sup>

It is commendable that 4C's evaluation methodology employs risk-based sampling aimed at evaluating the weakest links. Requiring on-site inspection and interviews is an important starting point, however more details could be added to the process. To improve, 4C should codify its requirement that evaluators interview the most vulnerable stakeholders, such as temporary workers or children, and provide confidentiality assurances to interviewees.

While 4C's monitoring system has a number of innovative aspects, there are a few areas that call for attention and improvement. The most pressing issue is the requirement that producers pay for evaluations. This requirement may preclude smaller-scale producers from participating in 4C (see **4C's Mandate and Relationship to Human Rights**, above). Previously, "4C Association cover[ed] [evaluation] costs in order to lessen the cost burden for coffee producers, especially the

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<sup>108</sup> The template for the framework contract between 4C units and their evaluators (provided by 4C staff on 7 Feb. 2013 as part of 4C's comment period) has a confidentiality clause. However, because this is a template that may be modified without approval from 4C, such a confidentiality clause can be easily removed as it is not made mandatory under the verification regulations.

<sup>109</sup> *Verification Regulations* at 44, §9.1.4.

<sup>110</sup> Evaluators must either be accredited or self-declared to be compliant with evaluator requirements. While accredited evaluators are responsible for periodic evaluation of team member competence as specified in ISO/IEC Guide 65 or ISO 17021, self-declared compliant evaluators do not appear to be monitored for compliance at all. While 4C staff state that unannounced checks of evaluators by independent organizations will be implemented, it would be more effective if the evaluation team reports to 4C on these requirements for each evaluation (if they do not do so already).

smallholders”.<sup>111</sup> 4C’s decision to abandon this for a user-pays approach is disappointing. While ensuring 4C’s financial sustainability is important, it should not lose sight of the issues it sought to address at its founding. As noted in **4C’s Mandate and Relationship to Human Rights**, above, 4C’s user-pays approach imposes cost as a barrier to entry for smallholders who are not part of a larger supply chain and thus unable to pass the cost of evaluation up the supply chain. These smallholders have no incentive to join 4C given the lack of demand even under the new demand-driven model, such that evaluation and other membership costs far outweigh the benefits of membership. 4C’s user-pays approach thus crowds out smallholders, who are often the most vulnerable to poverty and its associated human rights issues.

Hence, 4C should consider ways to cover evaluation costs for small producers. For example, it could use an approach similar to its membership fee structure (see **Funding, Resources and Internal Accountability**, below), where the lower the gross output of coffee, the greater proportion of costs 4C will cover. Thus, large estates and plantations may have to pay 100 percent of the cost, whereas smaller cooperatives or groups of smallholders might be expected to pay only 10 percent.<sup>112</sup> Membership fees could cover the remaining 90 percent of the cost for small producers.

It is positive that both self-assessment and external evaluations are required, and innovative that at least one evaluation within the three-year reevaluation cycle must occur during harvest season. However, the discretion given to producers to identify their business partners, which informs external evaluators whom they must inspect, does not appear to be subject to external review. This should be remedied to prevent units from excluding from the list partners that are known to be in breach of standards from this list.<sup>113</sup>

It is misleading that 4C states that unannounced field visits and checks on 4C units seeking evaluation and unannounced audits of evaluators are being conducted when this is not the case. 4C should seek to implement these unannounced visits and provide guidance to regulators regarding how unannounced field visits should be conducted. The risk of receiving an unannounced visit should be sufficiently high that the farmers are motivated to keep up with compliance during the three-year gaps in the evaluation process.

The report template should be made publicly available; it is positive that 4C staff agreed to do so. Evaluation reports (see **4C’s Transparency**, below) and the results of evaluations, including when units have failed an evaluation, should also be made publicly available.

#### *Monitoring: Reporting*

The reporting of purchases of 4C compliant coffee by final buyers is adequate, but secrecy regarding individual purchasing amounts by members greatly undermines the goals of 4C. As noted in **Incentive Regime**, above, this is problematic since there is no regime that incentivizes companies to significantly increase the amount of 4C compliant coffee they purchase. Making public the amount and/or proportion of 4C compliant coffee purchased by each buyer could help provide such incentive.

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<sup>111</sup> 4C Association *4C Code Implementation Guidance* (2008) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_045\\_4C\\_Code\\_Implementation\\_Guidance\\_v1.3\\_en.pdf?PHPSESSID=9edcsuk5rqne8e85lk95v1cn3](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_045_4C_Code_Implementation_Guidance_v1.3_en.pdf?PHPSESSID=9edcsuk5rqne8e85lk95v1cn3)> at 6, §2.7.

<sup>112</sup> In addition, it’s worth noting that 4C’s sampling formula is harsher on small-scale farmers because a higher proportion must be sampled for farms with a small number of business partners compared to those with a greater number of partners.

<sup>113</sup> Also, it is misleading that the “aggregated self-assessment” only requires assessment of the business partners in the managing entity’s office, rather than across the entire unit.

## Recommendations:

- In order to meet minimum standards, 4C should:
  - Remove the requirement that producers pay evaluators directly. Instead, producers could pay fees to a fund managed by 4C, which then uses this money to cover the cost of evaluations or revert to 4C's prior policy. 4C should take particular care to ensure that the costs of evaluation do not prohibit small producers from participating in 4C (see **4C's Mandate and Relationship to Human Rights**, above), for example by offering tailored fee waivers or subsidies to small producers who are not part of a 4C unit that enables them to pass the cost up the supply chain. 4C should prohibit producers from using evaluators with whom they have existing financial relationships.
  - Specify minimum procedures regarding interviewing procedure, including procedures that seek to protect interviewees against reprisals and assure confidentiality.
  - Implement and clarify its unannounced visit system.
  - Make the report template and evaluation results publicly available, and require reporting on specific incidents that implicate breaches of 4C standards.
- To improve its monitoring systems, 4C should:
  - Expressly require that especially vulnerable stakeholders within the unit (e.g. migrant workers and children) and other community stakeholders be interviewed.
  - Clarify how evaluators are monitored for compliance with requirements such as gender balance and local knowledge.
- To be more relevant as a human rights initiative, 4C should:
  - Publish the individual amounts of 4C compliant coffee purchased by trade and industry members.
  - Improve the sufficiency of the standards that are monitored by ensuring: that they are consistent with international human rights law; that they appropriately differentiate between different producer groups and affected communities; and that they do not exacerbate poverty for particular producers and therefore frustrate the ability to fulfill human rights as explained in **4C's Mandate and Relationship to Human Rights**, above.

## **Grievance Mechanism**<sup>114</sup>

The 4C Mediation Board has a broad mandate to resolve disputes. The board may settle disputes between 4C and its members and even non-members, provided the non-member agrees to abide by the outcome of mediation. Each chamber of the 4C council elects four representatives to the 12-member mediation board.<sup>115</sup> The council appoints the chairperson of the mediation board, who is the ombudsman.

The board is authorized to hear two types of disputes: “technical” and “principle.” Technical disputes are those related to direct breaches of 4C statutes, standards or its participation rules, where “clearly measurable obligations” exist.<sup>116</sup> Examples would be a failure to eliminate unacceptable practices or a misuse of the 4C logo. Principle disputes arise when a member is alleged to be in

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<sup>114</sup> Unless otherwise indicated, all information in this section is contained in 4C Association *By-laws of the Mediation Board* (November 2012) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_010\\_By-laws\\_Mediation\\_Board\\_v4.1\\_en.pdf](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_010_By-laws_Mediation_Board_v4.1_en.pdf)> (accessed January 11, 2013).

<sup>115</sup> Mediation board members serve three-year terms with a maximum of two consecutive terms. The decision-making bodies of 4C are discussed below in **Decision-Making Functions and Balance of Power**.

<sup>116</sup> *By-laws of the Mediation Board* at 5, §4.1.

breach of the “spirit” of 4C.<sup>117</sup> Examples of principle disputes include those regarding incorrect communication about 4C or “not buying increased volumes” of coffee over time.<sup>118</sup>

The 4C secretariat decides whether a dispute is admissible to the mediation board.<sup>119</sup> Once notified of a dispute, the secretariat must attempt to reach an amicable agreement between the parties. If such agreement cannot be achieved, the secretariat will refer the dispute to the ombudsman. If the ombudsman agrees with the conclusion that an amicable settlement is unachievable, he or she will appoint a three-member mediation panel from the mediation board, each member representing one of the three chambers of the 4C council. The panel may also be assisted by a lawyer assigned by the council on a case-by-case basis.

The applicant must pay €1,000 to cover the cost of assembling the mediation panel, but this may be waived by the council if the applicant can show lack of financial means. Ultimately, the losing party is required to cover this filing fee, as well as the actual fee for the mediators and 4C’s legal counsel. The fee for each mediator is €1,000 for each half-day session and the fee for 4C’s legal counsel is €2,000 per half-day session.<sup>120</sup> Thus, for a half-day mediation, the fee would be €5,000.

Once a time is set for the mediation panel to hear the dispute, the bylaws require that this time frame be posted on a members-only section of 4C’s website and that the parties be notified in writing. The panel will meet at the 4C office in Bonn, Germany. Parties to the dispute may attend or send representatives, and they may also choose to be represented by legal counsel. Witnesses may be asked to testify and stakeholders may be permitted to submit their views if the panel deems it appropriate. The mediation panel can also call for evidence, and “refusal to provide the requested evidence shall be taken as an admission of guilt.”<sup>121</sup> If one or both of the parties or their representatives are not present, the panel may give a verdict based on written submissions.

The panel will issue its findings by majority vote within six weeks, in a “Binding Advice for a Corrective Action Plan” for technical disputes and in a “Ruling” for principle disputes.<sup>122</sup> The process for sanctions is discussed in **Accountability**, below. Parties do not have the right to appeal decisions of the mediation board.

*Material update:* The bylaws of the Mediation Board and the forms to be used for filing a complaint are available on the 4C website in Spanish and English.<sup>123</sup>

*Updated information provided by 4C:*<sup>124</sup> 4C staff clarified that 4C is currently in the process of selecting its mediation board. 4C staff noted that no grievances have been filed thus far, and that the grievance mechanism procedures may come under review when 4C revises its evaluation system.

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<sup>117</sup> *By-laws of the Mediation Board* at 5, §4.2.

<sup>118</sup> *By-laws of the Mediation Board* at 5, §4.2.

<sup>119</sup> The secretariat also determines, with the agreement of the parties, whether the dispute is technical or principle. If there is contestation or doubt, the ombudsman will make the final determination on the classification of the dispute.

<sup>120</sup> It is unclear whether 4C’s legal counsel refers to the legal representative when 4C is a party to the dispute or the lawyer assigned to assist the panel. The wording of the text indicates the former, while logically it makes sense that it would be the latter.

<sup>121</sup> *By-laws of the Mediation Board* at 5, §5.2.

<sup>122</sup> *By-laws of the Mediation Board* at 4, §3.1.

<sup>123</sup> “4C Association: By-laws of the Mediation Board,” accessed 6 March 2013. <http://www.4c-coffeeassociation.org/document-library/documents/4c-policies-and-statutes/by-laws-mediation-board.html>.

<sup>124</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C’s Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C’s comment period.

## Evaluation:

4C has a clearly defined grievance mechanism. It expressly lays out the evidentiary rules, the sequence of the proceedings and the time frames for the resolution of grievances. It also provides some helpful interpretive guidance of various standards and provisions.

It is good practice that any aggrieved party, including a non-member, may file a complaint. While 4C appears to have taken steps to ensure affected communities have access to redress for violation of human rights, such as allowing them to have an advocate or representative and apply for a fee waiver, several financial barriers remain. For example, all mediation panels<sup>125</sup> are held in Germany — thousands of miles from most producers — and there is no provision to enable travel costs to be covered or for disputes to be heard in more convenient locations. Furthermore, aggrieved individuals may be deterred from filing a complaint due to fear of being responsible for all formal costs if their claim is rejected, which may easily run to thousands of dollars. It is difficult to imagine a small group of seasonal workers having the resources or capacity to file a claim against an employer given these hurdles. It is also unclear if civil society may file claims on behalf of an individual or groups of affected community members. Given that 4C was established in acknowledgement of widespread poverty amongst coffee farmers (see **4C's Mandate and Relationship to Human Rights**), these financial barriers to the grievance mechanism are unacceptable. They are compounded by other accessibility issues, such as the mediation rules only being available in English and Spanish and a lack of explanation as to how a non-member may file a grievance and initiate mediation.<sup>126</sup>

Although the mediation bylaws do contain confidentiality provisions worthy of praise, it is not clear whether 4C keeps party identities confidential. For example, the bylaws provide that the secretariat will forward dispute claims to the opposing party; the complaint form requires the claimant to list his or her name. Without such confidentiality, some workers may refrain from lodging a complaint out of fear of retaliation from his or her 4C-member employer.

Furthermore, it is unclear what degree of discretion the secretariat possesses to deem a dispute admissible or inadmissible. While the bylaws indicate that any dispute regarding at least one member of 4C would be admissible, it is not clear whether there are any other criteria the secretariat may consider in making the admissibility determination.

The evidentiary rule that refusal to provide requested evidence is interpreted as an admission of guilt also seems unduly harsh. The rigidity of the bylaw may unfairly punish parties who are unable to produce the evidence, refuse to provide the evidence due to confidentiality or safety concerns or have an otherwise legitimate basis for their refusal.

While no grievances have been filed thus far, to be transparent, 4C should publish this information.<sup>127</sup> In addition, 4C should publish the membership of the mediation board once it has been formed and what (if any) guidelines the ombudsman follows when appointing the three-

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<sup>125</sup> Although 4C refers to these as mediation panels, these actually function as arbitration panels, because the board is empowered to make binding decisions.

<sup>126</sup> The process is explained for complaints between members and/or 4C.

<sup>127</sup> When this report was written, there were no publicly available abstracts even though the secretariat is required to publish abstracts of decisions on the website. Thus, it was unclear whether this is because the secretariat has failed to publish the information, if abstracts are published to the “members only” portion of the website or if no grievances have been filed thus far. During the engagement, 4C staff clarified that the lack of information is because no grievances have been filed thus far.

member mediation panels.<sup>128</sup> For example, it is unclear if there are conflict-of-interest guidelines to ensure the neutrality of the process and outcome.

Finally, it is of major concern that 4C considers failure to purchase increasing amounts of coffee by buyers to be a principle, rather than technical, dispute.<sup>129</sup> As demonstrated in **4C's Mandate and Relationship to Human Rights**, this indicates a disproportionate lack of firm obligations placed on buying members of 4C, and has the practical consequence that buyers cannot be required to purchase more coffee.

#### Recommendations:

- To meet minimum standards, 4C should:
  - Remove the barriers to accessibility of its grievance mechanism. For example, it could provide travel subsidies or allow sessions to be conducted in alternative locations. In addition, it should ensure that other costs associated with commencing a complaint do not act as a barrier to accessibility. For example, 4C could waive costs for organizations or individuals in financial hardship who present an admissible complaint, even if they are the losing party. 4C should also ensure that information about the grievance mechanism is available in the local languages of coffee-producing regions to ensure language is not a barrier to access.
  - Establish appropriate confidentiality measures. These should include provisions for closed proceedings and, especially important for the protection of smallholders, for non-retaliation.
  - Publish the full admissibility criteria that the secretariat follows.
  - Clarify the process by which non-members may submit complaints or civil society may file on their behalf. These processes should be communicated clearly to affected communities, including both workers and smallholding farmers in cooperatives or other associations (see **Programs and Outreach**, below)
  - State that no grievances have been filed or, when applicable, publish the number of grievances filed, the number of resolved grievances and the abstracts of the mediation board's rulings as required by its bylaws.
  - Publish the membership of the mediation board when it has been formed and the process by which mediation panels are elected, including conflict of interest provisions.
- To be more effective as a human rights mechanism, 4C should:
  - More rigorously enforce the existing obligations on roasters and retailers. For example, 4C could define the failure to purchase increasing volumes of coffee as a technical non-compliance.
  - Improve the sufficiency of its standards by ensuring: that they are consistent with international human rights law; that they appropriately differentiate between different producer groups and affected communities; and that they do not exacerbate poverty for particular producers and therefore frustrate the ability to fulfill human rights as explained in **4C's Mandate and Relationship to Human Rights**, above.

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<sup>128</sup> Similarly, it is unclear what internal process for electing representatives to the mediation board within each chamber are.

<sup>129</sup> It should also be noted that the distinction between technical and principle disputes in practice is not readily apparent. For example, 4C characterizes “non-payment of membership fees” as a technical non-compliance and “ignoring the duties of membership” as a principle non-compliance: *By-laws of the Mediation Board* at 5, §42.

## Accountability

### *Accountability of members who do not comply with MSI requirements*

If a producer is not in compliance with evaluation requirements, 4C may categorize the violation as either a “critical non-conformity” or a simple “non-conformity”.<sup>130</sup> The first category covers failure to exclude unacceptable practices with no actions taken to “address” the non-conformity and failure to continuously improve (see **4C’s Standards**), by retaining one or more red practice after the first evaluation, without any effort to “eliminate” those red practices.<sup>131</sup> If a critical non-conformity is discovered, the producer will not receive a license to sell 4C coffee or its license will either be suspended or not renewed, depending on the type of evaluation.<sup>132</sup> In all instances, a follow-up visit is carried out within 180 days and a license is only issued, reinstated or renewed “upon confirmation of clearance of the critical non-conformity”.<sup>133</sup>

Simple non-conformities are considered less serious violations. There are five simple non-conformities with clearly delineated sanctions. A simple non-conformity with the requirement to continuously improve occurs when a producer continues to engage in a red practice “despite many (verifiable) efforts” to eliminate it or when a producer fails to submit an annual improvement plan (see **4C’s Standards**).<sup>134</sup> In the former instance, a producer will be issued a one-year provisional license, to be replaced by a three-year license when the red practice is removed.<sup>135</sup> The latter situation will result in license suspension, to be lifted after submission of the improvement plan.<sup>136</sup>

Another simple non-conformity is the failure to carry out periodic monitoring (i.e. annual commercial reporting and annual update). Failure to report can lead to “license suspension after two unsuccessful reminders”.<sup>137</sup> The suspension will be lifted once the relevant documents are received.<sup>138</sup>

The simple non-conformity of failure to give evaluators access to certain information is sanctioned by refusal to issue a license until the information is submitted, and if a member is found to have selected evaluators with a conflict of interest or in a manner that is not transparent, the license is immediately suspended and an evaluator appointed by the secretariat (and paid for by the producer) will visit the producer to evaluate overall conformance.<sup>139</sup>

As explained above in **Monitoring: Reporting**, final buyers must report the volume of 4C compliant coffee purchased each year, “latest one month after ending of the respective coffee year, by latest October 31st”.<sup>140</sup> If a buyer fails to meet this deadline, after 60 days, 4C will “take respective steps to exclude the member from the 4C Association and to retract licenses from 4C

<sup>130</sup> *Verification Regulations* at 36, §8.5.2.

<sup>131</sup> *Verification Regulations* at 36, §8.5.2.

<sup>132</sup> If a producer is found to be engaged in an unacceptable practice during its initial evaluation, no license is issued. If the unacceptable practice is discovered during an addendum evaluation, its license will be immediately suspended and if the practice is found during re-verification, its license will not be renewed.

<sup>133</sup> If the breach is confirmed during the addendum evaluation or re-evaluation, the unit’s license is immediately suspended (or not renewed), a follow-up visit is carried out within 180 days, 4C members are informed, and the suspension is only lifted (or license renewed) if it is confirmed that the unit now passes the standards. *Verification Regulations* at 36-37, §8.5.2.

<sup>134</sup> *Verification Regulations* at 38, §8.5.2.

<sup>135</sup> *Verification Regulations* at 38, §8.5.2.

<sup>136</sup> *Verification Regulations* at 38, §8.5.2.

<sup>137</sup> *Verification Regulations* at 38, §8.5.2.

<sup>138</sup> *Verification Regulations* at 38, §8.5.2.

<sup>139</sup> *Verification Regulations* at 38, §8.5.2.

<sup>140</sup> *Commercial Reporting Procedures* at 12, §5.

Units”.<sup>141</sup> However, there is no equivalent automatic process where the filed reports demonstrate that the buyer failed to purchase an increased volume of — or indeed any — coffee that year.

4C members can be held accountable by sanctions imposed through the mediation process (see **Grievance Mechanism**, above). In technical disputes, in addition to issuing binding advice, the mediation panel will compile and submit a final report to the council.<sup>142</sup> If a party fails to comply with the corrective action plan after 12 months, the council “has the power to” — but is not required to — exclude the party from membership and place the party on an exclusion list published on the 4C website each year.<sup>143</sup> With respect to principle disputes, if the ruling is that a party is in breach of the statutes or its rules of participation, has failed to pay membership fees or is ignoring membership duties, the panel “may” recommend that the party be excluded from 4C.<sup>144</sup> For either type of dispute, the mediation panel has the power to impose an obligation to take some form of corrective action, discontinue a certain behavior, pay damages to another party, pay a fine to 4C or any combination thereof.<sup>145</sup>

4C’s statutes provide some guidance for expulsion from the organization outside the evaluation or mediation procedures. A member may be expelled for violating 4C statutes, failing to comply with the rules of participation”, actively acting against the interests of 4C, neglecting to pay its membership dues or ignoring the duties of membership.<sup>146</sup>

Any member facing expulsion according to the mediation bylaws or 4C statutes will receive two warnings from the council, with a period of at least four weeks between them.<sup>147</sup> A party who remains in breach after the warnings can be expelled by a majority vote of the council.<sup>148</sup> The secretariat, on behalf of the council, will provide a member a written notice of its expulsion.<sup>149</sup> The member may refuse the expulsion in writing within 10 days, in which case two-thirds of the council must confirm the expulsion.<sup>150</sup> If the council cannot reach a decision, the general assembly has the “ultimate power” of expulsion.<sup>151</sup>

A list of licensed producer units is available on the website,<sup>152</sup> but the list does not indicate whether any members are currently subject to any sanction.

#### *Recommendations to targeted actors*

4C does not provide formal recommendations regarding implementation to each 4C member, nor does it provide recommendations for improvement based on the evaluation reports on individual 4C units.<sup>153</sup> 4C does provide training generally (see **Stakeholder Learning and Engagement**, below)

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<sup>141</sup> *Commercial Reporting Procedures* at 12, §5.

<sup>142</sup> *Mediation By-laws* at 8, § 9.1.13.

<sup>143</sup> *Mediation By-laws* at 8, § 9.2.1.

<sup>144</sup> *Mediation By-laws* at 10, § 10.1.12.

<sup>145</sup> *Mediation By-laws* at 6, § 6.3.3 (technical); *Mediation By-laws* at 6, § 6.3.4 (principle).

<sup>146</sup> 4C Association *Statutes of the 4C Association* (2012) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_004\\_Statutes\\_v3.0\\_en.pdf](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_004_Statutes_v3.0_en.pdf)> at 5, §8.

<sup>147</sup> *Mediation By-laws* at 10, § 10.2.1; 4C Association *Statutes of the 4C Association* (2012) at 5, §8(1).

<sup>148</sup> *Mediation By-laws* at 10, § 10.2.2; *Statutes of the 4C Association* at 5, §8(2).

<sup>149</sup> *Mediation By-laws* at 10, § 10.2.3; *Statutes of the 4C Association* at 5, §8(3).

<sup>150</sup> *Mediation By-laws* at 10, § 10.2.4; *Statutes of the 4C Association* at 5, §8(3).

<sup>151</sup> *Mediation By-laws* at 10, § 10.2.5; *Statutes of the 4C Association* at 5, §8(4).

<sup>152</sup> 4C Association “Who we are” <<http://www.4c-coffeeassociation.org/about-us/verified-producer-groups.html>> (accessed January 11, 2013).

<sup>153</sup> Each 4C unit must provide an improvement plan, but 4C does not comment on this plan. If a unit fails an evaluation, presumably the evaluator would identify the critical non-conformity or non-conformities (although this is not certain).



on how to implement its standards. 4C also assists members who wish to “step up” to certification schemes that it identifies as more rigorous.<sup>154</sup>

*Updated information provided by 4C:*<sup>155</sup> 4C staff explained that the provision that excludes sanctions for unacceptable practices was designed to apply only where there has been a violation of the unacceptable practice relating to use of banned pesticides, wherein the producer’s government has derogated the applicable international law.<sup>156</sup> No other exceptions are permitted. 4C staff also noted that it has exercised its discretion not to sanction producers who continue to have red practices after three years only if the producer has more than 30 percent new business partners during re-verification and “actions have been taken to eliminate red practices”.<sup>157</sup>

Although not public, 4C staff confirmed that there have been units of different sizes that have failed initial verification (meaning no license was issued), as well as verified units that have been sanctioned and lost their licenses due to violations of the 10 unacceptable practices or continued red practices. The secretariat provides this information to members via monthly updates and acknowledges that it should and will review the possibility of releasing this information to the public.

Where a non-critical non-conformity has been assessed for the existence of a red practice, the one-year provisional license that is issued is non-renewable.

#### Evaluation:

4C’s accountability mechanisms need improvements to effectively enforce the rules and standards.

The sanction regime for critical non-conformities contains the problematic condition that a producer does not appear to be subject to sanction as long as it can show it has taken some form of action to “address” the non-conformity. The regulations do not place a limit on how long such a producer can be considered compliant if the actions taken to address the issues are not effective.<sup>158</sup> Nor do the regulations provide guidance or qualify the type of actions that are sufficient. While, in practice, 4C appears to have been cautious in exercising its discretion in finding actions acceptable to evade a critical non-conformity, 4C should develop express restrictions to this discretion to ensure it continues to be used judiciously and consistently across all members.

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Although 4C units have 180 days to remedy any problems, it is unclear if the evaluators are required to educate units about potential corrective actions.

<sup>154</sup> 4C Association “Cooperation with other standards” <<http://www.4c-coffeeassociation.org/our-services/cooperation-with-other-standards.html>> (accessed January 11, 2013).

<sup>155</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C’s Executive Director, Melanie Rutten-Suelz, Director Sustainability Innovations, Annette Pense, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C’s comment period.

<sup>156</sup> An example provided by 4C staff is the case of Endosulfan, which was banned globally under Stockholm Convention of Persistent Organic Pollutants in 2011. This meant that all 4C units were banned from using Endosulfan under unacceptable practice number 9, which bans the use of pesticides listed under the Stockholm Convention. However, because certain countries had derogated the inclusion of Endosulfan under the Convention, 4C decided it would allow producers from these particular countries to apply for under a special temporary exemption (a derogation) of up to 12 months. 4C Association *Endosulfan becomes an Unacceptable Practice: Implications and steps for 4C units* <<http://www.4c-coffeeassociation.org/document-library/documents/4c-code-and-verification-documents/position-on-endosulfan.html>> (accessed March 4, 2013).

<sup>157</sup> *Verification Regulations* at 36.

<sup>158</sup> 4C staff noted that the effectiveness and adequacy of a 4C unit’s actions to “address” the non-conformity is measured against the 4C unit’s improvement plan. However, given that the 4C unit has full discretion to design its improvement plan and does not require approval from the 4C secretariat, producers can simply designate an improvement plan that allows them to take minimal action that is not truly effective.

Similarly, to be transparent, 4C should indicate which licensed producers have continued to engage in red practices due to the inclusion of new business partners.

While it is positive that 4C treats the continuance of red practices that persist despite attempts to eliminate them as a non-conformity, the “sanction” in such instances is the issuance of a non-renewable one-year provisional license upon submission of an improvement plan. A member in breach has no incentive to avoid being “sanctioned” because, in practice, there does not appear to be a disadvantage to holding a provisional license as opposed to a regular license, aside from the frequency of evaluation. A member can simply correct the non-conformity while holding the one-year provisional license without suffering any detriment; a member is not deterred from preventing non-conformities. It is also troubling that the sanction for failing to eliminate a red practice is the most lenient of all simple non-conformity sanctions.<sup>159</sup>

Furthermore, whether the result of a critical or non-critical conformity, all of the listed sanctions surround licensing decisions. Mere exclusion from an incentive regime (such as licensing) is in many instances<sup>160</sup> not a sufficient sanction for non-conformity with evaluation requirements; the cost of non-compliance may be too low because producers may still avail themselves of all other 4C membership benefits. In such instances, these members would only be eligible for expulsion from 4C as the result of a complaint filed through the grievance mechanism (see **Grievance Mechanism**) or at the behest of the council acting under the 4C statutes.

By comparison, there seems to be very little oversight and accountability for final buyers surrounding their purchasing obligation. While there is a clearly defined process regarding the procedures where a buyer fails to report coffee purchase amounts at all, that process does not include automatic referral for exclusion or another sanction where no increase has been made. It appears that the council would need to raise this issue of its own initiative, which may be problematic given the power of buyers in the council (see **Decision-making Functions and Balance of Power**, below). Similarly, there appears to be no accountability or disincentive for buying only marginally more than previous years,<sup>161</sup> perhaps an increase of just one coffee bag. To the contrary, 4C expressly states that “the only clear situation [where final buyers are not fulfilling their commitment to purchase increasing amounts of 4C compliant coffee] is where no purchases are made at all, or over time do not show any increase from the starting point”.<sup>162</sup>

Although 4C has a clear process for sanctions related to the evaluation process, equivalent systems do not exist for flagrant violations of other 4C rules and standards. It is problematic that the process for expelling a member as provided by the 4C statutes, as well as the mediation bylaws, is so arduous that it may jeopardize 4C’s ability to hold accountable those members who are in clear violation of standards and incentive compliance. The requirement of a two-thirds vote of the council to expel a member who does not consent to the expulsion may be politically difficult to achieve, particularly if members of the council representing the same chamber have an interest in retaining the member in question. It also effectively permits a re-hearing of the grievance, without appropriate guidance for 4C to adjudicate issues.

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<sup>159</sup> Issuance of a provisional license, compared with refusal to issue license or license suspension.

<sup>160</sup> Sufficiency of exclusion from incentive programs may depend on the non-conformity at hand. For example, license suspension may be appropriate for a reporting violation, but not for continuing to engage in one or more unacceptable practices.

<sup>161</sup> 4C expressly states that “the only clear situation [where final buyers are not fulfilling their commitment to purchase increasing amount of 4C Compliant Coffee] is where no purchases are made at all, or over time do not show any increase from the starting point.” *Mediation By-laws* at 15, §6.6.

<sup>162</sup> *Mediation By-laws* at 15, §6.6.

Even though sanctions have been implemented, information regarding these sanctions is only circulated internally, and is not publicly available. It is extremely disappointing that 4C claims to make public the list of licensed units and their evaluation status, but there is also no information available regarding producers whose licenses have been suspended, or each producer's compliance with specific standards or copies of their evaluations reports; see **4C's Transparency** below. As such, producers are not publicly differentiated according to their performance and improvements in implementing 4C standards. Additionally, the exclusion list described as a sanction for non-compliance for technical disputes does not seem to be available online as provided in the mediation bylaws.

#### Recommendations:

- To meet minimum standards, 4C should:
  - Impose substantive guidance and time frames for the “actions” sufficient to avoid a determination of critical non-conformity.
  - Increase the accountability mechanisms available and the sanctions that can be imposed.
  - Publish a list of members who are sanctioned and/or whose licenses have been suspended.
  - Review the expulsion procedures to develop a more autonomous system. In particular, both the ability for members to refuse their expulsion and the requirement that the council support decisions to expel by two-thirds should be removed.
  - Define sanctions for final buyers who fail to buy increasing amounts of 4C compliant coffee that follow a clear autonomous system.
  - Conduct an evaluation to determine the effectiveness of accountability mechanism (see **4C's Capacity to Evolve Over Time**).
- To improve its accountability of members, 4C should consider instituting a formal recommendation system.
- Even if the above recommendations are adopted, to be effective as a human rights initiative, 4C's accountability mechanism should be based upon compliance with adequate human rights standards. Therefore 4C should improve the sufficiency of its standards by ensuring: that they are consistent with international human rights law; that they appropriately differentiate between different producer groups and affected communities; and that they do not exacerbate poverty for particular producers and therefore frustrate the ability to fulfill human rights as explained in **4C's Mandate and Relationship to Human Rights**, above.

#### **Stakeholder Learning and Engagement**

4C facilitates its members' active engagement on sustainability issues and the sharing of learning through “organizing forums, conferences, or working groups, and developing training tools or pilot projects”.<sup>163</sup> These learning programs include 4C's annual sustainability forums, held since 2009, which bring together representatives from “producer organizations, trade and industry, NGOs, trade unions, and government and sustainability initiatives”.<sup>164</sup> Upon member request, 4C also organizes working groups, such as the current group on pesticides developed with member organization Pesticide Action Network UK.<sup>165</sup>

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<sup>163</sup> 4C Association “Sustainability Platform” <<http://www.4c-coffeeassociation.org/our-services/sustainability-platform.html>> (accessed January 11, 2013).

<sup>164</sup> “Sustainability Platform”.

<sup>165</sup> The group “collects information and provides coffee producers with tools and guidance on how to tackle pesticide use challenges efficiently”: “Sustainability Platform”.

4C members “may” contribute to capacity building activities, “including field and farm education and training programs”, that are designed “to benefit in particular small holders and their organizations”.<sup>166</sup> It is apparent from 4C’s website that some of the organization’s large trade and industry members have provided substantial financial contributions to such programs. For example, 4C’s Indonesian Sustainable Coffee Project, which provided trainings to smallholders in the region, was funded by Kraft and largely implemented by ECOM Agroindustrials.<sup>167</sup> Over 300 smallholders took part in the program, which offered trainings regarding soil conservation, shade management, environmental protection and the health effects of pesticides.<sup>168</sup> Similarly, 4C’s 2012 Africa Sustainability Forum, which brought together more than 130 participants “representing the main stakeholders in the African coffee sector” was sponsored in part by Nestle, Tchibo and Kraft.<sup>169</sup> 4C has also supported one-off research projects, such as research and development of an ergonomic coffee bag designed to reduce injuries for workers harvesting coffee.<sup>170</sup>

The secretariat collaborated with members and partner organizations to create an online tool library, which includes “training documents on good agricultural and management practices as well as on social, ecological and economic sustainability”.<sup>171</sup> This tool library is available to all members, though a 4C unit manager interviewed by 4C in 2012 stated that “most 4C documents are only available in English or French,” and asked that 4C provide more documents in local languages.<sup>172</sup>

What 4C’s shift to a demand-driven model implies for its learning programs is not entirely clear. While the secretariat will remain responsible for organizing forums, conferences, working groups and training materials,<sup>173</sup> it is unclear if these will only be available on a for-fee basis.<sup>174</sup>

*Updated information provided by 4C:*<sup>175</sup> 4C staff explained that most documents in the tool library are actually available in English, Spanish and Portuguese. 4C staff noted that they are making a great effort to translate all of core documents into more languages but are limited by their own resource constraints.

Under the new demand-driven model, regional offices will no longer provide training on implementation of standards (e.g., training on the application of chemical standards) to producers

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<sup>166</sup> *Rules of Participation* at 7, §5.1.

<sup>167</sup> “Sustainability Platform”.

<sup>168</sup> 4C Association “Sustainable Coffee Project in Indonesia” <<http://www.4c-coffeeassociation.org/4c-voices/sustainable-coffee-project-indonesia.html>> (accessed January 11, 2013).

<sup>169</sup> 4C Association “2<sup>nd</sup> African Coffee Sustainability Forum in Addis Ababa” <<http://www.4c-coffeeassociation.org/news/current-news/article/2nd-african-coffee-sustainability-forum-in-addis-ababa.html>> (accessed January 11, 2013).

<sup>170</sup> 4C Association “Redesigning Coffee Harvesting Bags to Improve Workers’ Health” <<http://www.4c-coffeeassociation.org/4c-voices/redesigning-coffee-harvesting-bags-to-improve-workers-health.html>> (accessed January 11, 2013).

<sup>171</sup> 4C Association *Annual Report 2010* (2011) <[http://www.4c-coffeeassociation.org/uploads/media/4C\\_AnnualReport2010\\_web\\_en.pdf](http://www.4c-coffeeassociation.org/uploads/media/4C_AnnualReport2010_web_en.pdf)> (accessed January 11, 2013).

<sup>172</sup> 4C Association “Rwacof 4C Unit: Interview with Jean Ndushabandi” <<http://www.4c-coffeeassociation.org/4c-voices/rwacof-4c-unit.html?PHPSESSID=9nscqtka639s6k70ebol0o2m6>> (accessed January 11, 2013).

<sup>173</sup> 4C Association *Annual Report 2011* (2012) <[http://www.4c-coffeeassociation.org/uploads/media/4C\\_AR2011\\_EN.pdf](http://www.4c-coffeeassociation.org/uploads/media/4C_AR2011_EN.pdf)> (accessed January 11, 2013).

<sup>174</sup> “4C Kicks-off”.

<sup>175</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C’s Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C’s comment period.

without an additional fee.<sup>176</sup> However, the tool library will still be available to members at no extra charge.<sup>177</sup> 4C staff also noted that 4C is building up an implementers network to connect producers with various NGOs that provide technical implementation assistance. Regional offices will also continue to provide assistance on code interpretation free of charge.<sup>178</sup>

#### Evaluation:

4C exhibits good practice by providing multiple programs to facilitate learning and engagement among its stakeholders. Its focus on providing skills and knowledge to benefit smallholders demonstrates an awareness of the needs of ground-level stakeholders. It is hoped that under 4C's demand-driven approach, costs will not prohibit smallholders from participating in learning programs that would be of substantial benefit to them. It is also unclear whether other affected communities, aside from small-scale farmers, are included in 4C's learning programs.

While the tool library is an innovative approach to sharing information, its restriction to those with reliable Internet access and relevant language skills may limit its impact. As discussed in **Programs and Outreach**, below, 4C should focus on disseminating its materials to affected communities whose residents may be illiterate or lack Internet access. While the sustainability forums appear to be a space where shared learning occurs, it is unclear whether trade and industry are simply financial supporters, or equal participants. 4C should ensure that learning programs include all participants. For example, civil society and industry would both benefit from better understanding the practices and needs of small-scale farmers.

The approach of the pesticide working group integrating its learning outputs into 4C's standards and policies, by elaborating on 4C's prohibited pesticide lists, is good practice.<sup>179</sup> To maximize the benefits of numerous learning programs, 4C should consider mandating that learning outcomes be referred to the council or standards review body for inclusion in 4C's document.

#### Recommendations:

- To be effective as a human rights initiative, 4C should create a formal process to incorporate the guidance material into other areas of implementation.
- To meet minimum standards, 4C should ensure that its learning materials, such as its library materials, are translated into the primary languages of coffee-producing regions.
- To improve its learning program, 4C should ensure that all stakeholders, including civil society and trade and industry, benefit from shared learning programs. 4C should take care to include local communities affected by its activities (beyond coffee farmers themselves) in some of its learning programs, in order to maximize its understanding of impacts, experiences and needs from their perspective.
- To be effective as a human rights initiative, 4C should differentiate between and within affected communities and producer groups in its learning programs, and ensure all of these stakeholder groups participate. For example, 4C should specifically differentiate between small-scale and large-scale producers and provide tailored learning programs based upon their specific needs and human rights concerns (see **The Level of Community Involvement in 4C**).

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<sup>176</sup> See also 4C Association "Q&As: New 4C Business Model" received on 8 Feb. 2013 as part of 4C's comment period.

<sup>177</sup> See also "Q&As: New 4C Business Model".

<sup>178</sup> See also "Q&As: New 4C Business Model".

<sup>179</sup> 4C Association *Pesticide Lists* (2011) <[http://www.4c-coffeeassociation.org/uploads/media/4CDoc\\_048\\_Pesticide\\_Lists\\_PiC-POP\\_RedandYellow\\_v1.1\\_en.pdf?PHPSESSID=d1ucusvrnvgjsk5n3ipekf51i7](http://www.4c-coffeeassociation.org/uploads/media/4CDoc_048_Pesticide_Lists_PiC-POP_RedandYellow_v1.1_en.pdf?PHPSESSID=d1ucusvrnvgjsk5n3ipekf51i7)> (accessed January 11, 2013).

## Systems Development and Operationalization

4C's progressively realizable standards are largely process-based, and several of them require members to develop and adhere to new systems. For example, producers are required to implement "integrated pest management" systems and water management plans, to institute "policy and procedures for equal rights ... including grievance mechanisms"<sup>180</sup> and to systematically assess coffee quality from the "farm to the Managing entity level".<sup>181</sup> In addition, each unit is required to create and implement a system to manage compliance with 4C's standards.<sup>182</sup> This system must gather performance data and include plans for further implementation and improvement of 4C's standards.<sup>183</sup> In addition, to provide some assurance regarding the chain of supply of 4C coffee, units must ensure that contracts for the sale of this coffee refer to the license number that is assigned to that unit, and the contract must also state the period for which it is licensed.<sup>184</sup>

To help facilitate its members' systems development, 4C provides members with a tool library, discussed above in **Stakeholder Learning and Engagement**.

### Evaluation:

4C requires producers to develop numerous systems and processes. If implemented well, these have the potential to greatly improve outcomes for producers. For this potential to be realized, 4C needs to ensure that the systems developed are robust. Currently, it has provided very few minimum standards or substantive details to guide the development of those systems. For example, its discrimination standard should specify what an acceptable grievance mechanism would look like, ideally drawing on the effectiveness criteria for non-judicial grievance mechanisms outlined in the *UN Guiding Principles on Business and Human Rights*.<sup>185</sup> In developing these guidelines and minimum standards, 4C should establish a system that requires that the outputs of its learning programs and tool library are included, as explained in **Stakeholder Learning and Engagement**, above.

### Recommendations:

- To improve its systems development and operationalization, 4C should ensure that its standards and systems development and operationalization include specific minimum requirements regarding the quality of the processes that must be followed. This should inform the improvement of 4C's standards that is discussed in **4C's Standards**.
- To be effective as a human rights initiative, 4C should differentiate among different producer groups, and ensure that the systems development and operationalization components are appropriately tailored to their various capacities and demands.

## Programs and Outreach

4C provides regular news releases on 4C internal developments, as well as activities of its members and other relevant industry stakeholders. The website is regularly updated, including changes to reflect the most current number of 4C members, and 4C posts up to three or four "news" posts a

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<sup>180</sup> *Code of Conduct* at 14.

<sup>181</sup> *Code of Conduct* at 22.

<sup>182</sup> Producers are required to have an Integrated Management System (IMS). For more information on IMS, see FN 87.

<sup>183</sup> *Verification Regulations* at 20, §7.11,

<sup>184</sup> Thus, each shipment must include a copy of the license as part of the shipment documentation. *Verification Regulations* at 18, §7.9.

<sup>185</sup> United Nations Office of the High Commissioner for Human Rights *Guiding Principles on Business and Human Rights*, nr. 31. Accessed 11 January, 2013. These include requirements such as accessibility, predictability, and transparency.

month. 4C's frequent and regular posts and public response to external feedback reflect the MSI's commitment to public engagement.

Beyond its learning programs, 4C does not appear to have programs to inform non-member affected communities about 4C's standards, opportunities for participation and how or where to report alleged violations of standards. It is also unclear whether 4C makes efforts to reach out to affected communities that are part of member entities but who may not be aware of the protections and recourses offered to them by 4C, for example small farmers who make up member cooperatives and employees of member plantations. Nor is it clear whether or how 4C encourages producers to become members.

*Updated information provided by 4C:*<sup>186</sup> 4C staff members acknowledged that they face outreach challenges. While regional offices do not perform direct outreach, the 4C staff stated that they have collaborated with local NGOs in Vietnam and Brazil to perform local outreach. 4C staff members hope to increase 4C's outreach to producers with the upcoming re-opening of the Central American office and the establishment of a new regional office in Indonesia.

#### Evaluation:

Outreach efforts are crucial to ensuring that those community members who work within the entities that 4C regulates understand their obligations and protections, including how to file grievances if standards are not met. Given the accessibility hurdles that these communities face in finding out about 4C, which range from language barriers to financial costs, 4C must make efforts to reach these populations, taking into account the differing nature of coffee producers. It may be helpful for 4C to target local civil society organizations operating in coffee-production regions, as well as small-scale coffee farmers themselves. In addition, 4C could require that its members take steps to conduct outreach where possible, as discussed further in **The Level of Community Involvement in 4C**, below.

#### Recommendations:

- To meet minimum standards, 4C should implement accessible outreach programs to inform local actors (both actors who belong to member entities and non-members) about the initiative. This should include information about 4C standards, opportunities for participation and how and where to report alleged violations of standards. Such programs should be specifically targeted to local groups and be available in local languages.
- To be effective as a human rights initiative, 4C should differentiate between and within affected communities and producer groups in its outreach programs. For example, 4C should specifically differentiate between outreach activities for workers in large-scale producers and its targeting of small-scale producers (see **The Level of Community Involvement in 4C**).

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<sup>186</sup> Information in this section provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Rutten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

## 4C's INTERNAL GOVERNANCE PROCEDURES

### **Stakeholder Involvement**<sup>187</sup>

4C has more than 255 members, organized into three chambers: coffee producers;<sup>188</sup> trade and industry;<sup>189</sup> and civil society.<sup>190</sup> At the date of publication, there are 66 producer members, more than 100 trade and industry members and 13 civil society members. Four of the civil society chamber members are other standard-setting organizations.<sup>191</sup> There do not appear to be any trade unions, human rights organizations or labor organizations within the civil society chamber. 4C also allows associate members, who are “not automatically associated to any chamber, but may affiliate themselves with one”.<sup>192</sup> 4C's associate members are given observer status in the general assembly.

4C members are based in Asia, Africa, Europe, North America and Latin America. Each chamber “shall strive to achieve a gender balance in their representation at the Council”.<sup>193</sup>

In order to join 4C, eligible entities must agree to adopt 4C's standards (see 4C's Standards, above). Prospective members of 4C must also acknowledge and accept 4C policies and statutes.<sup>194</sup> Membership is continuous and annual renewal is automatic, unless the member is excluded following failure to pay fees,<sup>195</sup> bankruptcy or insolvency,<sup>196</sup> failure to comply with the rules of participation, taking actions against the interests of 4C or failure to execute duties as a 4C member.<sup>197</sup>

*Updated information provided by 4C:* 4C staff noted that they are open to having a trade union and/or a human rights organization join as members, but have not received requests.<sup>198</sup>

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<sup>187</sup> Unless otherwise indicated, the information in this section is from 4C Association “Our Members” <<http://www.4c-coffeeassociation.org/about-us/our-members.html>> (accessed February 20, 2013).

<sup>188</sup> This includes “[m]embers of the coffee supply chain, who produce, process and sell green coffee,” such as “[p]roducers, producer-exporters, producer organisation, mills, estates etc.”

<sup>189</sup> Trade and industry members include intermediary buyers, agents and brokers and final buyers (i.e. roasters, private label companies, coffee bar chains, etc).

<sup>190</sup> The civil society chamber is open to “not-for-profit organisations working on social, environmental, labour, gender, child and human rights issues in the coffee sector” that are “mission-driven and pursue a general public interest of social or ecological, AND are not commercially engaged in the coffee supply chain and do not represent the interests of any commercial entities in the coffee supply, AND are active in advocacy and/or the implementation/financing of sustainability programs/projects”: 4C Association *Membership Registration, Categories, Fees and Payment Compliance Policy of the 4C Association* (2011) at 3-4, §3; 4C Association *By-laws for the General Assembly of the 4C Association* (old), 3, §1.3.

<sup>191</sup> Fairtrade International Organization (FLO), ONG Aidons les Deplaces, UTZ Certified and Rainforest Alliance.

<sup>192</sup> Associate members include associations and institutions, individuals and other chain members, such as warehouses, banks and coffee equipment suppliers.

<sup>193</sup> *By-laws of the General Assembly* at 5, §4.1.6.

<sup>194</sup> *Membership Registration, Categories, Fees and Payment Compliance Policy of the 4C Association*. The Council may decide to refuse a membership application if the secretariat considers the request to be “inconsistent with the Association’s sustainability concept or if it decides that the reputation of the Association may be put at risk by accepting the applicant.”

<sup>195</sup> *Membership Registration, Categories, Fees and Payment Compliance Policy of the 4C Association* at 7-8, §7; 4C Association *Statutes of the 4C Association* (2012) at 6, §8(1).

<sup>196</sup> *Statutes* at 6, §7(1).

<sup>197</sup> *Statutes* at 6, §8(1).

<sup>198</sup> Information provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.



### Evaluation:

4C members' geographic diversity is commendable, as is its encouragement of gender-balanced representation. However, it is unclear to what extent affected communities are represented within the various chambers of 4C. It is concerning that no distinction is made between different producers, such as small-scale farmers and large plantations. Conflation of these different types of producers may lead to large producers overshadowing the smaller, more vulnerable producers. One possible way to address this issue would be to create separate chambers or sub-chambers within the producer chamber. It is also problematic that some affected communities, such as unions, workers and communities living in coffee-growing regions, are not represented in 4C at all.

The civil society chamber lacks the diversity of organizations necessary to best advocate for affected communities. The absence of human rights and labor organizations, particularly those that operate in coffee-producing regions, is puzzling given that labor and human rights issues were critical to 4C's development and are central to its standards (see **4C's Mandate and Relationship to Human Rights**). In addition, while 4C's inclusion of other standard-setting organizations in its membership is likely to bring the benefits of harmonization and shared knowledge, these organizations should not be voting members of the civil society chamber. While their overall goals may be related to improving outcomes for affected communities, these organizations may at times be acting in tension with 4C or be pursuing agendas driven by industry or other constituent groups, creating the potential for conflicts of interest. The benefits of involving standard-setting organizations could be retained by involving them as observers, rather than as voting members of 4C, or by placing them in a new chamber.

### Recommendations:

- In order to meet minimum standards, 4C should:
  - Ensure that all affected community groups are included in 4C, particularly small-scale farmers, workers and any vulnerable groups as identified by a rights analysis discussed in **The Level of Community Involvement in 4C**, below. This may include taking special care, for example, to include women and representatives from other marginalized groups.
  - Conduct outreach to expand its civil society chamber to include labor and human rights organizations, particularly those that operate on national and/or local levels in coffee-producing regions.
  - Redefine the role of other standard-setting organizations to distinguish them from civil society organizations. This could be done, for example, by limiting them to observer status or creating a new chamber or sub-chamber for standard-setting organizations.
  - Develop a conflict of interest provision that regulates the provision of payments and contributions among its members, particularly from trade, industry and producers to civil society.

### **Decision-making Functions and Balance of Power**

4C comprises several decision-making bodies, including a general assembly, council, technical committee, mediation board and secretariat. The membership of the technical committee and mediation board are unknown. All three chambers are represented in each of the 4C decision-

making bodies.<sup>199</sup> With the exception of the general assembly, each member of the decision-making body has an individual voting right.<sup>200</sup>

#### *General Assembly*<sup>201</sup>

The 4C general assembly is “the supreme governing body of the association”<sup>202</sup> and “has the ultimate decision power”.<sup>203</sup> It is responsible for electing the council and modifying council bylaws, approving and changing the 4C statutes and conducting referendums. Referendums are put to the assembly if there is support from two-thirds of the proposing body (e.g. chamber).<sup>204</sup>

Each of the chambers represents a third of the total votes within the assembly.<sup>205</sup> Members’ votes are weighted, with the weight of each member’s vote depending on the internal procedures of the respective chamber. The assembly aims to make decisions by consensus, provided at least 20 percent of each chamber votes. Where consensus is not possible, a supermajority of each chamber (two-thirds of total members and more than 50 percent of each chamber) is sought. If this cannot be reached, a simple majority in each chamber in a second voting is sufficient. Finally, as a last resort, a majority of 50 percent plus one of all members in the assembly can make the decision.

#### *Council*<sup>206</sup>

The council is 4C’s main decision-making body. Its responsibilities include approving the MSI’s annual budget and its long-term strategy, as well as the bylaws for the other decision-making bodies. The council is made of 17 members, with seven representatives elected from the producer chamber, five representatives from trade and industry and five representatives from the civil society. The producer members must each come from a different designated coffee-growing region, and the civil society members must each represent one of five designated focal areas (environment, human rights, social issues, labor rights and economic empowerment).<sup>207</sup> Council representatives serve three-year terms, and “should” only serve a maximum of two consecutive terms.<sup>208</sup> Council decisions may be made if at least 50 percent of council members (including a minimum of 50 percent from each chamber) are present.

All council decisions are made following the same procedure as the general assembly: starting by aiming for consensus, but ultimately allowing simple majority. If a decision still cannot be made even by simple majority, a two-third majority of the council can refer the matter to the general assembly. The council elects an executive board, with each chamber electing one representative; these three representatives serve as chairperson, vice chairperson and treasurer.

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<sup>199</sup> *Membership Registration, Categories, Fees and Payment Compliance Policy of the 4C Association* at 3-4, §3.

<sup>200</sup> *Statutes* at 5, §6(1).

<sup>201</sup> Unless otherwise stated, the information in this section is from *By-laws of the General Assembly*.

<sup>202</sup> Swiss Civil Code, Art. 64(1); see *Statutes*, 4, §4(1). The General Assembly ordinarily meets every 24 to 36 months, although extraordinary meetings may be called by a weighted 51% of the Assembly (2 chambers) or half plus one member of the Council. *By-laws of the General Assembly* at 5, §4.1.2

<sup>203</sup> *By-laws of the General Assembly* at 7, §4.3.1.

<sup>204</sup> In the revised by-laws, referendums may now be initiated by the support of two chambers or 30% of the votes in the General Assembly. 4C Association, *By-laws of the General Assembly* at 7, §4.3.1.

<sup>205</sup> *Statutes* at 5, §6(1)

<sup>206</sup> Unless otherwise stated, the information in this section is from 4C Association, *By-laws of the Council of the 4C Association* (old).

<sup>207</sup> It is also recommended that the members from trade and industry represent the chamber’s five sub-groups (exporters, green coffee trade, roasting industry, soluble manufacturer, retail) although this is not required.

<sup>208</sup> *By-laws of the Council of the 4C Association* (old) at 2, §1.3.

### *Technical Committee*<sup>209</sup>

Nine representatives (three from each chamber) are elected by the council to form the technical committee, which may also include additional experts from inside or outside 4C. The committee provides technical guidance to the council regarding the standards, including recommending revisions. Committee representatives serve three-year renewable terms. The chairperson of the committee is recommended by the council, approved by the executive board and cannot serve more than two consecutive terms. Members of the committee make decisions by consensus, if not by supermajority, otherwise by simple majority. It is unclear whether these processes require majorities within the chambers, or across the committee.

*Material update:* At the general assembly meeting in October 2012, 4C reconfigured its internal governance structure, and released updated 2012 versions of the statutes, the assembly bylaws and council bylaws. There have also been material changes to the council's bylaws.

Under the new council bylaws, the chamber-based proportional voting has been abandoned and, should consensus be impossible, a two-thirds vote of the total council is sufficient. The council is now made up of 10 members, with four representatives elected from the producer chamber, three representatives from trade and industry and three representatives from civil society.<sup>210</sup> At the first meeting of a new council, members may choose to “expand its membership by up to two individual members, irrespective of their chamber affiliation”.<sup>211</sup> It appears this has happened for the current council, as an additional trade and industry representative has been appointed.<sup>212</sup> Previous provisions requiring or encouraging these members to represent different coffee-growing regions, social and economic concerns and trade and industry sectors have been removed. Instead, each chamber is simply encouraged “to seek a balanced representation of different interest groups and regions.”<sup>213</sup> There is no longer a limit on the number of terms that representatives may serve.

The executive board has been abolished and the council and secretariat have taken over most of the board's former responsibilities.<sup>214</sup>

*Updated information provided by 4C:*<sup>215</sup> At the 2012 general assembly meeting, it was decided that the council, mediation board and technical committee would conduct their business in English.

### Evaluation:

4C follows good practice by sharing the burden of the decision-making process over numerous bodies, and delegating its administrative functions to paid staff. The chamber-based proportional voting structure followed by the general assembly ensures fair and proportionate representation among 4C's various stakeholders. Unfortunately, the final provision that allows ultimate recourse to simple majority voting undermines these efforts: Currently, more than 50 percent of 4C's

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<sup>209</sup> Unless otherwise stated, the information in this section is from 4C Association, *By-laws of the Technical Committee of the 4C Association*.

<sup>210</sup> 4C Association, *By-laws for the Council of the 4C Association* at 2-4, §1.3 and 3.2.

<sup>211</sup> But they cannot both be from the same chamber.

<sup>212</sup> 4C Association “Council Members” <<http://www.4c-coffeeassociation.org/about-us/our-governance/council-members.html>> (accessed January 11, 2013).

<sup>213</sup> *By-laws for the Council* at 2, § 1.4.

<sup>214</sup> *Statutes* at 3, §4(3).

<sup>215</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

membership is made of trade and industry, giving them the power to impose decisions against the will of civil society and producers. Given the conflicting interests that may exist between producers and traders, and that producers may include the very communities that 4C was established to benefit, this is very problematic.

It is disappointing that this chamber-based proportional voting has been further eroded in the council, 4C's main decision-making body. This change to immediately seeking a supermajority of the total council membership in the absence of consensus is particularly disadvantageous to civil society, which now has one less vote than the other chambers. Formerly, representation of each chamber in the decision-making process was ensured despite the unequal number of representatives in each chamber because votes were counted per chamber. This regression, coupled with the removal of geographic and expertise diversity previously expected of the producer and civil society chambers, may skew decision-making in favor to those with more power.

It is worrying that, except for the general assembly, non-English speakers are not able to participate in the 4C decision-making bodies. While working in multiple languages is a costly and time-intensive process, adopting an English-only policy may exclude producers and affected communities from directly participating in these decision-making bodies. This is especially of concern since there are no coffee-producing countries wherein English is the native language.

As explained in **Stakeholder Involvement**, above, it is unclear whether affected communities are adequately represented in decision-making. It is possible that the voices of small-scale farmers are drowned out in the producer chamber if larger producers outnumber them because there is no such differentiation. One possible way to address this would be to create chambers specifically for these affected communities, which could be open to groups such as workers and/or the smaller cooperatives of smallholders that 4C was designed to benefit.

Some critical information is also unknown, and should be disclosed as and when it becomes available. This includes: (a) chamber's internal procedures with regard to voting at the general assembly and electing council representatives,<sup>216</sup> (b) the membership of 4C's technical committee and mediation board and (c) how many and which associate members have been accorded voting rights via affiliation with a member chamber.<sup>217</sup>

#### Recommendations:

- In order to meet minimum standards, 4C should:
  - Prohibit decision-making by absolute majority in the council and general assembly. For example, 4C could instead require that there must be majority support of each chamber.
  - Institute internal governance structures that guarantee representation of the different producer and affected community groups. For example, by creating separate chambers for workers, small-scale farmers and large-scale producers. 4C should take special care to encourage vulnerable populations within these groups to join these chambers.
  - Make publicly available the list of members of all remaining 4C decision-making bodies; each chamber's internal procedures on the weighting of member votes and the election of representatives to the various decision-making bodies; and how many and which

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<sup>216</sup> A weighting system may clearly skew the power held by affected communities while the election procedures and membership outcomes would reveal whether affected communities are adequately represented in the management and leadership of 4C.

<sup>217</sup> The number of associate members given the right to vote would shift the balance of power, and the lack of information makes it unclear whether this is a positive or negative shift.

associate members have been accorded voting rights via affiliation with a member chamber.

- In order to improve its decision-making and balance of power, 4C should:
  - Re-establish the stipulations concerning a diversity of geographical regions, social, economic and trade interests that council members should represent, and extend this to other decision-making bodies.
  - Consider feasible alternatives to an English-only policy that will minimize the exclusion of coffee producers.

#### **4C's Funding, Resources and Internal Accountability**<sup>218</sup>

Members are required to pay annual fees. For members of the trade and industry and the producer chambers, the fee is based on the average of the member's prior three years' annual volume of all green coffee (irrespective of whether it is 4C compliant) that was produced, traded or purchased.<sup>219</sup> Members are assigned a sliding-scale fee relative to volume, which ranges from as little as €5-€25 for the smallest producers or industry members, to as much as €50,400-€160,000 for the largest producers or industry members. Producers and agents with an average of fewer than 100 bags of coffee are not required to pay any fees. In addition, for the first two years of membership, a reduced fee is available for trade and industry members who are based in a producing country.

The fee for civil society and associate members is based on annual turnover. Those registered in a coffee-producing country and not part of a multinational organization are also offered a reduced flat-rate fee, which is €100 for civil society. Individuals who join 4C pay a flat-rate fee of €50.

4C issues annual reports that include a financial report (including balance statement, profit and loss account and budget statement) and expenditures broken down by general categories. In addition to membership fees, 4C received both in-kind support contributions and cash support contributions in 2010.<sup>220</sup> 4C permits members to provide voluntary financial contributions beyond these fees.<sup>221</sup> As of 2011, 4C no longer accepts membership contributions made in-kind.<sup>222</sup> In 2010, more than a third of 4C's budget was spent on implementation costs, largely attributable to 4C paying for monitoring evaluations, which was halted in 2011. That year, and according to the budget for 2012, implementation spending appears to have dropped to less than a third of total expenditure. 4C's 2011 income was approximately €2 million (expenditure was about €1,85 million), and its 2012 budget was €1.5 million.<sup>223</sup>

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<sup>218</sup> Unless otherwise stated, the information in this section is from *Membership Registration, Categories, Fees and Payment Compliance Policy of the 4C Association*.

<sup>219</sup> New members must provide evidence of the running average of the their past three years' traded volume reported via annual reports, audit reports or other signed third party statements. Trade and industry members must list and total traded volumes of all subsidiaries included in its membership. All members must update the running average in October of each year via the 4C online platform.

<sup>220</sup> *Annual Report 2010* at 27.

<sup>221</sup> *Statutes (old)* at 4, §3(5).

<sup>222</sup> *Annual Report 2010* at 26.

<sup>223</sup> *Annual Report 2011* at 24, 26.

*Updated information provided by 4C:*<sup>224</sup> Although 4C no longer pays for verifications under the new demand-driven model, 4C staff acknowledged that they are now spending money on verification-related activities such as auditing evaluators and hiring additional staff for the verification department to help cope with the larger number of members.

#### Evaluation:

4C's graduated scale of membership fees is an innovative approach to proportioning membership fees. This scale, coupled with features such as the reductions for trade and industry members in producing countries, helps prevent barriers to affected community membership and involvement. It also demonstrates recognition of the need for the MSI to be financially feasible. The approach should serve as a model for other MSIs. To innovate further, 4C could consider permitting those at the low end of the fee scale to apply for a fee waiver where that member can show financial hardship. Similarly, the decision to no longer accept in-kind donations in lieu of fees may make it more difficult for small and financially struggling producers to participate in 4C. This decision should be reversed to allow smallholders to pay membership fees through quantifiable in-kind donations.

In terms of 4C's financial integrity, the lack of transparency with regard to specific funding sources prevents a detailed analysis of potential conflicts of interest and unfavorable power imbalances. To overcome this, 4C should publish individual contributions of members and non-members in its financial reports.

4C's decision to no longer provide evaluations for producers has meant that expenditure has significantly dropped; it is unclear whether new expenditure on evaluation-related activities such as auditing evaluators and hiring additional staff equals or exceeds the prior amount being spent. In any case, 4C operates a large budget of approximately €1,5 million, which is almost entirely spent on administrative costs. This is a very expensive operation, and as 4C did not reduce its fees for producers to account for reduced services it provides, there are some doubts as to 4C's efficiency and whether it is an economically viable approach to addressing the needs of smallholder farmers and other struggling producers.

#### Recommendations:

- In order to improve its funding and resource accountability, 4C should:
  - Introduce membership fee waivers available to small members unable to pay dues.
  - Make public more detailed financial information, including voluntary financial contributions made by members in addition to membership fees, and a line-by-line breakdown of expenditure.
  - Continue to accept in-kind donations.
- To be effective as a human rights initiative, 4C should ensure that the costs of evaluation do not bar participation by small producers, for example by offering tailored fee waivers or subsidies to small producers (see **Monitoring of Compliance with Standards**, above).

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<sup>224</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

## Dispute Resolution

The mediation board also deals with alleged breaches of internal governance. For example, the board is empowered to hear disputes regarding the interpretation of or failure to respect the bylaws of the various decision-making bodies. See **Grievance Mechanism**, above.

### Evaluation:

The evaluation of the mediation board in **Grievance Mechanism**, above, applies here. In particular, it is worth reiterating that under the bylaws of the mediation board, "[t]he Secretariat will publish an abstract of the Binding Advice at the website of the Association."<sup>225</sup> However no such information is available. It is unclear if this is because the secretariat has failed to publish the abstract, or because no cases have been submitted for mediation.

*Updated information provided by 4C:* According to 4C, no disputes have been filed thus far.<sup>226</sup>

### Recommendations:

- In addition to the recommendations set out in **Grievance Mechanism**, above, 4C should publicly state that no disputes have been filed and, when appropriate, make public the number of disputes filed, the number of disputes resolved and the decisions of the mediation board in relation to the internal governance of 4C.

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<sup>225</sup> *By-laws of the Mediation Board* at 9, §9.1.12.

<sup>226</sup> Information in this section was provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Rutten-Suelz, Director Sustainability Innovations, Annette Pensele, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

## 4C'S CAPACITY TO EVOLVE OVER TIME

4C mandates reviews standards, standard-setting procedure and monitoring. 4C has also conducted ad hoc reviews of 4C's internal governance, as well as an impact assessment of 4C on small-scale producers.

### *Standards and standard-setting procedure*<sup>227</sup>

Standards are subject to review every five years. All records of the development and revision of 4C standards are kept for at least five years. 4C is required to keep a list of these documents on its website. Documents on the list are required to be shared upon request.

The most recent revision of the standards, in 2009, was led by the technical committee and included the participation of 4C members, evaluators and trainers.<sup>228</sup> The process begins with a “need and risk assessment” as to which standards should be reviewed, and mapping of the stakeholders who would be affected by the revisions, which eventually leads to a public consultation.<sup>229</sup> Upon request, and “under certain circumstances”, 4C may cover the cost of travel and accommodation for member representatives to participate.<sup>230</sup> 4C will also seek “means to support the participation of interest groups affected by the standard” to participate in the public consultation.<sup>231</sup> Decisions on the content of the standards and a summary of the process in arriving to the decision will be made public. These decisions will then be referred to the council for approval. All approved revised versions of the standards will be published 15 days after approval, with translations published within 30 days thereafter.

The standard-setting procedure itself is subject to review every three years; the review takes into consideration member comments, changes to the 4C governance and the ISEAL standard-setting code.<sup>232</sup>

### *Monitoring*

On a monthly and quarterly basis, the secretariat reports on highlights and critical issues in the monitoring system to the council to assess compliance with ISEAL standards.<sup>233</sup> The reports are sent to ISEAL. 4C became a full member of ISEAL in September 2011, and is required to receive an unannounced review of its standards each year to retain membership.<sup>234</sup>

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<sup>227</sup> Unless otherwise stated, all the information in this section is from *Standard setting procedure*.

<sup>228</sup> 4C Association *Annual Report 2009 (2010)* at 10.

<sup>229</sup> *Standard setting procedure* at 7, § 5.2. The public consultation period lasts up to 60 days, although a reduced period of no less than 30 days is justified under certain conditions.

<sup>230</sup> *Standard setting procedure* at 7, § 5.2.2.4.

<sup>231</sup> *Standard setting procedure* at 7, § 5.2.2.4.

<sup>232</sup> ISEAL sets codes of good practice for standard-setting organizations. See [www.isealalliance.org/about-us](http://www.isealalliance.org/about-us).

<sup>233</sup> The original document provides that the report goes to the executive board. Presumably the eradication of the board means that the council will now receive the secretariat reports.

<sup>234</sup> This system evaluator conducts a periodic system review on the 4C secretariat and evaluator companies with unannounced visits to both verifier companies and units. The system evaluator reviews documents and records at the 4C secretariat and based on the information provided by the secretariat, uses a risk-based approach to decide at least two unannounced field visits. These visits cannot be announced more than two days in advance. Currently, this periodic system review is set to occur annually but may change according to the forthcoming ISEAL Assurance Code. Depending on the results, corrective actions may be proposed by 4C and show evidence and results of implementation of these corrective actions to the system evaluator and ISEAL.



*Ad hoc reviews: internal governance and impact assessment of 4C*

4C commissioned a study on the impacts of 4C implementation on small-scale producers in Vietnam, Uganda and Nicaragua. The quantitative study used baseline data from 2006–2007 against outcomes from 2008–2009 and drew on interviews from almost 500 farmers, comparing 4C farmers against a control group of non-4C farmers. A summary report was made public in 2010. It concluded that 4C had had limited impacts, but noted that 4C was still in its early stages when the evaluation was conducted. In particular, it found no significant increase in income, “assets and living conditions” or health and safety. To the contrary, 4C farmers in Nicaragua seemed to perform slightly worse than the control group in respect to income.<sup>235</sup> There was a decrease in child labor during school hours, but “worryingly, children are still involved in heavy and dangerous activities on some farms ... despite the fact that 4C strives to eradicate this practice”.<sup>236</sup> There appeared to be better access to market and price information, but this has not translated into increased prices being received for 4C coffee compared to non-4C coffee. 4C seemed to have been the most effective in Vietnam, where it had led to outcomes such as significant reduction of pesticide usage and more active participation in farmer organizations. By comparison, in Nicaragua “no significant positive change has been observed on any of the indicators”.<sup>237</sup> The report noted that “since a majority of farmers report improvements from being verified, one would expect to see conclusive results in a second round of investigation planned for 2011”.<sup>238</sup> However, it is unknown whether this investigation has since occurred.

In 2011, the now-defunct Executive Board established a governance task force to review its internal governance to reflect the new demand-driven model. The aim was “to transform the Association into a business-driven, action-oriented organization and ensure a clear definition of the responsibilities and accountabilities at governance level”.<sup>239</sup> The general assembly agreed to adopt a new governance structure at its meeting in October 2012.<sup>240</sup> There is no further information available regarding the task force, such as its membership or specific terms of reference.

Similarly, there is no information regarding the revision process that led to the demand-driven model. While the council is also responsible for determining 4C’s long-term business strategy and “receives regular progress reports from the Executive Director”,<sup>241</sup> it is unclear whether it was the council that instigated and developed the new model.

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<sup>235</sup> 4C Association *Assessing 4C implementation among small-scale producers* (December 2010) <[http://www.4c-coffeeassociation.org/uploads/media/4C\\_Impact\\_Assesment\\_Outcome\\_Summary.pdf](http://www.4c-coffeeassociation.org/uploads/media/4C_Impact_Assesment_Outcome_Summary.pdf)> at 4, 5.

<sup>236</sup> *Assessing 4C implementation* at 7.

<sup>237</sup> *Assessing 4C implementation* at 10.

<sup>238</sup> *Assessing 4C implementation* at 11.

<sup>239</sup> *Annual Report 2011* at 20.

<sup>240</sup> 4C Association, “The 4C Association’s General Assembly Sees Strong Commitment to Sustainably Produced Coffee,” <http://www.4c-coffeeassociation.org/news/current-news/article/the-4c-associations-general-assembly-sees-strong-commitment-to-sustainably-produced-coffee.html>. Previously, the statutes and by-laws for various 4C organs previously had been updated in 2009. *Annual Report 2009* at 5.

<sup>241</sup> *By-laws of the 4C Council* at 5, §§4.8 and 4.9.

*Updated information provided by 4C:*<sup>242</sup> The 4C staff confirmed that the revision of the standards originally scheduled for 2014 has been brought forward and will commence in 2013. The revision of the verification regulations scheduled for 2013 will be delayed until the code revision process has been completed.

According to 4C staff, 4C is participating in a pilot project with ISEAL, together with Fairtrade, Rainforest Alliance, UTZ and Forest Stewardship Council. The pilot project seeks to establish a common set of impact indicators, which can then be used for external impact assessments. At the same time, 4C staff noted that 4C has its own set of key performance indicators (KPIs), which were developed in reference to 4C's new demand-driven business model. Examples of KPIs include the ratio between the supply and demand of 4C compliant coffee, and the degree of satisfaction of members. The staff further indicated that 4C is currently trying to develop a system that will allow it to extract information from producer evaluations to measure 4C's impact against both its own KPIs and the common impact indicators set under the ISEAL pilot project. 4C intends to make the KPIs public later this year; the impact indicators under the ISEAL pilot project should also be available later this year. While the 2011 assessment was not completed as planned, 4C will be undergoing a new external impact assessment and evaluation at the end of 2013.

The 4C staff confirmed that 4C has no formal theory of change, although it has invested significant effort in the process of formulating a theory of change, a draft of which is currently available to members.<sup>243</sup> The theory of change is being defined as part of 4C's involvement in the ISEAL pilot project regarding impact assessment. The theory of change will be finalized should it receive approval from the 4C council at its scheduled meeting in June 2013.<sup>244</sup>

According to 4C staff, information regarding the composition and role of the governance task force that was established in 2011 to review internal governance to reflect the new demand-driven model was circulated internally as part of a bi-monthly activities update and members were able to participate in the review by sending in comments. 4C staff declined to provide this information.

#### Evaluation:

4C has continued to evolve since its inception and has a number of review processes that appear to make it capable of developing and adapting to changes. For example, it is good that 4C brought forward the 2014 revision of the standards to 2013, and rescheduled the 2013 review of the verification regulations until after the new code has been finalized.<sup>245</sup> However, it is extremely worrying that 4C does not as yet have a concrete theory of change. Without such a theory, there is no basis to believe that 4C will be able to solve the human rights concerns and poverty issues that prompted its formation. Relatedly, while 4C appeared to show its ability to evolve and adapt via the adoption of a new business model to deal with the demand-supply gap, 4C has failed to measure the impact of the new model on rights holders and develop a theory of how this new business model

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<sup>242</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

<sup>243</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C's comment period.

<sup>244</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C's comment period.

<sup>245</sup> Information provided during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.

will lead to improved human rights outcomes. Ultimately, 4C's ability to evolve has not led to an evolution that improves its impact on human rights. Rather, 4C appears to have regressed given how its new model excludes smallholders (see **4C's Mandate and Relationship to Human Rights**, above).

4C's standards revision process exhibits many good practices, which should be incorporated into 4C's revision of its other components. In particular, 4C's promise to pay for the travel and accommodation of members who require financial assistance to participate in the review of standards is commendable, as it prevents money from being a barrier to access for representatives of affected communities. It would be helpful if 4C made more information available regarding how it communicates, or intends to communicate, the availability of this funding. 4C should also actively encourage workers, small-scale farmers and other affected communities to contribute their input to an upcoming standards review process.

In addition, while 4C commendably has a stakeholder-mapping process and permits public input, it should consider specifically soliciting expertise from human rights experts and affected communities to ensure its standards are thoroughly reviewed. This is especially the case since, for example, 4C currently does not include labor organizations, and would benefit from their expertise when reviewing the large number of standards that include working conditions. These groups should also be included in the agenda-setting process for any standards review. Currently, 4C notes that review may be triggered by multiple sources, but it is unclear who is involved in its "impacts monitoring exercises" and how they are conducted, as well as how many comments and criticisms on the current version of the standards would trigger inclusion in a review or whether demands by an individual stakeholder are always reviewed. These issues should be clarified.

The principles that underpin the standards review should be extended to the review of 4C's internal governance, evaluation monitoring and overall impact assessments. Some of 4C's components do not appear to have been evaluated for their effectiveness at all, such as its grievance and accountability mechanisms. Reviews of 4C's components should be regular, transparent and inclusive of affected communities. Regular reviews are essential to ensure that initiatives evolve over time to meet changing circumstances and progress toward meeting their stated purposes. Given that the change to the demand-driven model may lead to the exclusion of some of the most vulnerable affected communities, as explained in **Development of 4C**, above, it is particularly important that 4C can demonstrate that its decision to adopt this model was transparent and representative of all 4C's stakeholders. The lack of information as to who was involved in this process raises particular questions about the legitimacy of the decision. It is also unclear whether groups that may be harmed by the outcomes, such as small-scale producers, were made fully aware of the review and its implications and were supportive of the decision.

It is highly innovative that 4C made efforts to assess the impact of 4C standards among smallholders based on implementation just two years after launching. However, it is disappointing that 4C did not complete its scheduled 2011 assessment, and yet revamped its model in the same year without any assessment and evaluation of either its prior system or the new demand-driven model.

With regard to the quantitative study that 4C commissioned, 4C should release the content of the full report, including details regarding its commission and methodology. For example, it is not apparent what indicators were used to assess impact and whether these included human rights indicators. It is also unknown what recommendations this report has led to, whether any changes have been made in response, and whether 4C plans to carry out these studies regularly. It appears that 4C has not implemented concrete changes to address the issues raised by the report or

otherwise addressed the concerns raised. For example, the finding that children continue to perform dangerous work on farms has not led to a change in relevant standards or heightened monitoring of child labor. While the findings are certainly preliminary, given that the overall conclusion was that 4C has had little positive impact on small-scale farmers, and has had some negative impacts, 4C should be looking for means to proactively address this. To the contrary, 4C's subsequent decision to move to a demand-driven model entails imposing increased costs on small-scale farmers, which may only amplify negative outcomes. To address some of these issues, 4C should begin by specifically including these small-scale farmers, as well as workers, in its producer chamber and conducting a rights analysis to better understand how these distinct communities could best benefit from 4C (see **The Level of Community Involvement in 4C**, below).

#### Recommendations:

- To meet minimum standards, 4C should:
  - Ensure that all relevant affected communities, particularly small-scale farmers and workers, are included in reviews. 4C should take particular care to involve vulnerable groups within these communities, as discussed in **The Level of Community Involvement in 4C**, below.
  - Publish full reviews and methodologies that include information about the participants involved and recommendations issued. For example, 4C should make information available regarding who was involved in its decision to adopt a demand-driven model and how the decision was made, as well as the full version of its impact assessment.
  - Develop follow-up procedures to ensure that recommendations are implemented where appropriate, or that explanations are given where recommendations are not followed.
  - Institute a review mechanism or a process to ensure that internal governance and implementation mechanisms are subject to regular and comprehensive reviews.
- To improve its capacity to evolve, 4C should:
  - Actively reach out to affected communities to notify them of upcoming reviews, opportunities to be involved and options to receive funding to facilitate their participation (see **Programs and Outreach**, above).
  - Ensure that its reviews take into account human rights expertise by specifically soliciting input from experts.
- To be more relevant as a human rights initiative, 4C's review of standards in 2014 should focus on the sufficiency of its standards by ensuring: that they are consistent with international human rights law; that they appropriately differentiate between the different producer groups and affected communities; and that they do not exacerbate poverty for particular producers and therefore frustrate the ability to fulfill human rights.

## THE LEVEL OF COMMUNITY INVOLVEMENT IN 4C

*Individuals and communities whose human rights are affected by the coffee industry and 4C*

As described in **4C's Mandate and Relationship to Human Rights**, it is extremely worrying that 4C's new demand-driven business model excludes growers who are not part of supply chains wherein the final buyer is a member of 4C. 4C's new model shifts the cost of evaluation to units seeking to be evaluated. A producer who is part of a larger supply chain can pass on the cost to the final buyer, who is often the party seeking to certify its supply chain to begin with. However, a producer who is not part of such a supply chain is prevented from being verified due to the prohibitive cost of evaluation, and the lack of demand for its 4C compliant coffee even if it did pass verification. These producers thus have no incentive to join, and are excluded from the human rights benefits of membership. Worse, these coffee growers are often the most vulnerable since they are not already part of an established supply chain headed by a large final buyer, and hence often face either a lack of demand for their coffee, or have to accept low prices that may trap them in poverty.

Furthermore, the human rights needs of the groups who are most directly affected by 4C's standards, smallholders and workers at large plantations and estates, differ substantially.<sup>246</sup> There are also differences within these two groups. Some smallholders operate their farms with their families, while others employ outside workers. Many smallholders belong to cooperatives, but not all of the cooperatives operate under democratically selected leadership or similarly representative structures. Similarly, workers at large plantations or estates may be seasonal employees, migrant workers or day laborers. Some may live on site, while others reside in surrounding communities. As with smallholders and cooperatives, certain employees of large coffee-growing operations will be unionized, and union structures may vary. In many instances, the differing work and living circumstances of these people will present distinct vulnerabilities to human rights abuses. Furthermore, certain groups — for example women, children and indigenous people — may be particularly vulnerable to direct or indirect human rights abuses related to the coffee industry. Aside from banning the “worst forms” of child labor and non-discrimination provisions, 4C does not offer any particularized protections to these groups and does not appear to have undertaken any analysis to identify such particularly at-risk groups and their needs. Finally, individuals and families who do not work on coffee farms, but live in coffee-growing regions, may also be affected by the environmental and social consequences of coffee production.

### *Internal Governance and Standards*

While 4C should be applauded for including producers in its decision-making processes, there do not appear to be safeguards that ensure the representatives in its producer chamber are faithful to the varying concerns of farmers and workers most vulnerable to human rights abuses.<sup>247</sup> In particular, the structure of the producer chamber does not guarantee representation from both employees and small farm owners. As discussed in **4C's Internal Governance Procedures**, 4C

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<sup>246</sup> The human rights concerns of smallholders are often related to food security, as well as access to education, health care and commercial markets. Workers on large plantations and estates, on the other hand, more frequently face issues with labor abuse, inadequate living conditions and low wages.

<sup>247</sup> For example, the current producer representatives in the 4C Council are from Cooxupe, Brazil's largest cooperative; National Federation of Colombian Coffee Growers, a large coffee association; African Fine Coffees Association (AFCA), a regional MSI and 4C associate member, rather than a producer member; and Vietnamese Coffee and Cocoa Association, also an associate member rather than a producer. Given the size of these organizations, not to mention that AFCA, for example, is an MSI that does not exclusively represent producer interest, there is no guarantee that the human rights concerns of actual coffee growers are represented.

should guarantee that both groups are represented; one way of doing this would be to break the producer chamber into sub-groups for large-scale producers, small-scale farm owners and workers.

Furthermore, 4C does not account for the possibility that cooperative leaders in the producer chamber may not be truly representative of smallholders. Nor has 4C acknowledged or accounted for the possibility that management-level representatives of large coffee plantations may not be adequately concerned with the human rights needs of their lower-level employees. This is especially troubling in light of the complete absence of a labor union presence in the producer chamber.

The concerns of especially vulnerable groups — such as women, children and indigenous people — are most at risk of underrepresentation in the producer chamber, as there are no safeguards to ensure their involvement. Its present failure to guarantee that the views of women are represented is especially disappointing in light of 4C's acknowledgement of the widespread gender-related issues in the coffee industry throughout its standards and rules for evaluation teams.

It is positive that the producer chamber elects four representatives to the council, compared with the three representatives allowed the other chambers. It is also laudable that producer representatives sitting on the council may apply for monetary support from 4C to attend meetings if they are unable to attend for financial reasons.<sup>248</sup> However, while it is understandable that 4C sought to provide each chamber with autonomy by not mandating an election process, imposing no formal process creates the risk that powerful large producers will ascend to the council and disregard the interests of smallholders, farm workers and other vulnerable groups. More significantly, because non-English speakers are not able to participate in any of 4C's decision-making bodies, and there are no coffee-producing countries wherein English is the native language, smallholders are effectively excluded from participating in internal governance or in the development of standards.<sup>249</sup>

The differing human rights vulnerabilities of workers and smallholders are also not adequately distinguished in the standards. 4C should differentiate among affected communities and conduct a human rights analysis for each group. 4C standards should then revise the standards to reflect each group's particularized needs. This process will require extensive engagement with and participation from the most vulnerable affected communities.

Under its new ISEAL compliant standard-setting process, 4C has made a commitment to take the concerns of affected communities into consideration.<sup>250</sup> According to 4C, the “needs and risk” analysis undertaken at the outset of its standard-setting process is meant to “identify disadvantaged groups that will be affected and impacted by the standard”, and includes reference to “those materially affected by the standard”.<sup>251</sup> The public consultation phase “take[s] into consideration” “languages” and “meaningful opportunity to comment”, though it is not clear how this works in practice.<sup>252</sup> It is commendable that “upon request, the 4C association will search for means to

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<sup>248</sup> *By-laws of the Council* at 3, §1.9.

<sup>249</sup> Information provided during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period. See **Decision-Making Functions and Balance of Power**, above.

<sup>250</sup> 4C staff clarified that as part of its ISEAL membership, 4C is obliged to comply with its new standard-setting procedure during the upcoming review of its standards. This was clarified during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period. See **4C's Capacity to Evolve over Time**, above.

<sup>251</sup> *Standard setting procedure* at 6, §5.2.2.1.

<sup>252</sup> *Standard setting procedure* at 6, §5.2.2.1.

support interest groups directly affected by the standard to be able to participate actively in the public consultation process” and that the secretariat will accept “comments in any form and language . . . convenient for the interest groups”.<sup>253</sup> However, these commitments are meaningless unless 4C is also dedicated to ensuring that affected communities are aware of upcoming standards revisions and instructed on how to utilize the comment process. 4C states that it “proactively contacts key stakeholders (such as 4C units, producers, 4C verifiers, 4C master trainers, etc.) for their participation and contribution”.<sup>254</sup> 4C does not make clear, however, whether it actively seeks involvement from all affected communities rather than just large-scale producers.

*Implementation: Grievance Mechanism, Monitoring, and Stakeholder Learning and Engagement*

While 4C makes it possible for affected communities to access its grievance mechanism and monitoring process, the costs associated with these systems are so prohibitive that, in practice, it is likely difficult for the smallest producer groups to participate.

As discussed in **Grievance Mechanism**, above, 4C can waive filing fees for claimants who demonstrate financial hardship and “parties may appeal to the association for participation costs where reasonable”, which has the potential to improve the accessibility of the system for affected communities.<sup>255</sup> However, legal costs — which are never covered by the association — may discourage affected communities or their representatives from filing complaints. A grievance mechanism that is inaccessible to impoverished communities is not sufficient and will frustrate the success of an MSI created to address the human rights abuses associated with extreme poverty.

Similarly, as discussed in **Monitoring: Evaluations**, producers must pay for their own evaluations. As noted in **4C’s Mandate and Relationship to Human Rights**, this may prevent or deter some smallholders who are not part of a larger supply chain from even attempting to join 4C, which in effect precludes some affected communities from obtaining any of the organization’s potential human rights benefits. Again, financial barriers to membership in an MSI intended to alleviate rights abuses caused in large part by poverty is counterintuitive and counterproductive.

It is positive that 4C’s monitoring process takes affected communities’ concerns into account, insofar as evaluators conduct interviews of business partners, farmers and workers — and may interview union representatives — during initial evaluations; it is assumed that these interviews take place during re-evaluations as well. However, as mentioned, 4C does not seem to require that particularly vulnerable stakeholders are included<sup>256</sup> and interviewees are not guaranteed confidentiality protection.<sup>257</sup> A lack of confidentiality guarantees may limit the extent to which the interviewees candidly share their needs and experiences. It is commendable that evaluator teams must have “knowledge of applicable local legislation and international conventions, knowledge of the local context, and knowledge of the language spoken by the majority of producers in the units,” but audits of evaluators have only been conducted once, and are not currently being conducted.<sup>258</sup>

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<sup>253</sup> *Standard setting procedure* at 6, §5.2.2.1.

<sup>254</sup> *Standard setting procedure* at 6, §5.2.2.1.

<sup>255</sup> See *Grievance Mechanism*.

<sup>256</sup> See *Implementation: Monitoring of Compliance with Standards*.

<sup>257</sup> The template for the framework contract between 4C units and their evaluators (provided by 4C staff on 7 Feb. 2013 as part of 4C’s comment period) has a confidentiality clause. However, because this is a template that may be modified without approval from 4C, such a confidentiality clause can be easily removed as it is not made mandatory under the verification regulations. There is no guarantee that confidentiality of interviewees will be protected. See **Monitoring of compliance with standards**, above.

<sup>258</sup> Information provided during an in-person meeting with 4C’s Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensel, Communications Manager, Veronica Pérez Sueiro, and Verification Manager,

Similarly, 4C should be praised for mandating that each evaluator team have at least one woman, which demonstrates an understanding of and appreciation for the particularized vulnerabilities of female workers and smallholders.

4C facilitates numerous training programs that involve affected individuals by engaging them directly in the field and on the farm; these programs are discussed in more detail in **Stakeholder Learning and Engagement**, above. It also hosts sustainability forums, in which trade unions are permitted to participate; the research projects 4C helps fund also presumably involve the input of those affected on the ground. It is excellent practice that 4C seeks to engage its affected communities with its learning programs.

Recommendations:

- In order for 4C's internal governance and standards processes to meet minimum standards, 4C should:
  - Differentiate among affected communities — namely large-scale producers, smallholders and workers — in the producer chamber.
  - Identify the most vulnerable communities, conduct a human rights analysis for each group and incorporate the results into standards.
  - Make efforts to ensure that affected communities are aware of upcoming standards revisions and the comment process.
  - Ensure that vulnerable groups, for example women, children and migrant workers, are actively targeted for input during the standards review process.
- In order for 4C's implementation processes to meet minimum standards, 4C should:
  - Ensure that its grievance mechanism is accessible to members of affected communities.
  - Ensure that members of affected communities are interviewed during the evaluation process, and are guaranteed confidentiality protection.
- To be effective as a human rights initiative, 4C should differentiate between and within affected communities and producer groups in its outreach programs. For example, 4C should specifically differentiate between outreach activities for workers in large-scale producers and its targeting of small-scale producers (see **The Level of Community Involvement in 4C**).

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Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period. See **Monitoring of compliance with standards**, above.



## 4C's TRANSPARENCY

4C provides the public with a great deal of information about the MSI, and appears to be mindful of ensuring information is accessible to those living in coffee-producing regions. For example, 4C meets best practice by having regional contact offices in producing regions, such as Brazil, East Africa and Vietnam.<sup>259</sup> In addition, while the official language of 4C is English, 4C pledges to translate important documents into “major coffee languages”.<sup>260</sup> 4C has followed good practice by translating its standards into Spanish, French, Portuguese, Vietnamese and Bahasa Indonesia. However, some of the information most critical for affected communities is either not available at all or is only available in English. For example, the procedure and rules for filing grievances, as well as the list of members, would be essential to a worker or small-scale farmer wishing to bring attention to human rights violations, yet these are not available in languages other than English. Similarly, 4C's training library, designed to assist small-scale farmers, is largely only available in English or French. This undermines the purpose of producing these materials, as they are not accessible to the communities they were most intended to benefit.

There is also a lack of available information on member compliance with standards. 4C does not provide information regarding which specific members are in compliance. Related to this, it is unclear whether any members are currently facing sanctions. Transparency of standards compliance is not only critical to 4C's integrity, but can serve as an important incentive for producers to comply with 4C standards while serving broader policy goals. For example, if 4C's verification reports showed widespread use of forced labor among large national coffee cooperatives, this might prompt stricter national oversight of human rights in coffee production.

As discussed in 4C's **Capacity to Evolve Over Time**, 4C is required to provide on its website a list of all documents related to ongoing standards formation, and states that it will share these documents with interested parties on request. This is innovative, allowing full examination of 4C's development. This approach should be extended to other governance aspects of 4C; currently, documents showing the decisions and decision-making processes of the council and general assembly, such as meeting minutes or voting outcomes, have not been published. For example, it is unknown how the decision to shift to a demand-driven model was made. In addition, the details of how chambers elect representatives to the council and the mediation board, and the guidelines for the appointment of three-member panels by the ombudsman, are missing from these documents. Without information regarding appointment processes, it is difficult to be certain that decisions made by 4C's organs reflect constituents' collective will. Similarly, while the website provides lists of its current membership, which are regularly updated to reflect updates (though it is unclear how many and which associate members are affiliated with an operational chamber member), members of 4C decision-making bodies are not listed; this makes it difficult to evaluate whether these bodies are sufficiently representative and whether 4C is in compliance with its own bylaws, which impose a number of membership requirements (see 4C's **Internal Governance Procedures**).

4C makes its consolidated financial reports publicly available. However, although the 4C statutes require that an accountant audit the accounts, full audited financial statements are not provided.<sup>261</sup> 4C should consider including detailed financial information regarding its spending and future budgets in the information it provides to the public, and identify any voluntary contributions made by members.

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<sup>259</sup> 4C also has specific representation for Central America, however this representative is located in Germany.

<sup>260</sup> *General Assembly By-laws* at 8, §4.4.1.

<sup>261</sup> *Statutes* at 4, §4(1)h.

*Updated information provided by 4C:*<sup>262</sup> 4C staff stated that most documents in the tool library are actually available in English, Spanish and Portuguese, and that given resource limitations, great efforts are being made to translate all of its core documents into more languages. Even though the procedure for complaints on verification is provided in English, Spanish, Portuguese and Vietnamese,<sup>263</sup> it is disappointing that the bylaws of the mediation and the forms for filing a complaint with the mediation board are currently still only available in English and Spanish (see **Grievance Mechanism**, above).<sup>264</sup>

During the engagement, 4C staff also provided the list of participants of the working group meetings during 4C's formation from 2003 to 2004, an internal document relating to the new demand-driven business model, and the templates made available to members for business partner mapping, self-assessment for verification, the framework contract between 4C units and evaluators, evaluators' reports, improvement plans and annual self-assessment for reporting purposes. Although requested, 4C staff declined to provide minutes of the working group meetings from 4C's formation (see **Development of 4C**, above). During the engagement, 4C staff committed to making the evaluator report template publicly available. However, the staff affirmed that evaluator reports would not be made publicly available, on the basis that they belong to the respective 4C units under evaluation. A list of evaluated units is now available on the 4C website, but the list does not identify units that have failed an evaluation versus those awaiting evaluation (see **Accountability**, above).<sup>265</sup>

The composition of the 4C council has since been made available on 4C's website.<sup>266</sup> 4C staff clarified that both the mediation board and the technical committee are still in the process of being formed. The staff also confirmed that no disputes have been filed thus far, even though this is not stated on the website. On the other hand, 4C staff confirmed that there have been sanctions imposed, but this information has only been circulated internally to members and is not publicly available (see **Accountability**, above).

Even though the 4C's new demand-driven model took effect in January 2012, 4C staff confirmed that information about the new business model will only be made public in June 2013. The theory of change has been drafted, and will only be finalized following approval from the 4C council at its June meeting; publication will follow thereafter.<sup>267</sup> This is extremely worrying as there is thus no reason to believe that 4C's new business model was designed with an awareness of 4C's theory of change; consequently, it is unclear whether 4C has established whether it will lead to improved human rights outcomes (see **4C's Mandate and Relationship to Human Rights**, above). While 4C staff provided an internal "Q&A" document that was circulated to members, the staff declined to provide information regarding the decision-making process that led to the adoption of the new

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<sup>262</sup> Unless otherwise indicated, all information in this section was provided by 4C staff during an in-person meeting with 4C's Executive Director, Melanie Ruten-Suelz, Director Sustainability Innovations, Annette Pensele, Communications Manager, Veronica Pérez Sueiro, and Verification Manager, Thanh Van Cao, Bonn, Germany, 7 Feb. 2013 as part of 4C's comment period.


<sup>263</sup> 4C Association "4C Association: Procedure for complaints on verification." <<http://www.4c-coffeeassociation.org/document-library/documents/4c-code-and-verification-documents/procedure-for-complaints-on-verification.html>> (accessed March 4, 2013).

<sup>264</sup> *By-laws mediation board.*

<sup>265</sup> 4C Association: "Verified producer groups" <<http://www.4c-coffeeassociation.org/about-us/verified-producer-groups.html>> (accessed March 4, 2013).

<sup>266</sup> "4C Association: Council Members".

<sup>267</sup> Information provided by 4C staff in an email dated 2 Apr. 2013, as part of ongoing dialogue after 4C's comment period.



business model. For example, the staff declined to disclose the composition and role of the governance task force that was established in 2011 to review internal governance and receive member comments on a new business model (see **4C's Capacity to Evolve Over Time**, above).

Recommendations:

- To meet minimum standards, 4C should:
  - Publish all its key implementation and internal governance documentation. This includes a list of current members of all 4C decision-making bodies, the internal process for electing decision-makers, disputes handled by the mediation board, detailed financial reports and verification reports reflecting real levels of compliance.
  - Publish the list of representatives and decision-making process involved in the development of 4C, the original 2004 Code of Conduct and its recent developments. These developments include the demand-driven model and its new governance documents.
  - Clarify the implications of the new demand-driven model and make them available to 4C members and the public.
  - Publish its core documents in languages understood by people in coffee-producing countries.