

PILOT TESTING VERSION

Human Rights in the Mining & Metals Industry

Handling and Resolving Local Level Concerns & Grievances

October 2009



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FOREWORD

The members of ICMM – as the mining and metals industry’s leadership group on sustainable development – are keen to contribute to the development of best practices on community relations and human rights. One of the core principles of ICMM’s Sustainable Development Framework, which all company members are committed to implementing, is to “uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities” [ICMM Principle 3].

This publication builds upon ICMM’s overall work to date on ‘business and human rights’ and is one of a number of good practice guidance publications and toolkits that ICMM has produced to encourage improved sustainable development performance. It focuses in more depth on one of the issues highlighted as important in a recent ICMM publication which provided an overview of human rights issues in the mining and metals sector. It also complements the extensive, ongoing, on-the-ground work by ICMM members to build strong, trusting relationships with local communities around their operations.

It sets out good practice approaches on a specific, but important, issue in this area: the development of company procedures for handling local level concerns and grievances. The number of documents on this topic has recently grown significantly, in part prompted by the importance that John Ruggie has attached to having systematic approaches to dealing with such issues in his “Protect, Respect and Remedy” framework.

What is lacking, however, is succinct guidance focused on the mining and metals sector that draws from the on-the-ground experience of leading companies in the industry to demonstrate how to move from theoretical principles to workable practice.

The purpose of this guidance is to fill this gap. It aims to help companies both design complaints procedures or mechanisms and/or enhance existing procedures as needed. It has been developed based on a review of external literature (see appendix 1 – further reading), discussions with and guidance from ICMM members and interviews with some external stakeholders (listed in appendix 2). A short core text is supplemented with a handful of relevant case studies, both from ICMM’s membership and beyond.

Given that practice in this area is continuing to evolve, this guide is released as a ‘Pilot Testing’ version. The intention is that member companies will apply the approaches outlined on-the-ground in the next 12 – 18 months, and review progress periodically in the interim. We have benefitted from discussions with some of the leading practitioners in this area during the course of developing this guidance, and will continue to engage with them and others as we move into the pilot phase and ultimately revisit and reinforce this pilot version in 2011.



R. Anthony Hodge
President, ICMM

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What are the benefits of a well-designed complaints procedure?

This guidance deals with the handing and resolution of issues of concern to local communities. It sets out how mining and metals companies can develop robust, credible and trusted procedures that provide local communities with a means of raising concerns relating to the company's operations, and dealing with these in ways that are considered to be fair, by both the community and the company.

For any large-scale project with potentially significant impacts, even those managed to the highest standards, some local concerns are inevitable. These concerns can be expressed in the form of a complaint, either formally or informally, and can encompass relatively minor concerns as well as more entrenched or serious issues (that may be described as grievances). In all such cases, having a credible local mechanism in place for systematically handling and resolving any complaints that might arise is clearly the right and responsible thing to do.

At the same time, responding to complaints in a non-defensive, effective way may not always be easy for companies. This is particularly the case when a company may consider that a community concern is based on perceived rather than real problems, or where there are fears of encouraging complaints motivated less by genuine problems than by a desire for compensation.

If complaints procedures or mechanisms are well designed however, they are likely to bring significant benefits not just for communities, but also over the long term for the companies themselves. By providing an ongoing, well-respected channel of communication with local people over issues of concern, they can serve as a tool to build local trust and a common understanding of the issues and thereby strengthen stakeholder support for projects. They also can help operations detect local concerns at an early stage rather than leaving them unresolved with the potential to later erupt in more damaging ways for the company (for example as protests, conflicts, negative headlines or litigation).

Also, by designing complaints procedures so that they clearly embody a respected and predictable process, companies can send a clear signal that while they will respond to well-founded complaints fairly and sensitively, they will not simply settle claims irrespective of the merits of their concerns.

Increased international attention over complaints procedures

Attention is growing at the international level on how companies respond to community concerns and grievances. In particular, the UN Secretary General's Special Representative on Business & Human Rights, John Ruggie, has highlighted this as a critical issue. "An effective grievance mechanism is a part of the corporate responsibility to respect [human rights]", he stated in an influential report to the UN Human Rights Council². Professor Ruggie's use of the term 'grievance mechanisms' appears to encompass processes to resolve both minor and more serious issues.

ICMM's Position Statement on Mining and Indigenous Peoples (May 2008) includes a commitment for member companies to support "appropriate frameworks for facilitation, mediation and dispute resolution..... In general, Indigenous Peoples as well as communities as a whole will be provided with a clear channel of communication with company managers if they have complaints about a mining operation and transparent processes through which to pursue concerns".

Various basic requirements dealing with complaints also form part of the 'Performance Standards on Social & Environmental Sustainability' for projects funded by the International Finance Corporation (which refers to the term grievance mechanism). IFC, in common with many of the other international financial institutions, provides an independent avenue of complaint for communities to register their concerns about projects that may have negatively affected them, through the office of the Compliance/Advisor Ombudsman (CAO). Many private financial institutions have committed to the Equator Principles which are in turn closely based on these IFC standards.

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What does this guidance cover – and what issues are beyond its scope?

The focus of the guidance is specifically on ways companies can resolve concerns at the operational level, rather than in national or international forums. While community complaints are sometimes raised at such levels, their roots are by definition local. As a matter of good practice this is also where companies should focus their efforts at resolution: that is by engaging directly with communities and their representatives in the vicinity of operations in order to resolve issues.

The guidance takes as a starting point that the handling and resolution of complaints is a natural extension of good community relations, and rests on a foundation of effective and responsible management of interactions with communities. Complaints procedures should be rooted within a company's community relations programs, and can substantively reinforce other efforts to build local trust. (At the same time they should not be seen as a substitute for other important elements of community relations – for example, local consultation processes and social investment programs – nor developed in isolation of these other activities.)

In addition to the focus being on responding to concerns at the operational level, the scope of this guidance is also limited in two other ways. First, it looks specifically at procedures for handling community, rather than employee, complaints and grievances. Employees' concerns clearly need to be taken seriously, but best practice approaches in this area are generally already well understood. Second, the guide is not intended to detail all the requirements that may exist in this area – for example, in national legislation or in standards such as the IFC Performance Standards. However, the broad approaches it sets out are intended to be helpful in complying with such requirements, where appropriate.

What exactly is meant in the guide by 'concerns' and 'grievances'?

Community concerns can range from commonly occurring, relatively minor issues to more entrenched or serious ones that have become a source of significant concern or resentment. The latter are sometimes referred to as grievances. For example, failures to resolve local concerns in a way that the concerned individuals perceive to be fair can give rise to a grievance. Whereas some organizations or institutions use 'concerns' and 'grievance' interchangeably, along with the term 'complaint', in this guide a distinction is generally made between these terms. At the same time, there is no clear boundary that marks the point at which minor concerns can give rise to grievances. It is also important to note that more minor concerns still represent issues that need to be satisfactorily resolved.

Concerns and grievances may either be individual or collective. They can be openly expressed in conversations between companies and communities or, for a variety of reasons, individuals or communities may be reluctant to openly raise or discuss them. There may be language or cultural barriers to raising concerns or people may not trust the company to respond. Part of the skill in designing an effective complaint handling process is to encourage people to raise their concern in the first instance, as a first step to moving towards resolution.

This should ensure that the vast majority of issues that are dealt with through complaint mechanisms are minor concerns, as opposed to more difficult to resolve grievances. Put another way, a good complaints procedure is one that helps ensure that concerns do not evolve over time into grievances.

But it is also important to accept that grievances, in common with other community concerns, cannot always be avoided. Their occurrence does not necessarily reflect a failure on the part of a company to effectively manage its interactions with communities. For example, where companies acquire new assets, they may also unwittingly become involved in 'legacy' grievances that were not readily identifiable in pre-acquisition due diligence. Grievances may also spring from incorrect perceptions on the part of community members, or they may originate from external factors, over which the company may have little or no control. In other instances, apparent 'grievances' may reflect opportunistic behaviour by individuals or organizations to extract advantage.

One final clarification of terminology is worth making at this stage: the guide uses the term 'complaints mechanism' as shorthand for the set of processes that a company may have in place to deal with local-level concerns and grievances. Companies may choose not to label their processes in this area as a 'mechanism', and may prefer terms such as complaints 'procedures' for example. The guide uses 'mechanism' simply as a convenient catch-all term, rather than implying that this is the only appropriate terminology.



What are the main practical aspects of the guide?

An important basic theme is that the way in which complaints mechanisms are designed and operated is often critically important to their success. For example, on paper such a mechanism may appear to have all the necessary elements, but if communities are insufficiently aware of its existence or distrustful of its outcomes, they won't use it and instead may look for other ways to resolve their concerns or express their dissatisfaction.

Diagram 1 on page 6 summarizes the main practical points addressed in the guidance, with the different elements of the diagram mirroring the consecutive sections of the document. First, a set of 'overarching design principles' provide basic, high-level guidelines for companies developing complaints mechanisms. It is important to ensure, for example, that these are genuinely accessible to communities, based on clear procedures to ensure predictability, and built around a basic governance framework to reinforce their legitimacy.

The second section begins by outlining some basic criteria to help operations 'assess the nature of and potential for complaints' and so to develop a mechanism most appropriate to their situation. All operations with communities in their vicinity should see the development of some form of complaints mechanism as a basic element of good practice. But the scale of the operation's local impacts, for example, or the extent to which there is a history in the region of distrust of mining, may influence the sort of mechanism developed.

For operations where significant disagreements with local communities seem very unlikely, a 'basic good practice complaints mechanism' may be most appropriate. The main elements of this are set out in section 2.2. Though 'basic', such mechanisms among other things should provide for resolving complaints in a timely manner, keeping complainants' regularly informed, and carefully logging all complaints. They also should incorporate an appeals procedure and be supported with internal training as needed. A bias towards face-to-face meetings with complainants and joint problem solving with communities are additional recommended features, which can make it easier to resolve concerns in ways that gain broad stakeholder support.

In situations where relations between the operation and communities are, or may become, difficult, stakeholders' trust can be strengthened by deepening the involvement of community members or respected third-parties (for example, local academics) in the operation of the mechanism. As set out in section 2.3 such involvement can be enhanced in one or more areas, including in the design or evaluation of the mechanism and in the adjudication of, and appeals over, complaints themselves. Whatever the exact model adopted, such an approach can help tackle perceptions that the mechanism may be biased in the companies' favour.

In the relatively unusual situations where community concerns or local distrust have reached a level that suggests that any company-driven mechanism is likely to be seen as inadequate to bring about positive relations with stakeholders (even with community or third party involvement) – or where this may be a risk going forward – it can make sense for operations to establish some sort of local independent forum or process. The leadership of such a forum or process potentially could be assigned to independent third parties. Though presenting challenges and risks for an operation, such an approach sometimes can help to establish trust and a common understanding between the company and community more powerfully than other approaches. Potential models for this are set out in section 2.4.

Finally, although the focus of the guidance is on operational-level mechanisms, section 2.5 sets out various ways in which global headquarters of companies can develop 'group-wide procedures' to support best practice locally. One example is by requiring operations to report internally on the extent and nature of complaints they are facing – this can help companies monitor overall trends. Another is assigning responsibility to a board or other senior independent committee for reviewing the most serious complaints received. Such global oversight can further strengthen external trust in complaints mechanisms at the local level.

¹'Complainants' is the term used to describe those who raise concerns or grievances with a company.

²'Protect, Respect and Remedy: a Framework for Business and Human Rights', April 2008

See page 24 of 'Protect, Respect and Remedy: a Framework for Business and Human Rights', April 2008. Also see 'Rights-Compatible Grievance Mechanisms: a guidance tool for companies and their stakeholders', January 2008. Weblinks in appendix 1.

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Diagram 1: **Overview of main practical aspects of the guide**



OVERARCHING DESIGN PRINCIPLES



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1. OVERARCHING DESIGN PRINCIPLES

Whether complaints mechanisms are successful in strengthening relations with communities depends partly on the details of their design and how well they are adapted to a particular operating context – see section 2 for these context-specific elements. But it is also important that they follow some basic design principles. Research undertaken for John Ruggie’s initiative together with the experience of ICMM members and of the Office of the Compliance/Advisor Ombudsman (CAO)³ suggests a large number of such overarching requirements. However, these can be clustered into four broad principles:

1.1 Ensure communities face no obstacles in using the mechanism

A mechanism which is little known or poorly understood locally, or which is held in suspicion by complainants, or whose use incurs them significant costs or effort, risks simply deterring complaints. As a result, an opportunity for resolving concerns and building trust with communities may be lost.

A starting point therefore is for operations to ensure that the mechanism they establish is widely publicised (for example, by highlighting it in consultation meetings with communities and flagging it prominently in local publications). Making it logistically easy for local people to access the mechanism is important too. An element of good practice here, for example, is to allow formal complaints to be made verbally to community liaison officers or other personnel when they are in the neighbourhood, but to ensure that the community liaison officers or other personnel subsequently record such complaints in writing. Expecting local people to fill out written forms or to visit company facilities to set out their concerns sometimes risks creating unnecessary obstacles.

Promoting awareness of the mechanism and its accessibility among vulnerable or minority groups within communities is another important consideration. The mechanism also needs to be culturally appropriate, allowing for complaints in a language and form sensitive to local needs. Lack of literacy among some community members, for example, may be another reason for designing a mechanism that allows for verbal complaints. Open communication can be encouraged further by stating explicitly that all sorts of concerns can be raised through the mechanism, rather than restricting complaints to certain categories of issues.

Communities may also require reassurance in a number of other areas: that no reprisals of any sort will be made against them if they complain, for example; that – subject to any requirements of transparency in the design of the mechanism (see below) – complaints will be kept confidential and the names of complainants will remain anonymous; and also that, where appropriate, they will be provided with support to allow complaints to be pursued. In some cases, community members may require such assistance (for example, access to relevant information) to engage with the process on fair and equitable terms.

Finally, it should be made clear to communities that the existence of the mechanism does not in any way inhibit their access to legal or judicial recourse processes. In some countries legal systems may be seen to be inadequate or beyond the financial reach of communities, which is why their attention often focuses on corporate mechanisms. But complainants should be free to pursue legal or judicial processes at any stage if they feel their concerns are not being adequately addressed by the mechanism.

1.2 Establish the mechanism early on, and base it on a transparent, predictable process

Designing a complaints mechanism from the very start of a project, before any issues have had a chance to develop, is likely to be more supportive of positive community relations than retrofitting it once problems have already arisen. Once trust is eroded, it can take many years to restore.

Similarly, the predictability and transparency of the process underlying the mechanism can help build community trust. It should be clear to community members what basic steps will be followed when they make a complaint, with a clear, defined timeframe set out for each stage of the process and for the complaint’s overall resolution. It may be difficult to extend the principle of transparency beyond this – that is, to announce publicly the outcome of individual complaints, as this may conflict with protecting the privacy of complainants. Where this is not an issue, however, and it has previously been agreed by both parties that outcomes will be made public, such openness can reinforce support for the mechanism by showing the seriousness and balance with which the company responds to complaints.

³The Compliance/Advisor Ombudsman (CAO) is the independent recourse mechanism for the private sector arms of the World Bank Group, the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA).



1.3 Find ways to build trust in the legitimacy of the mechanism

The more the governance structure and process for the mechanism is seen to be legitimate and result in outcomes which fairly and equitably balance company and community interests, the more community members are likely to place trust in it. Ensuring fairness is the key here. Communities need to be reassured that the mechanism is not biased in the company's favour. At the same time, an equivalent bias in the complainants' favour – which may spring from an operation's concern to quickly settle any disputes that pose a risk to mine production, say – could diminish the perceived fairness of the mechanism, and encourage an escalation of complaints which lack merit over time.

Section 2 (and particularly 2.3) below describes in more detail how the legitimacy of the mechanism can be strengthened. One recommendation to reduce the risk of perceived bias in the company's favour is to involve community representatives or respected third parties either in the design of the mechanism or in the adjudication or appeals over particular complaints. Similarly, ensuring all complaints are dealt with through the prescribed process of the mechanism and on the merits of the complaint (rather than, say, the threats the complainants pose or the status of the complainants in the community) can help avoid the sort of escalation mentioned above.

Finally, as with other corporate activities, and in line with ICMM's commitment to human rights, the mechanism should be – in the words of John Ruggie – 'rights compatible'. A grievance mechanism 'must ensure that its outcomes and remedies accord with internationally recognised human rights standards', noted Ruggie in his April 2008 report to the Human Rights Council. The various elements of this guide, as well as ICMM's Good Practice Note on human rights, seek to indicate what this principle means in practical terms for companies.

1.4 Create an organizational structure and mindset to support the mechanism

Both 'hard' and 'soft' elements are relevant here. One important 'hard' element is assigning ultimate responsibility for the mechanism to a particular senior manager within an operation, and also allocating sufficient manpower and resources to its day-to-day running. Another is designing the mechanism so that it is embedded within existing community relations or HSEC systems – that is, so that it builds upon, rather than competes with, other efforts to engage with communities.

In terms of 'soft' elements, part of the challenge is to identify and appoint community relations personnel who can engage effectively with complainants: qualities of empathy, maturity and fair-mindedness are likely to be important. But the overall mindset of the organization – which is typically determined by the attitudes and tone adopted by senior management – also can determine the success of a complaints mechanism.

A common mindset, for example, is that complaints and grievances represent 'bad news', and reflect poorly on the operation or the particular employees who are either directly or implicitly criticised. This can inhibit internal trust in the mechanism, discourage personnel from passing on reports of complaints internally, and encourage operational staff to adopt a defensive posture externally. In contrast, viewing complaints and grievances in a more balanced light – that is, as an inevitable result of company-community interactions, and a potential opportunity to clear the air with complainants – should lead to more open internal debate and more productive external dialogue.

The differing mindsets can be illustrated by a company's attitude to complaints that it may consider unfounded. Local peoples' concerns over water contamination may be one such issue, for example. An open mindset would mean that even apparently inaccurate local perceptions are viewed as worthy of dialogue and debate, especially as local peoples' observations may genuinely help strengthen company environmental monitoring. Where local concerns are truly unfounded, engagement provides an opportunity to properly explain why this is the case or determine how to resolve ongoing concerns in a way that builds mutual agreement and trust – for example by collaborative monitoring. Conversely, dismissing such concerns on the grounds of a lack of evidence can fuel suspicions and create the sense that the company is unapproachable and dismissive of local concerns.

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This section sets out in more detail the steps to developing a credible and trusted complaints mechanism – or strengthening mechanisms which already exist. As noted previously, all operations with communities in their vicinity should see the development of some type of mechanism as good practice. A mechanism can take different forms however, and operations should adapt its design to the complaints and grievances they are likely to face.

The next section highlights a few basic criteria for assessing and making predictions about this underlying context. Sections 2.2, 2.3 and 2.4 then outline how to develop particular forms of mechanism or processes – each illustrated with case studies – with sections 2.3 and 2.4 focusing on those approaches most appropriate to more difficult situations. Finally section 2.5 outlines potential group-level procedures which can help support operational-level mechanisms.

2.1 Assessing the nature of and potential for complaints and grievances

In the case of existing operations, managers and community relations personnel will likely already have a good understanding of the main issues and concerns for the local community. In order to assess how serious or problematic the complaints their operation may be facing, a few basic factors are worth considering:

- the frequency of such complaints;
- the credibility or seniority within communities of complainants;
- the extent to which complaints relate to serious concerns – or put another way, grievances – as opposed to relatively minor concerns (for example, allegations of human rights abuses as opposed to, say, minor damage to crops); and
- whether there is a history of resolving concerns and grievances to complainants' satisfaction.

But how should new or proposed operations seek to understand the extent of complaints they are likely to face in the future? Prediction is clearly difficult, and much will depend on the extent to which the operations themselves follow responsible standards of behaviour. But assessments such as Environmental and Social Impact Assessments (ESIAs) and conflict risk analyses can provide valuable information, as can consulting with credible NGOs and organizations representing local communities. There are also some simple criteria which can indicate in broad terms the likelihood of serious concerns or grievances. In particular:

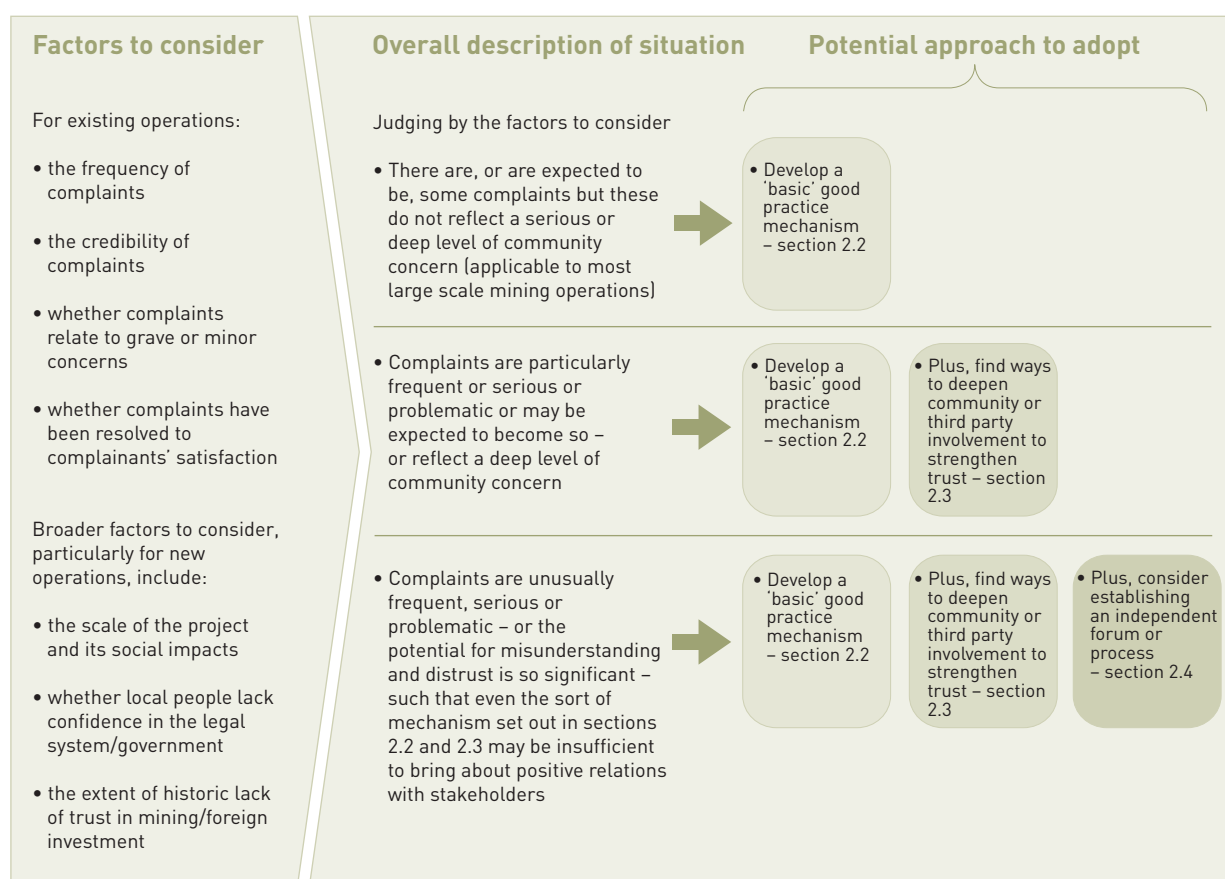
- The scale of the project and its impacts. Large projects involving significant potential adverse impacts, environmental or social, are likely to pose a higher risk of concerns and grievances, even where extensive measures are taken to mitigate these impacts.
- The extent to which local people lack confidence in the national legal system / the national government. The lower the level of such confidence the greater the potential for the company to become a focal point for concerns and grievances – whether or not these relate directly to its impacts. Also communities may see pursuing concerns through the company's complaints mechanism as preferable to using state judicial processes.
- Background or historic lack of trust in the mining sector and / or major foreign investors. The lower the levels of basic trust, the greater the likelihood the company will become a focus of complaints and that resolving them amicably will be challenging. This may affect an operation irrespective of whether its activities are a legitimate target of criticism.

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An assessment of the nature of and potential for complaints based on the factors above can be used to determine which sort of mechanism is most appropriate – that is, which sections of the rest of this guide are relevant. Diagram 2 below summarizes this.

What this simply indicates is that operations in high-risk situations may need to undertake the most extensive efforts. However, it should be recognised that such situations are relatively infrequent. Most ICMM members' operations face the situation described in the first row of the diagram, while the smallest number confront the situation described in the third row. Similarly, the recommended approaches do not represent stages of activity for operations: for example, if the situation remains as described in the first row, the approach set out for that scenario should be sufficient over time.

Diagram 2: **Designing the mechanism based on an assessment of the nature of and potential for complaints**





2.2 Developing a 'basic' good practice mechanism

This section sets out the recommended elements of a mechanism suitable for most large-scale mining operations – that is, where there may be, or are expected to be, a certain number of complaints but, judged against the basic factors above, these do not represent a serious and deep level of community concern and opposition. There are three overall steps to consider in developing (or strengthening) such a mechanism, each with various sub-elements:

2.2.1 Designing the mechanism

- *Keep the potential scope of complaints broad.* To be most effective the mechanism should be capable of receiving complaints about any issue of concern to local people, whether environmental, social, cultural or economic, either directly or indirectly related to the operation.
- *Allow for different ways of making complaints, and adapt these to local culture.* The more avenues communities have to raise complaints, the more likely the operation will get to know about major issues and have the opportunity to tackle them effectively. The potential options might include face-to-face contact, telephone, email, letter or other written note.

Communities should be easily able to lodge complaints, which may require several points of contact (as opposed to solely via a nominated staff member). Some ways of making complaints should allow for anonymity and confidentiality of complainants (for example, some ICMM member's operations have put in place anonymous telephone 'hotlines'). Another potential element of good practice is for community liaison officers who receive verbal complaints to fill in a complaint form on behalf of the community member concerned and read it back to them to provide confidence that their complaint is in the system.

It is important to design the mechanism so that language, literacy and other cultural factors present no significant impediment to community members wishing to lodge complaints (for example, in some societies, there may be reluctance to report concerns or grievances to members of a different caste or the opposite sex). The mechanism needs to be open, and seen to be open, to all sections of the community, including women and minority groups. Taking into account language, literacy and other cultural factors should not, however, interfere with the requirement to record complaints internally in writing. Incorporating traditional ways of making complaints can be a powerful means of enhancing the mechanism's accessibility and perceived legitimacy (albeit care needs to be taken that this does not disenfranchise less traditionally-influential parts of the community).

- *Define a clear process for resolving complaints involving regular updates for complainants.* It can be helpful to set out a simple flow diagram for the process, as illustrated on page 15. A commitment to resolve complaints, or at least provide a full response, within a defined and reasonable timeframe is also important to ensure the mechanism is seen to be robust and effective by the community. Ideally complainants also should be provided with an acknowledgement of their complaint and regularly updated during the process.

A simple appeals process for cases where complainants are dissatisfied with the outcome can strengthen the perceived fairness of the system. For example, this might involve one or more of: referral of the complaint internally to a more senior level of management, referral to an appeals panel involving both company and non-company members (see below), or referral to a relevant state or judicial body.

This results in the company concerned losing a degree of control in the process, which may be challenging. Where a referral to an appeals panel involving both company and non-company members is used, it is important to note such processes often involve an explicit agreement at the start for all sides to be bound by the outcomes, or at least for the company as well as other parties involved to explain publicly why they have chosen not to implement particular recommendations. The role of third parties in the dispute resolution mechanism will be more constructive where they have prior knowledge of the local culture/context.

- *Involve communities and/or respected third parties where possible in the design and implementation of the mechanism.* Such involvement is especially important where operations are experiencing extensive numbers of and/or serious complaints – see section 2.3. Even in less conflictual situations, it can be an effective way to build local trust in the mechanism. A relatively simple option, for example, is to consult communities on the design of the mechanism. Another approach sometimes adopted is to ask respected community leaders to sit alongside senior company executive on panels considering appeals over complaints.

2. DESIGNING THE MECHANISM

2.2.2 Making the mechanism work in practice

- *Promote external awareness of the mechanism's existence and make it easy to access.* This point has already been highlighted in section 1 above. Publicising the mechanism is clearly important, as is having a central point of contact for all complaints that have been submitted and are under consideration – ideally a skilled community liaison officer – who is well known among local people and already regularly out 'in the field' consulting with them on issues of mutual concern.
- *Ensure internal support and accountability for the mechanism.* Given the mechanism's central role in underpinning good community relations, all personnel including contractors should be made aware of its existence, importance and – should they be presented with a complaint by local people – ways that it can be accessed and points of contact in the company. A clear chain of accountability for the mechanism leading to senior management is also important (see also section 1). The agreed course of action in response to complaints above a certain level of concern should be signed off by a member of senior staff. Managers, meanwhile, can encourage the right organizational 'mindset' by regularly emphasising that concerns and grievances should be taken seriously, but are also an opportunity for dialogue with communities.
- *Log and document all complaints carefully.* Keeping full records can help ensure complaints are responded to and processed within a reasonable timeframe and provide an important repository of information if complaints are reopened. They can also assist operations to track overall trends or patterns in concerns and grievances, allowing emerging issues to be flagged and understood at an early stage.

The sort of information that could be recorded on each case includes the details of the complaint, the identity of the complainant (if not anonymous), and company actions requested. It may help to rate the importance of the complaint according to some standardised scale so as to help prioritise cases requiring urgent investigation and resolution.

- *Seek resolution of concerns and grievances where possible through dialogue and joint problem solving with communities.* The way in which operations resolve concerns will vary according to the issue itself, and may range from a reasonable rejection of the complaint (with a full explanation provided to the complainant) to some form of compensation or other follow-up⁴. The correct response to serious concerns or grievances may need to be decided internally by, say, a cross-departmental committee, rather than left to a single individual.

Even so, there is a risk that internal decisions of any sort are seen to be unfairly biased in the operation's favour. Such perceptions can be mitigated by face-to-face discussions with complainants and community members with the aim of jointly solving how to resolve the concern or grievance. According to one senior company manager interviewed by the Office of the Compliance/Advisor Ombudsman⁵, some 90% of complaints should be handled in this way. Direct community involvement in the process can be further reinforced in various ways – as set out in section 2.3.

2.2.3 Monitoring the mechanism over time

- *Internally evaluate how the mechanism is functioning.* Data from the logging of complaints will provide the raw material for this. Reviewing at regular intervals the type of and trends in concerns and grievances will build an internal understanding of whether the correct procedures are being applied, whether communities are sufficiently aware of the mechanism, whether complaints are generally being successfully resolved, and whether the trends reveal any underlying issues that need to be tackled. The mechanism can then be refined accordingly.

There also may be obligations on an operation to report regularly overall trends in complaints or serious individual concerns or grievances to the headquarters of its parent company (see section 2.5). This can provide a useful additional 'set of eyes' on how the overall system is functioning. In general, however, it should be remembered that a high overall level of reported complaints does not necessarily reflect badly on an operation: it may mean the mechanism is trusted by community members and an analysis of outcomes may demonstrate that it is working successfully.

- *Report externally on the results of the mechanism.* This can help to enhance trust in the mechanism. Providing information in local sustainability reports, other corporate publications, or in community meetings on the sort of issues being picked up, or on the number of recent complaints together with the proportion resolved to complainants' satisfaction, can help underscore that the company treats local concerns seriously. It can also encourage helpful feedback on any local issues that may have been missed, and ways to improve the mechanism.

⁴Please note there are specific obligations for companies under the 'Voluntary Principles on Security and Human Rights' regarding allegations of human rights abuses reported to have been committed by security forces.

⁵See page 38 of "A guide to designing and implementing grievance mechanisms for development projects". CAO, June 2008.



Case studies: Developing a 'basic' good practice mechanism

Anglo American has itself developed a tool – part of its broader 'socio-economic assessment toolbox' – setting out for its operations how to build a complaints procedure. This has various components. The first, forming the basis of a complaints mechanism, is a simple, formal process whereby stakeholders can submit their complaints via multiple entry points (verbal, written, toll-free telephone, email etc.) and, if they choose, anonymously or via a third party (such as an NGO). This process, Anglo suggests, should also allow for informal identification of complaints, so that employees in the field, for example, are able to receive complaints on behalf of community members and forward these to the appropriate staff member.

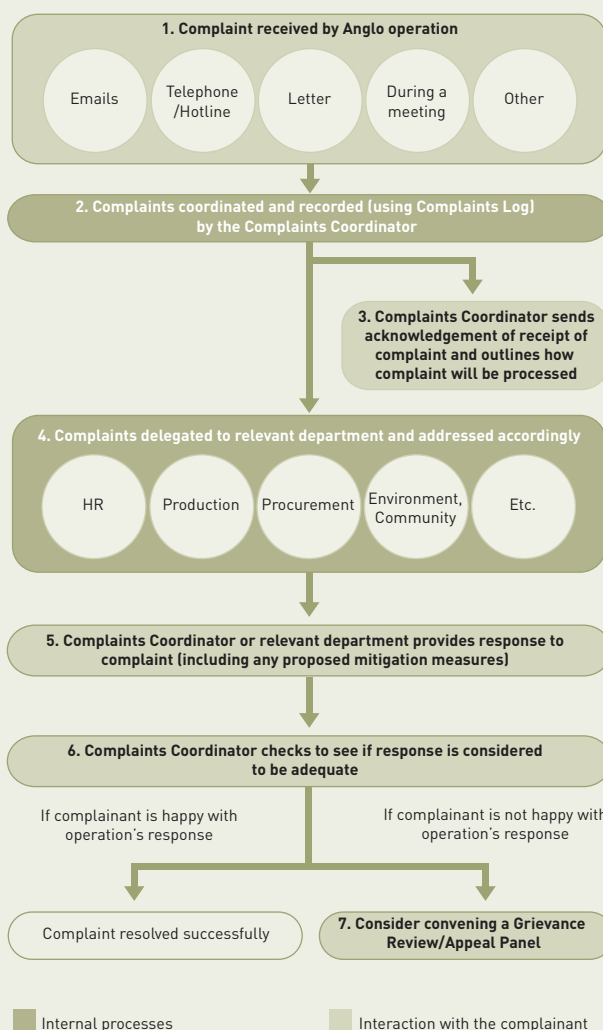
Other components include a simple internal procedure for recording and processing concerns, underpinned by a clear allocation of staff responsibilities and a set time-frame for the handling of complaints. Anglo recommends that a central 'complaints coordinator' oversees each operation's procedure. Internal induction training on the procedure should be targeted at operational staff (and not just community relations' personnel) and include guidance on how to recognise and redirect a complaint to the complaints coordinator.

Anglo also suggests complainants be kept informed with an initial response acknowledging receipt of their complaint and another for its resolution, and an interim response in instances where the deadline for resolution cannot be met (for example, if a detailed investigation is needed.) It is suggested that actions taken to resolve complaints are signed off by senior management.

In addition to setting out the basic components of a complaints procedure, Anglo's tool provides guidance on the internal assessment of complaints and potential models for third party involvement. Internal assessment of a complaint may require a system for categorising its severity, taking into account factors such as the nature, frequency and credibility of the grievance.

While Anglo suggests that in most cases a purely internal process for handling the complaint may be sufficient, additional community or third party input is recommended in situations, for example, where there is an underlying lack of trust between stakeholders and the Anglo operation, or where stakeholders are not satisfied with the proposed resolution of the complaint. In these instances, operations are asked to consider setting up a 'grievance review / appeal panel' comprising senior company staff, elected or respected external stakeholders and relevant independent specialists.

Figure 2: Example of a complaints procedure illustrated in Anglo American's tool



2. DESIGNING THE MECHANISM

Case studies: Developing a 'basic' good practice mechanism

Newmont has established a procedure for the resolution of concerns and grievances at its Ahafo operation in Ghana. This is in line with the company's group-wide management standard that requires all operations to have a complaints mechanism in place (see also the case-study on page 21 on group-level procedures). The procedure at Ahafo is based mainly on an internal company process, but with the option for the company to seek assistance from an independent third party in cases where the proposed resolution is not approved by senior management and / or by the complainant.

The procedure begins in the first instance as follows. Concerns and grievances can be lodged at a mine-site grievance office and at community information centres. While there are thus only limited entry points for complaints, they are well-publicised and staffed at consistent times throughout the week such that community members know when and where to access them. Also while concerns and grievances must be set out in writing, if the aggrieved person is unable to write, the complaint is written on his/her behalf and read back to him to check the facts are as written.

Management responsibilities are clearly defined, as is an efficient time frame for the handling of concerns and grievances. A 'front desk officer' conducts preliminary discussions with the aggrieved person, completes and directs the relevant form to the 'resolving officer' who in turn acknowledges the complaint (within 7 days) and proposes resolutions (within 20 days). Ahafo's procedure states that, "Wherever possible the mode of resolution of grievances should be through face to face discussion with the parties." A 'grievance officer' is responsible for the overall management of the system, for example ensuring records are logged in a computer database, and for issuing a (hand-delivered) response to the complainant (within 30 days). Finally, a 'grievance and complaints committee' authorises resolutions beyond the authority level of the resolving officer and, if necessary, escalates concerns and grievances to senior management or independent external bodies.

Newmont also sets out a clear appeals procedure in its mechanism at Ahafo. In the event that a complainant rejects a proposed resolution, he/she is first invited to resubmit the complaint with an explanation. However, if the proposed resolution is subsequently rejected then, subject to the agreement of the 'complaints and grievance' committee, Newmont may suggest assistance be sought from an independent third party, for example NGOs or mediation committees such as the Resettlement Negotiation Committee (this was established by the communities in the Ahafo region to handle resettlement negotiations with Newmont on behalf of residents).

Ongoing monitoring is also built into Ahafo's mechanism. For example, concerns and grievances and proposed resolutions are discussed at weekly review meetings of the community relations department. The grievance officer also produces a monthly status report which is sent to the relevant managers, including heads of department involved in the reported concerns and grievances. In particular, the report considers the number of complaints made and outstanding, the nature of the complaints and the average time lag between its receipt and resolution.

2.3 Deepening community or third-party involvement to strengthen trust

In some cases, building community trust in a complaints mechanism may be difficult, even with the elements of good practice outlined in previous sections.

When the level of complaints against an operation are particularly frequent, serious or problematic based on the criteria set out in section 2.1 – or are expected to become so (for example, in regions where there is a history of distrust of mining operations) – ways may need to be found to further strengthen the involvement of communities or respected third parties in the operation of the mechanism. This should be an addition to, rather than substitute for, the other elements of good practice from section 2.2. Such an approach is likely to be more time-consuming and challenging for operations, but can reap rewards if the mechanism – as opposed to vocal and visible protest – is seen by local people as the best way to voice concerns.

There are numerous ways this can be done. Involving entire communities in the day-to-day operation of the mechanism will be impractical, but community elders or other respected local leaders can be asked to carry out particular roles within the complaints process. Likewise, depending on the local context, there may be a range of independent third parties who could be involved in helping resolve particular issues, including local academics, religious officials, local government officials, and non-governmental organizations. It is critically important for operations, however, to appoint the right sort of community or third party official: those chosen need to be genuinely respected and trusted locally, unbiased and able to accurately represent local perspectives (if they are third parties), and representative of the community as a whole rather than of particular factions within it (if they are community leaders).



Similarly, depending on the local situation and procedural practicalities, community or third party involvement could be integrated into one or more stages of the complaints process, including:

- *Designing the mechanism* – for example, explicitly involving community representatives in a company committee overseeing the design of the mechanism
- *Investigating and fact finding* – for example, involving community members as observers when, say, company staff collect samples for pollution monitoring
- *Adjudicating complaints* – for example, appointing a local academic or community elder to help mediate particular complaints
- *Handling appeals* – for example, appointing a local NGO, government official, and community leader to sit on a panel with company officials to review complaints in cases where the resolution proposed by the company has been appealed by the complainant
- *Evaluating the mechanism* – for example, explicitly involving community representatives in a company-established committee to evaluate the mechanism

Inevitably, stepping up such community or independent involvement may involve greater resource commitments for the operation. In particular, community members or their representatives may require training, remuneration or other support to fulfil their designated roles. It may also be necessary to consider whether there are any local labour law issues, in particular with regard to vicarious liability. The case studies to the right provide some real-life examples of this overall approach.

Case studies: Deepening community or third-party involvement to strengthen trust

OceanaGold established a complaints mechanism at its Didipio gold and copper project in the Philippines with the explicit involvement of community representatives in designing and raising awareness of the mechanism, as well as in the investigation and adjudication of complaints. Although this project is on hold at the time of writing due to the global economic slowdown, the process developed by the company offers lessons for others seeking to establish a mechanism trusted by local communities.

OceanaGold inherited a situation of divided support and mistrust amongst parts of the local community on acquiring the project in late 2006. Complaints regarding the mine had been taken up by the Oxfam Mining Ombudsman and were the subject of an Oxfam report. OceanaGold recognised the need for a credible complaints mechanism to help rebuild relations with the community. It therefore invited the Didipio 'Barangay Council' – a recognised body of seven elected officials representing five communities in the project's surrounding areas, home to some 2,000 people – to work with the company to design the mechanism. Not all Barangay Council members agreed to participate in this process. However it was agreed that those which did participate would inform the others of progress, thus keeping the doors open to their joining the process at a later stage.

The process of designing the mechanism involved a series of meetings to allow representatives of both OceanaGold and the Barangay Council to discuss their concerns, and to air beliefs and myths in relation to each other, and how these could be effectively addressed by the procedure. One concern discussed, for example, was the perception amongst Didipio community members (whether justified or not) that some are favoured over others. This was also a problem for OceanaGold as it made it more difficult for the company to negotiate and reach agreements with them. The meetings were attended by translators and held at intervals of several weeks over a period of two months to allow time for participants to reflect on the discussions.

The meetings led to the agreement of a six-step complaints procedure with the explicit involvement of Council members at key stages. For example, the investigation of complaints, where needed, is carried out collaboratively by the complainant, Council member(s) and company representatives, including joint collection of data such as photographs. Following investigation, the complainant and Council representative can approve or reject solutions proposed by the company, a rejection leading to a process of further joint negotiations. It was also agreed that induction training would include both company staff and Council members and that Council member would introduce the mechanism to Didipio communities to help build trust and buy-in.

2. DESIGNING THE MECHANISM

Case studies: Deepening community or third-party involvement to strengthen trust

Newmont's operation at Batu Hijau in Indonesia established a formal complaints procedure following the introduction of a requirement to do so in a group-wide standard (see also the case-study on page 21 on 'group-level procedures'). Complaints had previously been addressed informally by the operation's community relations' team, and the new procedure was therefore designed to fit into and strengthen broader community relations efforts. In fact, Newmont had already established community relations offices in almost every community surrounding its operation (some eleven offices in total). According to company managers, the location of the offices within the villages has been critical to building trust. According to one local manager, "Once trust is built, the grievance mechanism is helpful, but the key is trust. The grievance mechanism is really another tool to build credibility and trust."

The mechanism comprises an internally-focused resolution process but also, importantly from the perspective of this case study, various third party elements. In terms of the basic process, complaints are first registered and logged at community relations' offices in the villages, providing an easy point of access and face-to-face contact with company staff. Complainants receive written acknowledgement of their complaint, including a time-frame for its resolution. Complaints are then categorised according to the class of hazard (taking into account, for example, the number of complainants and level of stakeholder interest, including media attention) and associated risk level.

Most complaints are investigated internally and proposed resolutions, if accepted by the complainant, signed off by senior management. However, complaints which are serious or difficult to resolve by the company alone (for example, where the facts are contested) are in some cases adjudicated by relevant external parties, including representatives of government, NGOs and academic bodies.

One example of a community complaint against Batu Hijau, supported by an NGO, which led to significant involvement of external stakeholders related to the reduction of fish stock in the east of the island allegedly caused by disposal of mine tailings there. Newmont considered the complaint to be factually inaccurate as, according to the company, mine tailings were not disposed of in the part of the island concerned; yet it was unlikely to be able to resolve the complaint satisfactorily with a company response alone. It therefore facilitated a joint investigation involving representatives of government, a local NGO and academics, including a process of joint fact-finding. This showed the reduction in fish stock to be caused by other factors (for example, poison bombs used by fishermen) which could then be addressed. Through this process, Newmont was able to resolve the complaint and help strengthen community trust in the company.

Significant third party input also helps to resolve a common source of complaint for the operation: over job applications which the company turns down. Newmont provides a specified number of jobs for local community members but demand greatly outstrips supply, often giving rise to local complaints. Here, Newmont refers each complaint to a relevant government department to mediate on a case-by-case basis. Again, external input is in these cases found to be a more effective way to resolve complaints than company action alone.

2.4 Setting up an independent forum or process, potentially led by third parties

In certain situations, the issues facing an operation may be unusually complex, the level of complaints unusually serious or problematic, or the potential for misunderstanding and distrust so significant and possibly damaging, such that any company-driven complaints mechanism – even as described in section 2.3 – may be insufficient on its own to bring about positive relations with stakeholders. The risk-based criteria in section 2.1 again may provide a useful pointer here.

In such cases, it may make sense for the operation to establish a process for resolving issues which is largely in the hands of a respected, independent body. This could focus on a defined set of issues, rather than necessarily all issues facing the operation. What it requires is for the operation to initiate and help structure the process, but surrender control to a large degree over its outcomes or recommendations. In general, such a process would be established with the express purpose of resolving issues associated with the operation, and therefore would be distinct from engagement by the company in existing national or international dispute resolution fora (the latter approach is beyond the scope of a guide focused on operational-level mechanisms, as noted previously).

In many countries the legal system already provides an adequate means of independent recourse, obviating the need for such an approach. But in countries where the legal system is beyond the reach of complainants, or is widely distrusted, or appears unsuited to the particular task of reconciliation at hand, both companies and communities may benefit from such a local independent process. Arguably this strategy is suited not just to operations where community relations have already hit a wall: it can also be a far-sighted choice for new operations in socially-complex environments to build stakeholder support and help pre-empt any problems.

In practical terms, there are different sorts of independent local processes that can be established (see case studies on page 19 for illustrations). The local context and the particular issues which need tackling will likely dictate which is most appropriate.



Among the possible options are:

- *Engaging a respected third party as a mediator* between the operation and local community. In some operations, for example, third parties have facilitated 'dialogue tables' bringing both sides together to build agreement on particularly contentious issues.
- *Establishing a multi-stakeholder commission*, including company, community and third party representatives, to investigate and resolve specific issues. This approach has been used by various companies to resolve land compensation issues, for example, and also allegations of human rights abuses.
- *Appointing an independent panel of experts* to investigate and make recommendations on specific issues. This approach has been used both by new operations seeking to establish positive relationships from the start and also by established operations looking for a credible review of their past performance or to identify ways to tackle ongoing challenges which command broad support.

Whichever approach is chosen, implementation can be difficult. The process needs to run alongside, not substitute for, the existing complaints mechanism (this should already be in place, ideally with the good practice elements set out in section 2.2). Similarly it should reinforce, not undermine, existing channels of communication between the operation and local community. Care should also be taken that it does not divert attention from any external efforts to improve legal recourse in countries where these are in need of reform.

Once again, there may be additional resource requirements for the operation in adopting such an approach – communities, for example, may need training and other support to engage effectively with the process. Third parties will need to be chosen carefully so as to avoid individuals or groups which have an inherent bias either for or against industry and to select those who will be genuinely trusted locally. And efforts will need to be made to ensure all segments of the community are involved in the process – otherwise agreements struck can later unravel as particular factions seek to disown them.

Finally – even more so than with the approaches set out in sections 2.2 and 2.3 – the operation will need to adopt a mindset of openness to criticism and to outcomes from the process with which it may not agree. Importantly, many independent processes involve an explicit agreement at the start for all sides to be bound by the outcomes, or at least for the company as well as other parties involved to explain publicly why they have chosen not to implement particular recommendations.

In spite of these challenges, however, a number of operations have judged that establishing such processes is likely to be the most effective way to protect their social license to operate. For while the independence of the process can make it difficult to manage, it is also precisely what gives it additional credibility with stakeholders.

Case studies: Setting up an independent forum or process

Exxon Mobil⁴ established a multi-party commission to establish eligibility for land compensation and address concerns and grievances relating to the company's acquisition of land for its Chad-Cameroon pipeline project. The commission was formed at an early stage in anticipation of potentially conflicting demands due to a complex land-use system in Cameroon which allowed multiple individuals to have claims on the same use of land.

The commission included government officials, village chiefs, traditional authorities, Exxon Mobil representatives, and two NGOs selected through a competitive bidding process. The Commission undertook a systematic, village-by-village process of "social closure," whereby they reviewed each compensation agreement along the pipeline route, and determined whether it was in compliance with the broader environmental and social management plan. For cases of noncompliance, the commission determined appropriate corrective measures. To promote transparency, final compensation payments took place at public hearings in the affected villages, with one of the NGOs serving the role of "witness" to the process.

BHP Billiton's former Tintaya copper mine (now owned by Xstrata) in Espinar province of Peru had a history of community unrest dating back to the expropriation of land for the mine by the Peruvian government in the 1980s. Following its acquisition of the mine in 1996, BHP Billiton sought to resolve concerns and grievances and improve relations with host communities by working with local and international NGOs to establish formal dialogue processes and agreements.

Of particular interest in this respect is BHP Billiton's participation in a three-year multi-stakeholder 'Dialogue Table' which, despite later community protests at Tintaya, has attracted lasting support and praise. The Dialogue Table was initiated by the Oxfam Mining Ombudsman in February 2002 in response to complaints about a wide range of issues involving the five communities closest to the mine. BHP Billiton participated in the process from the outset, alongside the local communities, two national NGOs and Oxfam America. Participants in the Dialogue Table formed four working commissions to investigate and resolve concerns and grievances relating to land, environmental impacts, sustainable development, and human rights respectively. The Dialogue Table convened on six occasions, with a final agreement, known as the 'Tintaya Agreement', signed in December 2004. The agreement provided for replacement of land that had been purchased or expropriated, establishment of a three-year development fund for communities, and ongoing joint environmental monitoring.

According to reports by the Oxfam Mining Ombudsman, the Dialogue Table helped "to improve communication and trust between the company, the communities and their support organisations" and was "successful at resolving most community grievances." Community protests nonetheless broke out at Tintaya in May 2005 causing the mine to be shut down for one month. It is important to note, however, that these protests focused on dissatisfaction with an earlier community agreement and did not involve any of the communities that participated in the Dialogue Table. Further, the protests failed to attract the support of many stakeholders, including of the NGOs involved in the Dialogue Table. In fact, it was partly as a result of the example set by the Dialogue Table that the protestors' concerns were able to be resolved: in this instance a multi-party mediatory commission was formed to broker a resolution between the government, the company and the protestors. In June 2005, the protestors agreed to join the commission and voluntarily withdrew from the mine site.

⁴Please note that this is an edited version of a case study that appears in "Stakeholder engagement: a good practice handbook for companies doing business in emerging markets" IFC, 2007.

2. DESIGNING THE MECHANISM

Case studies: Setting up an independent forum or process

Anglo American, BHP Billiton and Xstrata, equal owners of the Cerrejon coal mine in Colombia, commissioned in August 2007 an independent 'social review' of Cerrejon's past and current social engagement to provide a credible assessment of the mine's social impact and outstanding concerns. Though not explicitly a complaints or grievance resolution process, the panel's recommendations provided insights into the resolution of a number of legacy issues, notably regarding concerns and grievances over the resettlement of the Tabaco community in 2000-01.

The review was conducted independently of Cerrejon management by a panel of four internationally recognised experts in the area of social development, supported by a local consultancy to undertake fieldwork. The panel consulted extensively at the mine site and within local communities, as well as with international stakeholders. The panel's report was published in March 2008 and highlighted a number of areas in which Cerrejon could enhance its social practices. Cerrejon's management subsequently produced a comprehensive response to the report as well as an action plan to address its findings. These documents are all publicly available.

Among its recommendations, the panel emphasised the need to address outstanding issues over the resettlement of the Tabaco community. It urged Cerrejon "to facilitate reconciliation between the disparate groups formed by the former inhabitants of the village of Tabaco...through a consultative, participatory process." Taking up the recommendation, Cerrejon appointed the former Chair of the review panel to act as independent facilitator to a series of dialogue meetings with community members from August to December 2008. This led to an agreement setting out a number of commitments by Cerrejon, for example to purchase a new plot of land where the Tabaco community will be reunited.

It is as yet too early to evaluate whether the concerns and grievances over the Tabaco resettlement are indeed resolved but the recent agreement marks a significant step. According to Cerrejon, "the comprehensive independent review of our social processes has been a very constructive experience."

- *Building data and details on complaints into internal reporting systems.* There are likely to be requirements on operations to report regularly to the corporate centre data on HSEC performance. Requirements to report as part of this the level and nature of complaints – and particularly to highlight any serious complaints made – can assist headquarters in monitoring issues. It should be remembered, however, that a low number of complaints reported by any particular operation may not always be a positive sign; in some cases, the complaints mechanism, perhaps due to insufficient local awareness of it, may be failing to pick up all relevant concerns.
- *Undertaking oversight of operational-level mechanisms and responses to concerns and grievances as part of group-wide governance.* Many ICMM members have significant governance processes covering HSEC and related issues already in place, and these could incorporate how operations tackle complaints. For example, internal HSEC audits could include a review of the robustness of operations' complaints mechanisms. A number of ICMM members have established high level independent or board committees to review HSEC performance as a whole: reviewing and providing oversight regarding the most serious complaints made against operations could be part of the remit of such committees.
- *Establishing group-wide telephone 'hotlines' for anonymous reporting of complaints and infractions of company policy.* Many ICMM members have put such hotlines in place. While often directed at company employees and aimed at encouraging reporting of policy infractions which are difficult to raise through line-management, the relevant telephone numbers can also be made available where appropriate to community members and other external stakeholders. Group-level hotlines are not a substitute for operational-level complaints mechanisms, and potential abuses of the system by external parties needs to be guarded against. Nonetheless they can provide a useful additional route for raising local concerns (see examples in box below).

2.5 Supporting group-wide procedures

Finally, while the focus of this guide is on operational-level complaints mechanisms, for companies with more than one operation there are various ways in which project-level efforts can be reinforced by processes driven from corporate headquarters. The case studies on page 21 provide some examples. Looking across the ICMM membership as a whole, such processes can include:

- *Setting a basic requirement for operations to put in place complaints mechanisms.* Group-wide standards in this respect need not prescribe in detail the sort of mechanism to put in place, which will depend on the local context, but can insist on their development in some form as a matter of good practice.



- *Collating and externally reporting group-wide data on complaints.* Just as publication of data on complaints in reports to the local community can help bolster local trust in the mechanism concerned, group-wide reporting of this data within annual sustainability reports can send a signal of credibility to international stakeholders. A number of ICMM members already publish the total number of complaints received by their operations each year together with a break-down based on the sorts of issues raised (for example, noise from operations is often one of the most frequently-raised concerns based on the data from members). This aspect is also likely to be addressed in the final version of the Global Reporting Initiative (GRI) Mining and Metals Sector Supplement [the draft version of this contains two particularly relevant indicators: 'The extent to which grievance mechanisms were used to resolve disputes relating to land use, customary rights of local communities and indigenous peoples, and their outcomes' (MM6B) and 'Significant incidents involving communities in which grievance mechanisms have been invoked to address them with their outcomes' (MM10).]

Case studies: Group-level procedures

BHP Billiton sets the basic requirement that all operating sites maintain a register of complaints and company responses to record and track the management of community concerns. Complaints are acknowledged and investigated as official incidents using a standard investigation process. The course of action required to resolve a complaint depends on the nature of the issue and its severity, and can range from a simple face-to-face meeting with the affected person, to a full review by the company's 'global ethics panel' (see below). Information gathered from incident investigations is collated and analysed to identify lessons and monitor trends.

BHP Billiton encourages concerns and complaints over business conduct issues to be addressed primarily at the operational level. However, concerns can also be raised with regional points of contact using telephone and email based 'business conduct helplines'. Though primarily intended for employees to report in confidence issues such as harassment, conflict of interest, fraud or bribery, the helplines are also open to external stakeholders.

BHP Billiton's 'global ethics panel' provides oversight of concerns related to business conduct. The panel is comprised of eight corporate representatives from relevant functional areas (legal, risk assessment and audit, public affairs and human resources) and two external advisors. It provides a high-level point of contact for employees, and meets quarterly to review all business conduct cases that have been raised through the helplines. It also assesses emerging policy issues and recommends to the chief executive appropriate changes to BHP Billiton's 'Code of Business Conduct'.

BHP Billiton reports externally on concerns and complaints recorded both at the operational level and through regional helplines. Aggregate figures of the number and types of complaint received across all operations are published in the company's annual sustainability report. The most recent report indicates that in 2008, sites received 536 complaints. The single largest type of community complaint was noise-related, with 200 complaints relating to this issue. The helpline service received 133 enquiries in 2008, relating mainly to queries and concerns over equality of employment (18 enquiries), conflicts of interest (16 enquiries) and gifts and entertainment (13 enquiries).

Xstrata requires all its operations to implement a 'grievance and conflict resolution mechanism' to allow community members and other external stakeholders to raise issues or complaints, either directly or anonymously. Xstrata sets out in its group-wide sustainable development framework that the mechanism must include processes 'for registering, evaluating and resolving all issues and complaints'.

Xstrata has also set up a group-wide 'ethics line' for employees and external stakeholders to report anonymously concerns they feel they are not able to raise with line management. A free phone number is provided for every country in which Xstrata has managed operations. Ethics line details are published on the back page of the company's 'statement of business principles' and communicated throughout the group.

As with BHP Billiton, data on concerns raised at both the operational level and through the 'ethics line' are reported externally in Xstrata's annual sustainability report. In 2007, for example, a total of 577 complaints and enquiries were recorded at the operational level, relating most frequently to noise or dust (40%). A total of 17 incidents were reported through the 'ethics line' that year, relating mainly to alleged bribery and corruption, and unfair labour practices. Xstrata indicates that all incidents were investigated.

As already described on page 15, **Anglo American** has developed a tool for all its operations – part of its broader 'socio-economic assessment toolbox' – setting out how to build a complaints procedure. Anglo has also put in place a group-wide hotline known as 'speak up' which allows employees and other stakeholders anywhere in the world to report concerns and complaints relating to the company via a choice of communication channels (telephone, email, web-based and surface mail). Concerns can relate, for example, to fraudulent business practice, HSEC issues and financial reporting issues. They are routed to an external service provider which forwards them in anonymous form to a response team within the company.

Calls are answered on a 24-hour basis throughout the year by operators able to speak English and the main African languages. When a person submits a report via email or the 'speak-up' internet site (www.anglospeakup.com), he/she is provided with a confidential username and password to enable subsequent log-in in order to track progress of the investigation of the complaint.

APPENDIX 1: FURTHER READING AND LINKS TO KEY BACKGROUND DOCUMENTS

Brahm, E., & Ouellet, J., 2003. *Designing new dispute resolution systems*.

Available at: http://www.beyondintractability.org/essay/designing_dispute_systems/?nid=1398

Business and Society Exploring Solutions (BASES) online resource (known as 'BASESwiki') on non-judicial grievance mechanisms. 'BASESwiki' is an initiative of the UN Secretary-General's Special Representative on Business and Human Rights, undertaken in cooperation with the Corporate Social Responsibility Initiative at Harvard Kennedy School and with the support and collaboration of the International Bar Association and Compliance Advisor/Ombudsman of the World Bank Group. Available at: <http://www.baseswiki.org/En>

Compliance Advisor / Ombudsman (CAO), June 2008. *A guide to designing and implementing grievance mechanisms for development projects*.

Available at: <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf>

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Corporate Engagement Project, July 2006. *Stakeholder negotiation and engagement*.

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Corporate Social Responsibility Initiative, January 2008. *Rights compatible grievance mechanisms: a guidance tool for companies and their stakeholders*. Corporate Social Responsibility Initiative Working Paper No. 41: John F. Kennedy School of Government, Harvard University.

Available at: http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf

Corporate Social Responsibility Initiative, November 2007. *Report of 2nd multi-stakeholder workshop: Corporations and human rights: accountability mechanisms for resolving complaints and disputes*. Corporate Social Responsibility Initiative: John F. Kennedy School of Government, Harvard University.

Available at: <http://www.reports-and-materials.org/Accountability-mechanisms-workshop-report-Nov-2007.pdf>

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International Council on Mining and Metals (ICMM). (May 2009). *Human Rights in the Mining & Metals Industry: Overview, Management Approach and Issues*.

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APPENDIX 2: LIST OF EXTERNAL EXPERTS INTERVIEWED

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