

# DISPUTE OR DIALOGUE?

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Community perspectives on company-led grievance mechanisms

EDITED BY EMMA WILSON AND EMMA BLACKMORE – 2013



SHAPING  
SUSTAINABLE  
MARKETS

iied

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We welcome your comments on this publication or other aspects of Shaping Sustainable Markets. Please contact [emma.blackmore@iied.org](mailto:emma.blackmore@iied.org).

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## ACRONYMS AND ABBREVIATIONS

ADR	alternative dispute resolution	FPIC	free, prior and informed consent
ASM	artisanal and small-scale mining	FSC	Forest Stewardship Council
ASRC	Azerbaijan Social Review Commission	ESIA	environmental and social impact assessment
BTC	Baku–Tbilisi–Ceyhan pipeline	ICMM	International Council on Mining and Metals
CAMP	Continuous Auditing and Monitoring Programme	IFC	International Finance Corporation
CAO	Compliance Advisor/Ombudsman (WB Group)	ISO	International Organization for Standardization
CFA	Central African franc	IPIECA	The global oil and gas industry association for environmental and social issues (formerly known as the International Petroleum Industry Environmental Conservation Association)
CIB	Congolaise Industrielle des Bois	JLAT	Joint Land Acquisition Team
CLO	community liaison officer	KPIs	key performance indicators
CREDO	Community Relations and Development Office (TVIRD)	LNG	liquefied natural gas
CSO	civil society organisation	MGB	Mines and Geosciences Bureau (Philippines)
CSR	corporate social responsibility	NCIP	National Commission on Indigenous Peoples (Philippines)
CSRI	Corporate Social Responsibility Initiative (at the Harvard Kennedy School)	NGO	non-governmental organisation
CSRMI	Centre for Social Responsibility in Mining	OCDH	Observatoire Congolais des Droits de l'Homme (Congolese Observatory of Human Rights)
DRC	Democratic Republic of Congo	OECD	Organisation for Economic Co-operation and Development
EBRD	European Bank for Reconstruction and Development	PSA	production sharing agreement
EIA	environmental impact assessment	SCP	South Caucasus Pipeline
		SIA	social impact assessment
		SIMDP	Sakhalin Indigenous Minorities' Development Plan
		SOCAR	State Oil Company of Azerbaijan Republic
		SPZ	sanitary protection zone
		UN Guiding Principles	UN Guiding Principles on Business and Human Rights (for the implementation of the United Nations "Protect, Respect and Remedy" Framework)

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# FOREWORD

In 2005, when Professor John Ruggie was beginning his six-year mandate as UN Special Representative for Business and Human Rights, there was little on which human rights NGOs and companies accused of human rights abuses could agree. One rare point of agreement was that the only legitimate place for addressing these kinds of dispute was a court of law. Where that was not possible, the two sides typically defaulted into a rhetorical battle through campaigns and public relations.

Over the following years, as we explored the space between angry rhetoric on the one hand and lawsuits on the other, it appeared that so much more could and should be achieved. Research in the United States in the 1980s showed that even in a society where access to courts is relatively easy and culturally accepted, they are used for barely 10 per cent of grievances arising in society. Indeed, societies have long provided a range of non-judicial avenues for addressing grievances. These range from community hearings to dialogue-based processes, sometimes facilitated by a trusted individual, to administrative proceedings, to formal arbitration and many variations in between. In short, while courts have a crucial and irreplaceable role in any strong society today, they are no panacea for providing remedy and resolving disputes.

What was lacking in the business and human rights arena in 2005 was an understanding of what makes for an effective non-judicial grievance mechanism in practice. The very idea of these mechanisms was being written off because so many of those that existed were poorly executed.

Our first step was therefore to develop a set of criteria that should underpin the design of any non-judicial mechanism. The criteria Professor Ruggie first proposed in 2008 were tested and refined in the years following and their final form appears in Principle 31 of the *UN Guiding Principles on Business and Human Rights* (UN/OHCHR, 2011). They apply to state-based mechanisms and mechanisms hosted by international organisations, industry or multistakeholder initiatives, or companies themselves.

Company–community grievance mechanisms play a very particular role, not least in the extractive sectors. They are often closest to the point where impacts actually occur. Where these mechanisms work well, companies can identify complaints early and remedy them before they escalate into more serious issues. They can do so in a manner that reflects local needs, preserves relationships and avoids or reduces harm to human rights.

Since 2008, various organisations have developed guidance on designing effective company-level grievance mechanisms, including the Compliance Advisor/Ombudsman and the International Finance Corporation of the World Bank Group, the International Council on Mining and Metals and, more recently IPIECA, the global oil and gas industry association for environmental and social issues.

Perhaps the call I hear most often today from companies looking to develop mechanisms to deal with community grievances is ‘Can you give me some examples?’ or ‘What does good practice look like?’. Practitioners in the extractive industries are working through questions such as ‘How do we provide consistent standards for our local staff designing mechanisms, while recognising they must fit with local needs and cultures?’; ‘What needs to be formalised through a mechanism and what can be left to informal solutions?’; ‘Where does stakeholder engagement end and a grievance mechanism begin?’.

There are no formulae for answering these questions. Indeed, it would be dangerous to assume that what works in one place can be copied elsewhere with similar success. Yet there is a great deal of hard-earned experience that can help people find the right answers in their own situations. Credible case studies can help companies, NGOs and communities access that experience. They can provide ideas that stimulate discussion; they can highlight pitfalls and open eyes to opportunities.

This book makes an important contribution by bringing to light a range of powerful case studies of how companies, often with communities, have built grievance mechanisms that have both enjoyed a good measure of success and offered important lessons. The cases convey varying perspectives on the mechanisms they review, including the crucial perspectives of affected communities themselves. Together, they offer valuable insights into the considerable challenges, and the equally considerable benefits, of effective company–community grievance mechanisms.

**Caroline Rees**  
**CEO of Shift<sup>1</sup>**

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1. Shift ([www.shiftproject.org](http://www.shiftproject.org)) is an independent, non-profit centre for business and human rights practice, staffed by a team that was centrally involved in shaping and writing the *UN Guiding Principles on Business and Human Rights* (2011), and chaired by the former Special Representative of the UN Secretary-General on Business and Human Rights, Professor John Ruggie.

# ONE INTRODUCTION

Extractive industry companies and their investors increasingly see a strong business case for building good relations with local communities, and addressing conflict and potential conflict in a timely and effective manner. This involves engaging meaningfully with communities affected by project operations, so as to build trust and to respond appropriately to any local concerns, major or minor. If left unaddressed even minor complaints may escalate into disputes or even violent conflict. This is potentially devastating for local communities. From the company perspective, it can also result in damage to its reputation, a loss of operational time and money, and it can put future investment opportunities at risk.

Effective channels by which local communities can voice their concerns about a project – and get these concerns addressed – are particularly important. In general the only formal mechanisms by which citizens can challenge the activities of extractive companies tend to be those available under host country legislation. However, courts and tribunals in host countries, particularly in developing countries and emerging economies, can be inefficient, corrupt or reluctant to interfere with extractive industry activities (Schwarte and Wilson, 2009). This can result in increased conflict and resentment among host communities, which may be a key legacy challenge when one company acquires a project from another.

Leading oil and gas, mining and forestry companies are starting to establish their own formal mechanisms to address and resolve local citizens' grievances. Grievance mechanisms provide a channel for concerns to be identified

## BOX 1.1: WHAT IS A COMPANY–COMMUNITY GRIEVANCE MECHANISM?

We define a company–community grievance mechanism as a process or set of processes for receiving, evaluating and addressing grievances from affected communities, in a timely and consistent manner at the site or operational level. The mechanism may be wholly or partially run by the company. Grievances might be real or perceived: the latter may be a source of acute anxiety for communities and can be addressed through dialogue and provision of timely and accurate information.<sup>2</sup>

and addressed before they escalate. As part of an effective overall community engagement strategy, they can help to build trust with stakeholders, reduce operational risks and enhance management of project impacts and community relations.

Frequently companies establish grievance mechanisms in order to comply with the formal requirements of project finance and international certification initiatives, which address conflict resolution and human rights protection. Since 2006, for example, the International Finance Corporation (IFC) requires its clients –

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2. Definition derived from the International Finance Corporation (IFC, 2009:4), the International Council for Mining and Metals (ICMM, 2009:4) and IPIECA, the global oil and gas industry association for environmental and social issues (IPIECA, 2012:3). See Chapter 2 for more discussion on definitions.

companies that receive project finance – to set up and administer procedures to address project-related grievances from affected communities.<sup>3</sup> Other international financial institutions have similar requirements. The environmental management systems standard ISO 14001 of the International Organization for Standardization (ISO),<sup>4</sup> and the Forest Stewardship Council (FSC) certification standard both require certified companies to establish company–community grievance mechanisms.<sup>5</sup> More recently, a major influence on the adoption and development of grievance mechanisms, and on public awareness, has been the work of Professor John Ruggie in his role as UN Special Representative on Business and Human Rights, and the UN Human Rights Council’s endorsement of the *UN Guiding Principles on Business and Human Rights* (UN/OHCHR, 2011) (see Chapter 2).<sup>6</sup>

There is a growing body of literature on company–community grievance mechanisms, supported by online resources such as BASESwiki (which will be transferred to the ACCESS platform in 2013).<sup>7</sup> In general, there is a need for more long-term analysis of the implementation, impact and effectiveness of grievance mechanisms, including analysis of the broader societal impacts beyond day-to-day resolution of grievances. Having identified in particular a lack of material on the

community perspectives on company-led grievance mechanisms – their effectiveness and impact on sustainable development and livelihoods locally – IIED sought to address this by undertaking and commissioning the research in this book, with case studies based on a mix of desk-research, interviews and fieldwork.

Chapter 2 is a review of the current literature and experience of grievance mechanisms. Based on desk-research and interviews with company and industry experts, it explores definitions of the term ‘grievance mechanism’; some history behind the evolution of grievance mechanisms including alternative dispute resolution; key drivers, standards and guidance for their design and use; and consideration of future trends in grievance mechanism development. This is followed by a series of four chapters focusing on case studies in the oil and gas, mining, and forestry sectors.

Chapter 3 covers the grievance mechanism run by BP in Azerbaijan for the 1,768km Baku–Tbilisi–Ceyhan (BTC) pipeline, which passes through Azerbaijan, Georgia and Turkey. The BTC pipeline project has been the focus of considerable international scrutiny by civil society organisations and project lenders, due to its size and impact and international profile. The project has benefited from investing in civil society capacity building

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3. IFC’s updated sustainability framework retains this requirement and is available online. See: IFC (2013).

4. For more information on the ISO 14000 series of standards, see ISO (2007).

5. For more information on the Forest Stewardship Council and FSC certification, see FSC (2013).

6. For more on the work of the UN Special Representative on Business and Human Rights, see: [www.business-humanrights.org/SpecialRepPortal/Home](http://www.business-humanrights.org/SpecialRepPortal/Home)

7. See: [www.baseswiki.org](http://www.baseswiki.org) and [www.accessfacility.org](http://www.accessfacility.org). Accessfacility.org is due to come online in 2013 to replace BASESwiki.

during the construction phase, which has enabled informed dialogue between the company and civil society over the years. The case study highlights the need to balance government and company responsibilities in resolving grievances. It also demonstrates how a major international project such as this can positively influence government practice.

Chapter 4 is a case study of the company Congolaise Industrielle des Bois (CIB), which manages around 1.4 million hectares of tropical forest concessions in the northern Republic of Congo. The company achieved its first FSC certificate in 2006 and full certification in 2010. FSC has been a key driver for CIB to establish a grievance mechanism for resolving land-related disputes and for providing fair compensation for loss or damage to property, livelihoods and resources. This case study demonstrates how grievance mechanisms can be based on existing community structures and underscores the need to respect traditional conflict resolution approaches.

Chapter 5 relates to the Sakhalin-2 oil and gas project in the Russian Far East. Like the BTC project, Sakhalin-2 has used project finance, and has come under considerable international scrutiny and criticism, but is also seen as a pioneer of community engagement in Russia. This case study analyses the experience of the operating company, Sakhalin Energy, in addressing grievances and building a dialogue with the indigenous peoples in the north of the island. This is then compared to a conflict that has developed with a (non-indigenous) dacha community located close to a liquefied natural gas plant in the south of the island. The case study provides an example of a well-functioning grievance mechanism, but highlights the need to understand the full range of complexities

associated with building dialogue with communities, including outside the grievance resolution process.

Chapter 6 considers the effectiveness of three different grievance mechanisms and stakeholder engagement processes implemented by mining companies. The first is Anglo American's approach to stakeholder engagement, its grievance mechanism and the computerised system employed to manage grievances. The second is TVIRD in the Philippines, which demonstrates the value of building on local and traditional modes of communication and dispute management to create culturally appropriate grievance mechanisms. The third case, Kaltim Prima Coal in Indonesia, illustrates the 'governance gaps' that exist in a number of developing countries that a company–community grievance mechanism can help to fill.

The book's findings demonstrate the importance of having an open and responsive overall approach to stakeholder engagement within which a grievance mechanism can be employed effectively. The book offers examples of successful approaches for enhancing dialogue – from civil society capacity building to designing engagement around traditional decision-making processes, as well as system innovations such as electronic logging, which facilitate the monitoring and management of grievance resolution within the company. The book considers community conflict with an eye to understanding the mechanics and the challenges of how company–community engagement takes place in practice. It also offers local perspectives on the implementation of standards and processes that are frequently analysed primarily at the level of system or process. As such the book offers a fresh take on a growing body of literature on company–community grievance mechanisms.

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# TWO

# OVERVIEW OF COMPANY– COMMUNITY GRIEVANCE MECHANISMS

David Vermijs

This chapter describes and analyses the existing literature on company–community grievance mechanisms<sup>8</sup> in the oil, gas, mining and forestry sectors. As such, it provides the context for the remaining chapters in this book.<sup>9</sup> It explores the definition of company–community grievance mechanisms, trends and drivers for their implementation, and how their effectiveness can be assessed. It also considers possible future trends in the use and design of such grievance mechanisms. A major influence on public awareness, adoption and development of grievance mechanisms has been the work of Professor John Ruggie in his role as UN Special Representative on Business and Human Rights — notably in highlighting the need for adequate forms of ‘access to remedy’ in the case of human rights abuses. There is an increasing amount of literature on company–community grievance mechanisms now in the public domain, and an emerging community of research and practice, helped by online sources such as BASESwiki. Companies have demonstrated willingness to engage with researchers on the analysis of their grievance mechanisms but, overall, the literature is constrained by the absence of long-term analysis of the implementation, impact and effectiveness of grievance mechanisms.

## 2.1 INTRODUCTION

The existing literature on company–community grievance mechanisms is fairly limited, though in recent years available information has increased. The BASESwiki website provides online access to the largest collection of materials on grievance mechanisms. BASESwiki aims to provide ‘a collaborative work space for sharing information and learning about how dispute resolution

between business and society works around the world’.<sup>10</sup> The online hub is an initiative of the former UN Secretary-General’s Special Representative on Business and Human Rights, Professor John Ruggie (see Section 2.4 for details), developed in cooperation with the Corporate Social Responsibility Initiative (CSRI) at Harvard Kennedy School and with the support and collaboration of the International Bar Association

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8. In line with the definition provided in the introduction, the term ‘company–community grievance mechanism’ is understood to include mechanisms wholly or partially run by companies at the site or operational level for real or perceived grievances of communities and/or their individual members. It excludes non-company-led mechanisms even if companies are the subject of complaints under such external mechanisms.

9. This review chapter thus excludes supply chain initiatives and literature on apparel, agriculture and the electronics sectors, among others.

10. The abbreviation BASES stands for Business and Society Exploring Solutions and the website has a wiki format allowing stakeholders to add and update the descriptions of mechanisms and case stories. See: [www.baseswiki.org](http://www.baseswiki.org)

and the Compliance Advisor/Ombudsman of the World Bank Group. Links to nearly all the materials reviewed for this study can be found on BASESwiki, which provides the best starting point for those interested in learning more about the subject. The information on BASESwiki will be transferred to a new hub in 2013 (Accessfacility, forthcoming).

The literature on company–community grievance mechanisms consists of three types of publication: guidance, discussion papers, and mechanism descriptions (see Table 2.1).<sup>11</sup> The publications offering guidance generally describe a structured approach to setting up and improving a grievance mechanism following a step-by-step process. They usually include a discussion of the ‘business case’ for setting up a grievance

mechanism, since the guidance is usually aimed at the companies. However, a key characteristic of these guides is that they mostly describe the outward processes, that is, how to engage with the community in setting up the grievance mechanism. They provide limited guidance on the internal processes (e.g. alignment with existing management systems) that companies should follow to successfully implement grievance mechanisms for communities.<sup>12</sup>

The discussion papers commonly outline the ‘state of play’ of grievance mechanisms, which are usually based on interviews and/or surveys with industry representatives and other stakeholders, and address questions such as: Why is it important to have a grievance mechanism? To what degree are companies using grievance

**TABLE 2.1: SELECTED EXAMPLES OF AVAILABLE LITERATURE ON COMPANY–COMMUNITY GRIEVANCE MECHANISMS**

	SOURCE	TITLE
<b>Guidance</b>	Harvard University's Corporate Social Responsibility Initiative (Rees, 2008)	<i>Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders</i>
	International Council on Mining and Metals (ICMM, 2009)	<i>Human Rights in the Mining and Metals Industry: Handling and Resolving Local Level Concerns and Grievances.</i>
	World Bank's Compliance Advisor/Ombudsman (CAO, 2008)	<i>Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects</i>
<b>Discussion Papers</b>	University of Queensland Centre for Social Responsibility in Mining (Kemp and Gotzmann, 2008)	<i>Community Grievance Mechanisms and Australian Mining Companies Offshore</i>
	International Institute for Environment and Development and FIELD (Schwarte and Wilson, 2009)	<i>Building Public Trust: Transnationals in the Community</i>
<b>Mechanism descriptions</b>	Harvard University's Corporate Social Responsibility Initiative (Rees and Vermijs, 2008)	<i>Mapping Grievance Mechanisms in the Business and Human Rights Arena</i>
	BASESwiki: a dispute resolution community (online)	<i>'Case Stories'</i> <a href="http://baseswiki.org/en/BASESwiki:CaseStories">baseswiki.org/en/BASESwiki:CaseStories</a>

11. For an overview of all key sources, including information on where they can be obtained, see Appendix A.

12. ICMM (2009) is an exception. See in particular pages 9, 14, 20–21 and the various case studies offered in the ICMM report.

mechanisms? and For what purpose are grievance mechanisms used? Finally, mechanism descriptions, which are usually no more than a couple of paragraphs (or pages at most) in length, aim to provide insight and inspiration for companies.<sup>13</sup>

Building on these and other publicly available sources (see Appendix A for an overview) and the interviews with company representatives and independent experts, this chapter describes and analyses various definitions of company–community grievance mechanisms (2.2); factors in the evolution of use and thinking on company–community grievance mechanisms (2.3); some of the key drivers and the ‘business case’ for adopting a company–community grievance mechanism (2.4); community experiences and civil society perspectives (2.5); a review of literature on evaluating effectiveness (2.6); and a discussion of future trends (2.7).

The desk-based research for this chapter has been complemented with semi-structured

interviews with 14 representatives of 10 different companies, as well as with 7 independent experts.<sup>14</sup> The interviews focused mainly on the oil and gas sector, as the industry views on mining are more widely available in the literature.<sup>15</sup>

## 2.2 DEFINITIONS OF COMPANY–COMMUNITY GRIEVANCE MECHANISMS

There are several definitions of company–community grievance mechanisms in the existing literature. Table 2.2 provides an overview of the most prominent of these definitions.

The definitions in Table 2.2, as well as a number of others available in the literature,<sup>16</sup> share certain characteristics. Almost all of them emphasise the functional nature of a grievance mechanism (e.g. ‘method’, ‘vehicle’) and most tend to refer explicitly to their local or project-level application. A further commonality among the descriptions is that they describe a certain level of formalisation of process, for example, through set timelines and

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13. An overview of mechanism descriptions that were found during the research of this paper is provided in Appendix D with a short summary for each (see also overview table under 2.3).

14. The author is particularly indebted to the work of Caroline Rees, who led the work around the Remedy pillar of the Guiding Principles, launched BASESwiki, and conducted numerous grievance mechanism pilot studies as part of Professor Ruggie’s mandate. He is also grateful to representatives of the following companies for interviews and/or for reviewing a draft of this chapter: Arcelor Mittal, Anglo American, BP, Cerrejón, Chevron, ExxonMobil, Shell, Statoil and Total. He is grateful to the following experts for their time and input: Javier Aroca (Oxfam America), Natalie Bridgeman Fields (Accountability Counsel), Rachel Davis (Shift, Harvard Kennedy School), Amar Inamdar (World Bank), Chris Jochnik (Oxfam USA), John Sherman (Shift, Harvard Kennedy School), and Luc Zandvliet (Shift, Triple R. Alliance). Special thanks to Emma Blackmore and Emma Wilson of IIED, and Christoph Schwarte, formerly of FIELD, for very helpful commentary and to Thurid Bahr and Ties Schelfhout for research assistance. Notwithstanding all of the very helpful input, any remaining error is solely the author’s. Moreover, the views expressed in this chapter are the author’s and do not necessarily represent those of these individuals and organisations.

15. This is particularly through the work of the Centre for Social Responsibility in Mining, a part of the Sustainable Minerals Institute at the University of Queensland, Australia. See: [www.csr.mq.edu.au](http://www.csr.mq.edu.au)

16. See also: CAO (2008: iv), Rees (2008: 7), Kemp (undated), Kemp and Gotzmann (2009: v), Rees *et al.* (2011: 8). For more key resources, see Appendix A.

**TABLE 2.2: SELECTION OF EXISTING DEFINITIONS OF COMPANY–COMMUNITY GRIEVANCE MECHANISMS**

REFERENCE	DEFINITION	SCOPE OF APPLICATION
Guiding Principles on Business and Human Rights (Ruggie, 2011b)	'[A]ny routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.' (p. 22)	'...all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.' (p. 6)
Oxfam Australia (Hill, 2010)	'A company-supported, locally based and formalised method, pathway or process to prevent and resolve community concerns with, or grievances about, the performance or behavior of a company, its contractors or employees.' (p. 7)	Mostly projects in the mining industries (p. 4)
International Council on Mining and Metals (ICMM, 2009)	'[T]he set of processes a company may have in place to deal with local level concerns and grievances.' (p. 4)	Operational-level mechanisms in the mining and metals industries
International Finance Corporation (IFC, 2009)	'A process for receiving, evaluating, and addressing project-level grievances from affected communities at the level of the company, or project.' (p. 4)	IFC clients in oil, gas, and mining projects, including manufacturing companies (p. 1)

some degree of continuity in oversight or administration, although only three include this in their basic definition (CAO, 2008; Hill, 2010; Kemp, undated).

While all of the definitions are based in some way on alternative dispute resolution philosophies and techniques (see Section 2.3), only about half of the available definitions make this connection explicitly, mainly in the descriptions that accompany the definitions (CAO, 2008; Rees, 2008; ICMM, 2009; Kemp, undated).

Given that most major extractive companies, including those interviewed for this research, rely heavily on contractors for running their operations, an important consideration is whether grievance mechanisms are open to grievances related to the conduct of contractors and other third parties. Some definitions explicitly acknowledge the importance of including grievances related to contractors of the company (Hill, 2010; IFC, 2009; CAO, 2008), while others are not explicit about the issue (without excluding broader

application). Only the definition of CSRI (Rees, 2008: 9) explicitly states that contractors should have their own grievance mechanisms, while adding that the extractives company or brand using the contractor can also offer a fall-back option that enables communities to make complaints to them regarding contractors.

### 2.3 FACTORS IN HISTORICAL EVOLUTION

There are no written sources that provide evidence-based descriptions and analysis of the historical evolution of company–community grievance mechanisms. It is not possible, therefore, to establish a chronological description of the evolution of grievance mechanisms or attribute the emergence of grievance mechanisms to a particular driver or point in time. But this research reveals that a number of factors – prior to the work of Professor Ruggie – are likely to have played a role in driving the growing use of grievance mechanisms.

### 2.3.1 Globalisation, ‘governance gaps’ and the call for corporate accountability

The evolution of company-led grievance mechanisms for communities can be seen in the larger discussion on the role of multinational companies in the global economy. A series of high-profile cases during the 1980s and 1990s involving major companies such as BP, Union Carbide and Shell,<sup>17</sup> brought to the public eye the risks of large-scale industrial projects in developing countries. They revealed how major transnational companies can not only have a positive impact on development by investing in poor countries, transferring important technologies over borders and offering employment opportunities; but also that many companies had become powerful transnational actors, some with even larger revenues than the governments of the countries they were operating in, and that they had the potential to have significant adverse impacts on people and the environment.

Moreover, as part of the shift towards globalisation, extractive companies had expanded (and continue to do so) to explore and exploit natural resources in ever more remote areas. These are often found in countries experiencing political instability or unrest, or countries with weak governance, where governments are often

unable or unwilling to effectively manage the potentially adverse impacts of the new economic actors and forces. The presence of companies in contexts of conflict became particularly apparent in the 1980s and 1990s, which led to allegations of association with the worst forms of human rights violations, such as colluding with government security forces in extra-judicial killing or providing revenues that kept kleptocratic regimes in power. This predicament – of ever expanding activities of multinational companies into complex environments, coupled with a limited capacity or willingness for national governments to manage fully some of their adverse consequences – have been referred to by Professor Ruggie as ‘governance gaps’ (Ruggie, 2008: 3) (see also Chapter 6 on governance gaps).

These governance gaps have led communities to raise issues concerning adverse impacts on their lives and livelihoods directly with companies. It has also encouraged employees and executives to champion corporate social responsibility<sup>18</sup> (CSR) initiatives internally and develop the business case for closer attention to be paid to preventing and managing adverse impacts on communities. In relation to communities, key CSR concerns include how to ensure that a company’s operations do not adversely impact the

17. Some of the most well-known cases include: the 1984 poisonous gas leak of a pesticides plant owned by Union Carbide (since taken over by Dow Chemical) that led to thousands of deaths and hundreds of thousands injured in Bhopal, India; BP’s conflict with farmers over the environmental and social impacts of an oil pipeline during the 1990s in Casanare, Colombia; and Shell’s association with unrest in the Niger Delta and the military execution (in 1995) of Ken Saro-Wiwa and others who protested pollutions from Shell’s exploration and production in Nigeria.

18. According to the World Business Council on Sustainable Development (WBCSD): ‘Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large’ (WBCSD, 2000:8).

surrounding community; that community members are appropriately consulted and duly compensated for any unavoidable negative impacts; and that the overall net impact on the community is positive.

Local and international non-governmental organisations (NGOs) have also played a role in bringing attention to impacts of the extractive industries on communities. The internet and other new technologies have made it easier and cheaper to rapidly share stories and mobilise campaigns against multinationals – both at home and abroad. NGOs have become ever more effective in drawing public and political attention to particular issues through their campaigns – contributing significantly to the emergence and growth of CSR-related movements, sustainable development and inclusive globalisation.<sup>19</sup> They have called, in particular, for greater corporate accountability at an international level.

### 2.3.2 The role of international organisations in company–community dispute resolution

One target of consistent criticism by, among others, international NGOs, have been the international development banks, which provide finance for large infrastructure and extractive projects in developing countries, to governments as well as directly to companies. Because their investment contributions and financial guarantees are often significant and critical, as well as the reputational risk faced by these multilateral institutions if conflicts do arise, they have often been called upon to play their part in ensuring effective dispute prevention and resolution for the communities located near company operations.

The World Bank Inspection Panel was the first complaints mechanism established by an international financial institution to address allegations of harm to communities from projects it financed. Established in 1993, the mechanism focuses only on investigating whether the staff of the World Bank have complied with the Bank's own policies or procedures – though in the most recent evolution it has concluded that strong company–community relationships and conflict resolution capacity should be built into World Bank projects from their inception.

The International Finance Corporation (IFC), the private lending arm of the World Bank Group, was the subject of strong criticism in the late 1990s for its perceived lack of accountability for the impacts of projects it financed. In response to these pressures, the IFC established a complaints mechanism: the Compliance Advisor/Ombudsman (CAO). Unlike the World Bank Inspection Panel, the CAO provided not only for compliance assessments but also for 'problem-solving', that is, dialogue-based approaches to addressing complaints from communities. The 2007 revision of its procedures introduced a clearer separation between the problem-solving role and compliance assessment role.

Various regional development or investment banks, such as the European Bank for Reconstruction and Development (EBRD) and the Asian Development Bank (ADB), have followed suit in adopting complaints mechanisms. Other international and national mechanisms related to grievances by communities have since also been established to mediate disputes and/or increase corporate accountability. Examples include the National Contact Points of the *OECD Guidelines for Multinational Enterprises* (OECD, 2000) and the Canadian Extractive Sector Corporate Social Responsibility Counsellor<sup>20</sup> which both have a mandate to mediate disputes between companies and communities.

All these initiatives have created a fertile ground for companies to develop their own self-managed mechanisms to handle complaints by communities more directly. Both the IFC and CAO, among others, have also required and/or encouraged companies to develop such mechanisms before or during the project (see more in Section 2.4), including through offering publicly available guidance materials. Moreover, resolutions of community complaints handled by CAO have sometimes included the establishment of corporate mechanisms, such as in the case of Interagua in Ecuador, where community complaints related to water provision ultimately led to the establishment by the utility company of an ombudsman, 'to serve as an in-house mechanism for resolving difficult cases, as well as a mechanism for advising management about systemic issues' (CAO, 2011: 7).

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19. Inclusive globalisation can be defined as a process 'whose purpose lies not only in opening markets, but in expanding opportunity and promoting cooperation [...] to ensure that globalization benefits [...] all -- economically, politically and socially' (Annan, 2002).

20. See FAITC (2013).

### 2.3.3 Stakeholder engagement

Interviewees also cited the evolution of stakeholder engagement as an important driver in growing attention being paid to company–community grievance mechanisms.

*'Grievance mechanisms should not be thought of as a substitute for a company's community engagement process or vice-versa. The two are complementary and should be mutually reinforcing.'*

(IFC, 2007: 71)

The term 'stakeholder engagement' encompasses multiple and broader elements than grievance mechanisms, including stakeholder identification and analysis, communication and relationships with stakeholders, and empowerment of particular members of the community such as women or certain disadvantaged minority groups. Moreover, increasingly 'engagement' is understood to include 'consultation', meaning that the community should be consulted – and on some occasions even give its formal or informal consent<sup>21</sup> – about the best way that the company can prevent and mitigate its impacts before, during and after the project. Specifically, *meaningful* consultation implies two-way communication in the form of a dialogue and with due regard for linguistic, cultural, gender or other barriers, and sensitivity to cultural differences or perceived power imbalances between the company and the community (UN/OHCHR, 2012: 44–45).<sup>22</sup>

#### BOX 2.1: RELATIONSHIP BETWEEN STAKEHOLDER ENGAGEMENT AND GRIEVANCE MECHANISMS

'An effective grievance mechanism for [community] stakeholders must form part of a continuum with a company's wider policies for stakeholder engagement. Good stakeholder engagement can go a considerable way towards dispute prevention, which must always be the goal. But even with the best preparation and stakeholder consultations, grievances can be expected to arise wherever a company has a complex set of impacts on its stakeholders [...] Providing a trusted channel for individuals or groups to raise concerns early, openly, on an informed basis and in an atmosphere of respect cannot only help resolve full-blown disputes or conflicts once they have emerged (i.e. dispute resolution), but also identify the more minor or nascent concerns and problems and address them before they escalate into more entrenched disputes (i.e. dispute management). In addition, they can help restore relationships and enable lessons to be learned, contributing to future dispute prevention.' (Rees, 2008: 7)

21. See: Buxton and Wilson (2013) and Lehr and Smith (2010).

22. See also Zandvliet and Anderson (2009).

National governments, international finance institutions and other investors increasingly require or expect that corporations identify, consult and engage with communities to prevent and mitigate negative social, environmental and economic impacts to the greatest extent possible, as well as how investments in the community can be most beneficial. In the last decade many organisations have sprung up to assist companies in this process – both with commercial and non-profit purposes. Leading international institutions have developed public guidance material on stakeholder engagement in emerging markets and conflict-affected areas, including the AA1000 Stakeholder Engagement Standard developed by AccountAbility (2011) and good practice guidance documents developed by IFC (2007) and International Alert (2005).

### 2.3.4 Alternative dispute resolution

Alternative dispute resolution (ADR) refers to forms of dispute resolution that involve the active engagement of the parties involved without using litigation. ADR can include negotiation, mediation, conciliation, facilitation and arbitration (Rees, 2008: 11).<sup>23</sup> A number of interviewees highlighted that the growing attention towards ADR in the context of company–community relations was

preceded by broader developments in the practice of national justice systems, including in commercial settings. These developments occurred particularly in the United States and the United Kingdom, but also in other European countries, where civil cases (e.g. family disputes) were increasingly settled outside the court system. In some jurisdictions, under pressures of a high caseload and possible delays in hearing, the courts even mandated the relevant parties to try alternative dispute resolution before reverting to court adjudication.

Over the past two decades many big corporations have employed ADR processes in relation to their commercial partners and as part of their human resources management systems and/or have included ADR techniques into existing or newly mandated whistle-blower mechanisms, such as ombudsman systems, centralised hotlines, employee grievance mechanisms and integrated conflict management systems for employees.<sup>24</sup>

Conflicts with community stakeholders in the extractive/natural resources sectors often develop in relation to complex environmental disputes, where there are many different stakeholders involved, there are long project time frames, the environmental issues themselves are complex and

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23. For an explanation of these different terms, see Annex A in Rees (2008).

24. According to Sherman (2009: 11–12), 'ICM programs vary, but generally have the following characteristics: they encompass a broad range of disputes; they foster an open and trusting culture in which employees can raise problems in the belief that they will be listened to; they provide multiple access points, offer various dispute resolution options that can reflect the interests of the parties (e.g., ombudspersons, mediation, open door policies, union–management consultations, etc.), and the organisation supports them with senior leadership, training and education, incentives, organisational alignment, sufficient resources, central coordination, and feedback and monitoring. Some of these programs employ a kind of ADR known as transformative mediation, whose goal is to transform employer–employee relationships from vicious cycles of mistrust and powerlessness into virtuous cycles of respect and mutual empowerment.'

there is a need for scientific information. Both companies and communities have discovered (often the hard way) that resolving such disputes through the local court system would not resolve the issue for them, because either or both felt the ruling was illegitimate, for example because the credibility of the court was in question. Communities have therefore found alternative ways to make their voices heard, for example by making effective use of the 'court of public opinion', including with help from international NGOs, and, in particular, by taking actions that disrupt company operations such as blocking roads or staging protests.

In this context, previously developed ADR techniques have been advanced as a new approach to dealing with conflict, to complement other forms of dispute resolution (e.g. lawsuits), providing an additional option to stakeholders which might meet their needs better (needs like timeliness, fairness, a focus on dialogue, more space for creative solutions). ADR has also been used where judicial recourse is not available, not accessible or not perceived as credible or fair. Pioneers of ADR have argued that when there is a focus on dialogue between parties and the search for sustainable solutions that meet the core interests of both parties a win-win situation is more likely to result, thereby saving time and money, and possibly preventing future conflicts.<sup>25</sup>

Although a limited number of companies still systematically apply alternative dispute resolution techniques today, whether with their own

employees, business partners or with communities,<sup>26</sup> most company representatives interviewed for this paper referenced employee dispute resolution systems, in particular, as one of the primary sources of inspiration for developing conflict resolution systems for the community. Another important source is contracts with business partners, which often state that commercial disputes should be resolved through ADR. One independent expert working with companies on dispute resolution argued that drawing attention to these clauses in commercial contracts can help to make the case for using the same approach in relation to community agreements and grievance mechanism implementation.

### 2.3.5 The last five years: broadening and deepening

While there is no comparative data from 5 or 10 years ago, the proliferation of case descriptions of grievance mechanisms (see Appendix D for an overview and the table below for a summary) and information obtained through the interviews for this research, indicate there are a growing number of grievance mechanisms in operation today. Table 2.3 only lists those for which a description is publicly available. Company interviews revealed that the total number is likely to be exponentially greater.

This proliferation reflects trends in recent years of both a broadening (i.e. wider application) and deepening (i.e. more purposeful and integrated use) of company–community grievance

25. One of the most important pioneers in this field is Professor Larry Susskind, the founder of the Consensus Building Institute (CBI, 2011) and author of numerous books. See: [www.lawrencesusskind.com](http://www.lawrencesusskind.com). For an overview of multi-stakeholder consensus building, see CBI (2010). For more on the benefits and challenges of mediation, see also Rees (2010a, b).

26. This is particularly true for involving a third-party neutral in a mediation, conciliation or facilitation role, which many companies still find hard to envisage.

TABLE 2.3: SUMMARY OF PUBLICLY AVAILABLE MECHANISM DESCRIPTIONS

COMPANY NAME	NAME OF PROJECT / SITE	INDUSTRY	COUNTRY/IES OF OPERATION
Adaro Energy Indonesia	Various operations in Kalimantan	Mining	Indonesia
Aneka Tambang (Persero) Tbk	Various operations in Sulawesi	Mining	Indonesia
Anglo American	All operations	Mining	Australia, Brazil, Canada, Chile, Peru, South Africa, Venezuela, Zimbabwe.
BP	BTC Pipeline	Oil and Gas	Azerbaijan, Georgia, Turkey
BP	Tanggung LNG Project	Oil and Gas	Indonesia
Carbones del Cerrejón <sup>27</sup>	Cerrejón Mine	Mining	Colombia
ExxonMobil	Chad–Cameroon Pipeline Project	Oil and Gas	Cameroon - Chad
Freeport-McMoRan	Grasberg Mine	Mining	Indonesia
Marcobre S.A.C.	Mina Justa / Marcona Copper	Mining	Peru
MRL Gold Philippines	Batangas Operations	Mining	Philippines
Newmont	Ahafo South Project	Mining	Ghana
Newmont	Batu Hijau	Mining	Indonesia
Oceana Gold	Dipidio Gold and Copper Project	Mining	Philippines
Philex	Various sites	Mining	Philippines
Mining Development Corporation	National	Mining	Philippines
Rio Tinto	Weipa	Mining	Australia
Sakhalin Energy Investment Company Ltd. <sup>28</sup>	Sakhalin-2 Project	Oil and Gas	Russian Federation
TVI Resource Development	Canatuan operations	Mining	Philippines
Xstrata	Las Bambas	Mining	Peru
Xstrata	Tintaya	Mining	Peru

27. Joint venture of Anglo American, BHP Billiton and Xstrata.

28. Joint venture of Gazprom, Royal Dutch Shell, Mitsui, and Mitsubishi, located in the Russian Far East. See also Chapter 4.

mechanisms in the industries covered in this book. Nearly all interviewees mentioned and credited the work of Professor Ruggie in his capacity as UN Special Representative for Business and Human Rights, including research conducted under the auspices of his mandate, as an important driver for both the broadening and deepening of grievance mechanisms (See Box 2 and Section 2.4).

The *broadening* can be observed in the fact that more companies, particularly in the extractive industries, are adopting far-reaching, company-wide commitments to having grievance mechanisms in place at all of their sites with substantial risks for community impacts. An example is Anglo American, which in 2009 adopted a company-wide commitment – including ‘owned and/or operated facilities, from exploration to post closure; acquisitions and divestments; and activities of contractors/suppliers on Anglo American sites or under Anglo American management’ – to implement grievance mechanisms for communities (Anglo American, 2009: 9). For more information on the Anglo American case see Chapter 6.

*‘The recent trend that major extractive companies have taken the decision to equip all of their significant sites with a grievance mechanism, is by and large due to the Ruggie mandate...where first a company needed to explain why it went at great lengths to install a grievance mechanism, now it has to explain itself when it does not have one for a site with significant challenges.’*

Luc Zandvliet, independent expert on stakeholder engagement and company–community grievance mechanisms.

The *deepening* in the use of grievance mechanisms can be observed from the increasing awareness that a grievance mechanism is not just a mechanical process or a tool, but requires a change in corporate culture: a fundamental shift in how the company deals with conflict and stakeholder engagement. If the mechanism only handles small issues without analysing root causes and making changes at the level of company policy, then there will be no meaningful change in the long term (see also Sherman, 2009 and Section 2.5). Conversely, if a company uses the grievance mechanism as a process for improving its stakeholder engagement and management of community impacts, then this has the potential to have a positive effect for all parties involved.

Notwithstanding the observed broadening and deepening, it is still early days for many major companies, including those interviewed for this research, in their efforts to implement grievance mechanisms on a company-wide scale and to be able to demonstrate that they are identifying, addressing and remedying impacts on communities effectively. An area that still needs further attention is how companies organise themselves internally for implementation of company–community grievance mechanisms, in particular how to do so on a global company-wide scale, through integration into existing systems and in the face of possible internal push back and opposition. Another is the question of how transparent a company should and wants to be in sharing the outcomes of specific complaints and effectiveness of the grievance mechanism more broadly with communities and other stakeholders. (Some consensus exists around maintaining confidentiality over individual grievances, also to protect the individual complainants, while reporting on aggregate

## BOX 2.2: THE MANDATE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON BUSINESS AND HUMAN RIGHTS

In 2005, then Secretary-General of the United Nations (UN), Kofi Annan, appointed Harvard Professor John Ruggie as SRSG to help clarify the roles and responsibilities of both states and companies with respect to business-related human rights abuses. After extensive research and multistakeholder consultations, Ruggie published his first major report, *Protect, Respect and Remedy* in 2008, which declared that states have a duty to *protect* human rights from adverse impacts by companies; business have a responsibility to *respect* human rights; and victims of abuse need better access to effective *remedy* (Ruggie, 2008). The framework established for the first time a global standard on business and human rights for all human rights and companies of all sizes and in all sectors.

The UN Human Rights Council unanimously welcomed the report and asked Professor Ruggie to develop specific recommendations for the implementation of the framework. Building on more than 45 multistakeholder consultations and extensive research over a three-year period, he presented the final version of his 'Guiding Principles on Business and Human Rights' ('Guiding Principles') (Ruggie, 2011b) to the Human Rights Council, which formally endorsed them in June 2011. The Guiding Principles, or core elements of them, have since been included in several other leading CSR standards, including the OECD Guidelines for Multinational Enterprises, the ISO 26000 Guidance Standard on Social Responsibility, the IFC Performance Standards, the UN Global Compact, and the corporate social responsibility strategy of the European Commission, which serves as inspiration and input to many national CSR

strategies.<sup>29</sup> This convergence and alignment process is still ongoing (UN/OHCHR 2011).<sup>30</sup>

The Guiding Principles contain important requirements for states and companies to promote and implement non-judicial grievance mechanisms. Specifically, where companies 'identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes' (Guiding Principle 22). Furthermore, Guiding Principle 29 states that 'to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted'. Guiding Principle 31 requires that such mechanisms should follow a set of 'effectiveness criteria' that are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning, based on engagement and dialogue.<sup>31</sup>

The UN Human Rights Council established a follow-up Working Group on Business and Human Rights with the mandate to promote 'dissemination and implementation of the Guiding Principles'. The Working Group, which consists of five independent experts, 'of balanced geographical representation', has also been requested 'to continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas' (UN/OHCHR, 2013).

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29. The references are of various lengths and intensities. The most recent 2012 IFC Performance Standards (IFC, 2012), for example, have a mere reference to the responsibility to respect human rights, which is still a significant development compared to their previous version in which human rights was not mentioned at all, while the OECD Guidelines have integrated the Guiding Principles in their entirety, including the provisions on grievance mechanisms and the effectiveness criteria for non-judicial grievance mechanisms, and have even applied some of the concepts (e.g. due diligence) to other provisions of the Guidelines (OECD, 2011).

30. Ruggie has described the evolution of his mandate, and the rationale for the choices he made during it, in his book *Just Business* (Ruggie, 2013).

31. Section 2.6 of this chapter reports further on details of the effectiveness criteria with illustration of two case studies that formed part of their pilot-testing phase. The criteria are also used for analysis in the remaining chapters of this book.

outcomes.<sup>32</sup>) A final emerging question is how to develop effective key performance indicators (KPIs) and whether those that are being developed provide meaningful information (i.e. pass the 'know and show' test). Several of these questions are now discussed throughout this chapter.

## 2.4 DRIVERS FOR ESTABLISHING A COMPANY–COMMUNITY GRIEVANCE MECHANISM

Most extractive companies interviewed for this research are still at the early stages of company-wide implementation of grievance mechanisms. A key challenge is to convince top managers of the use, usefulness and effectiveness of these mechanisms. The research for this chapter confirmed that personal belief in the inherent value of respecting the rights of individuals and communities can be an important first step for successful implementation of a company–community grievance mechanism. However, in most instances, additional arguments – i.e. a strong business case – are required to get the buy-in of senior managers for a sustained, consistent, and enduring commitment across multiple sites and geographies.

The publications reviewed for this study offer various arguments supporting the business case for implementing grievance mechanisms. These

can be organised into three main categories: 1) meeting external standards and expectations, 2) avoiding escalation of disputes and (costly) conflicts, and 3) learning for better decisions and outcomes.<sup>33</sup> (While the interviews confirmed that most of the business case arguments in the literature apply to companies, it was also emphasised that for companies the business case arguments can often be mixed and case- or site-specific.) At the end of this section, some of the perceived disadvantages of grievance mechanism are also discussed.

### 2.4.1 Meeting external standards and expectations

External standards that apply to companies, or commitments they have voluntarily signed up to, increasingly refer to the implementation of grievance mechanisms as a requirement, or best practice. These standards include those required by investors and lenders: the IFC (which first required grievance mechanisms for certain high-risk projects with the adoption of its updated Performance Standards in 2006), the World Bank, the regional development banks, and, increasingly, private lenders, some of which were among the first to require companies to set up a grievance mechanism for the community as part of their lending requirements. Project financiers that are signatories to the Equator Principles (first launched in 2003 and now encompassing around 80 financial institutions<sup>34</sup>) have committed to

32. For an example of aggregate reporting by a company, see Xstrata (2011).

33. This analysis is limited to the specific value that the resolution of grievances and disputes through grievance mechanisms potentially bring to companies. The business case for stakeholder engagement more broadly can be read in Zandvliet and Anderson (2009), IFC (2007), and International Alert (2005).

34. As of December 2012. On 13 August 2012, a draft of an updated version of the Equator Principles (EP III) was released, among other proposals, to put, '[g]reater emphasis on human rights considerations in due diligence and an acknowledgment of the UN 'Protect, Respect and Remedy' Framework for Business and Human Rights and Guiding Principles on Business and Human Rights'. See Equator Principles (2011).

requiring implementation of the IFC Performance Standards.

There is also some evidence that large pension funds and socially responsible investment funds encourage the adoption and strengthening of grievance mechanisms in their engagements with natural resource companies. For example, Dutch pension fund APG, one of the largest pension fund groups in the world, encourages companies it engages with to adopt and strengthen grievance mechanisms (APG, 2010). Similarly, one interviewee from an extractives company reported that the company was expected to adopt a human rights policy, including a commitment to strengthen implementation of grievance mechanisms, in order to remain in the FTSE4Good Index, an ethical stock market index whose aim is 'to objectively measure the performance of companies that meet globally recognized corporate responsibility standards' (FTSE, 2013).

Environmental and social impact assessments mandated by national legislation or regulation may also lead to the adoption of grievance procedures and mechanisms for conflict resolution as part of mitigation measures for potential impacts on communities arising from extractive projects. Such is, for example, the case in BP's Tangguh project in West Papua, Indonesia. Indonesia's environmental impact analysis regulation, which also includes reference to international standards, led the project to formulate a conflict resolution plan including conflict resolution mechanisms for

the community. The mitigation plan included a requirement to document grievances to be reported in six-monthly environmental compliance reports to relevant government institution.<sup>35</sup>

Certification initiatives, such as the Forest Stewardship Council (FSC) and International Organization for Standardization (ISO) standard ISO 14001 (environmental management systems) require grievance mechanisms to be established to address environmental and social issues. Recently updated standards, that are not directly intended for audit but nevertheless are very influential, such as the OECD Guidelines for Multinational Enterprises and the ISO 26000 Guidance on Social Responsibility, have included similar references to grievance mechanisms – inspired by the UN Guiding Principles and the 'Protect, Respect and Remedy' Framework (see below). Appendix B illustrates a selection of key standards and their specific requirements for grievance mechanisms, as well as their review/audit mechanisms, if these exist.

As previously mentioned (see Section 2.3), the development of the UN Guiding Principles during the mandate of Professor Ruggie has seen unprecedented focus and attention on the adoption and implementation of company–community grievance mechanisms. For example, in addition to the formal endorsement of UN member states in the Human Rights Council, through the broad business support illustrated by the many public statements in support of the Guiding Principles by leading companies

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35. The conflict resolution plans aims are formulated as ensuring that: '(i) grievances are identified as early as possible, so that they can be addressed before they develop into conflicts, (ii) all grievances are reported immediately to the appropriate project personnel, (iii) actions in response to grievances are communicated promptly and explained thoroughly to all those involved, and (iv) follow-up will be provided to assess the success of actions in resolving grievances.' See Asian Development Bank (2005: 54).

(including BP,<sup>36</sup> Cerrejón,<sup>37</sup> Sakhalin Energy<sup>38</sup> and Total<sup>39</sup>), an ad hoc group of 29 institutional investors claiming US\$2.7 trillion assets under management,<sup>40</sup> the International Council on Mining and Metals (ICMM),<sup>41</sup> as well as many other industry organisations and business representatives.<sup>42</sup> A number of interviewees have credited the Ruggie process/principles for the widespread uptake and increased systematic application of grievance mechanisms by leading companies in the extractives industries (as described in 2.3 above).

Besides their unanimous adoption by the UN Human Rights Council and their incorporation into leading international CSR standards, the UN Guiding Principles have prompted a productive dialogue on grievance mechanisms among all relevant actors concerned with company–community relationships. They have challenged companies to think of grievance mechanisms as

an opportunity to better handle disputes with communities. Consequently, in the context of Professor Ruggie’s mandate, both the industry organisations for the mining sector (ICMM<sup>43</sup>) and the oil and gas sector (IPIECA<sup>44</sup>) have in recent years been running pilot projects to better understand their effective application and to share lessons learned and best practices among the individual company members.<sup>45</sup>

#### 2.4.2 Avoiding escalation of disputes and (costly) conflicts

Conflicts with communities can be costly affairs. The most obvious illustration is provided by the increasing number of lawsuits in home-state courts with their potential for significant corporate reputational damage. For example, a BP oil pipeline conflict with Colombian farmers resulted in a multi-million pound settlement in 2006 after years of legal battles, which will have cost the company millions more in legal fees, as well as

36. International Business Leaders Forum, letter of support to the UN Protect, Respect, and Remedy Framework (2011). See: [www.iblf.org](http://www.iblf.org)

37. See: [www.business-humanrights.org/media/documents/cerrejon-letter-to-special-representative-24-may-2011.pdf](http://www.business-humanrights.org/media/documents/cerrejon-letter-to-special-representative-24-may-2011.pdf)

38. See: [www.business-humanrights.org/media/documents/ruggie/sakhalin-energy-ltr-re-guiding-principles-5-may-2011.pdf](http://www.business-humanrights.org/media/documents/ruggie/sakhalin-energy-ltr-re-guiding-principles-5-may-2011.pdf)

39. See: [www.unglobalcompact.org/system/attachments/11504/original/COP\\_2010-2011\\_-\\_Total\\_s\\_response\\_-\\_August\\_2011.pdf?1312294548](http://www.unglobalcompact.org/system/attachments/11504/original/COP_2010-2011_-_Total_s_response_-_August_2011.pdf?1312294548)

40. See: [www.business-humanrights.org/media/documents/ruggie/investor-statement-re-guiding-principles-2011-may-20.pdf](http://www.business-humanrights.org/media/documents/ruggie/investor-statement-re-guiding-principles-2011-may-20.pdf)

41. See: [www.business-humanrights.org/media/documents/icmm-letter-to-john-ruggie-25\\_may\\_11.pdf](http://www.business-humanrights.org/media/documents/icmm-letter-to-john-ruggie-25_may_11.pdf)

42. For a full overview, see BHRR (2013b).

43. See ICMM (2009).

44. See description on IPIECA’s website (2011).

45. For a broader effort involving ten Dutch multinational companies with a wide sectoral spread that considered and pilot-tested all business-relevant elements of the corporate responsibility to respect, including grievance mechanisms, see Business and Human Rights Initiative (2010), in particular chapter 3.5.

causing extensive reputational damage (Browne, 2010).<sup>46</sup> In 2008, the company was faced with yet another group lawsuit before the UK High Court related to the same pipeline in Colombia.<sup>47</sup>

But perhaps more significant are community protests that come with blockages of access roads, protests around operations and strikes by workers. Such operational interruptions can be very costly: one day of extra drilling for an oil company can run into millions of dollars of extra expenses (regardless of the source of the delay), and failure to complete a construction project in time can lead to hefty contract fines. Conversely, projects that come on stream earlier than planned can realise strong additional revenues.<sup>48</sup>

*'A local community leader in Peru, after closing down the only access road to a mine, which triggered a serious clash with security forces, explained [...]: "They paid no attention to us when we raised small problems, so we had to create a big one."'*

John Ruggie, former UN Special Representative for Business and Human Rights. Ruggie (2009: 3–4).

A core characteristic of a well-functioning grievance mechanism is that it enables companies to identify minor community incidents before they escalate into unmanageable disputes. Several interviewees in this research, as well as a number of publications reviewed (Rees, 2008, Ruggie, 2008, Ruggie, 2009, Herz *et al.*, 2007) suggest that major public campaigns or violent protests begin as relatively minor issues at a local community level that could have been resolved early and peacefully. One external relations expert of a mining company interviewed for this research

confirmed that this applied to his company to a significant extent when it found, during an analysis of the most significant public NGO campaign against the company, that it had started out as a small issue that could (and should) have been dealt with much earlier, and certainly more cost-effectively.

The examples of conflict are plenty, but so far such conflict has seen little analysis from a cost perspective beyond easily identifiable costs (e.g. settlement of a court case) on the part of companies and independent researchers alike. Fortunately, this is changing. New research that was started up by CSRI (as part of the Ruggie mandate) is looking at costs that are typically not identified and aggregated by companies. The research shows that, in a nutshell, for companies the *greatest* costs arising from conflict with communities are related to delays during the operations phase; the *most frequent* costs are those arising from lost opportunities, including for expansion, future projects and sale of assets; and the *most overlooked* costs relate to staff time spent on managing conflict, particularly senior management time (Davis and Franks, 2011).<sup>49</sup>

This new research has revealed that stakeholder-related risks such as community conflicts and project opposition is a significant contributor to the nearly doubling (in the past decade) of the time that it takes for new oil projects to come on stream (Ruggie, 2010: 15). Moreover, it '... estimated that one company may have experienced a \$6.5 billion "value erosion" over a two-year period from stakeholder-related sources. [...] and] that in the mining industry an operation with capital expenditures in the \$3–\$5 billion range suffers losses of roughly \$20 million per week of delayed production, in net present value terms. [...] We also learned that perhaps the

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46. Lord Brown, CEO of BP at the time, calls the negative stories on the security incidents in Colombia a 'media nightmare' in his memoir, see Browne (2010).

47. The lead counsel in the case, Martyn Day (2010), has argued that BP could have saved a lot of money by agreeing to talk earlier. For details on the case, see the BP Colombia 'Case Profile' on the Business and Human Rights Resource Center (BHRRRC, 2013a).

48. In its study *Development Without Conflict: The Case for Community Consent*, the World Resources Institute (WRI), cites the example of the Malampaya Deep Water Gas-to-Power Project, a joint venture operated by Shell, which has documented cost savings estimated at between US\$ 44 and 66 million (according to 2007 figures) due to an effective strategy to obtain community consent. It also made estimations of losses due to conflict with the community for three other projects: Esquel Gold Project in Argentina; Samut Prakarn Wastewater Management Project in Thailand; and the Minera Yanacocha Gold Mine Project in Peru (Herz *et al.*, 2007).

49. See Davis and Franks (2011) for initial findings from the study and more elaborate analysis. See also Herz *et al.* (2007) for an analysis of specific projects.

single most overlooked cost is the staff time that has to be devoted to managing conflicts with communities. We are told that the working assumption in the extractives is about 5 per cent of an asset manager's time. Yet there are many instances where it gets to be as high as 50 and even 80 per cent. And if those conflicts are left unattended they may escalate, which can lead to property damage and injury, or worse, to community members and company employees. Then come the major advocacy campaigns and lawsuits. We've all seen this movie, the original and its sequels. It's called "Everybody Loses". (Ruggie, 2011c: 5–6).

Following the initial analysis, CSRI and the Center for Responsible Mining at the University of Queensland, Australia, did further detailed research by developing a typology for a much wider array of potential costs experienced by companies, which was tested against 25 publicly available cases for robustness. The typology – consisting of 'Issues in Dispute, Manifestations of Conflict, Types of Costs to Company, Company Responses to Conflict, Stage of Operations, and Distinguishing Factors' – can be found in Appendix A of Davis and Franks (2011: 10–13).

#### 2.4.3 Learning for better decisions and outcomes

Seeing the grievance mechanisms not just as a system for dispute resolution, but equally as a 'learning mechanism' is increasingly recognised, and advanced as a 'business case' argument, by company experts seeking to promote the use of grievance mechanisms internally.

One CSR representative from a major mining company explained in her interview that in most sites the company already had a grievance mechanism in place. To promote standardisation and harmonisation across the various site-level mechanisms, an assessment has been done of all

sites with the aim of producing a company-wide good practice guide for operating units to follow. The analysis also provided valuable information on performance, trends and risks that will be included in the guidance notes to strengthen community relations and inform decision-making. An interviewee responsible for CSR in another major mining company similarly offered that, in addition to new company leadership and a decision to adopt international standards, the installation of the company's public grievance mechanism was, in part, aimed at restoring trust among the community members, which had been partially lost due to past incidents.

Ruggie (2008 and 2011a) and Rees (2010a) have made compelling cases as to how the implementation of company–community grievance mechanisms can make it easier for a company to gather data on the number, types and causes of grievances, analyse the trends, and capture valuable lessons (Rees, 2008; Rees *et al.*, 2011). Over time, through standardisation of procedures, continuous recording and tracking of grievances, and good oversight, a company can receive a wealth of information that it can analyse and learn from in support of better management of relations with the community and prevent future grievances. This, in turn, can enhance (and avoid undermining) the company's reputation with the local community, NGOs and, ultimately, consumers and investors, which can contribute to better retention and recruitment of talent. Attracting the right talent is still one of the major challenges for extractive companies (Ernst and Young, 2011).

#### 2.4.4 Discussion of perceived disadvantages of grievance mechanisms

For those wanting to see broader and wider uptake of grievance mechanisms, the above business case arguments need to overcome a

number of counterclaims or objections, in particular from those inside companies that are sceptical about the use of grievance mechanisms – as discussed in this section.

An often heard counterargument relates to resource implications. Implementing a grievance mechanism may for some companies require significant investments in terms of money, time and personal engagement. Moreover, since a formal decision to implement grievance mechanisms from the top does not always come with additional resources (i.e. the sites are expected to absorb the investment cost from existing budgets), those left at the central office of the company aiming to accelerate uptake and implementation will need to make the business case to the site-level operations that the investment will pay off over time. Nevertheless, the interviews with some companies suggest that the resources needed for implementation may be either relatively limited and/or available within the existing budgets of the company's management systems and processes. Moreover, key (again) is that grievance mechanisms are part of a broader and integrated approach to stakeholder engagement: the more the company has already invested in stakeholder engagement (i.e. prevention) the less costly the management of disputes is likely to be, including the implementation of grievance mechanisms.

But it is not just the time and resources that are sometimes questioned. Those who are tasked with managing community relations often have established ways of dealing with community disputes and may have concerns about other issues, such as:

- perceived loss of control over the dispute resolution process by one internal function of the company over the other;
- fear of not knowing which issues will be raised and opening 'Pandora's box', in particular in relation to legacy issues;
- grievances seen as personal failures reflecting negatively during performance reviews.

Whether such resistance to change is legitimate or not, managing internal company dynamics is key to successful implementation of grievance mechanisms. Unfortunately, in the current literature a discussion of such internal push back or opposition, and how to overcome them, remains limited.<sup>50</sup>

Another issue mentioned by interviewees is the fear that a formalised mechanism might encourage the filing of vexatious claims and use of the grievance mechanism as a means for community members and third parties (e.g. unions) to further their own interests, including attempts to put pressure on the company to make unreasonable concessions or payments. This concern may be exacerbated if the company feels that many of the concerns of the community are based on perceived rather than real problems. Moreover, in this context, some critics claim that non-judicial grievance mechanisms do not establish binding legal precedent favourable to the company, which could discourage future disputes and claims. A final issue frequently mentioned and also addressed in some of the literature (e.g. ICMM, 2009) is the different approaches to conflict that may exist between and within local communities and how this can be

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50. A notable exception, albeit focused on company–community relations more broadly, can be found in Zandvliet and Anderson (2009). See in particular Chapter 13.

accounted for in a centrally mandated system based on universal principles (see also discussion of pilot projects in 2.6).<sup>51</sup>

In addition to the most recent research on the cost of conflict mentioned above, the best discussion – rebuttal, if you will – in the literature of most of these concerns is provided in ICMM's guidance document (ICMM, 2009), which is based on interviews with practitioners working in (or with) mining companies. Selected paragraphs outlining the publication's main arguments are provided in Box 2.3 (with the particularly relevant arguments italicised by the author).

## 2.5 COMMUNITY EXPERIENCES AND CIVIL SOCIETY PERSPECTIVES

Grievance mechanisms, where they exist and are effective, ostensibly provide a direct channel for communities to bring their issues to the attention of a company or operating unit, where necessary get them resolved and remediated, and in some cases, play an active role in the process (see Rees, 2010b, further discussed below). A key benefit versus other mechanisms such as government ombudsman and complaints offices or courts, is that they are likely to be a more immediate, and less costly and time-consuming process. However, whether these potential benefits of grievance mechanisms for communities actually materialise in daily practice is less well evidenced in the literature than the

business case, and neither did this research include interviews with users of grievance mechanisms (for this particular chapter).

Companies have started to acknowledge that adopting grievance mechanisms, even where they are effective and involve neutral third parties, does not necessarily mean 'success' in terms of the community being satisfied with the outcome. One independent expert explains that he thinks of 'resolved' grievances as a 2 by 2 matrix, with 'satisfactory outcome' on one axis and 'satisfied with the process' on the other.<sup>52</sup> The companies that he works with increasingly track community perspectives, either through perception surveys but also through routinely asking complainants to sign off on the 'respectfulness' with which they were treated during the grievance procedure.

A noteworthy recent effort to begin shedding better light on the community's perspective has been developed by CSRI: a series of videos tracking the actors, processes, challenges and successes of company–community dispute resolution processes. The first three videos address the Mesa de Diálogo at the Tintaya mine in Peru (see also below) (BASESwiki, 2011a); a dispute resolution process around the hydroelectric power plant at Ambuklao and Binga in the Philippines (BASESwiki, 2011b); and the negotiation of General Memoranda of Understanding between Chevron and communities in the Niger Delta around its facilities (BASESwiki 2012). The videos, which tell the

51. The author experienced this first hand when visiting Papua, Indonesia, last year. Workers from Java, travelling in large numbers to Papua to work in oil, gas and mining projects, have an entirely different approach to conflict than the local Papuans. One local observer summarised the difference as follows: for Javanese, a situation that erupts into a conflict means the end of any constructive resolution process, but for Papuans a meaningful conversation or negotiation is always preceded by tensions and disruptive protests.

52. See also the discussion of the Sakhalin pilot study in Section 2.6.

### BOX 2.3: SELECTED PARAGRAPHS OF THE ICMM GUIDE ADDRESSING POTENTIAL COMPANY CONCERNS OF IMPLEMENTATION OF COMPANY–COMMUNITY GRIEVANCE MECHANISMS

'... [R]esponding 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' (ICMM, 2009:3).*

*'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' (ibid, 9).*

stories of these processes in the voices of those who were involved, are intended to help others in their situation envisage what mediated dialogue processes involve and to consider whether they might be a viable option to address their own disputes.<sup>53</sup>

The civil society organisation with the earliest practical experience of company–community dispute resolution is the development NGO Oxfam, in particular its local offices in Australia and the Americas. From 2000 to 2009, Oxfam Australia ran its Mining Ombudsman project, which was in itself not a specific site-level mechanism, but nevertheless used facilitated community participation, engagement and communication between the company and the community in an effort to resolve disputes. For example, Oxfam Australia and Oxfam Americas played an important role in the ‘Mesa de Diálogo’ set up around the Tintaya mine in Peru to address grievances by the community, which later became a permanent forum to address community concerns.<sup>54</sup>

Oxfam Australia, drawing on its practical experience with its Mining Ombudsman project, produced a number of reports,<sup>55</sup> in one of which it urges mining companies and their financiers to ‘ensure a rights-compliant grievance mechanism for affected communities is in place’ (Martin and Newell, 2008: 44). More recently, Oxfam Australia published a guide for the Australian mining

industry on company–community grievance resolution (Hill, 2010). Oxfam International has shared some of the concerns raised by human rights NGOs (see below) (Oxfam International, 2011). Nonetheless, the Oxfam guide states that, ‘[a]n effective, human rights-compatible grievance mechanism can provide a channel through which communities impacted by company operations can gain recognition for legitimate concerns, engage in a process to secure acceptable solutions, and share in the ownership of that process’ (Hill, 2010: 6).

An example of an organisation that in recent years has been supporting communities in their dispute resolution processes with companies is Accountability Counsel, a San Francisco-based NGO, around the Cerro de Oro Hydroelectric Project in Oaxaca in Mexico and Maple Energy’s oil operations in the Peruvian Amazon. Accountability Counsel’s work involves helping communities access already available dispute resolution processes (e.g. Office of Accountability of the US Overseas Private Investment Corporation and the Compliance Advisor/Ombudsman of the World Bank) and policy work aimed at making such accountability mechanisms more effective and transparent to communities.<sup>56</sup> Field research and advocacy has also been carried out by IIED (for the Forests Dialogue), and the Forest Peoples Programme, among others (Wilson, 2009; Schwarte and Wilson, 2009; The Forests Dialogue, 2010. In chapters 3–5 of this

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53. The three videos have also been made into a compilation. See: <http://vimeo.com/43661831>

54. See case description under Xstrata (Appendix D) and BASESwiki: [http://baseswiki.org/en/BHP\\_Billiton\\_&\\_Xstrata,\\_Tintaya\\_Mine,\\_%E2%80%98Mesa\\_de\\_Di%C3%A0logo%E2%80%99\\_%E2%80%93\\_Dialogue\\_Table,\\_Peru\\_2004](http://baseswiki.org/en/BHP_Billiton_&_Xstrata,_Tintaya_Mine,_%E2%80%98Mesa_de_Di%C3%A0logo%E2%80%99_%E2%80%93_Dialogue_Table,_Peru_2004)

55. Oxfam reports available at: [www.oxfam.org.au/explore/mining](http://www.oxfam.org.au/explore/mining)

56. See: [www.accountabilitycounsel.org](http://www.accountabilitycounsel.org)

book, there is some discussion of the roles of the Open Society Institute Assistance Foundation in Azerbaijan (providing support for an NGO pipeline monitoring programme) (Chapter 3); the Tropical Forest Trust and other national and local NGOs in the Congo Basin (Chapter 4); and a local indigenous people's association and the environmental NGO Sakhalin Environment Watch on Sakhalin Island in the Russian Far East (Chapter 5).

At the higher policy-level, civil society organisations (CSOs) claiming to speak on behalf of victims have reacted in a lukewarm manner to the increased attention to operational-level grievance mechanisms in the context of Professor Ruggie's mandate. While not dismissing their usefulness per se, the responses from organisations like Amnesty International and Human Rights Watch, often in concerted efforts with many other CSOs,<sup>57</sup> have argued that, '[v]oluntary mechanisms, including operational-level grievance mechanisms, do not provide an appropriate and adequate means of safeguarding human rights against business abuse' (Amnesty International *et al.*, 2011:3) and that '[c]orporate grievance mechanisms that seek to address human rights abuses may leave victims of abuses unprotected, and may allow the corporate perpetrator of the abuse to go unpunished.' (Amnesty International, 2010:21). Mostly implicitly, but sometimes also more explicitly,<sup>58</sup> these organisations fear that the focus on company–community grievance mechanisms may in fact detract from a focus on state-based judicial and (to a lesser extent) non-judicial mechanisms, including through extraterritorial application, which they ultimately see as the only real effective way to provide remedy to victims of corporate-related human rights abuse.<sup>59</sup>

Rees (2010b), building on her practical experience of piloting grievance mechanisms and multistakeholder research, has addressed these charges by analysing the role of mediation, a core foundational process of grievance mechanisms, in rights-based disputes. While acknowledging that human rights abuses that amount to international

crimes absolutely require state-based adjudicative processes, she makes the case that mediation-based processes, including through operational-level grievance mechanism, have an important role to play in many other situations of human rights-related grievance. She argues that individuals and communities not only have rights that define a particular outcome (e.g. right to health, water, adequate housing and freedom from discrimination), but also rights that are process oriented such as to 'shape their own lives and welfare and (re)claim their dignity.' (Rees, 2010b:7).

The UN has emphasised that a rights-based approach to development encompasses principles of 'accountability, empowerment, participation, transparency, non-discrimination and attention to vulnerable groups' (Rees, 2010b: 6–7). In line with this understanding of human rights, Rees argues that mediation processes, including in the context of company–community grievance mechanisms, hold great potential for empowering individuals and communities to hold companies accountable and achieve forms of remedy for impacts on their rights that are meaningful to them in practice as well as in line with international standards (Rees, 2010b). This position is echoed by Oxfam America, which emphasises that grievance mechanisms are more effective when they affirm procedural rights of affected individuals (e.g. participation or access to information) in addition to remedy, and thus provide the means for communities to take part in the defence of their own rights.<sup>60</sup>

While both sides of the argument – Amnesty International, Human Rights Watch and likeminded organisations on the one hand, and Oxfam and Rees on the other – have extensive experience researching and working with communities, those that have actual practical experience working with company-based grievance mechanisms and dialogue and mediation-based processes for communities seem to be in favour of them. Furthermore, this research did not reveal any substantive literature, let alone field research, documenting evidence

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57. For an overview, see ESCR (2013).

58. 'In order to ensure that the human rights to an effective remedy is properly respected in cases of corporate abuse, the Working Group's main focus must be on access to State-based judicial and non-judicial remedies. These can be supplemented, but not replaced by corporate-level grievance mechanisms.' Amnesty International (2011:4).

59. For a more elaborate analysis of this argument, see Rees (2010b: 5–6).

60. Personal communication with representative of Oxfam America.

that the implementation of company–community grievance mechanism would lead to greater infringements of human rights or distractions from other forms of remedy or realisation of rights.

## 2.6 EVALUATING THE EFFECTIVENESS OF GRIEVANCE MECHANISMS

Both the policy debate and practice would be highly enriched if there were clear and tested metrics for measuring effectiveness of grievance mechanisms. Unfortunately, here again the literature is limited. Only three sources can claim to include some level of serious analysis of effectiveness: the guidance documents developed by CAO (2008), Rees (2008), Rees *et al.*, (2011) and IFC (2009). Based on a review of the existing literature and the interviews, three cumulative levels have been identified by the author to analyse these publications on how much depth their suggestions for evaluating the effectiveness of grievance mechanisms have.

The levels are cumulative in that a more comprehensive level generally cannot be achieved without meeting a more basic level, for instance, without effective resolution of, and learning from, individual grievances it is difficult (if not impossible) to make significant company changes to prevent future grievances. And without making structural changes in how business is conducted, strategic goals, such as avoiding escalation of conflict and maintaining a favourable reputation, are unlikely to be achieved.

Here it is interesting to draw a parallel with health and safety systems. For companies where frequent health and safety incidents occur, resolving and compensating for individual injuries (level 1) will not prevent future incidents without analysing and addressing root causes and making

improvements in key management processes (level 2), which in turn will not achieve a company's overall safety goals and general reputation if it is only done in isolated pockets rather than systematically throughout the entire company (level 3). Having started about two decades ago, the health and safety (r)evolution continues to take shape in extractive and construction companies today: this is an important reason why companies and experts, including during interviews for this chapter, have drawn strong parallels between health and safety and human rights, including in relation to company–community grievance mechanisms.

How does existing guidance on grievance mechanisms match these three levels of evaluation? The CAO Advisory Note recommends that the company ask itself the following questions when evaluating the mechanism:

- What kind of demonstrable change and improvement is the mechanism producing in project operations, management systems, and benefits for communities?
- How does the mechanism facilitate identification of root causes of conflict?
- What actions has the company taken to address these root causes? Is the company adopting any structural changes? (CAO, 2008: 59).

While these questions are certainly useful and appear to aspire to meet all three levels, the actual guidance in the publication, like those provided by the IFC (see Table 2.5), tends to be quite functional and focused on level two (at best), without a clearer connection to larger, overall goals, which were identified by nearly all interviewees in this research as critical in ensuring long-term and sustainable adoption of grievance mechanisms by companies. However, these guidance materials are primarily concerned with

**TABLE 2.4: THREE LEVELS OF DEPTH IN EVALUATING THE EFFECTIVENESS OF GRIEVANCE MECHANISMS**

LEVEL	KEY QUESTION	COMPANY BENEFITS	COMMUNITY BENEFITS
1	Are individual complaints or grievances resolved in a satisfactory manner (for all parties)?	Meeting external standards and internal policies; addressing issues early and addressing individual complainants	Individual cases are resolved fairly and expeditiously; no need to escalate
2	Does the mechanism lead to measurable changes in how the company conducts the activities that caused, or contributed to the grievances in the first place?	Reducing costs of conflict and avoiding escalation of issues; healthy relationship with the community; better management oversight; learning from grievances to better manage impacts	Impacts are minimised (rather than just remedied or compensated); no systemic recurrence of issues
3	Does the mechanism contribute to larger goals of both companies and communities?	Cost reductions, enhanced reputation, staff retention, future projects, renewed access to finance	Structural benefits, e.g. employment, wealth creation, essential services and economic and social development

**TABLE 2.5: COMPARISON OF SUGGESTED STEPS FOR MONITORING, REPORTING AND LEARNING FROM CAO AND IFC**

CAO ADVISORY NOTE (2008, PP. 57–60)	IFC GUIDANCE NOTE (2009, P. 27)
<ul style="list-style-type: none"> <li>• Get the right people and create suitable forums</li> <li>• Establish clear standards and criteria for evaluation</li> <li>• Create a plan to implement changes to the mechanism</li> <li>• Report back to the community</li> <li>• Learn and modify</li> </ul>	<ul style="list-style-type: none"> <li>• Track grievance statistics to ascertain effectiveness</li> <li>• Adapt the mechanism to correct inefficiencies</li> <li>• Use monitoring results to report back</li> </ul>

impacts on communities and their guidance do not preclude systematic adoption and implementation of grievance mechanisms throughout the company or connecting them to larger company goals.

A helpful addition to the CAO and IFC guidance on monitoring and reporting is provided by CSRI,

which has developed a set of effectiveness principles with corresponding key performance indicators. The effectiveness principles have been developed to guide companies when developing a new grievance mechanism, but can also be used to evaluate the effectiveness of existing mechanisms and serve as a reference point for redesigning them.<sup>61</sup>

61. While the mandate of Professor Ruggie was exclusively in the business and human rights nexus, grievance mechanisms work carried out in the context of his mandate, including the development of the effectiveness principles/criteria, has had broader uptake and application covering a wide array of potential impacts. Indeed, the Cerrejón case study discussed below, initially chose not to use human rights language and instead focus on ‘impact and risk mitigation, early warning, professionalization, etc.’ (Rees *et al.*, 2011: 34).

The effectiveness principles developed by CSRI formed the basis for Professor Ruggie's Effectiveness Criteria for Non-judicial Grievance Mechanisms, as first outlined in his 2008 report (Ruggie, 2008) (Appendix C includes the 2008 version). Building on the underlying guidance document of Rees (2008), these principles were tested in a series of pilot projects in four regions around the world, 'to test the benefits of grievance mechanisms that are aligned with the Special Representative's principles, and to learn lessons about how the principles could be further refined to reflect operational realities and enable their practical application' (Rees *et al.*, 2011: 5).<sup>62</sup> Among the five piloting companies were Carbones del Cerrejón – an integrated mining and transportation company owned by BHP Billiton, Anglo American and Xstrata, operating in one of the poorest regions of the north of Colombia – and Sakhalin Energy Investment Company Ltd., an off- and onshore oil and gas joint venture of Gazprom, Royal Dutch Shell, Mitsui and Mitsubishi, operating on Sakhalin Island in the Far East of Russia (see Chapter 5). In the case of Cerrejón a new mechanism was developed at the start of the pilot project, which consisted of creating a complaints office from scratch, whereas in the Sakhalin pilot existing grievance procedures were tested against the effectiveness criteria/principles (Rees *et al.*, 2011; Appendix A and C).

Even though most of the pilot projects, including Cerrejón, did not reach the monitoring and evaluation phase they nevertheless offer important lessons about the real world application of grievance mechanisms.<sup>63</sup> For example, feedback from complainants in the Sakhalin pilot demonstrated that a consistent approach to transparency throughout the process makes the community feel respected, which likely contributed to the fact that some people signed off on the satisfaction forms (which concludes a case as 'resolved') even when they did not get a favourable outcome (Rees *et al.*, 2011: 55, 60).

Similarly, the Cerrejón study demonstrated that in order for the mechanism to be perceived as *legitimate* and receive sufficient buy-in from all parties, both internal and external stakeholder input was critical, not only during the design phase, but also during the testing phase of implementation of the grievance mechanism. Moreover, it demonstrated that creating internal alignment among all Cerrejón relevant departments before submitting a proposed resolution to the management team for approval was another important element for increasing internal legitimacy. Finally, it was observed that in order to achieve external legitimacy it is critical that the grievance mechanism is an integral part of the company's overall approach to stakeholder engagement (Rees *et al.*, 2011: 34 –35).<sup>64</sup>

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62. In order to flesh out what each principle meant, the project used the referenced guidance tool (Rees, 2008).

63. Since the report was published in January 2011, both companies have continued developing their respective grievance mechanisms. For Cerrejón, more can be read in its 2010 sustainability report (Cerrejon, 2010: 51), For Sakhalin's complaints procedure, see: [www.sakhalinenergy.com/en/aboutus.asp?p=whistleblowing](http://www.sakhalinenergy.com/en/aboutus.asp?p=whistleblowing) and Chapter 5.

64. Anglo American, one of Cerrejón's three shareholders, has included the lessons learned from the pilot study in its updated and publicly available Socio-Economic Assessment Toolbox (SEAT) (Version 3), which includes a specific implementation tool for company–community grievance mechanisms (Anglo American, 2012).

**TABLE 2.6: EFFECTIVENESS CRITERIA FOR OPERATIONAL-LEVEL GRIEVANCE MECHANISMS (2011 UPDATED VERSION)<sup>65</sup>**

- (a) **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes.
- (b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.
- (c) **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.
- (d) **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.
- (e) **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognised human rights.
- (g) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.
- (h) **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

The overall takeaway of the pilots, as cited in the conclusion of the report, is that '[t]hey repeatedly confirmed the value and importance of the overarching concepts represented in the principles themselves. They also added some clarifications and nuances to how those principles should be understood and applied in practice, regardless of the situation' (Rees *et al.*, 2011: 28). In other words: the effectiveness principles are essentially 'characteristics' that any grievance mechanism should have if it is to be successful in the medium to long run, and that any company developing or redesigning a grievance mechanism should work out how best to achieve those characteristics in the context in which it is operating.

Following the pilots, the effectiveness principles were updated and one ('a continuous source of learning') was added. Table 2.6 provides the *updated* criteria and their brief description, while Appendix C matches them against their 2008 version, allowing the reader to compare them before and after the pilots, and summarises the key lessons for the Cerrejón and Sakhalin pilots against each principle.<sup>66</sup>

In addition to the effectiveness principles (inherently of a qualitative nature), and defining clear roles and responsibilities around grievance mechanisms, some interviewees within companies as well as those working alongside companies suggested that specific targets are vital for the successful implementation of a

65. See Ruggie (2008: 24). These 'effectiveness criteria for non-judicial grievance mechanisms' were based on a set of 'Principles for designing effective rights-compatible grievance mechanisms' ('Effectiveness Principles') first published in a guidance tool for companies and their stakeholders on how to develop and improve operational-level grievance mechanisms, based on a year-long project of intensive research and multistakeholder and bilateral consultation by CSRI (Rees, 2008). The first seven principles address all non-judicial grievance mechanisms. The last principle (based on dialogue and mediation) is specific to operational-level grievance mechanisms only.

66. For more information interested readers are encouraged to turn to the full report (Rees *et al.*, 2011).

TABLE 2.7: SELECTED EXAMPLES OF KEY PERFORMANCE INDICATORS ON GRIEVANCE MECHANISMS

KPI	INTERPRETATION
A significant number of complaints or grievances are brought to the mechanism in the period after its establishment.	Indicating both awareness of the mechanism's existence and confidence that it provides a credible first avenue of recourse.
A reduction, over time, in the number of grievances pursued through other non-judicial mechanisms, NGOs or the media.	Indicating both awareness of the mechanism's existence and confidence that it can provide a credible and effective first avenue of recourse.
Over time, the number of grievances of the same or similar nature decreases.	Indicating that staff are learning from past mistakes and adapting practices and/or operating procedures where appropriate.
Audits show a reduction in incidents of non-compliance with applicable standards.	Indicating that grievance processes are contributing to the identification and remediation of non-compliance incidents.
A reduction in absenteeism and staff turnover and/or an increase in productivity among suppliers'/ contractors' workers.	A partial indicator of reduced worker grievances and improved worker satisfaction, most relevant in relation to supply chains and contractors.
Standard Operating Procedures (SOPs) have been reviewed and amended where investigations reveal significant and repeat grievances despite staff following existing SOPs.	Indicating that lessons for management systems are being learned and integrated to reduce the likelihood of the same kind of grievances recurring.

grievance mechanism and to ensure the grievance mechanism contributes to the company's overall goals (level 3), also referred to as key performance indicators (KPIs). However, the development of grievance mechanism-specific KPIs (let alone their application and public reporting), is still at the very early stages. CSRI's guidance tool provides a number of

recommended, quite specific, KPIs to assist companies (and their stakeholders) in measuring the success of grievance mechanisms in terms of perceived legitimacy, extent of use by community members, and degree to which it is effective in achieving its larger goals. A selection of the suggested KPIs from Rees (2008: 38–40) is provided in Table 2.7.<sup>67</sup>

67. The full version can be found in Rees (2008: 4). Brief discussion of KPIs can also be found in the Cerrejón (p. 39) and Sakhalin (p. 62) case studies, all in Rees *et al.* (2011). More intense consideration of KPIs was done in another case study of Esquel Garments in Vietnam (*ibid.*: 52–53).

## 2.7 FUTURE TRENDS

Just as interesting as analysing past developments is the expected future evolution of company–community grievance mechanisms. According to the literature and the interviewees, what does the future hold?

The University of Queensland's Centre for Social Responsibility in Mining (CSRSM, Australia), in its series of reports published in 2008 and 2009 (some jointly with other institutes), identified a number of expected future trends, based on interviews with representatives from mining companies and other experts. In its 2009 report on mining industry perspectives, CSRSM identified an 'industry practice agenda', including: 1) capacity building and skills development for staff in relation to grievance handling; 2) engaging local staff in a discussion on the role of the grievance mechanisms in the company's overall goals; 3) monitoring and evaluation of grievance mechanisms – ideally involving external stakeholders and building a knowledge base; and 4) work towards greater transparency on grievance handling with the mining industry as a whole (Kemp and Bond, 2009:41).

These observations seem to align with the broadening and deepening of company–community grievance mechanisms (see 2.4) and with the need to achieve higher levels of effectiveness of performance in line with the three levels of evaluating effectiveness, outlined above. Given that the CSRSM's research was conducted a few years ago, the research for this chapter reveals that the elements of the industry practice agenda identified by CSRSM have indeed received increased attention and are likely to continue to do so for the foreseeable future.

In their quest to start applying grievance mechanisms company-wide, a key open question for companies is how best to align and redesign existing systems with the new requirements on grievance mechanisms, in particular those arising from the UN Guiding Principles. Though interviewees agree that local application should be the main focus, they are seeking to answer how strong the direction from the centre – the level where such requirements typically first enter the company – should be when ensuring alignment with the various standards. For example, strong direction from the centre supported and/or mandated by senior management may facilitate faster implementation, but its ultimate success depends very much on how the company is organised (e.g. centralised vs. decentralised),

among many other factors, and a need to recognise that context-specific factors may require some flexibility in design.

Regardless of the challenges companies will continue to grapple with in the foreseeable future, most companies interviewed for this research agree that they will start out with the sites where mechanisms already exist and/or develop a number of pilot projects, with the central office as the focal point for learning, developing best practices and providing the overall framework – supported by engagement at the sectoral level, including through industry organisations. IPIECA, for example, has embarked on a three-year project to generate learning and innovations through a series of pilot projects grievance mechanisms by member companies and in November 2012 released its 'good practice survey' (IPIECA, 2011), while ICMM is about to conclude the testing of the pilot version of its Guide (ICMM, 2009).

One trend observed, therefore, is that the guidance and standards developed by external organisations is now being internalised and implemented by companies. Given that peers are an important source of learning and benchmarking, and that many companies in the extractive sectors are in joint ventures (both Cerrejón and Sakhalin Energy are joint ventures) or are otherwise in direct commercial relationships, it could be expected that smaller and more geographically diverse companies will adopt similar practices following the lead of larger companies (those mostly interviewed for this paper).

Several interviewees stated that the level of uptake and further development of grievance mechanisms by companies will also substantially depend on the degree to which there is acceptance on the part of *all* stakeholders that grievance mechanisms are an important tool for companies in their engagement with community stakeholders. From that perspective it will be interesting to observe how the views of CSOs on the effectiveness of grievance mechanisms for providing remedy to communities will evolve, and whether similar research to that undertaken for this book will be developed to address some of the key gaps identified, i.e. to better understand and publicise the community perspective on use, usefulness and performance of company–community grievance mechanisms – and how they can support and ensure a positive outcome for the company as well as the community.

## 2.8 CONCLUSION

Based on the available literature and interviews with company representatives and independent experts, this chapter has attempted to describe and analyse definitions of grievance mechanisms, their historical evolution, the business case and other arguments for their use, civil society perspectives, and how best to evaluate them. It has demonstrated and argued that, while significant gaps in the literature remain, the last few years have seen a significant increase in the study of grievance mechanisms, standard-setting for their design, and convergence in the way in which they are designed and used: new corporate social responsibility norms with provisions for company–community grievance mechanisms have been developed and adopted; several guides for companies and their stakeholders have been published; implementation of grievance mechanisms have been pilot-tested and described through company case studies, and industry views have been drawn up through review papers.

In December 2012, a new CSR Conflict Management Center was launched to support and contribute to locally driven processes of conflict management in company–community relations, which will initially focus on providing a resource regarding cases of dispute resolution and how to navigate options for using different grievance mechanisms, including operational-level grievance mechanisms.<sup>68</sup>

In light of these developments, the focus needs to shift to lesson-sharing about the application of grievance mechanisms in specific contexts and around specific dilemmas, as well as a better perspective on when and how grievance

mechanisms work for communities to achieve a beneficial outcome for all. Therefore, initiatives like BASESwiki (or the ACCESS facility), the CSR Conflict Management Center, the pilot projects of ICM and IPIECA, and IIED's *Shaping Sustainable Markets* initiative – in particular the case studies in the remainder of this book – are of key importance to both companies and communities, as well as those concerned with supporting and advancing their rights, interests and aspirations.

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# THREE

# BP AND THE AZERBAIJAN PIPELINES COMPLAINTS MANAGEMENT PROCEDURE

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The Baku–Tbilisi–Ceyhan (BTC) pipeline spans Azerbaijan, Georgia and Turkey. Due to its size and impact, the BTC pipeline project has been the object of considerable international scrutiny by civil society organisations and project lenders. It is also often used as a case study for progressive corporate responsibility practices.<sup>69</sup> The BTC project demonstrates the value of a holistic approach to stakeholder relations, with the grievance mechanism as an integral part. In particular, the project has benefited from having invested in civil society capacity building through an NGO monitoring programme during the construction phase. This has enabled informed dialogue between the company and civil society over the years. This case study highlights the importance of developing a clear distinction between government and company responsibilities in resolving grievances, and communicating this to stakeholders. Companies also need to consider what they can do to facilitate resolution of issues that are primarily government responsibility. Overall, the BTC pipeline project has demonstrated high levels of transparency and information sharing, though some observers note that provision of good quality information has been patchy at the local level. The case study also demonstrates how a major international project such as this can positively influence government practice.

## 3.1 INTRODUCTION

The Baku–Tbilisi–Ceyhan (BTC) oil pipeline runs from the Caspian Sea port of Baku, through Azerbaijan and Georgia to the Turkish port of Ceyhan on the Mediterranean Sea. It is 1,768 kilometres long and one of the biggest pipeline projects in the Former Soviet Union. Its construction, at a cost of around US\$4 billion, began in April 2003 and was completed in 2005. A consortium of 11 companies led by the British multinational BP is responsible for the pipeline's operation and maintenance.<sup>70</sup>

In Azerbaijan the BTC pipeline crosses 82 communities and 700 rivers, and affects 6,489 different parcels of land. At the peak of its construction between 2003 and 2005 the project employed about 21,000 pipeline workers. The first tanker taking Caspian oil to Western markets sailed away from the Ceyhan marine terminal in June 2006 (BP, 2013). At normal capacity, the pipeline can transport around 1 million barrels of crude oil per day. Construction on the parallel South Caucasus (gas) pipeline (SCP) began in 2004 and the first gas flowed in 2006. A further

69. See for example: Guldbrandsen and Moe (2007); IPIECA (2011); Wilson and Kuszewski (2011).

70. The others companies are: SOCAR (the State Oil Company of Azerbaijan Republic), Hess, ConocoPhillips, Eni, Inpex, Itochu, Statoil, Total, Turkish Petroleum Corporation (TPAO) and Unocal.

pipeline expansion, which would run alongside the current pipelines, is currently under consideration.

From its earliest stages, the BTC pipeline project has been under scrutiny from international financial institutions, non-governmental organisations (NGOs) and the media because of the scale of its (potential and actual) geopolitical, environmental and social impacts.<sup>71</sup> This scrutiny has been magnified due to the transparency policies of BP and other consortium members, and the requirements of the project lenders, notably the International Finance Corporation (IFC) and the European Bank for Reconstruction and Development (EBRD).<sup>72</sup>

Activists opposed the pipeline route due to its potential effects on conservation areas and local water supplies. They were also concerned that its construction would lead to forced resettlement and other human rights violations. Local and international advocacy organisations lobbied private banks, international financial institutions and export credit agencies not to support the pipeline. It is worth noting that there were no cases of resettlement in Azerbaijan. Some land compensation issues remain unresolved, as discussed below. Environmental impacts include land reinstatement issues and damage to local roads, sewage and water supplies. It is acknowledged widely, however, that the pipeline consortium has demonstrated leadership in other areas such as waste management.

As the leader of the BTC consortium, and operator of other projects in Azerbaijan, BP has sought to integrate international standards for human rights and environmental protection into the BTC pipeline construction and operations. The company involved pipeline-affected local communities in project planning and maintains a comprehensive programme to manage relations

with them. As part of its community engagement efforts, with encouragement from IFC and EBRD, BP established a company–community grievance mechanism along the pipeline route. The Azerbaijan section of this grievance mechanism is known as the Azerbaijan Pipelines Complaints Management Procedure. The procedure allows local people to raise pipeline-related complaints directly with the operator. The system created by BP has been cited as a positive case study and a blueprint for similar projects (see for example IFC, 2009).

This study focuses in particular on the Azerbaijan Pipelines Complaints Management Procedure. (Experiences are different in Georgia and Turkey and worthy of separate studies.) This chapter is based on desk-research and the outcomes of four focus-group discussions held in 2011 in the capital Baku and in Ganja, northwest Azerbaijan, with representatives of organisations and community groups directly affected by the pipeline, or working closely with pipeline-affected people. The authors subsequently followed up through engagement with representatives of BP in Azerbaijan and other stakeholders.<sup>73</sup>

Section 3.2 provides some background to the oil industry in Azerbaijan. Section 3.3 describes some of the broader stakeholder engagement and community development activities that have been carried out by the BTC consortium. Section 3.4 is a description of the pipeline grievance mechanism. Section 3.5 presents the key results of the four focus group meetings. In Section 3.6 we provide some analysis and lessons learned from the focus group meetings. In Section 3.7 we draw some overall conclusions and make some suggestions for future good practice.

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71. See: [www.baku.org.uk](http://www.baku.org.uk). International campaigns involved Platform, The Corner House, the Kurdish Human Rights Project, Friends of the Earth, the Centre for Civic Initiatives (Azerbaijan), Green Alternative (Georgia), WWF, Bankwatch, Rising Tide, Bank Information Center, *Campagna per la Riforma della Banca Mondiale*.

72. See: [www1.ifc.org](http://www1.ifc.org) and [www.ebrd.com](http://www.ebrd.com). Other project lenders include national credit agencies and commercial banks.

73. The authors are grateful to colleagues at PPMC for organising the field research and contributing notes from the focus group meetings. We thank the focus group participants for their time and valuable contributions, as well as the two Azeri–English translators who worked with us. We would also like to thank the staff of BP in Azerbaijan for ongoing engagement on this chapter over three years, for making thoughtful responses to the issues raised, and directing us towards good information sources. We are also grateful to David Rice for providing an external review of the chapter.

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Source: UN, 2013

## 3.2 OIL AND DEVELOPMENT IN AZERBAIJAN

Azerbaijan lies in the Southern Caucasus on the western shores of the Caspian Sea, bordering Russia, Georgia, Armenia, Turkey and Iran. It has a population of 9.168 million as of 2011 (World Bank, 2013). It is a secular republic with a strong central government, divided into economic

regions, administrative districts (*raions*) and cities. The capital is Baku with a population of 1.95 million as of 2009 (CIA, 2013). Azerbaijan has been a major oil producer since the late 19th century. Production declined in the second half of the 20th century because of World War Two and Russia's focus on its Siberian fields. The second oil boom came after independence from the Soviet Union in 1991. In 1994 the government

signed the 'Contract of the Century' – a 30-year multi-billion dollar production sharing agreement (PSA) for the Azeri–Chirag–Gunashli oil field in the Caspian Sea, with more than 5 billion barrels of oil. First oil was produced by the BP-led consortium in 1997.

Thanks to its oil exports, Azerbaijan has enjoyed significant economic growth and poverty reduction in the past decade (Wilson, 2010; World Bank, 2013). Today the oil and gas sector contributes around 52.5 per cent per cent of GDP and nearly 70 per cent of budget revenues. Yet the sector employs only 1 per cent of the work force, while agriculture contributes about 5.7 per cent of GDP but employs nearly 40 per cent of the population (State Customs Committee, cited in News.Az, 2009; National Budget Group, 2012; CIA, 2013). The economy is highly vulnerable to oil price fluctuations. It has also been showing signs of 'Dutch Disease', which is characterised by a decline in manufacturing and other sectors, such as aluminium and cement.

Pervasive public and private sector corruption and structural economic inefficiencies hamper economic reforms, particularly in non-energy sectors. Despite being an early signatory to the Extractive Industries Transparency Initiative (EITI), and the first country to become EITI compliant in 2009 (EITI, 2009), Azerbaijan was ranked 139th out of 174 countries in Transparency International's Corruption Perceptions Index in 2012 (Transparency International, 2012). Although Azerbaijan has held several elections since independence, it remains classified as 'not free' by Freedom House's 2011 Freedom in the World survey (Freedom House, 2011). The Yeni Azerbaijan Party and independents loyal to the ruling government hold almost all parliamentary seats. The current president, the former president's son, Ilham Aliyev, won a second

five-year term in October 2008. The next presidential elections will be in October 2013.

Numbers of local NGOs are increasing, but civil society structures are still relatively weak. NGOs are hampered by government efforts to control NGO registration and limit opportunities for obtaining grants, tax-exempt status and the right to convene public meetings. Large sections of civil society are poorly connected to political elites and thus are not involved in political decision-making. Although there are important grassroots initiatives, most financial assistance is provided by external sources (Böttger and Falkenhain, 2011).

### 3.3 THE BTC PIPELINE AND STAKEHOLDER ENGAGEMENT

BP has made considerable efforts to maintain good relations with local communities. Activities reported in the BP in Azerbaijan *Sustainability Report* (2011) include regular public meetings on security and human rights as part of the Inter-Agency Security Committee forum, which facilitates dialogue between BP, community members and government security services. These meetings are led by BP field security advisers and involve community liaison officers (CLOs), local government representatives, land owners and public security officials. In 2011, about 3,800 people from 136 communities took part in 108 sessions (BP in Azerbaijan, 2011:19).

The company collaborated with the Open Society Institute Assistance Foundation (OSI-AF) on an NGO monitoring and audit programme during pipeline construction. This helped to build the capacity of 27 local NGO representatives to review the environmental and social impacts of the pipeline, with working groups covering environment, cultural heritage, human rights and local procurement, and promoted informed

### THREE BP AND THE AZERBAIJAN PIPELINES COMPLAINTS MANAGEMENT PROCEDURE CONTINUED

dialogue between the developers and local civil society (IPIECA, 2006:34-35).<sup>74</sup>

In 2003 BP established the Caspian Development Advisory Panel (CDAP) as an independent, external advisory body to provide objective advice on the economic, environmental and social impacts of the BTC pipeline and other BP activities in the region.<sup>75</sup> In 2007 CDAP was superseded by the Azerbaijan Social Review Commission (ASRC), which helps the company recognise trends, challenges and longer-term issues relevant to BP's social performance in Azerbaijan (see for example ASRC, 2010; 2011). In 2010, the ASRC conducted an examination of BP's implementation of the Voluntary Principles on Security and Human Rights (ASRC, 2010).<sup>76</sup> The report commends BP's efforts in training and implementing security and human rights principles, and its internal monitoring processes, but criticises the lack of external monitoring.

BP in Azerbaijan and its commercial partners support development projects through their multi-million dollar Regional Development Initiative (RDI). The RDI is a long-term programme designed to address macro-economic impacts in Azerbaijan, Georgia and Turkey. The programme currently supports local enterprise development, access to energy and effective governance. In

Azerbaijan the programme focuses mainly on local enterprise development.<sup>77</sup>

The Community Development Initiative (CDI) was set up in 2003 for Azerbaijan, Georgia and Turkey, as a condition of EBRD and IFC loans. The programme covers communities living close to pipeline corridors and construction camps, as well as towns affected by the project. After completion of the pipelines, BP continued financing Phase 2 of the CDI, which includes support for young people's enterprises in non-oil sectors, with a focus on agriculture and micro-finance. In 2011, BP allocated around US\$800,000 to programmes under the CDI (BP in Azerbaijan, 2011:48-49).<sup>78</sup>

#### 3.4 BTC PIPELINE GRIEVANCE MECHANISM FOR AZERBAIJAN

As part of its overall community engagement efforts and in accordance with the requirements of the project lenders, BP set up a company-community grievance mechanism for the BTC pipeline and the South Caucasus Pipeline (SCP). The mechanism is known as the Azerbaijan Pipelines Complaints Management Procedure. The mechanism allows local people to raise pipeline-related complaints directly with BP. Its purpose is defined in the Environmental and

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74. Reports from the NGO monitoring programme can be found at: [www.bp.com/genericarticle.do?categoryId=9006625&contentId=7013552](http://www.bp.com/genericarticle.do?categoryId=9006625&contentId=7013552) (accessed 27 February 2013).

75. The CDAP reports and BP's responses are available at: [www.bp.com/caspian](http://www.bp.com/caspian) (accessed 27 February 2013).

76. The Voluntary Principles on Security and Human Rights were established in 2000 to engage businesses, governments and NGOs in a constructive dialogue on security and human rights issues in the extractive industries. See: [www.voluntaryprinciples.org](http://www.voluntaryprinciples.org) (accessed 27 February 2013).

77. See [Enterprise E-Centre \(2013\)](#).

78. For more on the CDI including the application process, see: [www.bp.com/genericarticle.do?categoryId=9006626&contentId=7058067](http://www.bp.com/genericarticle.do?categoryId=9006626&contentId=7058067)

## BOX 3.1: OVERVIEW OF THE AZERBAIJAN PIPELINES COMPLAINTS MANAGEMENT PROCEDURE

### Structure:

- Network of six community liaison officers (CLOs) located in pipeline-affected communities, stakeholder relations lead representative at Sangachal Terminal.
- Network of three public information centres with public drop boxes in Ganja, Yevlakh and Kurdamir.
- Telephone hotline.
- Internal company complaints log and database for managing and tracking complaints and their resolution.

### Procedure:

- Submission of grievance via drop boxes; information centres, CLOs, the pipeline right-of-way team, post or telephone; grievance form is filled out or a letter is sent.
- Grievance is logged and a staff member is nominated to address it.
- Grievance acknowledged within 10 working days; if grievance is not relevant to the project and/or cannot be resolved by the operating company, a letter explaining the reasons is addressed to the complainant.
- Aim is to address grievances within 30 days following submission.
- If grievance is not resolved within 30 days, it is reassessed and next steps are discussed with the complainant.
- If grievance remains unresolved, independent third-party mediation can be brought in. BP in Azerbaijan has used a third-party mediator, the local NGO Centre for Legal and Economic Education (CLEE).

### Dissemination:

- Information posters and brochures distributed widely in communities (e.g. information centres, local libraries, community bulletin boards).
- Advertising in local media.
- Telephone numbers and grievance forms published online and in brochures; telephone numbers published in the sustainability report;
- Information on website in the public consultation and disclosure plan, including location of bulletin boards and information centres.
- Annual public consultation and public awareness meeting covering all pipeline communities.

### Responsibility:

- Azerbaijan export pipelines social team is managing the resolution of complaints received from communities and third parties, involving other teams when relevant and necessary.
- The social team leader coordinates community grievances resolution process and has the authority to assign responsibility to address a grievance to appropriate levels of management or relevant contractors.

### Accountability:

- BP in Azerbaijan reports to the project lenders on number of grievances, complaint categories and other relevant information regarding their resolution.
- External review by the Azerbaijan Social Review Commission.
- Numbers and types of grievances resolved are published in the sustainability report.

### THREE BP AND THE AZERBAIJAN PIPELINES COMPLAINTS MANAGEMENT PROCEDURE CONTINUED

Social Impact Assessment (ESIA) as 'to ensure that all complaints from local communities affected by the pipeline are dealt with appropriately, with corrective actions being implemented and the complainant being informed of the outcome' (BP, 2002:42).

A structured grievance management system was established to be managed by a dedicated social team including CLOs working 24 hours a day, seven days a week in the communities. The CLOs are the main point of contact for local people in dealing with social issues related to the project. They have knowledge about the region, speak local languages and have previous experience in local government, civil society action and community development. CLOs are responsible for maintaining constructive relationships between communities and BP through ongoing dialogue comprising regular community and individual meetings; and by distributing relevant project information, including informing people of their rights and local regulations relating to the pipelines. The CLOs are responsible for receiving grievances and communicating them to the community liaison coordinator for resolution with relevant company managers and departments. For less formal complaints they can often resolve issues on the spot.

At the height of the construction phase there was a designated CLO for each affected region with further officers and support staff at headquarters. There are six CLOs at present, who are responsible for the three key pipeline zones – West, Central and East (overall they cover 13 regions: Garadagh, Absheron, Hajigabul, Agsu, Agdash, Ujar, Kurdamir, Yevlakh, Samukh, Goranboy, Shamkir, Tovuz, Agstafa) – and work a rotating shift seven days a week. BP has a stakeholder relations lead representative at Sangachal Terminal, who is responsible for

managing relationships with communities living around it. During construction, the pipeline contractors, Consolidated Contractors International Company (CCIC), had its own CLOs and kept its own complaints log, which was also reported on to BP.

Public information centres have now been set up and are functioning in three central cities along the BTC pipeline route: Ganja (West), Yevlakh (Central) and Kurdamir (East) in central and easily accessible parts of the city. These centres are meeting points where local people can obtain information on project activities and issues of concern to them, including job opportunities, apprenticeship programmes, local NGO activities, and the grievance mechanism.

In 2011, BP received 10 complaints from communities (BP in Azerbaijan, 2011). Five of these related to compensation, three to land use, one to recruitment and one to an access road. Nine of the complaints were successfully resolved. Only one complaint, relating to land use, remained unresolved. BP also received 221 requests related to permission to use the land along the BTC/SCP pipeline route for various purposes. Of those, 205 were resolved in 2011 and 16 in 2012. BP also received six submissions from communities around the Sangachal Terminal relating to local recruitment, social investment, skills training, and infrastructure upgrading. In response to public concerns, BP contractors hired 63 people from Garadagh district.

By comparison, in 2005 – at the height of construction – a total of 396 grievances were submitted, relating to irrigation issues (42 per cent), land use or land compensation (25 per cent), damage to property (12 per cent) and damage to infrastructure (7 per cent). By the end of 2005, 35 grievances remained unresolved. In 2006, 121 complaints were received, relating to

irrigation (31 per cent), land use and compensation (25 per cent), damage to infrastructure (22 per cent), damage to property (7 per cent), land reinstatement (6 per cent), recruitment (6 per cent), and other issues (3 per cent). By the end of 2006, a total of 21 grievances remained unresolved. All of these have now been closed out.<sup>79</sup>

Information on the land acquisition process can be found in the BTC/SCP publication *Encyclopaedia of Land Acquisition* produced by BP (Safiguliyev *et al.*, 2010). A working group consisting of the State Oil Company of Azerbaijan Republic (SOCAR), the Ministry of Fuel and Energy and company representatives was established to prepare the groundwork for land acquisition and compensation. On their recommendation, a joint land acquisition team (JLAT) was set up, with representatives of the State Land and Cartography Committee of Azerbaijan and BP contractors, and seconded to the working group. JLAT helped to explain the essence of land agreements to landowners and users, clarify the agreement signing process, investigate and settle any complaints, disagreements and misunderstandings arising in the course of the work in accordance with the adopted procedures (*ibid*: 146).

### 3.5 FOCUS GROUP OUTCOMES

To examine the experience and perceptions of local people along the pipeline route, the co-authors of this chapter arranged four focus group discussions with representatives of organisations and community groups directly affected by the pipeline, or working closely with pipeline-affected people. Two meetings were held on 9 June 2011 in the capital Baku, followed by two meetings on 11 June in Ganja, a regional centre of approximately 300,000 inhabitants on the pipeline route in the north-west of Azerbaijan. Focus group participants were selected through the local partner, the Public Finance Monitoring Centre (PFMC).<sup>80</sup> All had been working on environmental governance and natural resource management issues in Azerbaijan for several years. Of the participants, some had taken part in the NGO monitoring and audit programme supported by BP and OSI-AF (as described above), while others had refused to take part in it on principle.<sup>81</sup> The focus group meetings were supplemented by further informal discussions with individual NGO and company representatives.

Focus group discussions are widely recognised as a method of fact finding in social research. They promote self-disclosure among the participants and help to avoid situations where an

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79. Personal communication with staff of BP in Azerbaijan, February 2013.

80. For more on PFMC see: [www.pfmc.az](http://www.pfmc.az)

81. Some also observed that large corporations operating in Azerbaijan can display a 'sarcastic or snobbish' attitude towards NGOs. They argued that 'tame/compliant' organisations were favoured over more critical ones, which were excluded from work and the associated financial support.

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interviewer's preconceived ideas steer the discussion (Ogunbameru, 2003). The discussions were held in Azerbaijani language and translated into English, and were moderated and chaired by PPMC. The meetings were recorded electronically, and written notes were taken. The meetings lasted for around an hour and half each.

The discussion with these NGOs was frank and well informed. The NGOs offered critique and praise of BP's performance. Overall, there was a strong sense that BP had introduced high levels of social and environmental responsibility into the oil and gas industry culture in Azerbaijan, and had raised local people's awareness about their human rights. They felt that the national oil company SOCAR had much to learn from BP.

At the same time, the NGOs were clear about areas in which they felt BP's performance could be improved (e.g. management of contractors). In some cases this related to inadequacies in the government response to issues (notably land claims), where NGOs felt that BP could have more influence on the government and offer more help to aggrieved citizens. In other cases (such as information sharing) they felt that BP was doing well, but had the capacity to perform better.

The two meetings in Baku were attended by well-established NGOs with a track record of working on oil and gas issues in Azerbaijan. Most of them were based in and around Baku and described the focus of their work as relating to human rights, transparency and anti-corruption, law and policy, and/or campaigning and advocacy. All of them had previously worked with oil and gas companies and were – to varying degrees – involved in independent efforts to monitor the social and environmental impacts of

the BTC and SCP pipelines, including the NGO monitoring and audit programme.

The two focus group discussions in Ganja were attended by representatives of local, mostly community-based, civil society organisations and community development workers. They were involved in a variety of community support and capacity building activities (ranging from supporting disabled children to environmental protection). Some of them had also been involved in the NGO monitoring and audit programme.

The participants who had been involved in that programme were impressed by the high standards and modern technology employed for environmental protection, which set a new benchmark for Azerbaijan. They felt that the experience of taking part in the programme had been valuable, although some were of the opinion that a number of BP's commitments relating to human rights, infrastructure or community support had not been met. Overall they felt that during the monitoring process BP and civil society organisations entered into a 'productive and open dialogue' and 'were able to resolve many issues'. During this time, the NGOs had direct access to company experts to resolve issues that they had identified. However, while the companies collaborated with NGOs, as soon as the construction was finished, one participant observed that 'the doors were basically closed to NGOs again'.

It should be noted here that the company does continue to engage with NGOs, though not as intensely with some of them as during the period of the NGO monitoring programme. The Azerbaijan Social Review Commission (described above) includes five experts from Azerbaijani NGOs, along with two international members

(from the US and UK). Further information about NGO engagement can be found in the BP in Azerbaijan *Sustainability Reports*.<sup>82</sup>

### 3.5.1 Implementation of the grievance mechanism

Participants' assessments of the effectiveness of the pipeline grievance mechanism varied considerably. Comments ranged from observations that the grievance mechanism was 'well designed' and 'well organised' and helped to resolve many grievances, to comments such as 'the companies did not have a working grievance mechanism before, during or after the construction of the BTC pipeline'. This may be a reflection on the different application of the mechanism in different geographical regions or in relation to specific issues.

Similarly, participants disagreed on the extent to which different components of the mechanism, such as the telephone hotline, were working in practice. In general, however, they seemed to concur that many local people had the CLOs' telephone numbers and regularly contacted them with their grievances.

Some participants described the work of the CLOs as crucial. 'They were always giving advice if we asked for something and our problems got resolved within three to four days.' But others claimed that the CLOs 'were not influential enough and did not have the authority to resolve issues'. One participant noted that some of the CLOs he had encountered 'don't put their heart into the job. They are poor at outreach and they favour the people they know.'

An example of conflict resolution between company and community concerned the procurement of local products. Initially the BTC companies imported many goods, including bread, from France. Local communities challenged this practice and the companies subsequently agreed to procure bread locally, provided it met their health and safety standards. 'The companies were willing to work with local contractors that met their standards, and local businesses increasingly got involved in the construction of the BTC pipeline.'

A common complaint was that BP often responded to grievances by replying that the government or municipalities were responsible for

resolving certain issues (such as land rights and compensation). 'People were frustrated when they encountered the stock response that the responsibility for the problem lay with local government.' Others had sometimes been disappointed by a general lack of responsiveness on the part of BP: 'They could not get any reaction from BP while they had a lot of questions and complaints.'

Moreover, the majority of participants seemed to agree that while NGOs had sufficient access to CLOs, at the community level there was still a significant gap of knowledge about the grievance mechanism and a lack of skills to use it. Aggrieved individuals often found it difficult to understand the scope of the CLOs' mandate (especially in regard to government vs. company responsibilities). Some communities had a very limited awareness of the existence and operation of the grievance mechanism.

Efforts had been made at the grass roots to supplement the CLO network. Informal community representatives try to raise issues, but they are not paid a salary. The Open Society Institute supported a network of local focal points and helped local NGOs to produce their own leaflet about the mechanism. One NGO focus group participant observed of local people: 'They don't talk to BP – they talk to us instead.' Yet NGOs complained that they can't always get their concerns taken seriously by BP. BP staff tend to recommend that local people contact the company directly to get their concerns addressed most effectively, rather than contacting them via an NGO.

Participants noted that local people without easy access to one of the public information centres still find it difficult to obtain relevant information on further construction work, commercial activities of the oil companies, and grant opportunities. Some participants observed that local municipalities in the Ganja region had little interaction with donors, BP or international and local NGOs. As part of their community engagement efforts, international companies had allegedly ignored existing structures – such as local municipalities – and encouraged the creation of new community-based organisations instead. As these are not recognised by the government, their longevity and sustainability were questioned.

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82. The *Sustainability Reports* can be downloaded at: [www.bp.com/sectiongenericarticle.do?categoryId=9029687&contentId=7054436](http://www.bp.com/sectiongenericarticle.do?categoryId=9029687&contentId=7054436)

### 3.5.2 Key issues

Focus group participants distinguished between problems that occurred during the pipeline construction phase and those that have occurred (or persisted) post-construction. They generally agreed that land issues were the most common cause for – sometimes ongoing – disputes between communities and the pipeline consortium. Land title and property boundaries were not well documented in the official records and many land owners could not provide the necessary proof to receive compensation payments. People complained that the pipeline passed through their land, but compensation had been received by someone else: 'The actual land owners could not get compensation but someone else who is not even known in the area or lives close to it got compensation just because they have relations with the government or municipality officials.'

According to staff of BP in Azerbaijan, between 2003 and 2005 the BTC and SCP projects received 347 land compensation complaints. Following an investigation by the Dispute Resolution Group, which included representatives of the projects, the local land acquisition commission, and the NGO Centre for Legal and Economic Education (CLEE), 49.5 per cent of these complaints were judged valid and were compensated. Eighteen court cases have been held relating to land issues. Of these, 10 were rejected by the courts and in six the relevant land-owners were compensated. Two cases were settled on appeal by mutual agreement, involving the mediation assistance of CLEE. These were landowners in A. Agasibeyli and Hajalili villages in Samukh district. Much more information on the land acquisition process can be found in the above-mentioned BTC/SCP *Encyclopaedia of Land Acquisition* (Safiguliyev *et al.*, 2010).

Nonetheless, the participants in the focus group meetings felt that many local residents were dissatisfied with the resolution of land-related issues. They felt that, as the state authorities are responsible for the acquisition of land and compensation for land appropriation, the company grievance mechanism had little effect in resolving many of these issues. Participants noted that 'some grievances ended up in court regardless of the grievance mechanism, but none were resolved in favour of the complainant.' 'If you go to the communities, they will say these issues remain unresolved.' Participants spoke of a tripartite commission set up to address land compensation issues. But they felt that this initiative failed to resolve land claims and compensation issues. They also referred to an NGO that was contracted to provide legal aid to communities but whose activities did not lead to court cases. Some NGOs had filed cases through the courts, they noted, and there had been some mediation by NGOs, notably in relation to labour rights issues. But they felt more could have been done.

The participants had many complaints about the work of contractors. For example, during the construction phase, there was a great deal of damage to existing infrastructure and land. While these matters were often settled informally with the affected people, some participants felt that 'in practice it was mostly window dressing and not good quality repairs'. Examples included the removal and storage of top soil, road repairs and the dismantling of a construction workers' camp. Participants reported: 'In one settlement (Mugan) a contractor [who was meant to be repairing the roads] damaged the village water and sewage systems. The two are still mixed to this day.' In some places construction work has resulted in subsidence and the erosion of riverbanks, where

the pipeline is now exposed, while a greater area has been cordoned off than was initially agreed. Further unresolved matters include damage to irrigation channels and local infrastructure or damage caused by drilling through artesian wells.

Participants in Ganja referred to one contractor that was allegedly responsible for paying local workers differently from international workers; providing different standards of housing for local and international workers; and expected their workers to work long hours, while employee logs were not kept properly. At the same time, people felt that contractors overall were not hiring enough people from local communities. While BP had promised that contractors would make good any damage that they caused, there was a reported case in which heavy trucks had damaged local houses, but after finishing their construction job the contractor workers 'just packed up and left' without doing the repairs.

Participants noted that mitigation measures were not always appropriate to local needs or the problem being addressed. In one instance construction activities had resulted in damage to irrigation channels. However, 'instead of reconstructing these damaged irrigation channels BP has built a kindergarten in the village'. The participants in general agreed that 'companies should pay more attention to what people really want'. This in turn led to a wider discussion on possible activities ranging from the support for income generating activities of farmers (marketing, purchase of machinery and seeds, or credit financing) or environmental projects to raise local awareness.

Some participants criticised the official compensation allocation procedures as insufficient. They noted that the division of responsibility for resolving grievances between the pipeline consortium and the government was not always clear. One participant suggested that 'each of them tried to shift these obligations to the other'. BP claims that it had to use information provided by the government and was limited in its ability to go beyond this. Workshop participants noted that in some cases the government allegedly prevented the companies from providing additional compensation exceeding the limits set by statutory assessments.

Pipeline security initially comprised an automated monitoring system and officers on horseback; now, an additional task force has been set up to protect the pipeline against terrorist threats – the government's Export Pipelines Protection Department. But its officers occasionally come into conflict with local residents. For example, the Ganja participants noted that officers obstructed access to an important local source of fuel wood and the security corridor along the pipeline route now obstructs villagers' access to drinking water. Despite the community engagement efforts of the Inter-Agency Security Committee, focus group participants felt that such security issues were an ongoing matter of community concern. Yet according to the company, its security team conducted a survey in April–May 2009 to assess the results of the activities of the Inter-Agency Security Committee along the route of the BTC and SCP pipelines. Although 1,070 quantitative interviews were carried out and analysed, no information about local conflict was noted.<sup>83</sup>

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83. Personal communication with staff from BP in Azerbaijan, February 2013.

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Participants noted that, as part of its Community Development Initiative (CDI), BP has provided support to local communities, in particular during the construction period. This included grants for the improvement of roads and educational facilities. The public information centres at local libraries have been playing a key role in providing information about opportunities. But workshop participants felt that communities where information centres have been established have benefited most from employment opportunities and the CDI than others. Residents of other villages tended to be less satisfied. Participants noted that 'some communities had no information and no community investment'.

### 3.6 ANALYSIS

The focus group discussions, desktop-based research and further engagement with stakeholders, including representatives of BP in Azerbaijan, have helped to build a picture of the effectiveness and impact of the pipeline grievance mechanism.

#### 3.6.1 Overall stakeholder engagement approach

The experience in Azerbaijan illustrates the importance of viewing a company–community grievance mechanism as but one component in a larger picture, as noted by the IFC in their good practice note on addressing grievances (IFC, 2009). When implemented properly, a grievance mechanism may complement but does not replace other forms of stakeholder engagement such as information disclosure, consultations, project monitoring and reporting.

Focus group participants agreed that it was the independent monitoring process organised by BP and OSI-AF that created the most meaningful engagement with civil society. Contentious issues were resolved through action and dialogue – rather than through the formalised complaints procedure. Participants claimed that in the early stages of the project the grievance mechanism wasn't functioning. It was only with the NGO monitoring and audit programme that things started to change. The grievance mechanism itself only became fully functioning later. In our focus groups, the NGO monitoring and audit programme was mentioned much more than the grievance mechanism itself.

In its fifth report (ASRC, 2011:4), the Azerbaijan Social Review Commission notes:

*'During the BTC construction, BP had several levels of external monitoring. While a return to that degree of scrutiny may not be necessary, this Commission believes that some form of external view and comment is needed, to see things from a different perspective, to challenge, be able to express views that BP might find difficult, and at times perhaps provide pressure for BP to do something it might not otherwise have done. We believe BP should put in place a monitoring programme for the new construction.'*<sup>84</sup>

The involvement of local communities and civil society organisations in the pipeline monitoring helped to build trust and support for the project. But following the completion of the independent monitoring process, some NGOs felt disappointed at losing the close communication with the company and the former levels of

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84. This is a reference to proposed expansion of the Sangachal Terminal and construction of a new pipeline and offshore infrastructure (ASRC, 2011:10-11).

influence and access to project information. This emphasises the need for continuous dialogue during different project stages, including initiatives to proactively encourage the exchange of views, provide information and communicate problem areas. Continuous close engagement with affected groups and communities as well as NGOs is also likely to foster a sense of shared ownership and responsibility for the outcomes.

This case study is a positive demonstration of the importance of building the skills and awareness of civil society to engage, to criticise and to understand issues. It is essential for a functioning grievance mechanism and for stakeholder relations beyond the grievance mechanism. While the influx of oil and gas investment has created social and environmental problems, it has also catalysed the development of civil society and gradually helped people to understand and critique and help to resolve issues constructively.

### 3.6.2 Information dissemination and awareness raising

Project stakeholders need to understand the scope and purpose of a grievance mechanism. The focus groups indicated that some communities did not understand the procedure as well as they should have done, and some were not even aware of its existence. Participation of affected communities in the design process can help to ensure greater trust and ‘buy-in’ – an opportunity missed in Azerbaijan.

The focus group participants suggested that the settlements where public information centres had been established benefited more than others from information, not only about the grievance mechanism, but also about employment opportunities and the Community Development Initiative. They argued that information on business activities and community support programmes needed to be more widely available and easily accessed. This may mean opening more information centres, or working with more local libraries and schools to make information available more widely.

In its fourth report, the ASRC makes the following suggestion (ASRC, 2010:14):

*‘We suggest that BP explores the possibility of supporting citizen activity and service centres – sources of information in the skills and abilities*

*listed above and access to services, for example legal advice. Services could be provided by legal NGOs addressing education, health and other social rights such as dwelling, access to water, etc.’*

Participants also suggested that all complaints be published on the BP website, in the way that the Compliance Advisor/Ombudsman of the IFC and the Multilateral Investment Guarantee Agency publish theirs:<sup>85</sup> ‘If BP is willing to publish information about other things, why not grievance mechanism outcomes?’

With construction of a proposed pipeline extension, there will be a need to inform and work with all the land users along the pipeline route. BP already has a database of all the land users identified during the construction of the BTC and SCP pipelines. (There are about 4,000 of them.) BP expects that some of these people will have moved away or died in the interim and that the database will need to be updated. The company is planning to send information packs to all potentially affected land users, with information about their rights and the procedures to follow in cases of land compensation claims or complaints related to resource access, as well as information about the grievance mechanism. The methodology for calculating land compensation will also be shared with potentially affected land users.

BP also needs to re-engage with local NGOs to identify unresolved land compensation issues as a way to address any outstanding claims and also to learn from these instances to avoid any further land users losing their compensation claims. This will also require in-depth engagement with government over land rights and compensation procedures (see below).

### 3.6.3 Company vs. government responsibility

A key area for improvement is the way that the grievance mechanism addresses issues that are identified as ‘government responsibility’. Participants in the workshops stated that the company responded too frequently to complainants that resolution of a particular grievance was ‘the responsibility of government’. A letter such as this is sufficient to officially ‘close’ a grievance. In any review of the grievance mechanism that is based on counting numbers of

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85. Information about the Compliance Advisor/Ombudsman can be found at: [www.cao-ombudsman.org](http://www.cao-ombudsman.org). Accessed March 2013.

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grievances submitted, numbers resolved and average length of time it takes to 'close' them, this would show up in a positive light. According to company indicators of performance this equates to successful resolution, but our focus group participants argued that this is not 'resolution' but 'deferral of responsibility'.

The IFC and EBRD policies state that even if compensation payments are the responsibility of the government, the company (their client) should collaborate with the relevant government agencies to avoid human rights violations, hardship for affected communities and adverse socio-economic impacts. Where government capacity is limited, the client is expected to play an active role during resettlement planning, implementation and monitoring (EBRD, undated; IFC, 2012). The policies make clear that they expect clients to maintain at least a degree of involvement in land issues. In the eyes of many focus group participants, the fact that the pipeline grievance mechanism could not respond in any meaningful way to those complaints undermined its credibility.

However, company experts see a risk in collaborating with the government more than they do already. They fear that this might create a precedent that will increase the number of non-BP-related requests and complaints that are brought to the company to resolve. The company feels that it should not be regarded as a conflict resolution agency between stakeholders and the government.<sup>86</sup>

BP could, however, improve the grievance mechanism with an official procedure for tracking and monitoring resolution of grievances that are

considered to be 'outside the company sphere of influence' but where the project is resulting in situations where human rights are affected, creating hardship or adverse socio-economic impacts. These issues could be recorded separately and resolution of them could be included as an additional indicator of success for the grievance mechanism. While it is understandable that companies do not want to become a go-between or mediator between stakeholders and government, they may be in a position to provide support for capacity building and awareness raising for both parties, which might facilitate more effective resolution of non-company issues.

### 3.6.4 Third-party mediation and independent recourse

The focus group participants felt that third-party mediation had not been used effectively in resolving grievances, nor had an effective procedure for independent appeals been established. Despite BP's efforts to set up a commission to deal with land questions and engage the NGO Centre for Legal and Economic Education (CLEE) to provide legal support and mediation services to aggrieved citizens, many land-related issues reportedly remain unresolved, even when they have reached the courts. The company provided the authors with more information about third-party mediation and reported two cases that failed in the courts, but were successfully appealed and resolved through mediation. However, perhaps there would be greater levels of satisfaction locally and among NGOs if these avenues for redress had been strengthened and used more.

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86. Personal communication with company representatives, December 2012.

### 3.6.5 Role of contractors

The workshop participants referred frequently to construction contractors and the security services employed to guard the pipeline. During the construction process, contractors were required to have their own CLOs and were engaged in the grievance resolution process. However, it is clear that many of the key issues raised during our focus group meetings relate to the work of contractors and they should be more directly involved in grievance resolution and stakeholder engagement more broadly. Moreover, there should be greater accountability among contractors for resolving issues, and for translating learning from the grievance resolution process into improved performance.

## 3.7 CONCLUSIONS AND RECOMMENDATIONS

To conclude, we reflect on whether the grievance mechanism has had a positive effect on company practice and the socio-economic and environmental situation in Azerbaijan as a whole. Our focus group participants agree that the mechanism has contributed to – and benefited from – the positive achievements of the wider community engagement programme established along the BTC/SCP pipeline route. Yet there are some clear areas for improvement. NGOs are keen to see BP address these areas, as they believe this would set a good example for other companies not currently performing as well as BP in Azerbaijan, notably SOCAR.

### 3.7.1 Has the grievance mechanism contributed to broader societal improvements?

Overall, participants in the focus-group meetings felt that BP's work in Azerbaijan has had a positive influence on the culture of the oil and gas industry in the country as a whole. As part of the overall community engagement strategy, the grievance mechanism can be said to have had a positive impact on local people's awareness of their rights and willingness to seek resolution of grievances.

Even the most critical NGO participants in the focus groups accepted that BP's experience is a step towards better practice in the oil and gas sector in Azerbaijan: 'When large infrastructure projects are implemented by the government there is much less consideration of community needs. We were disappointed with BP's grievance mechanism at the time, but now we see it as good practice.' 'There have been a lot of court cases against SOCAR. I believe that this

was inspired by the BTC project's recognition of people's rights.'

Where the grievance mechanism could, however, have had a greater societal impact is in the area of government approaches to land rights and land compensation measures. Certain areas of support such as knowledge sharing and capacity building could be explored to facilitate land-related grievance resolution, which participants saw as one of the most contentious issues, and the least resolved.

### 3.7.2 Summary of recommendations

Based on analysis of the focus group discussions, one or two areas have been highlighted where improvements could be made to the Azerbaijan pipelines complaints management procedure.

These include:

- Ongoing efforts to build the skills and awareness of civil society to engage, criticise and understand issues. This may involve opening more public information centres, or working with local libraries and schools to make more information available; it may also include supporting citizen activity with legal, educational, health and other advice services. BP could support another NGO monitoring and audit programme for any further project expansion, with support for local capacity building to carry this out.
- Strengthening of third-party mediation approaches and existing independent appeals channels. More effort could be made to build local NGO capacities to support resolution of compensation and land rights issues, as well as increasing government officials' knowledge, awareness and skills in land rights grievance resolution.
- Establishment of an official procedure for tracking and monitoring resolution of grievances that are considered to be the government responsibility and 'outside the company sphere of influence'. These could be recorded separately and resolution of such grievances could become an indicator of success for the grievance mechanism.
- Re-engagement with local NGOs to identify unresolved land compensation issues from previous years, as a way to address any outstanding claims and also to learn from these instances to avoid any future cases of land users losing their compensation claims to other people. This will also require engagement with

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government over how to improve land rights and compensation procedures.

- Greater involvement of contractors, including security service providers, in grievance resolution. Contractors should be encouraged to engage with company CLOs and, where appropriate, hire their own or nominate a focal point for grievance resolution. Grievance mechanisms and CLO activities should enable communities to address issues related to contractors effectively.

It is worth noting that according to the Law of the Republic of Azerbaijan on 'Land acquisition for state needs' (No. 987-IIIQ, dated 20.04.10), a grievance resolution commission should be established in addition to the land acquisition and compensation commission. This commission should work closely with project land teams and can bring in third-party experts including NGOs. The law in question was developed on the basis of BP experience during the BTC/SCP project land acquisition process.<sup>87</sup>

The focus group participants suggested that we publish this chapter in Azerbaijani language as a guidance note on good practice in the oil and gas industry. The positive and negative lessons learned from this case study will be useful in informing and improving the performance of other companies operating in Azerbaijan, notably the national oil company SOCAR.

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# FOUR

## A GRIEVANCE MECHANISM IN THE FORESTRY SECTOR IN CONGO

The example of Congolaise Industrielle des Bois

Jérôme Lewis and Sophie Borreill

The Congolaise Industrielle des Bois (CIB) manages approximately 1.4 million hectares of tropical forest concessions in the northern Republic of Congo. Since 2004 the company has been striving towards securing Forest Stewardship Council (FSC) certification, achieving its first certificate in 2006 and full certification in 2010. FSC has been a key driver for CIB to establish a grievance mechanism for resolving disputes over tenure claims and use rights and for providing fair compensation for loss or damage affecting the legal or customary rights, property, livelihoods or resources of local communities. In practice, the CIB grievance mechanism is a flexible approach and philosophy, rather than a fixed set of procedures that need to be followed to the letter. This case study illustrates the importance of developing a company culture of resolving issues through dialogue with the community. In addition to dedicated social communicators (hired from the communities themselves) and a team of social experts, company managers are prepared to go out into the communities to respond directly to conflicts and issues as they arise. The CIB case study underscores the need to respect traditional conflict resolution approaches; to engage in open dialogue and negotiation of solutions; and to 'ritualise' agreements in order to ensure communal acceptance of the resolution. It also highlights the importance of respect and hospitality in diffusing conflict and tension.

### 4.1 THE COMPANY AND THE PEOPLE

Since 2004 the Congolaise Industrielle des Bois (CIB) has been committed to achieving the Forest Stewardship Council (FSC) certification of sustainable management for its forest concessions in the northern Republic of Congo. It secured its first FSC certificate in 2006 and FSC certification for all its concessions in October 2010, covering an area of just over 1.3 million hectares of tropical forest.

While there are several forest certification programmes,<sup>88</sup> FSC certification is broadly accepted as the highest standard in the field of sustainable forest management, particularly because it also has clear social principles (see Section 4.5). The respect of local people's rights and their involvement in key decisions concerning them are key elements of the FSC Principles and Criteria. Equally, the absence of major social conflict on the concessions is an important requirement for certification.

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88. These include the Programme for Endorsement of Forest Certification (PEFC), the Sustainable Forest Initiative (SFI) and the Fairtrade label of the Fair Trade Labelling Organisation (FLO), and a range of national schemes.

To comply with FSC standards, CIB has developed and implemented conflict prevention and management procedures with the local populations living within its concessions – including, but not limited to, a grievance mechanism. The innovations developed by CIB and its partners have received recognition and awards for innovation in approaching conflict resolution and community engagement.<sup>89</sup>

This chapter focuses on the forest peoples affected by conflicts related to the work of CIB and seeks to explore their views and experience of how the grievance mechanism has been implemented. It also takes into account the views of civil society partners employed by CIB as external observers, in conjunction with those of CIB's employees. It concludes by offering lessons for others who may wish to consider implementing a grievance mechanism in similar circumstances, while also drawing broader lessons for other sectors.

An initial desk study was completed by the authors in 2010. Following further fieldwork undertaken in the Congo Basin in September 2010, a longer field report was completed in April 2011. This chapter summarises and updates the April 2011 paper.<sup>90</sup>

After a brief presentation of the company and its concessions, we present and assess the policies and procedures that CIB uses to address conflicts and grievances with local forest people. We analyse what constitutes CIB's grievance mechanism, in the context of CIB's broader stakeholder engagement approach (see Section 4.2), providing case studies to illustrate grievance

resolution efforts in practice. We conclude by providing some reflections on elements of good practice, key challenges, and some recommendations for other forestry-related grievance mechanisms.

#### 4.1.1 The company

Established in 1968, CIB is a registered company based in Ouesso, northern Congo. As part of the Timber International Group it was bought in 2005 by the Danish group DLH (Dalhoff, Larsen and Horneman Associates) and then sold again due to financial losses incurred by DLH during the recession in December 2010. The current owner is OLAM International Limited, a Singapore-based processor of agricultural products and food ingredients. Its purchase of Timber International for a total of €9.6 million (US\$39.4 million) was its first expansion into timber production.

CIB has three concessions: Pokola, Kabo and Loundougou-Toukoulaka (see Figure 4.1). CIB has exploited the Pokola concession of 450,000 ha since 1964, the Kabo concession (290,000 ha) since 1997 and the 571,000 ha Loundougou-Toukoulaka concession since 2003. The concession of Pikounda-Nord (94,000 ha) has been allocated to CIB but is not under exploitation and indeed is set to become a carbon-sink pilot. CIB obtained FSC certification for Kabo in 2006, for Pokola in 2008 and for Loundougou-Toukoulaka in 2010. The Société Générale de Surveillance, a global inspection, verification and certification company conducts annual audits to check compliance with FSC principles and criteria.

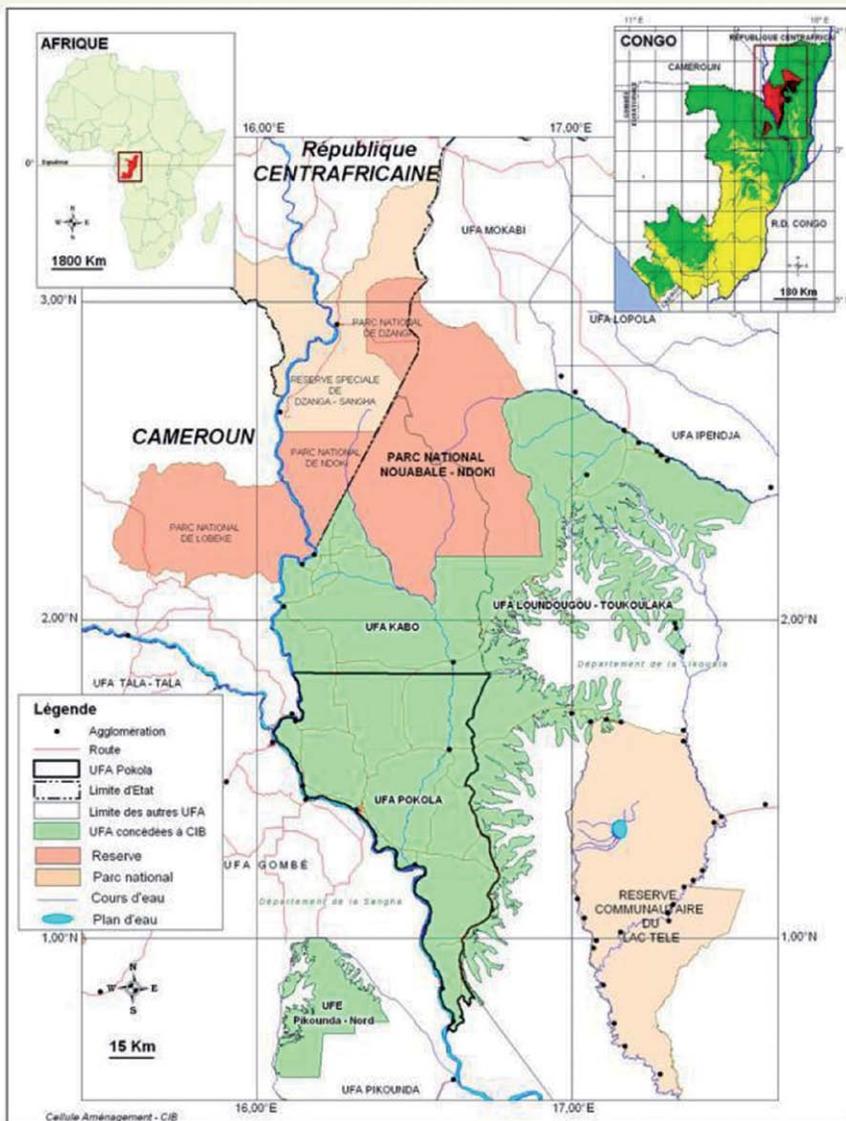
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89. For example, the CIB community mapping project, using GPS technology with Pygmies to identify valuable trees, was recognised in 2007 by the Tech Museum of Innovation in the social equality category of their Laureate awards scheme. See: <http://ictupdate.cta.int/layout/set/print/Feature-Articles/Logging-the-forest>. The UK-based Tropical Forest Trust won the World Bank Development Marketplace award in 2005 for its work with CIB and local communities. See: <http://go.worldbank.org/P9E4XFQSO>.

90. The authors thank CIB staff at the Management Unit, OCDH staff in Brazzaville and the people of Bomassa and Ibamba for giving their time to answer questions.

## TWO A GRIEVANCE MECHANISM IN THE FORESTRY SECTOR IN CONGO CONTINUED

FIGURE 4.1: CIB CONCESSIONS IN NORTHERN CONGO



Source: Management Unit CIB

#### 4.1.2 The people

CIB divides the populations in its concessions into two major categories: allochthones and autochthones. Allochthones are all the people attracted to the concessions in recent decades by forestry and related activities, while the autochthones are those that occupied the concessions before CIB arrived. The autochthones are subdivided into semi-nomads (hunter-gatherers and former hunter-gatherers), and Bantu sedentary farmers. In all they speak 12 different languages: Bambendjele, Bangombe, Bomassa, Bomitaba, Bongili, Kaka, Kabounga, Mikaya, Ngundi, Pomo, Sangha-Sangha and Yasua.

The Pokola concession is estimated to have 14,500 inhabitants, of whom 13,000 inhabit the two industrial camps set up by CIB (Ndoki 1 and Pokola). The management office also calculates that about 15 per cent of this population are non-Congolese, being composed of 1,046 citizens of the Democratic Republic of Congo (DRC), 573 Rwandans, 218 Cameroonians and 168 Central African Republicans, among representatives of 20 different nationalities. The Londoungou-Toukoulaka concession has a population of around 6,240, of which 1,111 live in the industrial camp set up by CIB – 3417 people are classed as Bantu and 2824 as semi-nomads (hunter-gatherers) (PROGEP, 2010). In 2004 Kabo had a population of 2,665 (Greenpeace, 2005), though in early 2010 the suspension of the industrial site's activities due to the economic crisis significantly reduced this number.

Mainstream Congolese society is very hierarchical. At the regional level sit government appointees such as the Prefet (state representative) and the regional military commander, who encompass urban-based elites

of both state and traditional structures below them. Village-based leaders and rural communities are seen as low status in comparison, and the hunter-gatherers are the lowest status group of all.

In general the hunter-gatherer communities are subject to racist and discriminatory stereotypes, segregation and denial of rights by their neighbours. Segregation practices include not allowing them to use the same cooking and eating utensils as farmers and forbidding interethnic marriage (which is therefore extremely rare). Farmers generally do not allow hunter-gatherers to make their camps next to their houses, but prefer them to keep a distance of several hundred metres or more. Many farmers refer to the hunter-gatherers as 'animals that speak' and accord them corresponding status and rights. As a result, hunter-gatherers are generally not able to lodge complaints in local or national courts unless they are represented by a farmer. These problems are recognised at the national level, and in early 2011 Congo's National Assembly voted in a law for the protection of indigenous peoples' rights. However at the local level the situation remains one of daily and serious discrimination.

CIB is sensitive to these issues and seeks to overcome discrimination. On its industrial sites the company will not tolerate segregation practices and hunter-gatherer employees that are given housing by the company find themselves living among farmers. This is tolerated, though not without complaint, since all are only housed while working for the company. CIB pays equal wages for equal work and seeks to minimise discrimination against the hunter-gatherers. But this discrimination is so entrenched in the region that it persists at every level of society.

## 4.2 CIB'S OVERALL STAKEHOLDER ENGAGEMENT APPROACH

CIB's grievance mechanism forms part of the company's wider approach to stakeholder engagement and conflict resolution. This overall approach comprises a set of practices that have been proven to be effective over time, with a guiding principle that 'prevention is better than cure' (see Box 4.1).

### BOX 4.1: CIB STAKEHOLDER ENGAGEMENT IN PRACTICE: 'PREVENTION IS BETTER THAN CURE'

- Maintain regular contact and a continuous dialogue with all stakeholders in order to prevent disputes turning into conflicts.
- Develop standard procedures to address recurring conflicts.
- Amicable discussion of issues as they emerge is always the preferred mode for resolving differences.
- An escalating range of mediators is available to both parties, but are only involved when agreement cannot be reached amicably.
- In cases where national law has been broken the competent national authorities are involved.
- Contractualise and ritualise agreements that are made with communities (see Section 4.7, Example 4)
- Implement and monitor the measures and actions agreed upon.

The following section looks at the institutional structure of stakeholder engagement and conflict resolution, both within CIB and without CIB, but supported by the company.

#### 4.2.1 Institutional structure

CIB's stakeholder engagement work involves four main internal and external institutions, described below.

##### **The social team within CIB's Management Unit**

The social team is in charge of managing CIB's socio-economic and wildlife programme (Programme Socio Economique et Faune), including implementation of the grievance mechanism (CIB, 2009a). As of 2012, the social team consisted of nine permanent staff members:

- Programme manager
- Assistant manager, responsible for questions relating to the autochthonous people (those resident in the area before CIB arrived)
- Three policy officers responsible for questions relating to (1) food security and social monitoring, (2) gender issues, and (3) local development
- Four social communicators responsible for relations with the autochthonous people.

##### **The Continuous Auditing and Monitoring Programme (CAMP)**

CAMP was set up to carry out independent auditing and monitoring of CIB social performance and to facilitate dialogue between the company and local populations. This programme was originally based on a partnership between CIB and four Congolese NGOs and is fully funded by CIB.

From 2006 to 2008 the NGO Observatoire Congolais des Droits de l'Homme (OCDH) acted as the national coordinating NGO in partnership

with Conservation de la Faune Congolais, a national NGO, and two local NGOs: Sangha Assitance Medical and Association pour la Protections des Ecosystems de la Sangha. OCDH's reputation for independent reporting was important to give legitimacy to CAMP, and something appreciated by local people. After the first two years, CIB tried to renew with OCDH alone, following concerns about the capacities of the local NGOs. OCDH resisted this, so instead CIB signed a new contract with the Tropical Forest Trust, which continues to oversee CAMP.

The role of CAMP is:

- To inform CIB through regular auditing of the state of social affairs, and how they are evolving on the ground, especially as they relate to CIB activities.
- To consult with the populations to assess their involvement in forest management and check that mechanisms for information, consultation and grievance resolution are operating properly.
- To advise CIB on strengthening its social performance concerning its management activities and its compliance with FSC certification.
- To act as a social mediator in case of conflicts and disputes between the company and communities.

For more on the activities of CAMP, see Section 4.6.

### **The Consultation Council**

The Consultation Council is made up of territorial authorities, local authorities, devolved administrations, the local representative of the Ministry of Forest Economy, local populations, civil societies, NGOs and CIB representatives. The Consultation Council for community development activities is responsible for defining the terms of

management of the agroforestry zone around the villages of the concession, which is supposed to protect villagers' agricultural land. It is calculated on the basis of information provided by the Ministry of Forest Economy, and is demarcated with the participation of local populations.

The Consultation Council was apparently difficult and unwieldy in the beginning, but over time the strategy of bringing all the chiefs together with other local authorities has greatly reduced conflict with some of the more unpredictable local chiefs. Certain local chiefs behaved very autocratically and made unrealistic demands in discussions with the company, or changed positions on a whim. CIB's Management Unit has been impressed with the way that peer pressure during council meetings has served to moderate extreme behaviour.

### **Village wildlife management committees**

Village-based wildlife management committees have been set up as part of the partnership between CIB, the Ministry of Forest Economy, and the Wildlife Conservation Society in relation to Nouabalé-Ndoki National Park that borders the concessions. Hunting is a fundamental economic and religious activity of the hunter-gatherers living on the concessions, and many farmers still hunt. Hunting is also practised by CIB employees, and increasingly by poachers from other parts of Congo and neighbouring countries, notably by refugees from DR Congo.

The village wildlife committees are meant to keep local populations informed about procedures for sustainable wildlife management and to involve them in the management activities. The effectiveness of these committees is variable: for example, they are unable to resolve the conflicts that have arisen between communities and the eco-guards, as described in more detail in Section 4.7 (Example 3).

### 4.3 IDENTIFYING AND ADDRESSING KEY AREAS OF CONFLICT

The major conflict issue in this case is tenure. Local people think that the forest is theirs; the state says the forest belongs to it. Then the state gives rights over the trees to CIB, without first explaining to local people that the trees are the property of the state. When this is explained, people tend to perceive CIB as having the same responsibilities as the state. This mostly translates into expectations that the company will provide local infrastructure and services: building roads, schools, clinics and pharmacies. CIB is unable to provide such infrastructure and services, but the government is unsympathetic, supporting the local arguments that the company is responsible for such provision.

A major achievement of CIB managers over the last five years has been to identify key recurring sources of conflict and prepare procedures to address them. These are:

#### **1) Socio-economic procedures in the forestry management units of Pokola, Kabo and Loundougou (July 2005)**

These procedures for managing and monitoring social issues in the forest management units provide basic guidance for loggers and managers on community engagement, land issues, and other socio-economic issues, including those related to potential conflict and resolving conflict.

#### **2) Procedures concerning requests for services or favours, such as access to wood off-cuts from the sawmill by the populations living on the forest management units of the CIB concessions (May 2008)**

Local requests for favours are frequent. In the past, the lack of company response to such requests has led to tension and conflict. The

company installed a data management software system called PROGSOC to systematise the requests and ensure timely follow-up. However, requests still have lower priority than production, resulting in raised expectations but a long response time. Key areas of conflict, such as how wood off-cuts not used by CIB are allocated to local people who need them, have required specific procedures to address them.

#### **3) The employment procedure dealing with work contracts and personnel management (October 2005)**

This procedure favours local employment and has replaced previous employment practices that were undermined by nepotism and corruption. It has addressed popular grievances about the absence of paid work for local communities, which was a frequent cause of road barriers, often erected by young men who felt they should be offered employment. Despite a certain lack of appropriate skills locally, the company now ensures that local people are favoured in recruitment, and it reserves certain unskilled work for local youth. Some local elders remember that in colonial times there was more effort put into training local people in skills required by industry. Now it is necessary to pay hefty bribes to employed staff for young people to get taken on as apprentices. This remains a source of resentment among local youth.

#### **4) Damage to indigenous peoples' resources or trespass on sites of cultural importance: The procedure for community-based land use mapping (2006)**

CIB instigated participatory community-based land-use mapping to ensure that economic and cultural resources are protected from damage during logging, and any commercially valuable trees that are of importance to local people are left standing. The community resources are

identified by Global Positioning System technology (GPS), using icons for non-literate people. The resources are then mapped. This is followed by an informed discussion between local people and company staff to exclude valuable trees from logging or negotiate compensation for damage or removal. Once agreement is reached, protected resources are marked with pink paint and are formally excluded from logging schedules. This approach has avoided many conflicts. According to local people, the participatory mapping also inspires confidence that the company is keen to respect their rights (CIB, 2009b).

This procedure was developed by a consortium of academic, NGO and company staff (Hopkin, 2007) and has been taken as a model and applied, with modification, in every certified concession in the Congo Basin (Lewis and Nelson, 2006). However, while originally designed as a participatory process, it now tends to be conducted more as a data-mining exercise, with company staff making key decisions and local people having limited understanding of the outcomes of decisions taken.

In addition, CIB has an FM radio and an internal TV network. These broadcast announcements and reports on local events to CIB employees and the local populations, as well as films and documentaries. CIB also partners with the community radio station *Biso na Biso* set up by the Tropical Forest Trust. Since 2009, this station has been training local people to produce and broadcast their own radio shows on local issues. CIB itself uses the medium to disseminate information about FSC issues, company news, meetings and consultations.

The company also offers the communities direct and indirect development opportunities via jobs and a local development fund. The development

fund supports community-oriented micro-finance projects. The fund is managed multilaterally and was set up with the involvement of local chiefs. Without financial oversight and capacity building of local people to prepare proposals and manage projects, the local development fund risks creating its own conflict. Elite capture is a major weakness of the community development fund programmes, and this can cause tension locally. But people do perceive the fund as an important source of support and a legitimate way to share benefits.

#### 4.4 BUILDING DIALOGUE

Implementing more effective and meaningful community engagement procedures has markedly improved relations between local people and the company. Because the major recurring sources of tension have been at least partially addressed through the policies listed above, the majority of the remaining problems can be resolved more easily through dialogue and information sharing. In line with the CIB principles (above), the company promotes ongoing dialogue and information sharing with stakeholders to prevent tension and conflict.

CIB seeks to clearly define and acknowledge local land tenure and use rights, and to ensure that their activities do not threaten or diminish these rights. It seeks to obtain the free and informed consent of indigenous peoples for proposed forest management activities and it involves local communities in management and decision-making concerning use of their lands and resources. It seeks to assess the social and environmental impacts of CIB activities on the communities' rights and resources, often using independent experts, and the results are integrated into the company forest management programme. There is special concern for vulnerable and marginalised social groups.

Forums are set up to enable meetings and discussions between all civil society intermediaries: trade unions, employees' representatives, village committees, traditional committees of elders, *Kombeti* or *Kobo* of the semi-nomadic populations, associations and local NGOs, formal or informal, the Ministry of Forest Economy, and all other local or national administrations, depending on the nature of the debates.

The results of discussions between the stakeholders and forum members are logged in a report drafted by the social team and are ratified by CIB's management. The documents are then read out to the groups concerned in the relevant language (French, *Lingala*, *Mbenzélé* etc.). This is to ensure that non-literate or non-francophone people have access to the information. With the agreement of those concerned, meetings are also filmed in order to prove that participants gave or refused their consent in a free and informed manner. The films are stored by the social team. Finally a ritual celebration is held with food and wine supplied by CIB as a way to respect local custom. By ritualising the contract in this manner, the community demonstrate their agreement (see Lewis *et al.*, 2008).

CIB's approach has evolved over the past decades from informal decisions taken by the company director as issues arose, to increasingly more systematic procedures since 2002 as the company moved towards FSC certification. Long-term members of the social team described how they began as 'firefighters' in the days when local communities declared major conflicts by erecting barriers across critical access roads. Previous directors called on the police to deal with the situation, arguing that since the government had given CIB the rights to log, the police should enforce the state's wishes. But this often led to

further confrontation and violence. Local people and CIB are now much happier not to involve the police whenever it is possible to avoid doing so, and road barriers are much less frequent.

However, certain issues are still addressed using national law, the police and existing community structures, for example criminal activities or road accidents.

#### 4.5 KEY DRIVER FOR THE MECHANISM: FSC CERTIFICATION

The prospect of FSC certification was a key driver in systematising conflict resolution approaches. FSC's Principles and Criteria include recognising tenure and use rights and responsibilities, and indigenous peoples' right to free and informed consent. The CIB grievance mechanism serves as a tool to support the process of *maintaining* the consent of local communities, by addressing issues and concerns as they arise, with the aim of resolving or avoiding conflict.

The grievance mechanism also meets specific FSC requirements for an 'appropriate mechanism' with which to 'resolve disputes over tenure claims and use rights' (FSC, 1996:5) and 'for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, livelihoods or resources of local communities' (FSC, 1996:6).

To comply with FSC, CIB is required to report against the following indicators:

- **Indicator 2.3.1:** The forest enterprise shall maintain an up-to-date and complete record of all disputes relating to tenure claims and use rights, including evidence relating to the dispute and a clear and up-to-date description of any steps taken to resolve the dispute.

- **Indicator 2.3.2:** In any case of dispute relating to tenure claims or use rights the enterprise shall enter into good faith efforts to resolve the dispute using locally accepted mechanisms and/or institutions.
- **Indicator 2.3.3:** In the case of a dispute related to the tenure claims and use rights of Indigenous Peoples, there shall be a process to resolve the dispute which has been mutually agreed.

Major disputes involving multiple interests will normally disqualify an operation from being certified. There is some question over the extent to which social indicators such as these are prioritised sufficiently in FSC audits. However, CIB has nonetheless demonstrated a certain degree of compliance. During the field visit to CIB in 2010, the authors were given access to reports made by the social team for the FSC auditors. In total there had been eight recorded conflicts between 2005 and 2010. Some of them are described in the case studies in Section 5 below.

Eco-guard units established by the government to protect local fauna, and co-financed by the company (see Section 4.7), have provoked a great deal of local resentment and sporadic conflicts due to their violent conduct. FSC auditors do not consider this a 'major conflict' because they argue that it is a conflict at the level of state law and enforcement, and not at that of CIB's management. FSC auditors make a similar argument for CIB not providing people with proper information about their right to say no to logging activities on their land, since the government claims it is their land and that it has given CIB the rights to log. Without the right to say 'no' local people cannot have given their 'free and informed consent' to logging activities.

## 4.6 THE GRIEVANCE MECHANISM IN DETAIL

Although CIB does not have a formalised procedure, the activities that address local complaints and dissatisfaction with the company's operations and their stakeholder engagement processes are considered here to constitute a grievance mechanism. This set of procedures aims to improve communication and information flow as well as reducing the potential for conflict by flagging up potential flare-ups in advance.

The official way of making a complaint is by writing a letter to the CIB Management Unit. However, in practice it is often done verbally when company staff are present in a community. The team then write up the complaint and submit it through internal channels within the company.

The core of the company grievance mechanism is the role of the company's social communicators, who are the equivalent of the community liaison officers in the oil industry case studies. Within CIB, four social communicators are in charge of relationships with the autochthonous populations. The social communicators are from these populations and are all male.

The lead social communicator is Gildas Obimbola. Each week he, or other team members, travels to the villages of the concession. They are often the first to be informed when local people have a complaint. Gildas applies traditional conflict resolution procedures to resolve situations. He listens to the issue as described by the complainant. If it is clear to him that CIB has not followed a procedure or has broken one of its commitments he immediately apologises and asks villagers to suggest how the problem should be resolved. All present are given enough time to express their views. Often these dialogues begin with impossible claims for compensation, but as

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### A GRIEVANCE MECHANISM IN THE FORESTRY SECTOR IN CONGO CONTINUED

discussions deepen he generally finds that people are reasonable. Gildas carefully explains that he will communicate their problem and suggestions for resolving it to the CIB directors, but only they can make the decision (Obimbola, 2010).

Gildas is a local man and it is important that people understand he is trying to be helpful, otherwise he knows he will have problems later. While he perceives this as a risk, it is an advantage for both the company and the community, as the effectiveness of grievance mechanisms often depends on the competency and commitment to the local area of the company staff responsible for working with local people (Obimbola, 2010).

A progressive aspect of CIB's grievance mechanism has been the work of the Continuous Auditing and Monitoring Programme (CAMP), acting as an ongoing third-party monitoring process. CAMP visits take place every six months and CIB covers all costs (Itoua, 2010).<sup>91</sup> This gives CIB the power to determine when the mission takes place, and visits have reportedly been delayed if inconvenient for CIB. In interviews, CAMP participants noted that visiting every six months was not frequent enough, since a major area of complaint from villagers was that CIB was slow on completing work that villagers thought had been promised to them.

On a typical CAMP visit two teams are set up, one visiting camps and villages along the river, the other those along roads. Each team visits about 10–12 villages over six days. On day seven they all come together and prepare a combined account of their visits to present to CIB. Six months later they return to follow up on the problems raised in their previous visits, and in general CIB ensures

some positive progress has been made since the last visit. Villagers report being pleased when the national NGOs do this work, but less satisfied when working with the local NGOs that are felt to be too dependent on CIB's support.

In the early days of CAMP, with the original partners, CIB felt that not all the NGOs were technically up to the task of auditing CIB's relations with local people. Sometimes their visits would cause more problems than they solved. In particular one member of the group reportedly did not make clear the difference between what communities had requested from CIB and what CIB had agreed to do; he would visit villages with lists of letters that they had written to CIB as requests, and present these as actions CIB would shortly be undertaking. This became a source of conflict as local expectations were being raised, while the company refused to carry out the actions.

Overall, the Management Unit said that they had a flood of complaints from villages just after the CAMP team had finished work, rather than a reduction in disputes and better relations with local communities as had been hoped. For this reason the Management Unit wanted to negotiate an exclusive contract with OCDH for Phase 2 of CAMP, but OCHD refused, necessitating the establishment of a new CAMP partnership coordinated by the Tropical Forest Trust.

CAMP (or any other agency as required by a plaintiff) can also intervene as a mediator if the company fails to avoid a conflict. In cases of litigation involving the state, a state mediator's presence is compulsory; for instance the Sous Préfet (sub-regional government representative) or a representative of a relevant ministry. If all else

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91. Source: September 2010 interview with Andre Itoua, formerly of OCDH, who was responsible for leading a number of these early CAMP missions.

## BOX 4.2: OVERVIEW OF THE CIB GRIEVANCE MECHANISM

### Structure:

- Network of four social communicators to work with local farmers and hunter-gatherers.
- Social team and Management Unit prepared to respond directly to issues as they arise.
- Internal company procedure and database for managing and tracking complaints and their resolution.
- Ongoing third-party assessment team, the Continuous Auditing and Monitoring Programme (CAMP).

### Procedure:

- Submission of grievance by letter or verbally (via social communicators or other staff). No formal public grievance form.
- Every week social communicators visit some villages in the concessions.
- Application of traditional conflict resolution procedures by social communicators and the Management Unit staff, including open dialogue, discussion of alternatives, and ritualisation of agreements (through sharing food or providing gifts of food and drink).

- Grievances addressed by company staff as required, based on principles of dialogue and negotiation with the complainants.
- Six-monthly monitoring visits by CAMP.
- Third-party mediation in case of failure of company to avoid or mitigate conflict.

### Dissemination:

- Regular visits to villages in the concessions by social communicators and CAMP.
- Word of mouth.

### Responsibility:

- Social team and Management Unit direct responsibility for addressing conflicts and grievances.

### Accountability:

- Reporting on key performance indicators to FSC.
- Annual FSC audits (with major audits every five years).

fails, the competent territorial and judiciary authorities can be appealed to. This is seen as a last resort. The company can appeal to these authorities in cases where the other party, deliberately and unlawfully, threatens people and property – for instance roadblocks, racketeering, armed threat, vandalism or kidnapping.

## 4.7 CONFLICT RESOLUTION IN PRACTICE: SOME EXAMPLES

Aside from the formal role of social communicators and CAMP, CIB can be alerted to conflicts by other means, mostly by word of mouth or letter to the Management Unit, though verbal threats made during public meetings, or sometimes 'kidnappings' (see Example 1 below) have been used. Despite efforts to formalise grievance resolution, many of the efforts to

address grievances are undertaken in a fairly ad hoc way by company staff, based on the principles of dialogue. To their credit, the Management Unit appears to be very responsive and prepared to travel out to communities at short notice to address issues. The following examples provide some detail on how conflicts are resolved in practice. They thus illustrate some of the practical challenges of applying a grievance mechanism in a formal way.

### Example 1: A kidnapping in a sacred forest

In July 2007 prospectors were preparing to begin CIB operations near the villages of Molapa and Seke-Beye and arrived to begin cutting transects. The prospectors inadvertently entered a sacred area of the forest. Rather than warn them in advance, the villagers allowed them to enter it, then arrested the three men and refused to let

them leave the village unless a fine of 100,000 Central African francs or CFA (GBP130) per person was paid, the chiefs of each village had a new house built and would receive a monthly payment of 50,000 CFA each from CIB. A delegation was immediately dispatched to the village, including CIB directors who made their apologies to the village committee and listened to the claims. After some discussion they explained that CIB would not build new houses for chiefs, nor would they pay indemnities to chiefs, but that they would pay the 100,000 CFA fines. This was accepted by the chiefs and the problem was resolved (CIB, 2007).

#### **Example 2: A company driver beats up a Pygmy boy**

The Pygmy village of Ibamba is deep in the forest and far from other villages. In 2008, a teenage Mbendjele Pygmy boy named Djamba was in the industrial site of Ndoki 1 when he saw a lorry leaving in the direction of Ibamba. For many years it had been normal practice for CIB drivers to give local people a lift around the concession.

However, for various reasons this had been outlawed and drivers that are found carrying passengers can face disciplinary action. Djamba jumped on the lorry without telling the driver. As the lorry passed Ibamba, Djamba knocked on the cab to request the driver to stop. The driver, who was known for his short fuse, was so annoyed by what Djamba had done that he beat him severely. Djamba arrived in Ibamba bruised and bleeding, especially severely from the nose – traditionally seen as *ekila*, a most serious taboo. The Mbendjele people there were furious and began to ritually prepare for a confrontation with the driver by felling a small tree to block the road and putting sacred leaves across that can only be crossed by initiates of the *Ejengi* secret society. Any other person crossing this line will evoke the fury of the male-only initiates and risks immediate

and very dangerous forced initiation (CIB, 2008a).

After other vehicles were forced to turn back, the CIB Management Unit was alerted and immediately came to Ibamba. Despite feeling intimidated by the angry, red-painted and spear-wielding men, the Unit representatives apologised and accepted that the driver had done wrong and that he would face a disciplinary hearing. They offered to take Djamba and his father, Sandima, to hospital. Djamba's nose-bleed was treated, thus resolving the problems associated with *ekila*. However, Djamba's father Sandima was arrested by the police and jailed for two days for being an irresponsible father. The Management Unit came to negotiate his release with the police, gave him 5000 CFA for his trouble and drove him and his son back to Ibamba.

The roadblock was still in place but people were not so agitated. The CIB representatives explained that they would like to sort out the problem, but first the roadblock must be lifted. This is standard CIB practice in such situations. On seeing that Djamba had been properly treated at the hospital the Mbendjele agreed. CIB promised to make compensation and sack the driver, before returning to Pokola. On return they took the police to the hospital to interview the doctor and back to Ibamba to make a report so that they had evidence should the sacked driver take CIB to court. A day later CIB returned to Ibamba with sacks of rice, jerricans of palm oil, wine and other items, but no cash, as compensation for the injury. This resolved the problem in the eyes of both the Mbendjele and the company. The driver was aggrieved and continued to cause trouble for the Management Unit through the union in Pokola.

### **Example 3: The eco-guards and anti-poaching conflicts**

The 'surveillance and anti-poaching unit' (*Unité de surveillance et de lutte antibraconnage*) operates in the forest. Community conflicts with the unit's 'eco-guards' are some of the worst conflicts associated with CIB's operations. Companies are obliged by the state to finance the eco-guard patrols, and around 75 per cent of the eco-guards' wages are paid by CIB. The eco-guards are government employees under the direction of the Ministry for Water and Forests but their work is managed together with the Wildlife Conservation Society.

Eco-guards are mostly local men who after brief training are given uniforms and carry weapons so as to control illegal activities in the forest. Many local people accuse eco-guards of excessively violent searches for unlicensed guns, wire traps, dead animals and animal parts; involvement in trafficking of bushmeat, endangered species and trophies; and theft and violence against local people. In 2010, eco-guards were responsible for two killings: one was a DR Congo refugee poaching in deep forest and who resisted arrest, the second a local Bongili villager who shot at the eco-guards and was killed by returned fire. In previous years there have been other killings. Since eco-guards are public servants these cases are all dealt with by the national justice system. The police conduct the investigation, and cases are judged in local courts. But local people complain that those eco-guards responsible for some of the worst abuses continue to conduct missions in their villages, and they wonder why eco-guards have such impunity.

CIB's subcontractors all sign a contract saying that they will respect all CIB's rules and procedures. Yet CIB is unable to impose such constraints on those, such as the eco-guards,

employed by the state; the state resists what it interprets as foreign interference in state affairs. The Management Unit prepared a procedure to improve the eco-guards' training, with greater emphasis on peoples' rights and limitations of eco-guards' behaviour. However, the Management Unit does not do the actual training or manage the eco-guards directly. But the CAMP structure has reportedly been useful for putting pressure on eco-guards when villagers report bad behaviour. CAMP delegations regularly visit the office of the eco-guard management to discuss grievances. Nevertheless, regular complaints of beatings continue and CAMP's influence seems limited.

### **Example 4: The accidental felling of a protected caterpillar tree in Bomassa**

In April 2008 CIB workers accidentally felled a caterpillar tree that the community and CIB had agreed to be exempted from the cutting schedule due to its non-timber economic value to local people (CIB, 2008b). Although no community members observed the mistake, CIB workers reported it to their superiors and the chain-saw operator responsible for felling the tree was suspended for eight days. The chief of Bomassa explained that they had not known about the incident until CIB's social team arrived in the village to tell them and he and other villagers then went into the forest with CIB to see what had happened. The social team saw another sapelli tree some five metres away and suggested it could be taken out of the schedule instead. The chief and those present agreed to this solution.

Upon returning to the village, the chief explained this to the villagers. People pointed out that the sapelli that had been cut was exceptionally rich in caterpillars, year after year, unlike most other trees that host caterpillars unpredictably; the neighbouring tree was not sufficient to

compensate them for the loss. They demanded that a pharmacy be built in the village, since the sapelli that was cut provided so many medicinal services in addition to the caterpillars. The women of the village were most upset by the exchange as they are the principal collectors of caterpillars and it represents an important cash income.

CIB rejected the demand to build a pharmacy, but agreed to exclude a second nearby sapelli from the cutting schedule. Once this was accepted by the chief and village committee, CIB ritualised the agreement with a gift of rice and wine worth 150,000 CFA (£195). When relating this story to the authors, the chief emphasised that ritualisation is important because it ensures that everyone is aware of the resolution and agreement. By consuming some of the goods people feel that they have received some compensation. Local villagers told the authors that they believed the issue had been fairly resolved.

#### **Example 5: Claims on the forest of Fouloungou 2005 and 2008**

The retired Bongili senator Mr Biteke was originally from the village of Ikelemba though he lived in Brazzaville and the regional capital Ouessou for most of his life (CIB, 2005). In 2000 CIB began exploiting forest where Biteke's ancestors had lived and collected large amounts of sand from the river-bed in Fouloungou forest. This provoked protest from village elders in Ikelemba who claimed to be the owners of Fouloungou. To respect traditional rights, CIB took a group of elders to Fouloungou to perform a short ritual blessing of the company's work. CIB representatives were surprised that the elders appeared to be visiting the place for the first time. Nonetheless the elders performed the ritual and

received money, but this caused protest among local Mbendjele Pygmies who live in the locality but were not involved. Apologies were made but nothing further was done.

In 2005 Mr Biteke, the ex-senator, took CIB to court for damages to Fouloungou, claiming 20 million CFA (£26,000) as the traditional land-owner of the area. CIB challenged the claim arguing that the ex-senator was not the legitimate representative of the Bongili and that the Mbendjele Pygmies were the only group that actually lived in the area. The case ended with ex-senator losing and being told to pay 1,000,000 CFA (£1,300) compensation to CIB and court costs. He contests this judgement and he is not satisfied that his rights have been respected.

In July 2008 a delegation of 13 elders from the district of Bouaniela, Likouala Region, came to the CIB offices demanding financial compensation for exploiting their traditional lands around Fouloungou. They also wanted a road to connect their villages, and wanted young people from their villages to be employed by the company. CIB explained that Fouloungou had already been unsuccessfully claimed by the ex-senator in the law courts and they recognised only the Mbendjele Pygmies as having land-use rights in the area,<sup>92</sup> according to national law. The company agreed to consider the road proposal once the dry season arrived, and asked the elders to prepare a list of candidates for employment and submit it for consideration following normal employment procedures. The delegation asked that CIB show them hospitality after their long journey and provide them with a means to return home. CIB agreed to this and the meeting ended in 'mutual comprehension'.

92. These last two case studies are testimony to the problems associated with applying the concept of 'traditional rights'. Clearly this concept is vulnerable to manipulation by local elites. As a result CIB and many other logging companies use the concept of occupation and actual use to define beneficiaries when exploiting an area.

## 4.8 ANALYSIS

From the study of CIB's approach to grievance resolution, we get a picture of conflicts and tensions being resolved through a combination of:

- formal procedures developed in response to persistent conflicts, designed to regulate specific company activities;
- ongoing dialogue through the role of social communicators and established local multistakeholder forum;
- ad hoc response to conflicts and tensions on the basis of dialogue and negotiation, often led by the Management Unit.

The examples in Section 4.7 emphasise the importance of dialogue and the need to respect traditional conflict resolution approaches. These include open discussion of a problem; owning up to being at fault and accepting blame; discussion of a range of potential solutions with the aggrieved party; negotiation of a mutually agreeable solution; and ritualising agreements to ensure communal acceptance of the resolution. The examples underscore the role of respect and hospitality in diffusing conflict and tension.

The examples in Section 4.7 also provide some idea of the tactics used by local people to alert the company to problems, including the kidnapping of workers in a sacred site, the blocking of roads with logs, and ritual threats. They also illustrate the importance of employing a local person as the first point of contact, and the need to understand the reality and politics around 'traditional' land claims.

### 4.8.1 A mechanism or a philosophy?

While CIB has in place a number of tools that together serve as a grievance mechanism, overall the mechanism is not integrated in such a way that it offers local people clear guidelines about what

they can do and what options are open to them in different circumstances. The grievance mechanism is not a 'mechanism' as such, with fixed institutions and procedures that need to be invoked in order to resolve a dispute. It is more of a philosophy based on the principle that 'prevention is better than cure'.

The basic approach is that conflict should be addressed first and foremost through dialogue with respect for traditional ways. This has the advantage of enabling the company's 'social communicators' to be flexible in their approach and allows them to take the different local cultural approaches to conflict resolution into account.

The disadvantage is that local people are not aware what their rights are in the grievance resolution process, nor of alternatives to those being offered by the company. This may put them at a disadvantage during negotiation with the company, however open and 'reasonable' the dialogue is perceived to be. A clearer description or schema of the structures used to resolve disputes and what technical support is available for claimants, along with their rights and what possible outcomes might be, would facilitate the company's communication to the people concerned.

The real strength of the grievance mechanism is its emphasis on maintaining regular contact through the range of activities conducted by the social team and social communicators. During their visits problems can be discussed, and in most cases resolved without further need for mediation. This means that although the CIB's grievance mechanism is ambiguous, its implementation is efficient.

In all cases of grievances, CIB accepted fault unequivocally. Accepting fault then leads directly to compensation and so discussions have a

clearly constructive objective. There seems to be an implicit cost-benefit analysis in favouring such an approach. It is simply easier to accept fault and resolve the problem than to contest it with all the implications this has for workers' time and costs, and the company's reputation. This was well illustrated in example 1, when the villagers could have been blamed for not informing the workers about the sacred area. But this was disregarded, and CIB simply accepted the fact that the workers had walked in the sacred area, and paid up (300,000 CFA or £390).

By contrast, in Example 5 where the stakes were much higher (20 million CFA or £26,000), CIB let the first case go to the courts where the plaintiff lost, and subsequently resisted the further claims, and were persuasive (and courteous) enough to avoid further conflict. Disputes where neither side accepted fault were rare,<sup>93</sup> and this pays testimony to the importance of effective dialogue and a shared understanding of company principles, local cultures, FSC principles and national law. Most 'conflict resolution' consisted of setting out in which rule system the offence should be judged, debating the different demands with reasonable expectations, then establishing a 'fair' compensation and ensuring it was delivered in a timely manner.

Capacity building is also important. While this is self-evident as far as the Management Unit is concerned, it is important to emphasise that this needs to extend beyond the Management Unit. So

the way the chiefs correct and advise each other on proper chiefly behaviour when they are brought together for several days has led to them engaging in negotiation realistically, resulting in important improvements in their relationship with CIB. Time taken to explain, and re-explain, the different rule frameworks (FSC, national law, etc.) to people during visits to their communities has enabled them to get a better understanding of the issues and as a result make better decisions about how to resolve problems. The community radio *Biso na Biso* is supporting this awareness raising movement at a more general level by sharing understandings of key local issues from local peoples' perspectives.

Like other case studies in this collection, the CIB case study demonstrates the need for a multiplicity of approaches and an overall flexibility to respond to community needs and concerns. Having said that, this case study also provides valuable lessons regarding replicable approaches and tools, such as community mapping, social communicators, and the use of traditional conflict resolution practices.

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93. Example 5 is the only case that has been analysed that went to national courts. With the recent dismissal of large numbers of workers (approx. 600) there are likely to have been many workers appealing against their dismissal at work tribunals. However, national work tribunals are outside the scope of this study.

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# FIVE

# THE SAKHALIN-2 PROJECT

# GRIEVANCE MECHANISM,

# RUSSIA

Natalya Novikova and Emma Wilson

The Sakhalin-2 oil and gas project, located off the eastern shores of Sakhalin Island in the Russian Far East, is viewed as a pioneer of community engagement in Russia and has received several awards for its social programmes.<sup>94</sup> The Sakhalin-2 project started up in the 1990s and produced its first oil in 1999. It is operated by a multinational consortium — Sakhalin Energy Investment Company, Ltd. — which was led by Shell until 2007 when the Russian state company Gazprom took over as operator.<sup>95</sup> The Sakhalin-2 project has come under considerable international scrutiny due to the extent of the project footprint, onshore and offshore; high-profile NGO campaigns on gray whale protection, pipeline river crossings and indigenous rights; the presence of multinational corporations in the consortium; and the fact that the project has sought project finance from international financial institutions, notably the European Bank for Reconstruction and Development (EBRD).<sup>96</sup> The Sakhalin-2 project has developed a suite of tools for community engagement including a company–community grievance mechanism. The company has also engaged in lesson-learning and dissemination of its experience. This is useful for other projects taking place in Russia and the Former Soviet Union, but also more widely. This chapter compares use of the grievance mechanism with indigenous communities in northern Sakhalin and in addressing a long-running conflict with a dacha collective in the south of the island.

## 5.1 BACKGROUND TO SAKHALIN AND THE SAKHALIN-2 PROJECT

The Sakhalin administrative region (including the Kuril Islands) has a population of 511,000, according to the 2010 census, with a Native population of around 3,000 (including Nivkhi,

Uil'ta, Evenki and Nanai) living mostly in the north of the island. Sakhalin lies 10,400km – and seven time zones – to the east of Moscow. The key industries are fishing, oil and gas, construction, food production and forestry. Oil and gas recently took over from fishing as the main industry in terms of revenues, though not in terms of

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94. In 2011 Sakhalin Energy was acknowledged as a leader in corporate philanthropy in Russia, coming second in a nationwide ranking of the efficiency of philanthropic programmes (Corporate Philanthropy Research). In addition, the Sakhalin Indigenous Minorities Development Plan (discussed in this article) was awarded Best Programme for Corporate Philanthropy Policy and Company's Social Investments Principles. Other Sakhalin Energy programmes have also received various awards: [www.sakhalinenergy.com/en/default.asp?p=channel&c=1&n=400](http://www.sakhalinenergy.com/en/default.asp?p=channel&c=1&n=400)

95. Shell remains in the consortium, which also includes Mitsui and Mitsubishi. For a discussion of the reasons behind the Gazprom takeover and the Russian government's aggressive behaviour towards the Sakhalin-2 project consortium, see Fenton Krysiak (2007).

96. The EBRD provided a loan for Phase I of the project, then carried out a rigorous due diligence process before ultimately deciding not to provide a loan to Phase II (due to environmental considerations and the intervention of Gazprom).

employment. Sakhalin's offshore hydrocarbon reserves alone total more than 2 billion metric tons of oil and 2.6 trillion cubic metres of natural gas (RIA Novosti, 2010).

Onshore oil and gas activity has been ongoing since the 1920s; interest in the offshore reserves began in the 1970s. The Sakhalin-2 project, led by Sakhalin Energy Investment Company, Ltd. (Sakhalin Energy), is the most advanced of several offshore projects. (The second most advanced is Sakhalin-1, led by ExxonMobil, but due to the fact that Sakhalin-1 is self-financing and less open about its activities, it has received much less international attention.) Sakhalin-2 produced its first oil in 1999. This was Phase I of the project, using the Molikpaq offshore platform, with tanker transportation to market. Phase II involved construction of an onshore processing facility in the northeast (near Nogliki and neighbouring settlements) and 800 kilometres of oil and gas pipelines down the centre of the island to a liquefied natural gas (LNG) plant and export terminal in the south of the island near the town of Korsakov. Over 220,000 people who live in those communities are thought to have been directly or indirectly affected by the project (during the completed construction phase or the ongoing operations) (Zandvliet, 2011:54)

This chapter was compiled by two authors with direct experience of Sakhalin Energy's grievance mechanism between 1995 and the present, including implementation, research and analysis into its effectiveness. This experience was supplemented and updated by recent desk-based research, informal interviews and

correspondence, and a field visit to Sakhalin undertaken by Natalya Novikova in 2011. The field visit included interviews with 30 people, including representatives of civil society, industry and government, and local entrepreneurs. The authors followed this with further desk research and engagement with the company.<sup>97</sup>

## 5.2 THE SAKHALIN-2 PROJECT AND CORPORATE RESPONSIBILITY

In 2009, Sakhalin Energy joined the Global Compact, confirming its commitment to international standards and principles of corporate social responsibility, including human rights, labour standards, environmental protection and anti-corruption measures. The Global Compact network in Russia is fairly small. According to the UNDP website, as of 2012 the network had 57 members, of which 17 are classed as 'companies' (other categories including SMEs, business associations, academic institutions and NGOs). Only three oil companies have signed up to it (Lukoil, Rosneft and Sakhalin Energy), although one of Sakhalin Energy's major contractors has also signed up (the joint venture Sakhalin-Shelf-Service) (UN Global Compact, 2013). Sakhalin Energy recently became the first Russian company to join the Global Compact LEAD platform. The aim of this platform is 'to challenge highly engaged companies in the UN Global Compact to reach further, to experiment, to innovate, and to share learnings – both successes and failures' (UN Global Compact, 2012). Sakhalin Energy's engagement in these

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97. The authors would like to thank all the respondents who helped out during the fieldwork. We would also like to thank Greg Guldin and Aaron Dennis of Cross-Cultural Consulting Services (CCCS) and staff of Sakhalin Energy who provided helpful comments on a draft of the chapter.

initiatives is therefore a responsibility as well as an achievement.<sup>98</sup>

In 2010, Sakhalin Energy re-issued its 'Statement of General Business Principles', in which its community engagement approach was articulated as follows:

*'Sakhalin Energy aims to be a good neighbour by continuously improving the ways in which we contribute directly or indirectly to the general well-being of the communities within which we work. We manage the social impacts of our business activities carefully and work with others to enhance the benefits to local communities, and to mitigate any negative impacts from our activities. In addition, Sakhalin Energy takes a constructive interest in societal matters, directly or indirectly related to our business.'* (Sakhalin Energy, 2010b:7)

Sakhalin Energy's grievance mechanism is one of the main tools for implementing these principles, by identifying and addressing issues as they arise.

The work of the UN Special Representative on Human Rights, Professor John Ruggie, emerged out of the work of the Global Compact (see Chapter 2). Sakhalin Energy's grievance mechanism has been used as a case study by the Harvard Kennedy School research team tasked by Professor Ruggie to pilot a set of principles for effective grievance mechanisms (Rees *et al.*, 2011). Some of the findings are referred to in this article.

The Ruggie process started in 2005 and by that time Sakhalin Energy had already developed a

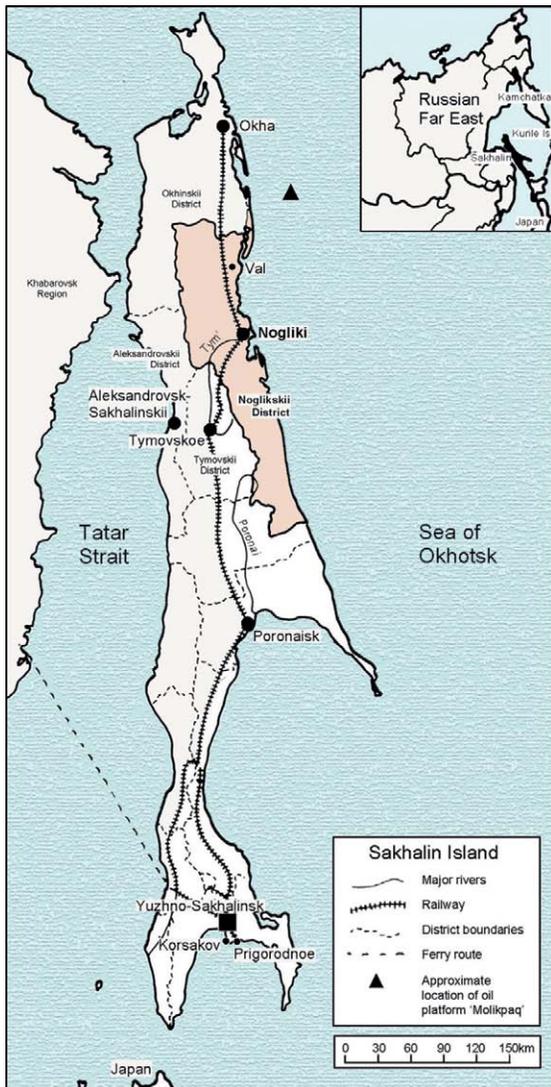
social issues management strategy. While the Ruggie process was not a key initial driver of the grievance mechanism, it has acted as an important validator of the tool. Moreover, the Sakhalin Energy case study has become a key source of learning for researchers and others that are engaged in the development of the UN Guiding Principles. As the 2011 sustainable development report states (Sakhalin Energy, 2011a:93):

*'Experience of Sakhalin Energy in grievance resolution as well as the mechanisms provided by the Grievance Procedure were taken into account during development of the UN Guiding Principles for Business and Human Rights. In 2011, these principles were approved by the UN Council on Human Rights and became a practical guide for the international business community in the area of human rights, including the issues of improving the efficiency of grievance resolution mechanisms. Thus, the complaints handling model applied in Sakhalin Energy contributed to development of the new international standard in the area of social corporate responsibility.'*

In the course of this research, we have considered to what extent Sakhalin Energy's grievance mechanism provides 'access to remedy' (to use the Ruggie terminology), and how it enhances the company's community engagement practices and the overall social and environmental impact of the Sakhalin-2 project. The grievance mechanism is analysed against the backdrop of government and oil industry policies towards local and indigenous communities.

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98. For more information see: [www.sakhalinenergy.com/en/default.asp?p=channel&c=1&n=389](http://www.sakhalinenergy.com/en/default.asp?p=channel&c=1&n=389)



Map credit: Gavin Wood

### 5.3 LEGAL BACKGROUND

The legal basis for company–community relations in Russia is established primarily by the federal laws on oil and gas development, environmental expert review (*ekologicheskaya ekspertiza*) and indigenous peoples. This legislation requires an industrial project developer to prepare a package of environmental impact assessment (EIA) documents (according to Russian EIA regulations), incorporating the results of mandatory public consultation. These are then

submitted to the State Environmental Expert Review Panel for review.

In 2006 the federal law ‘On introducing amendments to the town planning code of the Russian Federation’ altered the definition of an environmental expert review. It no longer considers potential negative socio-economic impacts due to environmental changes, while the range of industrial activities requiring such a review has also been narrowed to exclude projects with an indirect impact (Novikova, 2008b). Essentially, what used to be a fully-functioning instrument protecting the environmental rights of citizens has been reduced to a desk-review of EIA documentation, which environmental law experts consider to be a weakening of the legislation. In the light of these changes, company policies and international standards of corporate responsibility, such as those developed and adopted by Sakhalin Energy, take on greater significance in protecting the environmental and social rights of citizens.

One particularly sensitive area for companies is indigenous rights. From a global industry perspective, companies generally take a lead from government policy on the status of indigenous peoples and their rights to land and resources. Article 7 of the Russian federal law ‘On Production Sharing Agreements’<sup>99</sup> states:

*‘While operating within the [Production Sharing] Agreement on territories of traditional livelihoods of indigenous peoples, the investor is obliged to comply with Russian Federation legislation in protecting the environment and traditional way of life of the indigenous peoples, and also provide appropriate compensation according to Russian Federation law.’*

According to Article 8 of the federal law ‘On guaranteeing the rights of indigenous peoples of the Russian Federation’, indigenous peoples have the right to take part in monitoring industrial development on land used for their traditional economic activities. They also have the right to receive compensation for any damages to their environment and traditional livelihoods. Specific implementation mechanisms for this law are agreed by regional governments together with the companies themselves.

99. This law is still in force, despite the fact that President Putin discontinued the use of PSAs in the mid-2000s. For a comparative discussion of three of the four PSAs in force in Russia and the relative benefits to the Sakhalin-2 consortium and the Russian parties, see Fenton Krysiek (2007).

In Russia, the law governing company–community relations plays out differently at federal and regional levels and in different regions. In some cases, for example, regional governments have introduced specific regional legislation framing company–community relations (Alferova, 2006; Novikova, 2008a; Martynova and Novikova, 2011). Voluntary standards adopted by companies are also becoming increasingly significant in shaping company practice. They can be more effective than Russian regulations, and can be more sensitive to the local context. Therefore the experience of Sakhalin Energy in implementing a company–community grievance mechanism and broader stakeholder engagement, based to a great extent on voluntary approaches, is valuable to other companies working in Russia.

#### 5.4 CORPORATE RESPONSIBILITY AND THE RUSSIAN OIL INDUSTRY

Given the legal context, the standards and principles of corporate responsibility take on particular significance as they are applied to specific projects. These might include company policies, the standards or ‘conditionalities’ applied by international financial institutions providing project finance, and international norms invoked by civil society organisations.

The literature on Russian corporate law notes that the country’s legislative base is not enough to defend the rights of indigenous peoples (Shitkina, 2008). However, corporate norms can be viewed as a source of the law (i.e. normative acts passed by subjects of private law and obligatory for all those covered by those normative acts). This does not mean that people can take a company to court

if it fails to implement its grievance mechanism; however, internal or external sanctions may be applied to the company – and in extreme cases, staff may lose their jobs. Such policies are frequently found on company websites. Much depends of course on the extent to which the company applies these sanctions (*ibid*: 48).

In Russia, the interaction of industrial companies and indigenous peoples has been attracting increasing attention from researchers, business and government. On the part of business, this is primarily those professional and business organisations that are members of the Global Compact and the Russian Union of Industrialists and Entrepreneurs, which has adopted the *Social Charter of Russian Business*.<sup>100</sup> Legal experts observe that the *Social Charter* only has the power of recommendation: it has no legal power, and does not apply sanctions for non-compliance. From a legal perspective it is therefore not seen as a strong instrument, although it can be useful as an additional accountability tool.

Anthropologists and other researchers have made efforts to develop standards for company engagement with indigenous peoples. In 2009, the Russian Ministry of Regional Development commissioned the Russian consultancy company *Ethnoconsulting* to prepare a draft Russian standard to apply to the social activities of industrial companies working in regions inhabited by indigenous peoples. The team (including co-author of this chapter Natalya Novikova) started from the hypothesis that voluntary obligations are more effective than regulatory requirements.<sup>101</sup>

100. For more information on the Global Compact in Russia, see: [www.undp.ru/index.phtml?iso=RU&lid=1&pid=109](http://www.undp.ru/index.phtml?iso=RU&lid=1&pid=109)

101. The report is published in Russian on the *Ethnoconsulting* website at: [www.ethnoconsulting.ru](http://www.ethnoconsulting.ru)

Effective implementation of social and other corporate responsibility standards requires developing a new culture within the oil industry. Companies need to become more involved in the lives of the local community, as 'good neighbours'. According to respondents engaged during fieldwork, indigenous people themselves believe that in order for them to co-exist with oil workers in the North, the oil workers need to see them as neighbours. Yet despite the fact that multinational companies are increasingly hiring social scientists and anthropologists to develop policy, build skills and raise awareness internally, many oil workers, especially in Russian companies, do not welcome the 'good neighbour' approach, considering it burdensome. They see themselves as engineers and labourers with specialist knowledge of oil and gas extraction and transportation, and do not believe they should be engaging in local politics and 'social work'.

On the other hand, anthropological research in northern Russia reveals that where oil workers and indigenous reindeer herders live and work in the same localities over long periods of time, they build working relations and a common understanding that allows them to resolve practical issues quickly (such as food or fuel provision, transportation routes and construction schedules) (Stammler and Wilson, 2006). However, this may result in situations where, for example, workers might siphon off fuel from the company to give to local people, so as to resolve a fuel supply issue quickly. In such cases, company workers end up illegally filling the gap left by the government in failing to address the needs of indigenous peoples (i.e. provision of fuel). Ultimately this does not resolve fundamental underlying problems.

Another reason for companies' reluctance to adopt social policies is their (sometimes

exaggerated) impression of their role in the development of the country and provision of benefits to its citizens. For them, it is enough for the company to be paying taxes and providing a certain amount of employment. In Russia, companies still lack awareness of the need for additional social and environmental policies focused on building relations with local and indigenous communities. Indeed, in the industry as a whole, understanding of community relations and indigenous peoples' issues lags behind understanding of the need for other policies (such as government relations or health and safety). Civil society groups, particularly those representing local communities and indigenous peoples, need to encourage oil companies to develop appropriate and effective social and environmental policies focused specifically on building relations with indigenous and local communities.

Developing a new culture requires more than just new policies. Research on oil and gas contracting chains draws attention to the fact that it is not enough simply to have policies and standards on paper. Most important is the effective implementation and oversight of these procedures, and the resulting positive effects for society. The head of the US government commission looking into the Deepwater Horizon incident warned of a 'culture of complacency', whereby companies who had exemplary standards on paper did not implement them adequately. This is the kind of context where combinations of factors, including human error, cutting corners due to time constraints, or cost-cutting to meet tight budgets can result in a major catastrophe (Wilson and Kuszewski, 2011:17). A grievance mechanism is one of those standards to which a 'tick-box mentality' can easily be applied. It is therefore worth exploring in more detail how such mechanisms are implemented, including through engagement with members of

local communities who are meant to benefit from their use.

## 5.5 THE SAKHALIN-2 PROJECT GRIEVANCE MECHANISM

Sakhalin Energy has two company–community grievance mechanisms: one for the whole population of the Sakhalin Region, and one specifically related to the company-supported Sakhalin *Indigenous Minorities' Development Plan*. Sakhalin Energy also has an employees' grievance mechanism and a whistle-blowing procedure to address issues related to business integrity, ethics, criminal activity or improper conduct (see Zandvliet, 2011:54). The external company–community grievance mechanisms were developed as part of the overall community engagement policy of the company in accordance with the requirements of international lenders.<sup>102</sup> The lenders were a key driver in developing the mechanism initially.

The company-community grievance mechanism was first developed alongside the Social Impact Assessment (SIA) and is referenced quite extensively in Chapter 17 of the SIA (Sakhalin Energy, 2003).<sup>103</sup> The grievance mechanism was developed over time, with various iterations following reviews by the international lenders. Major revisions took place in 2006 and 2008. The mechanism specially developed for the Sakhalin Indigenous Minorities' Development Plan was introduced in 2010. Now Sakhalin Energy has a

grievance mechanism that appears to be working effectively and was assessed positively by the 2011 Harvard Kennedy School review (Rees *et al.*, 2011).

The height of construction was the period 2004 to 2006. During this time around 150 grievances per year were addressed using the grievance procedure (Rees *et al.*, 2011). However, as noted above, the grievance mechanism itself underwent major revisions towards the end of this period and later, while concerted awareness-raising only took place from 2006, following an external review that highlighted very low levels of public awareness (AEA, 2007). Thus the procedure was functioning, but not fully mature, during the time it was needed most. Projects seeking to introduce a grievance mechanism today have the benefit of global experience that they can apply at the start of a major project. Sakhalin Energy simply did not have the benefit of that experience and, indeed, many companies can thank them (and other pioneering companies such as BP in Azerbaijan) for helping to build and disseminate that experience.

According to Sakhalin's public consultation and disclosure plan, the grievance mechanism is used to address impacts of the Sakhalin-2 project, including: 'negative impacts on yourself or community, e.g. financial loss, physical harm; nuisance from traffic or dust; dangers to health and safety or the environment; failure to comply with standards or legal obligations; harassment of

102. The European Bank for Reconstruction and Development (EBRD) provided project finance to Phase I of the Sakhalin-2 project and led comprehensive due diligence efforts on behalf of a group of lenders that Sakhalin Energy applied to for Phase II. In 2008, following EBRD's withdrawal, Sakhalin-2 secured a loan from the Japan Bank for International Cooperation and a group of international banks.

103. Chapter 17 of the SIA is available at: [www.sakhalinenergy.com/en/documents/doc\\_38\\_sia\\_chp17.pdf](http://www.sakhalinenergy.com/en/documents/doc_38_sia_chp17.pdf)

## BOX 5.1: OUTLINE OF THE SAKHALIN-2 PROJECT GRIEVANCE MECHANISM<sup>104</sup>

### Key elements:

- Grievance procedure and telephone numbers published online and in information brochures.
- Internal automated grievance database, which escalates a grievance to the next level of authority if it remains unresolved.
- Three community liaison officers (CLOs), supported by information centres; during construction there were six CLOs for pipeline contractors (including two for their subcontractors) and three social focal points at project facilities.
- Community information centres based in libraries; librarians trained to promptly communicate grievances to the company.

### Dissemination/publicity:

- Posters and information brochures distributed widely in communities.
- Awareness campaigns; advertising in local newspapers and community bulletin boards.
- Information on website in the public consultation and disclosure plan, including information about the location of bulletin boards and information centres.

### Procedure:

Grievances are submitted via CLOs, information centres, e-mail, by post or phone; a standard form is filled in. The public consultation and disclosure plan provides a set of five steps to address a grievance:

- **Step 1: Receive complaint:** The grievance is logged and a member of Sakhalin Energy staff is nominated to address it.
- **Step 2: Acknowledgement:** The grievance is acknowledged in writing within 7 working days, identifying a contact person, a grievance reference indicator and a target date for the complainant to receive an update on how the grievance is being addressed.
- **Step 3: Investigation:** Efforts are made to investigate and understand the grievance, and the complainant is contacted if required

to clarify anything. If the grievance is not related to Sakhalin Energy's activities and cannot be resolved by the company, a letter is sent explaining this.

- **Step 4: Resolution:** Sakhalin Energy endeavours to address grievances within 20 working days and no later than 45 working days. If grievances remain unresolved, an independent mediation process is set up. Failing this, the grievance is reassessed by the Business Integrity Committee (senior managers). The company urges complainants to sign a statement of satisfaction when the grievance has been resolved.
- **Step 5: Follow-up:** Sakhalin Energy may contact the complainant at a later date to ensure that there are no further problems.

### Responsibility:

- The managers of project plants and pipelines (known as 'assets') are responsible for implementing the grievance procedure within individual asset teams, rather than responsibility lying with the external affairs department.
- A staff member is designated as responsible for the grievance and senior management follows up if a grievance remains unresolved.

### Accountability:

- Sakhalin Energy reports to the project lenders on two grievance-related key performance indicators: 1) number of satisfaction statements signed, 2) number of grievances resolved within target time frame.
- External monitoring by lenders and consultants to the Resettlement Action Plan and Sakhalin Indigenous Minorities' Development Plan (SIMDP).
- Perception surveys carried out with communities by Sakhalin Energy staff.
- Numbers and types of grievances resolved are published in the annual sustainable development report, with comparison to previous years.

104. Sources: Sakhalin Energy (2011b, 2010c, undated); public grievance leaflet (Sakhalin Energy, undated); Wilson and Kuszewski (2011).

## FIVE THE SAKHALIN-2 PROJECT GRIEVANCE MECHANISM, RUSSIA CONTINUED

any nature; criminal activity; improper conduct or unethical behaviour; financial malpractice or impropriety or fraud; attempts to conceal any of these.' (Sakhalin Energy, 2011b:31). Grievances can be addressed from anonymous complainants as long as there are contact details. If grievances relate to the work of contractors the company raises the matter with contractors for them to follow up.

At the core of the grievance mechanism is a team of community liaison officers (CLOs), currently three in number (see below). During construction there was a larger team of CLOs; however, post-construction it is considered more effective to have a team that is smaller, supplemented by 23 information centres. These information centres have been set up across the island in district and village libraries, with library staff acting as 'information consultants' on behalf of the company (ENVIRON, 2011:11).

As other case studies in this collection have also demonstrated, a project needs more than just a grievance mechanism in place to avert and resolve conflicts. Sakhalin Energy has a full public consultation and disclosure plan, which is updated regularly and incorporates the full range of stakeholder engagement activities and the regulatory framework and company policies related to those activities (Sakhalin Energy, 2011b). This includes information about the CLO network and information centres, the full range of consultations and engagement with different stakeholders, and further detail about the company's approach to stakeholder communication and information disclosure.

Sakhalin Energy reports to its lenders on implementation of the grievance mechanism. The key performance indicators (KPIs) are: 1) resolution of grievances within the stated time frame, and 2) number of letters of satisfaction signed by complainants once the grievance is resolved (Zandvliet, 2011:55). The company also reports publicly on numbers of grievances submitted and resolved, relating to certain types of grievance. In 2011 it received 16 grievances, which is about a third less than in 2010 (Sakhalin Energy, 2011b: 20; Sakhalin Energy 2011a: 96). The decline in grievances is attributed to the reduction in construction work, and to the more effective and timely identification and resolution of issues that have arisen. Five of these grievances related to community impacts (e.g. land use or road conditions); 5 related to labour issues within contractor companies.<sup>105</sup> The remaining 6 related to contractual issues and implementation of the Sakhalin Indigenous Minorities Development Plan (SIMDP) (which now has its own grievance mechanism, see Section 5.7).

By the end of 2011, 14 out of 16 grievances had been addressed. Ten were resolved in less than 45 working days; 4 took longer. One grievance did not relate to Sakhalin-2 project activities, so a letter was sent to the complainant to 'close out' the grievance. Regarding the final unresolved grievance, as of the end of 2011 communication with the complainant was being maintained as required by the procedure. In 2011, 8 out of 14 complainants agreed to sign statements of satisfaction. Regarding the 6 other 'resolved' grievances, the company reported that all practical measures had been taken to resolve

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105. The reports use percentages 31 per cent (five grievances) and 38 per cent (six grievances), which have been rounded up for the report. For the purposes of this paper, we felt that numbers of grievances provided a clearer picture.

them and these were reported to the complainant. In such situations the company gives the complainant 45 days to respond, then the grievance is 'closed' through the Business Integrity Committee after appropriate verification with the legal team. If the complainant is not satisfied, they are free to lodge another grievance.

It is important to ensure that KPIs adequately reflect actual implementation. For example, comparing the number of grievances resolved to the number recorded does not provide the whole story if some community issues are not reported via the grievance mechanism. Standard KPIs may not provide a clear indication of whether a grievance mechanism has had any impact on social issues more broadly. Sakhalin Energy and its lenders are aware of these challenges. In addition to the grievance reporting system and standard KPIs, there are provisions for internal and external monitoring. This includes regular field visits by company staff, the lenders and review parties representing the lenders. The lender reports include detailed assessment of the implementation of the grievance mechanism (e.g. ENVIRON, 2011; AEA, 2010). The company regularly undertakes public opinion surveys (with approximately 900 respondents in 23 communities) on how people perceive the company's performance overall. As noted above, Sakhalin Energy also took part in the grievance mechanism study carried out by the Harvard Kennedy School as part of the Ruggie process on business and human rights (Rees *et al.*, 2011).

The research for this paper has attempted to elicit further local perspectives on the implementation of the Sakhalin-2 project grievance mechanism. As such it complements the company reports, public opinion surveys, lender reports and the Harvard study. In 2011, Natalya Novikova carried out field research aimed at eliciting the views of a

range of local citizens. This included interviews with 30 people, including 15 members of civil society, 9 local entrepreneurs; 3 government representatives and 3 company employees. The fieldwork was not meant to elicit perceptions on a mass scale, but to use targeted interviews to highlight key innovations and challenges in grievance mechanism implementation. The field research was supplemented by both co-authors, through further study of documents and discussion with company employees in 2012.

## 5.6 STAKEHOLDER PERSPECTIVES ON THE SAKHALIN-2 PROJECT GRIEVANCE MECHANISM

There are several issues that influence stakeholder perspectives on the Sakhalin-2 project grievance mechanism, or make the analysis of these perspectives more complex. For example, as noted above, ExxonMobil is implementing the Sakhalin-1 project very close to the Sakhalin-2 project. Therefore in the north of the island, ExxonMobil and Sakhalin Energy often use the same contractors and subcontractors. This has made it more difficult to attribute sources of pollution or disruption to a particular operating company in the northern area, close to the offshore operations, onshore processing facilities and northern pipeline routes. In general, however, several local residents who were interviewed for this research observed that projects with participation of international companies 'work more cleanly' and have 'better discipline' than Russian companies.

Another key issue is that of access to information or awareness of available information. Several interviewees stated that they knew nothing about the grievance mechanism. Despite the efforts of Sakhalin Energy to publicise the grievance

mechanism widely in the local media (described in the lender reports and the public consultation and disclosure reports), some people said that publications and newspaper articles do not mention that there is a special grievance procedure. Some people said that they felt the company was trying not to inform the population about the grievance procedure so as to avoid awkward confrontations. This partly reflects what people are interested in when they read newspapers. A journalist at the local newspaper *Znamya Truda* in Nogliki said people were generally more interested in the social activities such as competitions supported by Sakhalin Energy, but less so in the grievance mechanism itself.

The lack of general awareness – despite the company's efforts to advertise – chimes with the observations of the Harvard Kennedy School study:

*'[T]he project team found that many people in [Sakhalin Energy's] communities did not know of the mechanism when asked on the street, even when interviewed under an enormous poster advertising the mechanism in the town square. However, these individuals also expressed no concerns about what to do if they had a complaint: they would either go to the company or to the local authorities.'* (Zandvliet, 2011:16)

The study goes on to note the difference in attitudes between the general population and indigenous residents:

*'By contrast, separate work to monitor the success of the Sakhalin Indigenous Minorities Development Plan showed that although many indigenous individuals did have concerns, they were both unaware of the mechanism and lacked channels they trusted through which to register*

*their complaints. The company therefore focused on addressing those issues of accessibility in cooperation with representatives of indigenous communities.'* (ibid:16)

This distinction was also noted during fieldwork for this chapter. The company response and local perceptions of this response are explored in the following sections.

### 5.6.1 Community liaison officers

Sakhalin Energy's CLOs sit at the core of the grievance mechanism – although their work spans more than this particular responsibility. In addition to helping people fill out grievance forms and discussing issues, the CLOs provide an important feedback mechanism for the company by raising issues as soon as they spot them. If company managers are working effectively, this can be sufficient for an early warning and resolution of issues before they become conflicts, and even before grievances have been submitted.

At the height of construction Sakhalin Energy had one CLO for each affected district, with one each for the settlements of Nogliki and Val in the north (located in the same district), the CLO in Val having a special focus on indigenous peoples' issues (there were 11 CLOs in total in 2006, with 5 additional CLOs for contractors). According to the 2011 public consultation and disclosure report (Sakhalin Energy, 2011b) and the 2011 report for lenders (ENVIRON, 2011), Sakhalin Energy currently has three corporate CLOs covering all nine districts. This includes one 'municipal liaison officer' (based in Yuzhno-Sakhalinsk), one CLO based in Nogliki, and one CLO for the indigenous peoples based in Val. The work of the CLOs is supplemented by the company's information centre staff (trained library staff) at the company's 23 information centres,

located in community libraries (Sakhalin Energy, 2011b). Judging from the field research for this paper, the current Sakhalin Energy CLOs appear to value the opportunity to work with the company; they are proud of the company and are perceived by communities as diligent and hard-working.

Sakhalin Energy also requires contractors to have their own CLOs or to nominate a social focal point for addressing community matters. The contractors' CLOs are responsible for maintaining good community relations, monitoring social issues, liaising with Sakhalin Energy's CLOs, social reporting, participating in contractors' social projects, regular 'open hours', and public meetings organised by Sakhalin Energy. During the construction phase, the onshore pipeline contractors had six CLOs (including two for their subcontractors), while social focal points were nominated for the construction sites of the three major processing facilities. Sakhalin Energy provided training to contractors' CLOs, facilitated access to information, conducted internal and external monitoring, and maintained records on consultation, social monitoring and grievance resolution (Wilson and Kuszewski, 2011:42–43).

The role of CLOs depends very much on the individuals themselves and how they are perceived within the local community. The process of selecting CLOs is a critical one. In the earlier stages of the project, it was important that some of them spoke good English and also knew the local communities well; this proved difficult. However, speaking good English is not a mandatory requirement, and with the 'Russianisation' of the company staff, it is less and less necessary for CLOs to speak English. One exception is the independent indigenous people's monitor, who requires a translator. Indigenous residents feel it is not ideal for him to have to speak through a translator, though his experience is highly valued.

English language knowledge is in any case less important for CLOs than having good relations with the local population. In some cases CLOs, especially if they are more experienced, will be able to provide guidance and information on how to address problems, based on a good

knowledge of the local situation and company practice. However, according to the company, they must always follow procedure and act as a link between the company and stakeholders for the purposes of quality checks, effective management and lesson learning. Less experienced CLOs may focus more on the process of filling out forms diligently and ensuring that the forms are submitted to the company. This is where a robust yet flexible process is very useful, as it can work in different ways for different people, with various strengths and skills and levels of experience. Finding the balance between community knowledge and structured procedures is a key aspect of designing a grievance mechanism and of selecting an effective team of CLOs.

### 5.6.2 Information centres

Between 2009 and 2010, Sakhalin Energy established a network of 23 information centres at local libraries. Following completion of construction, Sakhalin Energy feels that the operations phase does not require an extended network of mobile CLOs that previously covered the pipeline route and other facilities. The current network of information centres is seen to be more appropriate for the operations phase (ENVIRON, 2011:10–11). These centres have been provided with computers, internet access<sup>106</sup> and information materials about project activities, job opportunities and social projects, and posters and brochures explaining the grievance procedure. Information about these centres, including their addresses, is published in local newspapers. Dedicated library staff have been trained to assist people in submitting grievances and prepare CVs for job applications. Over 4,000 people visited Sakhalin Energy's information centres in 2011, which is 8 per cent more than the previous year (Sakhalin Energy, 2011a). According to the company, three grievances were lodged via information centres in 2011–2012.

Field interviews were held for this research with employees of two of the information centres, at Nogliki and Poronaisk libraries. Library workers had different opinions about the role of the information centres in resolving grievances. In

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106. It is worth noting that the internet does not work reliably on Sakhalin. Only a limited number of people have access to the internet at home, as it costs up to 2,000 roubles (or approx. US\$70) per month. This is about four times the cost of internet access in Moscow. The average wage as of 2010 was 28,700 roubles/month and in reality for Sakhalin's village residents it is less.

Nogliki, respondents observed that there is more than enough information and library staff have helped people with the process of submitting grievances to Sakhalin Energy. In Poronaïsk, the library director and staff working in the information centre noted that residents approach the centre with grievances to the government and even the Russian president. They observed that people rarely submit grievances to Sakhalin Energy; in general they just send their CVs.

### 5.6.3 Key issues for local communities

For the Sakhalin population in general, employment is a major priority. Several informants noted that before the arrival of Sakhalin Energy, many men drank excessively and there was a high death rate. Then with the offshore projects new jobs appeared and social prospects improved; the companies also employed women. And the housing market improved; more people wanted to rent flats, which meant a supplementary source of income for those who were able to rent out property.

Following discussions with local respondents, the impression is that people who have worked with Sakhalin Energy value the social benefits resulting from the Sakhalin-2 project and do not have complaints about the company. Those who lost work as a result of downsizing after 2006, especially from 2007 when Gazprom became the lead shareholder, observe that they try to resolve their problems themselves, believing that they will not achieve anything by coming into conflict with the company.

Informants frequently compared the policies of Sakhalin Energy before and after Gazprom's takeover in 2007. Previously there were many social and leisure programmes for the workers. There were social guarantees for employees, such as insurance for the whole family and free

medicine, and families were included on company trips, while assistance was provided with arranging holidays. The company was very strict on health and safety, especially compared to Russian companies. Workers often went on courses to improve their qualifications and study English. Respondents also reported a friendly, democratic style of working on the part of the foreign managers, and that the company provided charitable support to the local orphanage and hospital.

While there were no major complaints about the post-2007 company, people felt that it has changed its style and is now somewhat less open and progressive. On Sakhalin and across Russia, Gazprom and Russian companies in general are trusted less than international companies for addressing social and environmental issues adequately. To Gazprom's credit, however, it continues to support the social performance initiatives (such as the grievance mechanism and the indigenous people's support programme). A key driver in this is their obligation to continue reporting to the project lenders.

The 2011 report for the lenders (ENVIRON, 2011:14) makes the following reference to the most recent public perceptions survey:

*'The data collected in 2011 show that a proportion of respondents expressing negative attitude towards Sakhalin Energy and the Project has declined over the recent years: 8% of the survey respondents indicated that they had "very unfavourable or unfavourable" impression of the Project as compared to 37% in 2007. Interestingly, the percentage of those who have "very favourable or favourable" perception has also declined, although inconsiderably: 28% in 2011 versus 31% in 2007.'*

The consultants who wrote this report suggest that the decline in the second measure may be attributable to the reduction in employment opportunities, particularly for low-skilled and non-technical jobs, following the completion of the construction phase. The increase in the first measure, in our view, may also be attributable to the end of the construction phase and associated disruptions.

Judging from the field research, environmental issues appear to worry the general population less than social issues such as employment and the condition of local roads. Many people have heard about oil spills and waste dumping, but they do not submit grievances about them. Mostly it is indigenous activists who hold environmental protests at the local community level. In general, local people rely on the fact that the company will resolve environmental issues itself. This situation is the same across Russia. Russian legal experts note that: 'environmental rights have ended up in an unfavourable position in the hierarchy of social values ... society is not prepared to prioritise environmental interests over economic interests' (Lukasheva, 2002: 76). At the same time, the protection of citizens' environmental rights in the context of industrial-scale natural resource exploitation takes on national significance – with environmental NGOs more active at the regional, national and international level

The most important thing to note from discussions with non-indigenous residents is that they know that the company holds public meetings, has information centres in libraries and prints notices in the newspapers (although not many people subscribe to newspapers). Yet they themselves tend not to attend such meetings. They note that public consultations took place more intensively at the start of the project but over time they are

becoming less frequent. Those who do attend meetings often talk about problems at the meetings themselves, but do not write official grievances, perhaps not realising the difference it makes to officially submit a grievance. Sakhalin Energy's social engagement is perceived, by some, as being strongly biased towards the indigenous peoples of Sakhalin. This is not surprising given the high profile of the SIMDP (see below).

Respondents observed that this may partly be to blame for intra-community resentment and tension. In the northern settlement of Nogliki, for instance, there is a strong split between the indigenous and non-indigenous populations; and to a lesser degree this is the case in other northern settlements of Val and Poronaisk. This has been observed by both co-authors of this paper during their anthropological fieldwork over many years since the 1990s, and the 2011 fieldwork for this paper strongly supported this observation. Living conditions tend to be much better for the non-indigenous populations, while there is frequently prejudice against the indigenous peoples, either in the workplace, at school or elsewhere. Prejudicial comments point to their lack of education, being passive, prone to alcoholism, and in conflict among themselves. When indigenous peoples are seen to be benefiting more from the largesse of international companies than other members of the population (or, indeed, when some indigenous residents appear to be benefiting more than others), this is bound to exacerbate existing tensions.

## 5.7 CASE STUDY 1: THE SAKHALIN INDIGENOUS MINORITIES DEVELOPMENT PLAN AND GRIEVANCE RESOLUTION

Sakhalin Energy has a special policy for the indigenous peoples of the island, implemented through the Sakhalin Indigenous Minorities Development Plan (SIMDP), which is currently in Phase 2 (2011–2015).<sup>107</sup> This is a tripartite agreement between the Sakhalin Regional Council of Indigenous Peoples' Representatives, Sakhalin Energy and the Sakhalin Regional Government. Its goals include improving the quality of life of indigenous peoples through benefit sharing, building capacities of indigenous enterprises, preparing indigenous peoples to manage their own development fund in future, and mitigating negative environmental impacts of the project. The policy has evolved over many years since the mid- to late-1990s, and during this time there have been several conflicts between the indigenous peoples and the company around environmental threats to the local natural resource base.

At first, Sakhalin Energy focused on the situation of the reindeer herders (Uil'ta and Evenki). The Sakhalin-2 project was seen as directly affecting them, as pipelines were to pass through the reindeer migration routes. Gradually dissatisfaction increased on the part of another indigenous group (the Nivkhi), who also live (seasonally) and catch fish in the same general

area, but were considered to be only indirectly affected by the project (thus influencing consultation and compensation measures). At the time Sakhalin Energy did not do enough to address these anxieties and the grievance mechanism was not being used by the indigenous peoples. This situation, together with concerns on the part of environmentalists about damage caused by pipeline construction across rivers, led to a joint campaign involving indigenous peoples and environmentalists, known as 'Green Wave' (Murashko and Krikunenko, 2005; Roon, 2006).

As a result of the protest, an American anthropologist was hired to lead a team of local anthropologists and social scientists to develop an indigenous peoples development plan (to World Bank standards).<sup>108</sup> One of the demands of the protestors was to carry out an anthropological expert review (*etnologicheskaya ekspertiza*) – something akin to a cultural impact assessment. Reference was made also to the Akwe:Kon *Guidelines on cultural impact assessment* developed by the Secretariat of the Convention on Biological Diversity (CBD, 2004).

At the time it was not clear to the company what the *etnologicheskaya ekspertiza* was and how it related to the extensive documentation that had been completed according to international standards, including their Environmental, Social and Health Impact Assessment (Sakhalin Energy, 2003) and the addendum that had followed in 2005 in response to comments from the lenders and other stakeholders (Sakhalin Energy,

107. The two phases of the SIMDP (2006–2010 and 2011–2015) are both available on the Sakhalin Energy website at: [www.sakhalinenergy.com/en/documents/doc\\_lender\\_soc\\_4.pdf](http://www.sakhalinenergy.com/en/documents/doc_lender_soc_4.pdf) and [www.sakhalinenergy.com/en/documents/SIMDP\\_2\\_eng.pdf](http://www.sakhalinenergy.com/en/documents/SIMDP_2_eng.pdf) respectively. The SIMDP also has its own website, which can be accessed at: [www.simdp.ru/eng.php](http://www.simdp.ru/eng.php)

108. This also involved Emma Wilson, the co-author of this chapter.

2005).<sup>109</sup> But following the protests, in 2006 the company commissioned a review of the Sakhalin-2 project documentation relating to Sakhalin indigenous peoples (Tishkov *et al.*, 2008).<sup>110</sup> This review can be considered to be an anthropological expert review, as in addition to studying the project documentation the authors carried out a short field trip, eliciting new information from the indigenous peoples about the impact of the Sakhalin-2 project on their lives.

The overview made a special note of the company–community grievance mechanism (Tishkov *et al.*, 2008: 302):

*'In the reviewed documentation the issue of eliciting feedback from the indigenous population is not addressed in enough depth. The proposed grievance procedure does not consider Russian traditions, or the cultural specifics and preferences of the indigenous peoples. This matter requires more detailed study of the indigenous peoples' preferences and available options for providing feedback to the company. During consultation with indigenous representatives, the experts came to the conclusion that the grievance procedure was not appropriate, especially the focus on postal grievances and individual grievances, and therefore the mechanism is rarely used. The proposed submission of anonymous grievances is, in our view, not ethical.'*<sup>111</sup>

*'The ineffectiveness of the grievance mechanism was underscored during our visit to Nogliki. In discussions with the population it emerged that company rules for their employees were systematically being broken. Many contractor workers do not live in camps, but rent flats in the village. They engage in hunting, fishing, gathering, smoking and salting of fish, and gathering of mushrooms and berries.'*<sup>112</sup> *Around the camps, for example, on Chaivo Bay, dogs are kept without supervision and they chase after the reindeer that are being herded in that area, many of which have died. The management of the company is not aware of these facts.'*

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109. See also Roon (2006).

110. This review was co-authored by Natalya Novikova.

111. This is particularly relevant in the Russian, or post-Soviet, context. If grievances are submitted anonymously this reminds people of the days when people secretly reported on their neighbours to the KGB. Moreover, in today's context, if a complaint is unsigned, the government has a right not to consider it, as the complaint may or may not be fraudulent – there is no way of verifying it. Both of these are arguments against an anonymous reporting system.

112. The company has a policy on 'No Hunting, Fishing and Gathering' in local areas, as this would conflict with local use of natural resources (Sakhalin Energy, 2006b).

At the same time, the company's team working on the SIMDP was developing a list of indigenous peoples' concerns about environmental and social impacts of the project. These were collated in consultation with indigenous representatives and environmental NGOs. The company then set up a process to systematically address these issues, based on a table of concerns known as the 'mitigation matrix', which formed a key part of the SIMDP (see Annex 12 of the first five-year plan, 2006–2010) (Sakhalin Energy, 2006a).

Meetings were held between indigenous and environmental NGO representatives and the company's environmental and social experts: a rare opportunity for civil society to engage directly with company scientists, as opposed to public relations experts alone. Issues were debated, and agreed solutions were listed in the mitigation matrix, publicised and then 'closed out' as they were resolved (Sakhalin Energy, 2006a). As reported in the second five-year plan, between 2006 and 2010, 30 issues were included in the matrix and addressed collaboratively. As of December 2010, 28 issues had been resolved and closed out, with two remaining under continuous monitoring. These were: oil spill response (still under close monitoring); and the grievance procedure (Sakhalin Energy, 2011a: 27).

In five years, the situation has altered considerably. Today, people have a different view of grievances, but now comparatively fewer people talk about environmental issues. Extraction and transportation of oil and gas continue to be hazardous – but indigenous peoples' environmental concerns have dwindled. There are objective reasons for this, not least the completion of construction activities and related direct disturbance. However, the main thing is that Sakhalin Energy is perceived as being more responsible than Russian companies (despite the 2007 take-over by Gazprom).

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In December 2010, indigenous activists from Sakhalin attended the grand signing of Phase 2 of the SIMDP (2011-2015) in Moscow. During interviews for this research, indigenous respondents observed that, as the phase was finalised, the attention of their community had shifted from environmental concerns to distribution of funds. Some expressed a lack of trust towards the indigenous peoples' committees making decisions about funds allocation. The general company–community grievance mechanism was not being used to address these concerns and related conflicts.

As a result, the SIMDP management developed a distinct grievance mechanism for the SIMDP, based on the existing company mechanism. It is worth emphasising that the grievance procedure devised for the SIMDP relates solely to the procedures and implementation of the SIMDP and is entirely separate from the grievance mechanism that relates to company operations. According to the guidance to the SIMDP grievance mechanism, people can submit grievances relating to the 'mitigation matrix', but in practice most attention is now given to funds distribution. Such a narrow focus is hardly justified, given that indigenous residents still have to engage closely with oil facilities and workers on the ground. In the predominantly indigenous village of Val, a grievance was submitted about the lack of cleaning equipment and the household waste from the workers camp was being drained into a local stream. The grievance was submitted by Russians, and everything was resolved in an operational manner. As the company notes, environmental and other issues are channelled through the regular community grievance mechanism, though this is still rarely used by indigenous residents.

Several indigenous people do not have sufficient understanding of the grievance mechanism as a way of resolving conflicts, and prefer other avenues. With minor issues, everything might be resolved in a simple way by getting in touch with a CLO or the SIMDP team. For serious problems a commission is always set up, which goes out to the place where the grievance is reported, studies the situation and takes a decision to satisfy all parties.

Some non-indigenous residents interviewed for this chapter were of the opinion that oil companies should not be expected to resolve social issues in the way that Sakhalin Energy has tried to do with the SIMDP. Many indigenous people also believe that money should be distributed through government channels, or if funds are established, they should be controlled by the local administration, with oversight from the Sakhalin Regional Government.

Moreover, there are different opinions about the extent to which grievance procedures are culturally appropriate. Several respondents argued that the traditional cultural mechanisms of indigenous peoples do not work today. They feel that the general aversion to submitting grievances or taking anything to the courts is probably more a consequence of a Soviet upbringing and Soviet-era scepticism about the possibility of getting any justice through written and official procedures. Thus the creation of a separate mechanism for the indigenous peoples was much more to do with the separate issue of managing the SIMDP (which has a tripartite ownership structure and should not be entirely subject to management by the company), rather than the requirement for something that is culturally appropriate for the indigenous peoples. On the

other hand, an mechanism that is seen by the indigenous peoples to be specifically aimed at them is likely to enjoy greater buy-in and usage (as is the case with the SIMDP grievance mechanism).

In this sense, the indigenous peoples of Sakhalin are different to other indigenous peoples in Russia, notably the Khanty and Nentsy of the Khanty-Mansiisk autonomous region, Yugry. In that region, they have had considerable experience of negotiating economic agreements based on the indigenous culture of dialogue. The indigenous peoples of Khanty-Mansiisk use various mechanisms to build collaboration with oil companies and government organs. Sometimes these are based on norms regulating their interaction with the surrounding world and ways of establishing empathy (Novikova, 1995, 1997, 2002).

It is also worth noting that Sakhalin-2 is not a representative example of other experiences in the country, although it is discussed everywhere. In many ways the levels of transparency and lesson-sharing from the project are extremely welcome and useful for others facing similar challenges. On the other hand, one could get a distorted view of Russian experience by focusing on Sakhalin-2 alone. Nonetheless, the SIMDP, including its targeted grievance mechanism, is considered largely to have been a success and has won several awards.<sup>113</sup> By contrast, the engagement between Sakhalin Energy and the dacha community at the company's liquefied natural gas plant in Prigorodnoye in the south of Sakhalin has been much less discussed in international circles, and is also considered by local observers to have been very problematic. The following case study explores some of the reasons for this and considers to what extent the grievance mechanism has been used in addressing the issues behind the conflict.

## 5.8 CASE STUDY 2: CONFLICT WITH A DACHA CO-OPERATIVE NEAR THE LIQUEFIED NATURAL GAS PLANT

There has been a protracted conflict between Sakhalin Energy and the dacha<sup>114</sup> co-operative *Stroitel* ('Construction worker') relating to the area around the liquefied natural gas (LNG) plant at Prigorodnoye in Korsakov District in the far south of Sakhalin, where the community of 80 dachas is located. The CEO of Sakhalin Energy has called the LNG plant the main production achievement of the company, producing more than 5 per cent of global LNG (10 million tonnes in 2011) and making Sakhalin Energy a key energy player in the Asia-Pacific region and globally (Sakhalin Energy, 2011a:4). Yet the plant itself and its surroundings are also a major source of unresolved social tension. This section provides a snapshot of this conflict based on discussions with the head of the dacha community and the company, and analysis of related documents, also drawing on the relevant past experience of the co-authors.

The dacha owners of the *Stroitel* co-operative express ongoing concern about the environmental impact of flaring from the LNG plant on their health and the food they produce on their dachas. The head of the dacha co-operative claims: 'In the past three years, six people have died of cancer. All of them lived permanently on their dacha plots, and something like this has never happened before.'

There has been a long-standing disagreement over the validity of the sanitary protection zone (SPZ) that has been established around the LNG plant. During planning and construction of the plant, the dacha owners were told that the SPZ would be 3.5 kilometres and that they would be resettled according to Russian law. Subsequently, in 2002, this zone was approved at just 1km by the Chief Sanitary Doctor of the Russian Federation, leaving the dacha owners outside the boundary and unable to qualify for official resettlement or

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113. See footnote 128.

114. Dachas are weekend cabins and garden plots; often local people grow all the vegetables that they consume on their garden plots, and so threats of pollution are of particular concern.

115. This is according to a letter from the deputy sanitary doctor of the Russian Federation of 16.07.2002 (author's [Novikova] archive). The Sakhalin Energy Sustainable Development Report (2011a: 23), states that the SPZ of 1km from emissions sources was established in 2002 and confirmed in 2009 by an expert review conducted by the federal consumer rights and human welfare oversight body, *Rospotrebnadzor*.

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compensation.<sup>115</sup> The arrangements relating to the 1km SPZ were completed in 2010, along with an environmental monitoring plan. Early monitoring results were submitted to the federal authorities in 2011 so as to finalise the SPZ (Sakhalin Energy, 2011a: 23).

The dacha owners argue that the so-called 'waiver packages' of compensation that were designed to allow dacha residents from within the 3.5km zone to move if they so wished, did not cover the costs of replacement dachas of similar quality to their own. Because of this, some of them have refused to accept the waiver package and leave the Prigorodnoye location. Sakhalin Energy argues that these dacha owners simply wish to receive the full resettlement compensation for which they would be eligible if the SPZ had been set at 3.5km rather than 1km (AEA 2010: 5).

According to the company, communication and engagement with the dacha co-operative has been ongoing since 2003 (during preparation of the social impact assessment). The dacha owners were also told about the grievance mechanism, which they used in 2007, 2008 and 2012. However, the company points out that the grievance mechanism is not able to resolve the dacha owners' main demand, i.e. the conditions of resettlement, as this would require changes in legislation.<sup>116</sup> It is also clear that the issue has been ongoing for such a long time that local campaigners may prefer to use other channels to air their concerns.

The company refused people a full official resettlement package to the dacha co-operative

as it was not obliged to do this by Russian law. However, a compensation process was developed by the company and agreed with its lenders in line with the World Bank Operational Directive 4.30 on Resettlement. As a result all dacha owners were offered a 'waiver package' of compensation, which was not equal to a full official settlement, but allowed them to relocate to another dacha site (AEA, 2009).

The company has also put in place a programme to monitor the effects of gas flaring on the local environment, including air quality, noise levels and electromagnetic fields. Yet the dacha owners feel that monitoring is being carried out by the company as a 'tick-box exercise', not to obtain a full picture of what is happening. The dacha owners claim that they have been complaining since 2005; they write letters to various people, not only at the company, but all replies refer them to the company. When the dacha owners approach the company, they are advised to go to court, but they do not believe they will win in the courts. There is no CLO specifically allocated to Prigorodnoye; most engagement with the company is via the head of the dacha co-operative. The interests of the dacha owners are also being defended by local NGO Sakhalin Environment Watch, which on its website has published a report *Good neighbour or the endless story of one protest*.<sup>117</sup>

During an interview for this research, the head of the dacha co-operative claimed that she did not know about the grievance mechanism, although since 2002 she has repeatedly raised issues at

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116. Personal communication with company staff, November and December 2012.

117. This was published on the SEW website (<http://sakhalin.environment.ru/rus/>) but appears to be currently unavailable.

meetings with the company (see, for example: Sakhalin Energy, 2010a: 118), and according to the company she did apparently submit a grievance in 2007 (perhaps unaware of the broader mechanism at the time).

The company has carried out an information campaign to promote awareness of the grievance mechanism in all relevant Sakhalin communities, including Korsakov (the town closest to the dacha community). There are huge billboard notices in Korsakov, and a Sakhalin-2 project information centre; people have been told that if they have any concerns they can seek help there. But if local people are asked whether they know how to resolve project-related grievances, most say 'no'. As one company representative observed, this is human nature: if you don't have problems, then there is no reason to know how to address them. But if you do have a problem you are more likely to get to know the relevant procedures.<sup>118</sup>

The company has relied on official studies to establish the SPZ, and company experts originally felt as though they were doing the right thing by avoiding resettlement.<sup>119</sup> The situation with the dacha owners is regularly monitored and audited by the consultants hired to report to the project lenders, and to date they have approved of the company's approach (AEA, 2010, 2009; ENVIRON, 2011). However, this does not take into account the anxiety caused by raised expectations of resettlement and compensation, and the fact that people have found themselves exposed to a threat (real or perceived) that one

official study had deemed they should be moved away from.

The key issue here appears to be that the proposed SPZ of 3.5km was initially made public, and it has been very difficult to 'put the genie back in the bottle', having already influenced local expectations. There is a sense that the company's activities will now always be perceived as potentially dangerous by the community however dangerous they actually are. This case illustrates how difficult it is for certain issues to be resolved, despite the operation of a grievance mechanism, especially when the concerns relate to legal issues that are beyond the capacity of the grievance mechanism to resolve, or where issues have been ongoing for a long time without resolution.

## 5.9 ALTERNATIVE CHANNELS FOR GRIEVANCES

Part of the field research for this chapter involved exploring channels other than the company grievance mechanism that people use to voice their concerns about the work of oil companies in the Sakhalin Region. These range from speaking at public meetings, to contacting the local newspaper, to engaging with local NGOs. Submitting an official grievance is sometimes considered to be a complicated and drawn-out procedure. Frequently people prefer to speak out at public meetings in the hope that they can resolve their problem there and then, though this is rarely possible, a fact that is perhaps not

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118. Personal communication, November and December 2012.

119. In the early days of the conflict, the European Bank for Reconstruction and Development (EBRD), which was carrying out due diligence, had a policy of recommending that companies should avoid resettlement.

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appreciated by some, who are unaware of the benefits of using the grievance mechanism.

In the Nogliki local newspaper *Banner of Labour*, Sakhalin Energy frequently publishes various types of information about its activities. According to the editor, people sometimes come to the newspaper and talk about issues, for example about oil workers washing their vehicles and polluting the local rivers, but they do not write an official grievance. The journalists sit and listen: they do not write up the stories unless people want them to; often people just want to talk. Sakhalin Energy pays the newspaper (in line with Russian media law) to publish project news. While the newspaper covers environmental and indigenous peoples' issues, there is a sense one gets on talking with journalists that the newspaper feels it is not in its interests to pursue an agenda that is overtly critical of the company's performance (though this is not due to direct pressure from the company).

Sakhalin Environment Watch is a local NGO that has been extremely active in both the cases described in this paper, as well as in relation to various other aspects of the oil and gas projects, including salmon-river crossings and gray whale protection, as well as Sakhalin environmental issues more broadly, notably forest protection. They have supported local groups, for example by taking part in the protests against all oil and gas operators on the island and in the subsequent engagement between the indigenous peoples' representatives and the company. They have also support the dacha community's fight, publishing the above-mentioned report.

The European Bank for Reconstruction and Development (EBRD) has also provided an alternative channel for grievances. Its due diligence team visited the island several times in the late 1990s and early 2000s and met with local

people. In addition to these informal meetings, the EBRD has its official independent recourse mechanism that local groups can use in cases where company activities violate EBRD environmental, social or public information policies (Rees and Vermijs, 2008: 81–87). Of all the people interviewed for this paper, only the head of Sakhalin Environment Watch was aware of this channel for complaints. It is possible that when EBRD representatives visited communities, many of the people they spoke to were not entirely aware of who they were and what potential influence they might have on the company.

Another instrument of feedback is the work of the independent SIMDP monitoring carried out by the American anthropologist Gregory Guldin. Guldin meets with people and records their views, seeking to determine the effectiveness of the SIMDP. According to indigenous respondents' statements, people often feel that they can share their problems with Guldin and they can count on his reports being able to help resolve their issues. Others believe that he is only able to write about their issues and not actually resolve them. In fact, the reports are read internally and may contribute to issues being resolved. The Phase 2 SIMDP now has a requirement that all recommendations of the external monitor need to have a written response from all bodies to which the recommendations are addressed. The grievance mechanism also offers that assurance. It should be highlighted here that the SIMDP is the property of the Sakhalin Regional Government and the Sakhalin Indigenous Peoples' Council, as well as Sakhalin Energy, and so it is not the sole responsibility of the company to respond to grievances.

In discussions and interviews, several people expressed the opinion that it would be much simpler, quicker and more effective to talk to the

SIMDP co-ordinators to try to resolve everything face to face. Several people believe that such discussions are possible in parallel with the submission of grievances. According to the company, consultations are carried out annually by all three SIMDP partners (the company, the government and the indigenous peoples' council), also involving the co-ordinators. If issues are raised, partners either resolve them directly or establish a working group if the issue is too complicated for an immediate resolution.

## 5.10 REFLECTIONS ON EFFECTIVENESS

As with other case studies in this book, the Sakhalin Energy experience demonstrates the importance of broader stakeholder engagement processes in building trust and dialogue with local communities. The grievance mechanism is critically important, but it should not become the only instrument of feedback. To achieve sustainable development goals within local society it is important to establish 'good neighbour' relations with all levels of the population, building dialogue in a broad range of ways.

The SIMDP provided a framework for indigenous peoples and the company, and latterly the local government, to build a dialogue around key social and environmental concerns, though this eventually evolved into a greater focus on development support for the local community. The dialogue between the company and the dacha co-operative suffered due to lack of legal grounds to address the underlying expectations of local residents, and to the drawn out nature of that conflict. Alternative channels may be preferred over the grievance mechanism. In some cases, people know about the grievance mechanism but do not use it because other methods are more

powerful, such as NGO campaigns or public demonstrations.

Respondents observed that the effectiveness of the grievance mechanism itself depends to a degree on the experience and work ethic of the CLOs and company public relations representatives. The fieldwork for this research revealed that Sakhalin Energy's CLOs are well respected and devoted to their work. A clearly defined but flexible grievance mechanism allows for people with different levels of experience to use it in different ways, either focusing on ensuring forms are filled in diligently (as less experienced CLOs might do) or providing more guidance based on local knowledge, and building mutual understanding. In the post-construction period Sakhalin Energy has decided that it is more efficient to limit the number of CLOs and focus instead on maintaining a network of information centres in public libraries, an approach that appears to be working.

Respondents noted that it was not a simple matter to submit a grievance. There is a sense that making a complaint is in itself a very serious decision to make. As these are close-knit communities, it is often difficult for people to keep personal relations separate from conflicts that have arisen. Personal relationships therefore affect people's use (or lack of use) of the grievance mechanism. Whether indigenous or non-indigenous, people have psychological barriers associated with using a grievance procedure. Even before the grievance is written, people discuss it and frequently think that it is very serious, and they are not sure what to expect as a response from the company. You might hear people say: 'I will do him a favour, I won't submit a grievance. We don't know how the company will react.'

## FIVE

### THE SAKHALIN-2 PROJECT GRIEVANCE MECHANISM, RUSSIA CONTINUED

The fact that 6 out of 14 'resolved' grievances in 2011 had to be closed out by the Business Integrity Committee indicates that there is sometimes reluctance on the part of some people to sign the satisfaction forms, even where the company believes that grievances are resolved. This may be a problem with the process itself (the bureaucratic use of forms) or the way that issues are resolved (people are unsatisfied with the resolution). On the other hand, Zandvliet (2011: 60) notes that in some cases people have signed satisfaction forms, despite an *unfavourable* outcome, and suggests that this is because they feel the transparency of the process is a demonstration of respect on the part of the company.<sup>120</sup>

As noted in Chapter 2, there is increasing interest about whether a grievance mechanism helps a company to contribute to broader societal improvements. As an example, along with the other aspects of the SIMDP, respondents suggested that the indigenous peoples' grievance mechanism has served to build the civic skills of the indigenous population. They noted that the SIMDP process overall has increased the confidence and activism of indigenous peoples – largely through activities that build their self-reliance, such as support for enterprise development, but also due to the participatory decision-making processes employed. The indigenous peoples have started to think more about their rights, go to meetings, and develop

greater interest in the activities of industrial companies.

Sakhalin Energy has been admirably open with its experience and keen to share learning, partly as it sees this as bringing positive public relations benefits, locally and internationally. There is some evidence that Gazprom is now using some of the Sakhalin experience in its engagement with local people in the region of Kamchatka, to the north of Sakhalin in the Russian Far East. Experts working on similar projects in northern Russia and Siberia have also found the Sakhalin experience useful. Beyond Russia, experts are using the Sakhalin materials in the online library as templates for work on similar projects.

The experience gained by Sakhalin Energy is very valuable, but we should not assume it is the norm across Russia, nor should we assume it is the only example of good practice in Russia. Comparable standards should become the norm for other industrial companies, but this must allow them to improve their work. The Russian Global Compact network could play a role in bringing human rights principles into common practice through sharing experience. Building constructive relations between industrial companies, state organs of power and the public requires building effective and appropriate institutions and further strengthening of civil society. Only this way can the principles and procedures developed by companies become working 'rules of the game'.

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120. For a more in-depth discussion of satisfaction forms, see Zandvliet (2011).

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# SIX

# COMPANY–COMMUNITY GRIEVANCE MECHANISMS IN THE MINING SECTOR

Emma Blackmore and Starr Levesque<sup>121</sup>

This chapter considers the effectiveness of three different grievance mechanisms implemented by mining companies. It focuses on two key areas of implementation: building systems within the company, and building relations with the community in particular country contexts. The first case analyses Anglo American's approach to stakeholder engagement, its grievance mechanism and the computerised system that forms part of this approach. It demonstrates the value of providing company-wide guidance for effective stakeholder engagement — in the form of a process and corresponding tools — although challenges remain in regard to implementation at the site level. The Anglo American case also demonstrates the potential of computerised technology in facilitating a more consistent approach to monitoring and managing grievances and in offering an important feedback loop to improve practice on the ground. The second case, TVIRD in the Philippines, demonstrates the value of building on 'local' and traditional modes of communication and dispute management to create culturally appropriate grievance mechanisms. The third case, Kaltim Prima Coal in Indonesia, demonstrates the 'governance' gaps that exist in a number of developing countries that a company–community grievance mechanism can help to fill. It illustrates the challenges companies encounter in trying to ensure a sense of community 'ownership' and participation in the design of the grievance mechanism. The companies' different approaches reflect a wider need to balance emphasis on, and use of, internal systems with the 'bottom line' of building trust, dialogue and transparent relationships with local communities through face-to-face contact and communication.

## 6.1 INTRODUCTION

Growing demand for minerals, concerns over resource scarcity, and rising prices are driving mining companies to operate in new environments to obtain the resources they need – often in developing countries. The price of gold alone has increased from US\$400 per ounce in 2003 to \$1,800 in 2012 (Kitco.com, 2013). Mining companies often explore and operate near land and property belonging to, or being used by,

communities. Mining can negatively affect the local environment, including water and biodiversity, as well as people's livelihoods (which often depend on the health of the environment or access to land and resources). However, the effects of mining industry activities are not always negative: mining may provide employment opportunities, procurement benefits for local businesses, significant tax contributions – at local and national level – and development of local infrastructure.

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121. The authors would like to thank a number of people who offered their time to be interviewed for this research. Special thanks goes to Jon Samuel who also reviewed an earlier draft of the section about Anglo American. Thanks also to Emma Wilson for reviewing the chapter.

Conflict is perceived as a real risk of many mining projects, especially if land rights are contested or environmental damage affects local health and livelihoods. The typically large scale of mining operations also means that the industry tends to be very visible to the public, even beyond the host communities close to the project site.

Technological advances and the spread of social media have connected the world in new ways. They have made it much easier for civil society to collectively organise and protest in response to the actions of businesses and government. The number of social movements resisting mining has increased over the last decade and has helped drive accountability of both governments and companies (Buxton, 2012a). For any large-scale project with potentially significant impacts local concerns are inevitable, but even relatively minor concerns can easily escalate into conflicts if not managed effectively, and can be costly for a company and its operations.

There is growing pressure on companies to address the concerns of communities before and during a project and after operations have ceased, to obtain a social licence to operate<sup>122</sup> and to avoid the costs associated with delays due to blockades and protests. But there is also growing recognition that a great deal of the conflict associated with mining can be managed. Having a credible local mechanism in place for systematically handling and resolving any complaints is not only regarded as a responsible thing to do, it also makes business sense (CSR, 2009; CAO, 2008).

This chapter presents and analyses a number of case studies of company–community grievance

mechanisms in the mining sector. These case studies are based on telephone interviews and a desk-based study of existing literature. They offer a number of insights and recommendations on how to design and implement company–community grievance mechanisms effectively. Unlike the other chapters in this collection, no fieldwork was carried out to elicit community perspectives on the implementation of grievance mechanisms, due to time and resource constraints. The first case study analyses a grievance mechanism from the perspective of a global company, Anglo American. The other two case studies, of TVIRD in the Philippines and Kaltim Prima Coal in Indonesia, are based on company interviews, literature reviews and some engagement with local NGOs.

## 6.2 EXTERNAL DRIVERS FOR THE IMPLEMENTATION OF A COMPANY–COMMUNITY GRIEVANCE MECHANISM

The International Council on Mining and Metal's (ICMM) sustainable development framework has been an important driving force in the uptake of company–community grievance mechanisms in the mining sector.<sup>123</sup> Principle 3 of the framework,<sup>124</sup> which companies sign up to and are assessed against, asks members to 'uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities' (ICMM, 2012a). Principle 9 requires that its signatories 'contribute to the social, economic and institutional development of the communities in which [they] operate' (ICMM, 2012a). Companies

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122. The Australian Centre for Corporate Social Responsibility defines a social licence to operate as 'the level of acceptance or approval continually granted to an organisation's operations or project by the local community and other stakeholders. It varies between stakeholders and across time... The social licence to operate is inversely correlated with social risk – the higher the social licence, the lower the social risk' (ACCSR, 2013).

123. ICMM was established in 2001 to improve sustainable development performance in the mining and metals industry. It brings together 21 mining and metals companies as well as 31 national and regional mining associations and global commodity associations. These 22 member companies employ 800,000 of the estimated 2.5 million people working in the mining and metals sector, with interests at over 800 sites in 62 countries and exploration activities that extends far beyond this (ICMM, 2013). In addition, according to ICMM, through their 31 mining and commodity association members, it has reach to another 1,500 companies in the sector.

124. ICMM's sustainable development framework has a number of principles which its members commit to fulfilling and against which they assessed. Members are assessed by ICMM itself, though ICMM members are also required to 'obtain independent third party assurance of their sustainability performance' (of which the principles form a part) (ICMM, 2012a).

are expected to 'engage at the earliest practical stage with likely affected parties to discuss and respond to issues and conflicts concerning the management of social impacts and ensure that appropriate systems are in place for ongoing interaction with affected parties, making sure that minorities and other marginalised groups have equitable and culturally appropriate means of engagement' (ICMM, 2012a).

ICMM has offered extensive guidance for companies on how to design complaints mechanisms and/or enhance existing procedures (see ICMM, 2009) as well as how to engage with indigenous peoples and local communities (see ICMM, 2010 and ICMM, 2012b). In 2005, ICMM developed a Community Development Toolkit in partnership with the World Bank and ESMAP (ICMM, 2005). This toolkit (updated in July 2012) is designed to support government, industry and community efforts to realise more sustainable community development around mining and mineral processing with 20 tools intended for use throughout the mining project cycle, from exploration to mine closure. Tool no. 5 offers advice on how to implement a grievance mechanism (ICMM, 2012b:73): '*by instituting a grievance procedure, stakeholders can formally voice their concerns, providing a valuable feedback loop to help you learn about the effectiveness of your suite of activities. If complaints procedures or mechanisms are well designed, they are likely to bring significant benefits to you and your communities*'. The tool recommends a step-wise approach to resolving grievances.

The ICMM grievance mechanism tool draws on the work of Professor John Ruggie on business and human rights (see Chapter 2). This work has undoubtedly played an important role in driving mining companies to consider the use of

company-community grievance mechanisms and/or offered them support in how to do so. Other key drivers include the performance standards of project finance institutions such as the International Finance Corporation, regional development banks and Equator Banks (see Chapter 2). Certification schemes and standards also play a role in driving better management of community issues, including standards and guidance of the International Organization for Standardization (ISO). The Responsible Jewellery Council's Code of Practice requires members with mining facilities to: 'ensure that affected communities have access to rights-compatible complaints and grievance mechanisms at the operational level' (Responsible Jewellery Council, 2012). The World Gold Council is currently developing a conflict-free certification scheme that requires the implementation of a grievance mechanism (World Gold Council, 2012).

### 6.3 CASE STUDY 1: ANGLO AMERICAN

Anglo American is one of the world's largest mining companies, with operations in Africa, South and North America and Australia. It mines iron ore and manganese, metallurgical coal, thermal coal, copper, nickel, platinum group metals and diamonds. In 2011, Anglo America's operating profit was US\$11.1 billion. Of this \$11.1 billion, \$3.6 billion was paid in tax, \$4.2 billion was reinvested into the company and \$2.2 billion was distributed to shareholders (Samuel, 2012).

Anglo American operates in developed countries, but also in emerging and developing countries, for example Zimbabwe, Venezuela and Peru, which increases the likelihood of potential conflicts with local communities. Anglo American has approximately 50 operations and projects and around 15 to 20 significant exploration projects. In

FIGURE 6.1: ICMM GRIEVANCE PROCEDURE FLOW CHART



Source: ICMM 2012b:78

total Anglo American has 70–80 locations where a grievance mechanism should be in place (Samuel, 2012).

### 6.3.1 Drivers

Anglo American sees a grievance mechanism as a key way to meet its commitment to human rights and to manage socio-political risks (Samuel, 2012). The company states that 'the effective management of social issues is a necessary element of sound overall operational management and a source of competitive advantage' (Anglo American, 2010:34).

*'It is through the goodwill of the communities around our operations that we are able to gain and maintain our social license to operate. It is essential, therefore, that the needs and concerns of host communities are taken into account and that they help inform our approach to doing business' (Anglo American, 2010:34).*

In 2009, Anglo American launched its 'Social Way' strategy: a mandatory set of social management system standards. In 2010, one of the key areas was improved monitoring and evaluation, with a complaints and grievance mechanism at the core (Anglo American, 2010) (see 4.2.3 below).

Jon Samuel, Head of Social Performance at Anglo American, states that Anglo American ultimately wants to see 'culture change, thinking about community in a different way within its operations' (Samuel, 2012). According to Samuel, the Ruggie process has been an important driver in the implementation of grievance mechanisms at its various sites: 'Ruggie created the expectation that large companies should have a grievance system in place and it has given management some comfort that they can manage things effectively' (Samuel, 2012). Unlike other companies Anglo American does not have pressures from

international finance institutions as it relies on its own funds to finance project development. A key driver within Anglo American appears to be 'enlightened leadership' and a personal desire among managers to promote better social performance throughout the company.

All Anglo American sites have to be certified to ISO 14001 (an environmental management systems standard) within two years of being bought or coming into operation, requiring an environmental complaints hotline to be set up. In many sites this became the de facto stakeholder complaints hotline, addressing both environmental and social grievances. However, this mechanism was less effective in managing complex social grievances: 'ISO 14001 is good for truths, to taking a scientific approach to analysing the root causes of particular environmental issues, but it can't protect and develop relationships or build trust. Social issues are more complex, sometimes it just about saying sorry because you have upset someone' (Samuel, 2012).

Anglo American categorises some grievances as localised 'housekeeping' issues, which local staff are best placed to manage. These can include complaints associated with dust from trucks, daily blasts and noise pollution and a need to change the timings to be less disruptive for local communities. More serious grievances might relate to land rights, fisheries damage and labour issues. One of the objectives of Anglo American's grievance mechanism is to solve problems to everybody's satisfaction before they get escalated into a court of law:

*'Courts are a poor way to solve complaints – particularly if you are a community member, because you'll be up against some very expensive well paid lawyers... If you are a community member and you have a legitimate grievance we would hope to be able to address that grievance*

*promptly, and before you could have scheduled a court hearing' (Samuel, 2012).*

Nonetheless, legal challenges against new projects are quite common: challenges to rights of way for road construction across local people's land, for example. According to Samuel, it is very unusual for community members to take Anglo American to court on anything other than issues around land acquisition:

*'Land acquisitions can often result in court action because it's almost part of the bargaining process in many of the cultures where we operate. There is no such thing as a price on a hectare of land. The price is what you agree. Even when landowners are willing to sell, this bargaining is part of the normal negotiating process, and land owners are usually very aware of how they can use the courts to strengthen their position.'*

### **6.3.2 Anglo American's overall approach to stakeholder engagement**

The Anglo American Social Way consists of a set of principles including, 1) engagement and accountability, 2) benefiting host communities, 3) learning from experiences, and 4) adopting simple, non-negotiable standards on social performance (Anglo American, 2009:6).

The Socio-Economic Assessment Toolbox (SEAT) is one way in which compliance with the Social Way is assured.<sup>125</sup> Anglo American's CEO explains that SEAT 'sets out a framework to build a constructive, open-minded and candid dialogue with our stakeholders' (Carroll, in Business Fights Poverty, 2012).

SEAT was first implemented in 2003 and comprises over 30 guidance notes or tools. Each existing operation/site is meant to carry out the SEAT process every three years.<sup>126</sup> Since 2003 it has been used at over 50 operations (Anglo American, 2012). It aims to identify social and economic impacts and issues that require management to reduce risks, assess existing social investment initiatives such as community development projects, to see where improvements are required and to document and share good practice across all Anglo American sites. SEAT is designed to increase trust and goodwill on the part of host communities and improve each operation's understanding of its stakeholders, their views and interests and the impact Anglo American's operations have on them (Anglo American, 2012). The results of SEAT assessments are shared with local communities. According to Samuel (2012):

*'SEAT has made the company more accountable and open to its communities and helped it be better at managing risks – and understanding what communities complain about most so that these can be managed (livelihoods, jobs, procurement, training, social investment, dust noise and road safety).'*

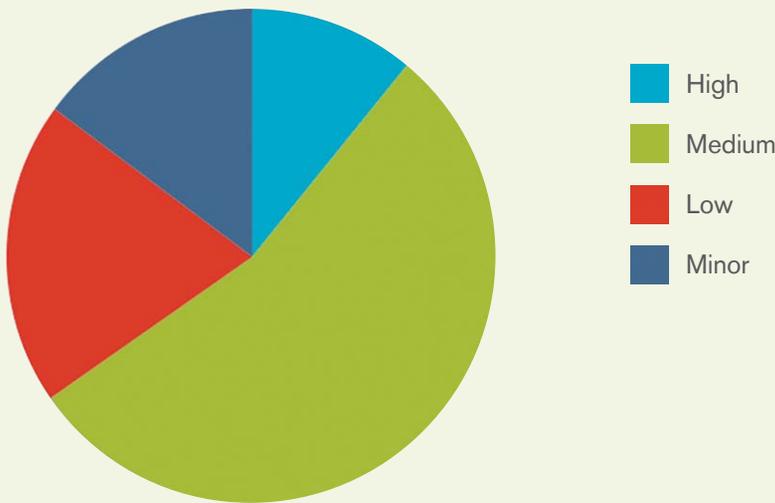
The socio-economic toolbox process is divided into seven steps, with each step supported by a number of tools. *Step 4* provides practical guidance on managing social performance during operation and closure of a mine. One of the tools in *Step 4* is 'Anglo American's mandatory complaints and grievance procedure for the

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125. The Social Way is assured using the following tools: the Good Citizenship Business Principles letters of assurance process; regular self-assessments; peer review; community consultation; implementation of the Anglo American Socio-Economic Assessment Toolbox (SEAT) process at relevant operations; and third-party audits. Version 3 of SEAT is publically available at: [www.angloamerican.com/~media/Files/A/Anglo-American-Plc/docs/seat-toolbox-v3.pdf](http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/docs/seat-toolbox-v3.pdf)

126. It is also important to note that while SEAT assessments are carried out every three years, operations are also required to update their Stakeholder Engagement Plans and Social Management Plans on an annual basis.

FIGURE 6.2: CLASSIFICATION OF COMPLAINTS REGISTERED IN ANGLO AMERICAN'S COMPUTERISED SYSTEM



recording, handling and resolution of complaints submitted by stakeholders' (emphasis added) (Anglo American, 2012: 69). SEAT offers detailed guidance on how to design a grievance mechanism and includes Ruggie's principles for an effective, non-judicial grievance mechanism (Anglo American, 2012: 71) (these principles are listed in Chapter 2). The main purpose of the grievance mechanism system is to deal with grievances in a pro-active and responsible manner (Samuel, 2012).

According to Samuel the grievance mechanism system is not too prescriptive in order to allow for local circumstances to appropriately 'define the workings' but all sites should be run to the same high standard. Involvement of the global corporate management team 'would undermine the local

management – hence the emphasis on sites to implement their own grievance mechanism using the guidance provided by Anglo American's corporate 'centre' (Samuel, 2012).

According to the internal documents provided to IIED by Jon Samuel, a total of 223 complaints were recorded in the system for the fiscal year 2012. These ranged from complaints about noise and dust, complaints about a lack of employment opportunities, to injuries caused by mining equipment and vehicles. It is worth bearing in mind, however, that this data is highly preliminary: the data management system is still very new (see Section 4.2.3). Once the system is used systematically by all sites it is expected that the number of complaints registered will increase.

## BOX 6.1: ANGLO AMERICAN'S GUIDANCE ON IMPLEMENTING A COMPLAINTS AND GRIEVANCE MECHANISM<sup>127</sup>

### Structure:

- Staff need to be identified to manage the mechanism; elected community members and NGOs may also be involved (see below).
- A 24-hour telephone hotline (preferably toll-free).
- Internal online logging system for tracking and assessing grievances.
- Centralised coordination of complaints and grievances to ensure they are managed consistently.

### Procedure:

- Submission of grievances in person to identified staff member(s); via the hotline; by letter or email; in person to elected community members and/or NGOs who forward to the operation; informally through employees on behalf of their own community. (Submission via third parties or anonymously should be possible and at least one option must be free of charge.)
- Clearly communicated time frames for (a) acknowledging that a grievance has been logged and (b) for resolution. If a resolution deadline cannot be met, a letter is sent to explain the delay.
- Grievances are recorded in Anglo American's online system, assessed and classified into Minor, Moderate or Serious (guidance on classifications provided by SEAT) (or minor, low, medium or high risk, as shown in the diagram above); adverse media coverage is also logged. Company responses are recorded in the system.
- Senior management are kept informed of trends (e.g. number/type received) and sign off on actions taken to resolve moderate/serious grievances.
- All moderate grievances are reported within 24 hours to divisional (site) management; if serious they are reported immediately to divisional management and within 24 hours to the Group Government and Social Affairs (GSA) department.

- Action to resolve the grievance needs to be signed off by a senior member of staff, with sufficient knowledge about the topic to provide assurance that it has been adequately resolved.
- Mechanisms should be provided to allow stakeholders to appeal findings. Operations should establish a Complaints Appeal Panel comprising senior managers and one or more reputable independent third party.
- For sensitive issues/conflicts of interest, Anglo American may work with third parties, such as an ombudsman, but most complaints need to be resolved directly by local management.

### Responsibility:

- One senior staff member takes overall responsibility for overseeing the mechanism.
- Grievances are directed to an appropriate staff member for investigation and resolution.
- Staff not associated with the procedure (e.g. switchboard operators and secretaries) will receive grievances from stakeholders, therefore systems and guidance for redirecting these need to be in place.

While there is no explicit requirement for community liaison officers (CLOs) to be in place at all sites, the SEAT Toolbox notes that CLOs are vital to ensuring stakeholder concerns are being fed back and addressed (Anglo American, 2012: 213).

### Accountability:

- Mechanisms are required for monitoring the effectiveness with which grievances are recorded and resolved (e.g. internal/external audits). Effectiveness is assessed according to whether agreed procedures/principles have been implemented and whether the grievance has been resolved successfully.
- Additionally, operations are required to report to central office on the volume and nature of all grievances, which should also be linked to the annual risk assessment process. This is now facilitated through the computerised system.

127. The text in this box is adapted from Anglo American (2012:72–74) and supplemented by interview material (Samuel, 2012).

The SEAT Toolbox suggests that Anglo American's contractors should also have grievance mechanisms in place. Tool 4F states that 'the Anglo American operation should finalise a social performance management plan with the contractor on the basis of the contractor's tender submission. These plans should detail who is responsible for what and cover relevant social issues, such as community liaison and complaints procedures' (Anglo American, 2012: 124).

Anglo American also has the 'speakup' whistleblowing programme to address any breaches of their business principles. The speakup website is managed by Tip-offs Anonymous, which is independent. The web-based system ensures that caller identity and the information shared are protected. The system operates 24-hours a day and can be used by employees, customers, suppliers, managers, shareholders or community members, using email, web-based form, fax, freepost or by phoning a toll-free number. Complaints can result in recommendations to senior management. Complaints are often initiated by one employee against another. The programme has been very successful in controlling corruption. The speakup website and the grievance mechanism are separate processes, but in practice people may use a local grievance mechanism and then 'speakup'.

### 6.3.3 Documenting and managing grievances: a new system

In January 2011, Anglo American rolled out a computerised system to help log and manage complaints, to ensure that all of the locally

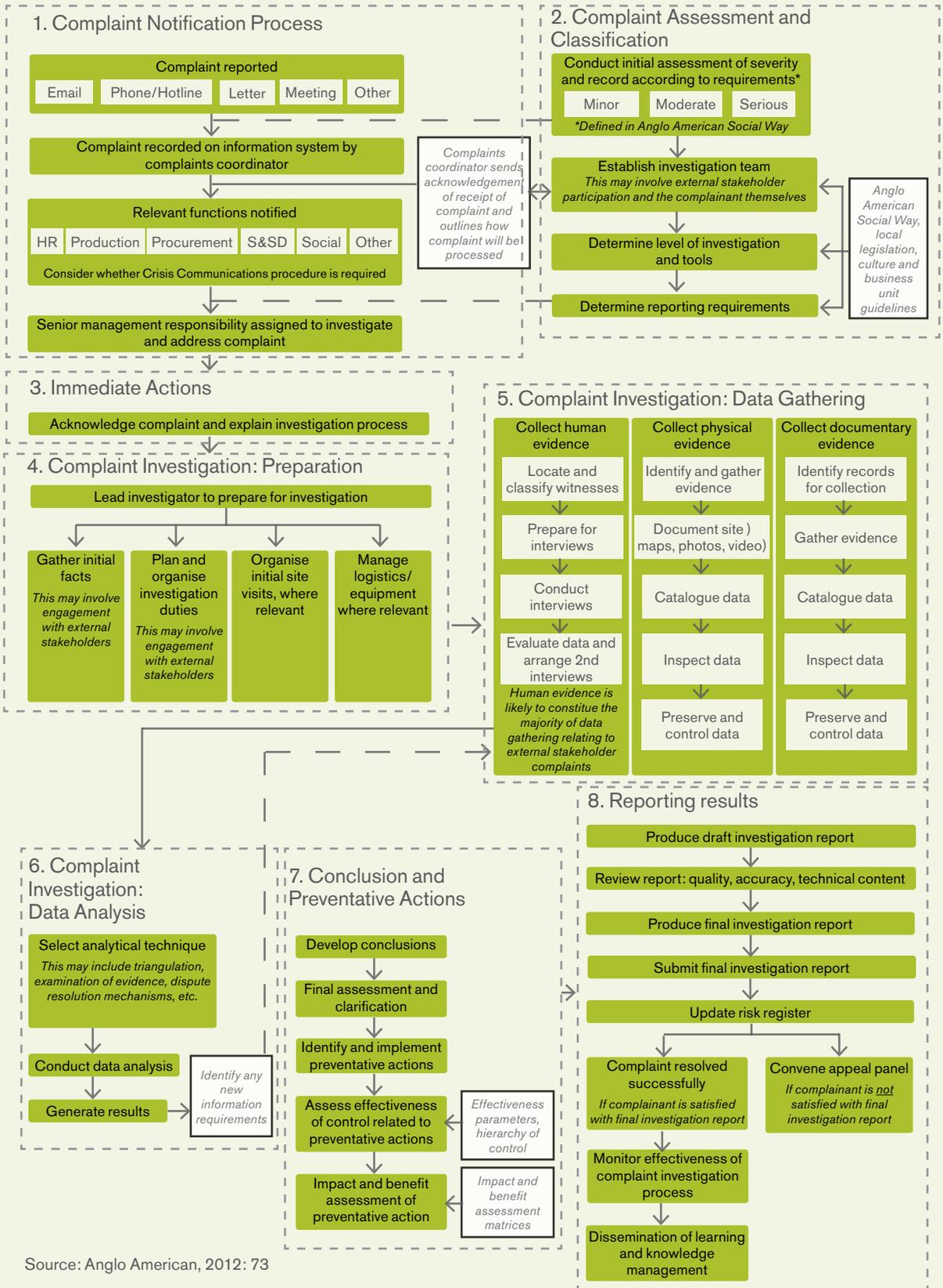
administered mechanisms were in line with international standards, and fed into a standardised group-wide process.<sup>128</sup> This system was based on an existing system called Enablon that was used to capture all of Anglo American's safety and sustainable development information. Enablon's health and safety incident module was customised to capture and reflect on stakeholders' social complaints and grievances. The use of an existing system has meant that it has not been 'a huge leap' for Anglo American to develop a more integrated and professional grievance mechanism and it also meant there was little internal resistance to the new mechanism (Samuel, 2012). Currently this system is being embedded across the company and its operations through awareness raising and training. Internal audits are also being carried out to monitor use of the system.

Enablon is a database that records, classifies and analyses grievances across Anglo American sites. The system records how complaints have been addressed and allows central oversight of this. The complaints coordinator keeps a record of every complaint, including its severity, the type of investigation carried out, the response given, whether the complainant was satisfied with the response or has appealed and if any follow-up is required. While grievances are primarily addressed at the local level this new system enables Anglo American to better manage information and learn from grievance resolution across its different sites.

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128. The formal decision to adopt this new system was taken in 2009 as part of the Anglo Social Way. After this decision was made, Anglo stakeholders were consulted over a yearlong period to inform the development of the new system. In autumn 2011 the system was developed, and training and deployment began.

FIGURE 6.3: EXAMPLE OF A COMPLAINTS AND GRIEVANCE MANAGEMENT PROCESS



According to Samuel (2012), monitoring and evaluation will be built into the computerised system over time. Every site will be given regular reports to facilitate trend spotting (e.g. the nature of communities' grievances, their severity) and allow them to analyse the process (how grievances are being addressed and over what duration). Incident investigation and root cause analysis is already common at site level; the computerised system enables Anglo American to do that more systematically. The computerised system includes action management tools that set out what will be done, and allocates tasks to people who then get reminders. It records and internally organises activities, and can only be accessed by internal parties.

### 6.3.4 Analysis and lessons

It is too early to say whether the introduction of Anglo American's online system is a success. Initial data indicate that some sites are still not logging complaints or no complaints are being lodged by the community (perhaps because local people lack awareness of the grievance mechanism or are not using the company mechanism to register complaints). This may indicate that the process needs to be better publicised (both internally and externally). But the majority of sites are recording grievances as well as capturing the stakeholders' reaction to how they were resolved. According to the data in the system no complainants made appeals against how their grievances were resolved.<sup>129</sup> By the end of 2011, the sites that were reporting non-compliance with the standards set out by Anglo American for its grievance mechanism were citing

challenges in using the computerised system, rather than community relations challenges (Samuel, 2012).

While the online system is still being assessed, Anglo American believes that the implementation of the grievance mechanisms per se has undoubtedly been positive: 'It is good to open up channels of communication and pro-actively engage with stakeholders. Dialogue is helpful. It has been important to avoid conflict and learn' (Samuel, 2012). Samuel offers his top three lessons:

- 1) Have a common system for multiple sites in regards to core components and processes, with centrally managed processes, reporting and oversight.*
- 2) Ensure you have the 'right' staff in place – they need to have a good balance of social expertise and knowledge of how to use management systems and the benefits of these systems.*
- 3) Don't reinvent the wheel. There is a lot of existing guidance that can help.*

Anglo American has seen real value in creating and disseminating overarching guidance and minimum requirements to its sites, in light of its size and scale of operations. But allowing for local adaptation and flexibility in design to suit local needs is also an important factor in successful grievance mechanism design and implementation at the various sites. It is important to have one person at every site that takes overall responsibility for its grievance mechanism, even if other staff members are involved in addressing

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129. This information is based on discussions with Jon Samuel, 2012.

grievances. But there need to be various means by which communities can make complaints (including anonymous and third-party options) as some communication methods may not be appropriate for all community members. The receipt of a grievance should also always be acknowledged. It is vital that communities are aware of the existence of a grievance mechanism. This communication needs to be carried out in a culturally relevant way – this is still a challenge for some of Anglo American's sites.

Computerised technologies and systems can help to systemise data collection and allow for broader analysis of grievances. However, systems cannot replace having staff in place with appropriate skills. Balancing the use of, and emphasis on, systems and direct and effective contact and engagement of staff with the community is vital.

Internal buy-in was vital for the Anglo American computerised system to be implemented effectively. It was important to allow time for a rigorous consultative process with employees, as the new system requires a culture change for some, including managers. Local staff are not necessarily used to working with computerised and highly centralised 'management systems'. Onsite training and awareness raising are required, which may put pressure on local staff and management.

Currently community-level assessments of the effectiveness of the various grievance mechanisms are not initiated by Anglo American. In particular there is no verification (by communities or third parties) of the number of complaints that are reported as resolved on the computerised system versus the actual number that are resolved. There is some media monitoring but no independent, community-level monitoring, though Anglo American may consult with its various stakeholders in future (Samuel, 2012). In future, Anglo American may make public some of the information collected by the system (for example the nature of grievances by severity and business unit). It may also work with think tanks and academic institutions to make the lessons learned more widely available. This would demonstrate a high degree of transparency on Anglo American's part and offer valuable lessons for other companies looking to develop or improve their stakeholder engagement strategies and grievance mechanisms.

## 6.4 CASE STUDY 2: UTILISING TRADITIONAL COMMUNITY GRIEVANCE STRUCTURES: TVI RESOURCE DEVELOPMENT INC., PHILIPPINES

In contrast to Anglo American's increasingly systematised approach to recording and managing the resolution of grievances – which perhaps reflects its scale (i.e. number of sites) and the geographical diversity of its sites – the case study of TVI Resource Development in the Philippines focuses on using existing community structures for company–community engagement. The case study demonstrates that using traditional structures to manage grievances can build greater legitimacy for a company within the local community. However there are also challenges around ensuring that traditional structures are not altered in any way through a grievance resolution process.

The history of mining in the Philippines is complex: its once booming industry has seen significant conflict in recent years. The Philippines is the world's fifth most mineralised country with large reserves of gold and copper, but the industry only accounted for about 1 per cent of GDP in 2011 and the sector has suffered from underinvestment. The industry is dominated by artisanal and small-scale mining (ASM), but the President is pushing strongly for large-scale mining and for foreign firms to revitalise the industry.<sup>130</sup>



Source: Googlemaps, 2013.

130. Though evidence suggest that these firms are struggling to operate in the Philippines due to the challenges of obtaining a social licence to do so.

Filipino law has special legislation and quasi-adjudicative mechanisms that communities have been able to use related to mining and community rights, labour rights, the rights of indigenous peoples, and the environment. In addition, many local-level mechanisms have been mandated by government-led collaborations between companies and communities, including public–private monitoring of the environmental issues of particular mining projects as a strategy for gaining trust among stakeholders and for receiving an Environmental Compliance Certificate (ECC) for the project. In these schemes, communities are offered government-initiated channels to raise grievances.

As part of the Philippine’s environmental impact assessment legislation, mining companies are required to monitor their own environmental compliance. They should set up Multipartite Monitoring Teams (MMTs) to receive complaints while ‘validating’ and ‘encouraging public participation’ in their implementation (DENR, 2012). MMTs are established as early as possible in the project cycle (Amador, undated).

Companies are responsible for setting up their own MMTs and choosing representatives – in this sense they are not completely independent.

MMTs are composed of representatives from the affected communities; the affected indigenous community; an environmental NGO; contractor/ company representatives; the Department of Natural Resources Regional Office concerned; and the representative of the Mines and Geosciences Bureau Regional Office.<sup>131</sup> They should ‘gather relevant information to facilitate determination of causes of damages and validity of complaints or concerns about the project’ as well as ‘monitor community information, education and communication activities’ (Amador, undated: 172). MMTs have been used to complement a grievance mechanism, or as the grievance mechanism itself (e.g. in the case of Philex Mining Corporation<sup>132</sup>).

The principle of free, prior, informed consent (FPIC)<sup>133</sup> is enshrined in Filipino law under the Indigenous Peoples’ Rights Act (IPRA) 1997 and the Philippine Mining Act of 1995. IPRA requires that no mining permits can be issued without the FPIC of the indigenous peoples impacted. The body charged with implementing the IPRA is the National Commission on Indigenous Peoples (NCIP). The NCIP has been criticised for not having the resources it needs to do its job, seeming powerless as compared to the mining companies and central Philippine government,

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131. As an example, TVI’s MMT is made up of the Siocon municipal government representatives from the executive and legislative branches, the Zamboanga del Norte provincial government is represented by the operations officer of the Zamboanga del Norte Environmental Management Office (ZaNEMO), the MGB, the Environmental Management Bureau (EMB), and the provincial and town offices of the DENR. The *barangay* chairman represents Tabayo and a member of the Knights of Columbus sits in the MMT as the representative of the Roman Catholic Church. The Subanons (IPs) are also represented. The company is represented by managers of its Environment Department, as well as its Community Relations and Development Office (CREDO), and Vice President for Environment and Civil Works.

132. See: [http://baseswiki.org/en/Philex\\_Mining\\_Corporation\\_Complaints\\_Mechanism](http://baseswiki.org/en/Philex_Mining_Corporation_Complaints_Mechanism)

133. ‘Free, prior and informed consent recognises indigenous peoples’ inherent and prior rights to their lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them, based on the principle of informed consent’ (UN/OHCHR, 2004:5).

and even stands accused of bribery (Buxton, 2012b; Rosario, 2008). In fact, there has been so much controversy over the FPIC process that the NCIP has issued an Administrative Order for revised guidelines on free, prior, informed consent and related processes (referred to as the 2012 Guidelines).<sup>134</sup>

While the government offers a number of channels for communities to raise grievances with a mining company, it is important to look to the local *barangay*, the smallest unit of village government which utilises alternative, community-based mechanisms for resolution of conflicts with companies. This is important as it remains the most accessible mechanism for local communities, and is based on cultural units and traditions (Rhia, 2010; Angeles, 2010). In addition, access to more formal community institutions is very difficult as communities live in remote areas where corruption, lack of resources, transparency and accessibility and costs of obtaining key documents is prohibitive. In some cases, local communities are unaware of what and where the correct bureau and office is for them to raise a grievance, and lack awareness of the government-led mechanisms that might be available to them (Rhia, 2010).

#### 6.4.1 TVIRD and the Council of Elders

Mindanao is the second largest island in the Philippines and the region with the most minerals in the country. Sixty-one per cent of indigenous peoples of the Philippines live in Mindanao. In addition to being the site for much large-scale mining exploration, the island is also the site of a separatist movement where rebel groups occasionally carry out attacks against mining companies (The Philippine Star, 2011). A number of stakeholders are sceptical of the benefits large-scale mining can bring to local communities on the island (Briola, 2011). As the scale of mining activities increases in the Philippines so does the potential for conflicts, and the relevance of and need for company–community grievance mechanisms.

TVI, a Canadian-based company, has operated the Canatuan copper mine located in the Province of Zamboanga del Norte, Mindanao, through its local affiliate, TVI Resource Development Inc. (TVIRD) since 2004.<sup>135</sup> The Zamboanga del Norte Province is populated by indigenous communities, specifically the Subanon indigenous people. Since 1989 there have been conflicts over exploration and mining on Mount Canatuan involving the Subanon people, ancestral domain

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134. These new rules would include a requirement for an FPIC process for each major mining phase – including exploration and development.

135. TVIRD'S approach to corporate responsibility is as follows: TVIRD is committed to exploration and mining practices that promote transparency, responsible stewardship of the environment, and the inalienable rights to life, dignity, and sustainable development in its host communities. Fully aware that mining is but a temporary use of land, TVIRD subscribes to the principle that mining should not detract from the potential of the natural environment to provide benefits to future generations. This, TVIRD believes, is the essence of sustainable development. TVIRD's sustained resolution towards its proactive commitment and adherence to best practice includes transparent consultation and communication with its host and impact communities; promotion, respect and fulfilment of the rights of Subanons (indigenous people); genuine contribution to host and impact communities' lives and well-being; and employment of Subanon community members (TVIRD, 2012).

## SIX COMPANY–COMMUNITY GRIEVANCE MECHANISMS IN THE MINING SECTOR CONTINUED

holders in Mindanao, other community members and ASM miners. Numerous NGOs have spoken out against TVIRD's activities regarding security, evictions, environmental damage, and cases of mistaken free prior and informed consent.<sup>136</sup> In return, TVI has published detailed responses to the allegations as part of its social and environmental programme of community engagement.<sup>137</sup>

The regulatory context and FPIC issues have shaped the nature of grievance mechanisms used for company–community relations. For example, such relations have affected TVI from the beginning when the Benguet Corporation sold its mining permit to it in 1994. Because this permit predated the IPRA, and therefore predated free, prior and informed consent requirements, the company claimed that there was no legal requirement to obtain the FPIC of the indigenous peoples. The lack of FPIC in the area left a gap around community–company engagement and communication which an appropriate grievance mechanism could play *some* role in helping to fill. Since then, the company has taken the measures outlined below to obtain the FPIC of the surrounding communities – though evidently it is too late to obtain the meaningful consent of local communities regarding the development, since operations are already in progress.

In the mid-1990s over 8,000 people in the Canatuan area lived in artisanal mining shanty towns that became 'illegal' when TVIRD won the right to develop large-scale mining in the area. At this time the company faced legacy issues of artisanal mining such as extensive cyanide and mercury degradation, child labour, struggles over

the distribution of benefits, uncertain land tenure, varied institutions of culture, and population migration. TVIRD's Canatuan operations, though relatively new, therefore faced a number of community conflicts before operations had even begun. As a result the company decided to take a more systematic approach to community issues.

TVIRD conducted an impact assessment and an internal human rights study to obtain baseline information and to evaluate and review the company's economic, legal, moral, ethical and social responsibilities. The findings of this study supported the development of its Social Commitment Policy, which signs up to the principles of the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. The company responded to two key issues, illegal mining and the rights of indigenous peoples, by developing a policy that utilises a rights-based approach to community relations (Yeban, 2010).

TVIRD uses existing community structures as the key means by which communities can raise their grievances about project activities with the Tribal Council of Elders (*Pigbogolalan*), a community-level decision-making council made up of the elders belonging to the indigenous people's tribe – the Subanons of Canatuan. When a mining-related grievance is raised by a community member using this forum, the Tribal Council calls the company's Community Relations and Development Office (CREDO) and asks them to attend a meeting to discuss the issue. Thus, the company does not host or administer the mechanism directly.

136. See Doyle *et al.* (2006). See, for example, [www.communitymining.org/attachments/202\\_Phillippines%20Mining.pdf](http://www.communitymining.org/attachments/202_Phillippines%20Mining.pdf)

137. See: [www.tviphilippines.com/social.html](http://www.tviphilippines.com/social.html)

The Tribal Council meets once a month, and, if they know that mining issues need to be addressed, will invite company representatives to attend the meeting. Small-scale miners and other community members go to the tribal councils as well.<sup>138</sup> Typically, a community member will state the complaint and ask the company to remedy the problem. In the Tribal Council meetings, decisions are made through '*gukom*' or tribal court hearings. Minutes of these meetings are documented both in the company office and the tribal council office. However, TVIRD does not maintain data on the number of cases filed and resolved. After the meeting, the company will investigate the concerns. If it is an environmental complaint, it will bring in a third party (e.g. an NGO, local government, or anyone acceptable to all parties such as the National Commission on Indigenous Peoples) to work alongside company management to explain what is being done by the company, and how the company is resolving it.

Concerns have been raised by local communities about the links between mining in the area and increased sediment in local rivers, which they argue affects fish spawning. Disagreements have also arisen in regard to land rights, the rights of indigenous peoples to their ancestral domains, the loss of livelihoods of rice farmers, and displacement. Some examples of remedies asked for by the community are monetary compensation, job opportunities, and for the company to fix items damaged on community property. Once the

complaint is processed internally within TVIRD, decisions and outcomes are communicated to the community in the next meeting. TVIRD usually attempts to separate personal grievances from community grievances as this affects what the company, or other institutions such as the local government, can offer as a solution.

Tribal Council leaders have great moral authority as well as the ability to provide or withhold certain benefits, such as mining-related royalties or development plans, from certain people in the community, and their authority is rarely questioned. However, formal, legal processes can be used if the company and/or a community member does not approve of the decision made by the *gukom*. TVIRD noted that the Tribal Council will continue to convene to reach a compromise with the complainant as both the company and community strive to resolve issues occurring within their ancestral domain internally – a right provided to them by obtaining their Certificate of Ancestral Domain Title.<sup>139</sup> The company maintains that it is important for TVIRD to be represented in the *gukom* process, especially when it involves one of its employees. Company decisions are usually made by the relevant department or the officer representing the department. If the issue is an environmental one, for example, the Environment and Civil Works Department will be involved, if the issue is related to social issues, CREDO will be involved.

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138. It is not clear whether using the tribal councils – as a form of dispute resolution – works as well for small-scale miners and other community members as it does for indigenous communities to whom the *Pigbogolalan* 'belongs'. We were not able to obtain any information regarding this.

139. This title protects the rights of indigenous peoples, including the right to ancestral domain and lands; right to self-governance and empowerment; social justice and human rights; and the right to cultural integrity, as provisioned in the Indigenous Peoples Rights Act (IPRA) of 1997.

#### 6.4.2 Analysis and wider lessons

Since utilising a rights-based approach, the Vice President of CREDO has noted that community relations have improved, which is a positive achievement in light of previously high levels of conflict. People are more willing to sit down and talk about the issues and find joint solutions, implying a degree of trust has been achieved (Subido, 2010).

This case demonstrates there is not always a need for a formalised grievance mechanism to be administered by a company when localised complaints procedures are already institutionalised within a community, or where quasi-adjudicative mechanisms are offered by the government. Instead, a company–community grievance mechanism can use local customary procedures for engaging with communities. A company may benefit from considering enshrined local practices before formalising a grievance procedure that communities may not relate to, or at least considering the preferred means by which communities discuss issues and communicate. Though perhaps more informal than a company-run mechanism, these procedures can carry more legitimacy within the communities.

However, there is scope for TVIRD to become more systematic in the way it uses these more informal mechanisms. For example it could record the complaints that arise during these meetings, and collect data for analysis on numbers of complaints/severity and their resolution. This would help the company ensure that even though the mechanism technically exists outside of the company, it uses the mechanism as an effective system of feedback and by doing so ensures that the informal mechanism offers formal, systematic learning for the company.

While Filipino law has come a long way in formalising indigenous peoples' rights and

consent, appropriate mechanisms for communities that do not use traditional structures should also be ensured. Existing multi-sectoral partnerships and institutions can be strengthened in order to help guarantee these rights for all communities. An effective grievance mechanism can be one tool to help maintain the ongoing free, prior and informed consent of local communities, as enshrined (though not without its weaknesses) in Filipino law.

The TVIRD case is set in the context of relatively strong legislation regarding the environment and public participation, and the recognition of the rights of indigenous communities. Our next case study demonstrates the potential value of a company-led grievance mechanism where the rights of indigenous communities are not well recognised and where the implementation of environmental laws is less effective.

### 6.5 CASE STUDY 3: FILLING A 'GOVERNANCE' GAP: KALTIM PRIMA COAL GRIEVANCE MECHANISM

Indonesia is a major player in the world's mining industry: in 2011 it was the world's fifth largest coal producer and the world's top coal exporter (World Coal Association, 2011). The mining industry contributes 4–5 per cent of Indonesia's GDP. Coal production continues to increase annually; but the significant scale of mining activities also means the industry has the potential for negative impacts on local communities.

This Section explores the case of Kaltim Prima Coal (KPC), a mining company operating the largest open pit coalmine in Indonesia. It explores the regulatory context in Indonesia, as background on the drivers and barriers to effective implementation of company-led grievance

mechanisms (referred to as a community feedback mechanism by KPC). It also explores the particular challenges faced by KPC in the implementation of its system.

### 6.5.1 The national context in Indonesia

At the national level, administrative boards such as the Ministry of Mines and Energy, and Indonesia's national human rights institution Komnas HAM, are platforms for raising mining-related environmental and social/labour complaints. However, their role in resolving social and environmental disputes between a company and its surrounding communities has proved ineffective and unreliable. This has been attributed to complex and conflicting decentralisation procedures, a lack of implementing regulations on dispute resolution, and high levels of corruption (Levesque, 2010–11).

Article 26 of the Indonesian Law Number 11/1967 on the Basic Provisions of Mining requires local land holders to surrender their land rights to mining concessionaires, who need only give communities notice and compensation, since all mineral deposits belong to the state. One report on the struggle between common resources and mining in Indonesia found that land is often obtained through collusion with a corrupt village headman rather than through traditional group discussion and consensus (CIEL, 2002).

Mining projects with major environmental impacts must comply with the Indonesian Environmental Impact Analysis procedures (AMDAL), which requires companies to obtain an environmental permit by carrying out an environmental impact assessment before they can be granted a business licence (Surowidjojo, 2012). In some cases, for example in BP's Tangguh project in West Papua, Indonesia, the ADMAL process has

also led to the adoption of grievance procedures and mechanisms for conflict resolution.

According to Law No. 32 of 2004 regarding regional autonomy, each province is expected to take up provincial and local monitoring including responding to reports of environmental damage that the public make.

As a large Indonesian environmental NGO explained, communities have often struggled to fully comprehend the mining process; including issues around compensation for relocation (for example what an appropriate amount of compensation would be for loss of livelihoods). As the NGO details, a company will initially negotiate formal compensation with a community who accepts, but dissatisfaction with the initial compensation often sets in after a few years when environmental changes become visible, or wider community benefits that were promised are not received. Communities then often attempt to seek further compensation (Ginting, 2010).

In some countries, cultural or religious customs have been used to resolve mining-related grievances of local communities, such as in the Philippines case study above. Indeed, *adat* (social processes) within local areas in Indonesia are often referenced in local alternative dispute resolution. In Indonesia, however, traditional customs such as *adat* or community-level *mushawara* (local meetings) have thus far not been adopted by companies as a reliable means of resolving grievances between companies and communities. Interviews with a number of Indonesian and multinational companies reveal that they prefer to negotiate directly with community leaders, rather than using *mushawara*. One possible explanation for this could be that Indonesian law does not legally define the rights of indigenous peoples, nor does it require customary land rights to be registered.

## SIX COMPANY–COMMUNITY GRIEVANCE MECHANISMS IN THE MINING SECTOR CONTINUED

Consequently, issues such as disputes over land tenure or contesting land claims arise between mining companies and local communities, and can be contentious and difficult to resolve through more informal means.

The ineffectiveness of national level administrative boards as described above, coupled with the under-utilisation and poor recognition of local cultural and religious customs, have effectively left a governance gap – as defined in Chapter 2 – that has heightened the need for other avenues for dispute resolution and recourse. We now explore Kaltim Prima Coal's community engagement process and its grievance mechanism.

### 6.5.2 Background to Kaltim Prima Coal's operations

Kaltim Prima Coal (KPC) operates Indonesia's largest open pit coalmine in Sangatta, East Kalimantan, Indonesia's second largest province. It is known for its diversity of indigenous peoples, including the Kutai Timur community, its rich biodiversity and natural resources such as timber, oil and gas, and minerals. The mine has been operational since 1992, directly employing 5,206 people (KPC, 2012b). In 2007 over 87 per cent of KPC's workforce had been hired from within the province of East Kalimantan (Lahiri-Dutt and Mahy, 2007). In 2010, the contribution of the mining sector to Regional Gross Domestic Product reached almost 86 per cent (KPC, 2010). There are concerns over this high level of dependence of local communities on mining, including the Kutai Timur, notably concerns about the loss of livelihoods after mine closure.

Kaltim Prima Coal is owned by Bumi Resources Tbk, an Indonesian transnational corporation that bought the company as a former joint venture between Rio Tinto and BP (Beyond Petroleum, formerly British Petroleum) in 2003. Bumi was established in 1973 and is a publicly listed company on the Jakarta and Surabaya stock exchanges. The company's core businesses are in oil and gas and mining and energy<sup>140</sup> (KPC, 2012a).



Source: Googlemaps, 2013.

Mining in East Kalimantan, as in other developing countries, is contested by many groups that have cause to be wary of operations. In East Kalimantan, 230 degraded coalmining concessions have never been restored by the companies responsible, despite their obligation by law to do so (Jakarta Post, 2012). While KPC has created some employment, it has faced

140. According to KPC's website: 'since its listing in 1990, the company has made a number of key acquisitions including Gallo Oil (Jersey) Ltd., PT Arutmin Indonesia and PT Kaltim Prima Coal. These acquisitions are in line with the company's vision of becoming a world-class operator with world-wide operations in its core business sectors.'

allegations around the improper use of security forces, the clearing of farmers' land and crops, the decline of communities' quality of life, and provision of inadequate compensation to communities (Maemunah and Wicaksono, 2010). The root causes of the conflict stem from before the mine was officially opened, when site construction was already causing community tensions. Major problems began when labour was recruited from outside the region, and when the appropriation of Kutai peoples' land and other resources, and a decline in water quality, occurred (Mines and Communities, 2001). More recently KPC's mines services contractor, Theiss, was accused of injuring a number of KPC employees – many of whom are from the local community – when they refused to go back to work after being on strike because of KPC's failure to implement an agreement (ICEM, 2012). Despite these controversies KPC intend to make a positive contribution to the local community, as seen in their sustainable development policy.<sup>141</sup> Both Company Law No. 40 of 2007<sup>142</sup> and the Mining Law require mining companies to be environmentally and socially responsible, and companies must report relevant activities.

Some of the conflicts that have arisen between KPC and the local community can be attributed to a mismatch in expectations of what the community thinks the company should be delivering (in terms of community projects, for example) and what the company thinks it is responsible for delivering, versus the government's responsibility. A

representative of the company stated in an interview that many of the issues raised when dealing with the local community are actually the government's responsibility (Wardhana and Pessireron, 2010). When KPC surveyed 2,000 respondents about what the people's perception of the company's responsibility should be, results showed that they perceive it as being responsible for 70 per cent of the community's development, and put government responsibility at only 30 per cent. There is also pressure from the local government for the company to do more for the local community including the funding of community projects. A grievance mechanism is one way by which the company has been made aware of the local community's dissatisfaction with the projects KPC has funded; we now explore this mechanism in more depth.

### **6.5.3 Kaltim Prima Coal's grievance procedure: the community feedback mechanism**

Although KPC is a signatory to/complies with a number of international standards and regulations, such as the United Nations Global Compact, Global Reporting Initiative, and ISO 14001, its main driver for implementing its grievance mechanism is the need to manage the costs and risks associated with community issues and maintain a social licence to operate (Wardhana and Pessireron, 2010). Major community issues include blockages or strikes, where three hours of stopped work cost the company around US\$200,000. One of the

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141. KPC's sustainable development policy is as follows: 1) Remain the supplier of affordable energy and a contributor to the alleviation of poverty, improved health and better quality of life, 2) Perform community empowerment programmes to encourage regional economic development based on local potential, 3) Build and maintain partnership with local communities, governments and stakeholders using mutual trust and mutual respect principles (KPC, 2012b).

142. Specifically Article 74 <http://irmadevita.com/wp-content/uploads/2008/04/company-law-uu-40-2007.pdf>

drivers for implementing the community feedback mechanism is therefore minimising risk – both financial and operational.

KPC established its grievance mechanism in 2006 as a formalised procedure evolving out of communications through informal meetings held around this time called the *Toga Tomas*.<sup>143</sup> The mechanism is governed by the company's Social and Environmental Management Plan, through the company's Department of Community Empowerment. This department is specifically designed to manage complaints related to the environment, threats against production, natural disasters, demands by community members relating to development programmes, negative press coverage, and social conflict. Social conflict is defined by KPC (in relation to its grievance mechanism) as 'problems with local workers, issues regarding local people, and the management of community development funds' (KPC, 2009).

Fifty-four complaints against the company were documented up to 2010. These complaints concerned mining-related water and river pollution, blasts, issues over air quality, dust and noise, land issues, and road use/access. In 2009–2010, the community feedback mechanism handled 27 complaints, the majority of which were classified as social issues, the rest classified as environmental issues. KPC states that 'these complaints were conveyed through collective demands accompanied by threats of demonstrations and blockades, all of which could be settled within the year' (KPC, 2010).

Communities can access the community feedback mechanism by communicating directly with one of KPC's 12 field officers, whose job it is

to represent the company at village level, or they can lodge complaints directly at the mine site office. Community members can also email, telephone or write to the company. It is not clear how most community members choose to make complaints, though the assumption is that most come via the field officers and this on-the-ground communication is regarded as one of KPC's strengths (Jalal, 2010).

Many of the complaints are resolved through negotiations between the complainant and the company but can involve a third party if an issue cannot be resolved. For example, a case that involved the exploitation of land for mining purposes had been contested by the local owners, even though the land fell within the mining area exploitation agreement between the company and the government. The company first tried to reach an agreement via compromise, negotiation, and offers of community developments, but finally turned to mediation by a local regulatory authority. When interviewed, the company representatives indicated that the outcome of such cases usually includes monetary compensation, or agreement to carry out local developments such as to infrastructure (Wardhana and Pessireron, 2010).

#### 6.5.4 Analysis

As this case in Indonesia highlights, there is a role for company-led community grievance mechanisms in delivering sustainable development commitments by documenting and taking community grievances seriously. Ultimately this shows the company where its wider sustainable development policies must be directed in order to be effective. The community feedback mechanism helps KPC achieve its

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143. No translation exists for this term.

policy of building and maintaining partnerships with local communities and creating a bridge between communities and company. Continued work on the quality of this 'bridge' and communication and engagement with local communities will be vital. A company's motivations for establishing a grievance mechanism, whether to reduce or avoid conflicts that disrupt mining and cost the company money, or as a way to ensure that mining delivers maximum sustainable development benefits to the local area (or both), will inevitably be reflected in the quality of the grievance mechanism and in the community's regard for it.

It is perhaps surprising that even as KPC's operations have scaled up there haven't been associated increases in the number of grievances made by the community – this could be the result of KPC becoming better at minimising the impacts of its operation on local communities, perhaps as a result of learning from previous complaints. Ensuring that KPC maintains up-to-date and publically available data on the number of grievances, their nature and their resolution, would help to ensure public accountability and that the mechanism offers a meaningful tool for community feedback and company learning.

As one corporate social responsibility expert (Jalal, 2010) in Indonesia noted, coal companies in the country have a long history of community and environmental issues that has helped them to come to an improved understanding of the roots of the problems. The role of field officers in building trust and a sense of openness, as well as in establishing and maintaining more informal lines of communication should not be underestimated.

One the other hand, as this mechanism is company designed and led, there is a clear need to create a sense of ownership or openness in regard to how the local communities perceive the

grievance mechanism and whether they feel a lack of ownership or inability to influence its design and implementation. It will only be effective if the communities believe the mechanism to be in existence for their benefit as much as the company's. Ultimately, drawing from the lessons learned from the national-level regulatory context in addition to this case study, this mechanism has played some role in helping to fill an institutional gap where effective government administrated avenues for redress are lacking.

## 6.6 CONCLUDING REMARKS

An effective company–community grievance mechanism can help to manage and avoid conflict and can be an important tool to help maintain companies' 'social licence to operate' and community consent. This is particularly important in the Philippines, where free, prior, informed consent is enshrined in law, albeit inadequately, and in Indonesia where national-level mechanisms are ineffective. But grievance mechanisms need to be part of broader, effective approaches to community engagement. A grievance mechanism alone is not sufficient to ensure that mining projects make a meaningful contribution to the development of local communities and sustainable development more broadly. Meaningful engagement with communities should happen long before conflicts even have the chance to arise, and should be a way of ensuring they do not.

The cases in this chapter offer an insight into just some of the different approaches to community engagement, and designing and implementing company–community grievance mechanisms. These differing approaches inevitably reflect the varying sizes of the companies we analysed, the different contexts in which they operate and how many years they've been in operation. Anglo

American, for example, with global operations and a large number of sites spread across diverse geographical locations has developed very detailed guidance for its operations on how to engage with stakeholders and design a grievance mechanism. It has established a computerised system to systematise the management of grievances: logging what grievances are, their severity, and steps to resolve them. If properly used, this can offer an important monitoring and feedback tool to ultimately improve Anglo American's relations with its surrounding communities and its contribution to sustainable development. Anglo American's emphasis on using this system as a learning tool is very positive – and could be replicated by other companies that are serious about engaging meaningfully with communities in the long term.

But a focus on systems and technology should not override the importance of face-to-face and people-centred relationships between company representatives and community. A computerised system is one tool to support these relationships but it is equally important for companies to build the skills required to communicate effectively with people. The skills required to use systems can be very different and so training needs to aim to develop both sets of skills. This has to be borne in mind during the recruitment and career development of community liaison officers and staff who participate in the design and use of company–community grievance mechanisms.

The increased engagement of the mining industry with company–community grievance mechanisms reflects growing awareness in the industry of the need to address 'social issues', engage with communities and obtain a social licence to operate. These are all positive developments. But for mining companies to truly contribute to sustainable development a constant and equitable

dialogue between the company and community is needed, to understand how mining can operate in a way that supports the long-term development and capacity of local communities. Grievance mechanisms are just one tool that can be used to support this process. While useful company guidance and examples exist on how to go about designing effective grievance mechanisms, the true test of effectiveness is the communities' assessment of its use and effectiveness. The next step for our research in relation to mining – and that of others – should be exploring and bringing attention to more community perspectives on the use and value of company–community grievance mechanisms.

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# SEVEN

# CONCLUSIONS AND RECOMMENDATIONS

## 7.1 CONCLUSIONS

The overview and the set of case studies provided in this book offer a wealth of material to enhance understanding of how company-community grievance mechanisms have evolved, how they are designed and how they operate in practice. The book helps to fill an identified gap in current literature, as the authors have sought to explore the subject primarily from the perspective of communities and civil society organisations.

The use of company-community grievance mechanisms has grown significantly in recent years in response to the increasingly evident business case for addressing and avoiding conflict and getting community relations right. Much of the more recent growth in awareness is attributed to the work of Professor John Ruggie in his former capacity as the UN Special Representative on Business and Human Rights. The case studies have also provided evidence of other drivers. A key early driver for oil and gas companies Sakhalin Energy in Russia and BP in Azerbaijan was that a company-community grievance mechanism was a condition of project finance. Company experts from Sakhalin Energy noted that they were implementing their grievance mechanism well before the Ruggie process began; however, a case study completed by the Ruggie team has served to endorse the company's approach. In the case of forestry company Congolaise Industrielle des Bois (CIB) in the Congo Basin, the driver was Forest Stewardship Council (FSC) certification. For Anglo American, company managers themselves seem to exert strong internal drivers to implement good practice in social issues management, but the Ruggie process has helped to demonstrate the value of having grievance mechanisms in place at all project sites. The findings emerging from the chapters also chime well with the

analysis carried out by Ruggie's team, including the identified 'effectiveness principles' that have been included in the UN Guiding Principles (Rees *et al.*, 2011; see also Appendix C).

The way in which company-community grievance mechanisms are designed has arguably become more sophisticated in recent years. This is due to various factors, including a growing evidence base and past experience from which to learn lessons; increasing amounts of often very detailed external guidance; and a more sophisticated understanding of community issues. The different approaches explored in this book inevitably reflect the varying sizes of the companies analysed, the different contexts in which they operate, and the length of time the projects have been in operation. It is always worth noting that companies come in different shapes and sizes, with different governance structures. Global companies often operate as joint ventures with national oil companies, meaning that decisions on whether to implement environmental and social issues management tools such as grievance mechanisms may be subject to negotiation with that partner. Smaller companies or contractors may not have the teams of experts that larger companies can afford, for example, so may find it difficult to implement complex grievance procedures.

While there is no 'one-size-fits-all' approach to implementing a company-community grievance mechanism, a number of key aspects of good practice have emerged from the research findings presented in these chapters. These can offer lessons for other companies looking to design or adapt their company-community grievance mechanisms.

## 7.2 GRIEVANCE MECHANISMS SHOULD BE PART OF A BROADER STAKEHOLDER ENGAGEMENT APPROACH

All chapters, in one way or another, support the IFC's statement that 'grievance mechanisms should not be thought of as a substitute for a company's community engagement process or vice-versa. The two are complementary and should be mutually reinforcing' (IFC 2007:71). The chapters also support the argument that grievance mechanisms are as important for establishing a meaningful dialogue between companies and local communities as they are for addressing specific grievances. This ability to offer a platform for broader dialogue and engagement can position company–community grievance mechanisms as tools to prevent conflict as well as mediate conflict when it does occur.

In the case of CIB in the Congo, it is difficult to separate out the grievance mechanism itself from the other community engagement activities carried out by the company. These include participatory land-use mapping (with identification of locally valuable trees using GPS technology) and a local radio and TV station run by the company. Anglo American's grievance mechanism is just one system that needs to be in place at individual sites to meet their commitment to Anglo American's 'Social Way' – a mandatory set of social management system standards.

In the Sakhalin case study, the indigenous respondents spoke less about Sakhalin Energy's grievance mechanism and more about the dialogue process associated with the Sakhalin Indigenous Minorities Development Plan. This dialogue allows indigenous peoples access to the company to discuss project issues and to plan the

company's support for their livelihoods activities. In the Azerbaijan case study, repeated reference was made to the NGO monitoring and audit programme implemented by BP and the Open Society Institute Assistance Foundation. To the civil society representatives at the focus-group meetings in Azerbaijan, this was a *de facto* grievance mechanism as it not only provided a more direct opportunity for resolving issues through dialogue, but also allowed for broader relationship building with the company, and learning about the project.

A company's stakeholder engagement strategy often starts with the way that it approaches its first engagement with a community, which may often require a process of eliciting the free, prior and informed consent (FPIC) of local residents. Where FPIC is not required by law, companies are increasingly expected to develop deliberative and participatory decision-making processes that reflect the knowledge, values, practices and norms of local communities, leading to an ongoing dialogue over the life of the project (Buxton and Wilson, 2013). A grievance mechanism is key to *maintaining* that consent through dialogue. The mining case study from the Philippines demonstrates how the company TVIRD attempted to build a dialogue with local communities through a grievance mechanism that reflected local dialogue processes. This and other actions, including an impact assessment and human rights study, served to fill the gap left by a failure to secure FPIC in the local community prior to the start of the project. Similarly the efforts to build the CIB grievance mechanism in the Congo Basin case study are closely linked to efforts to elicit the FPIC of the community (another requirement of FSC certification) (see also Lewis *et al.*, 2008).

### 7.3 GOVERNMENT AND COMPANY ROLES AND RESPONSIBILITIES MUST BE CLEAR

It is also important to maintain a clear distinction between government and company responsibilities in resolving grievances, and to communicate this to stakeholders. The Azerbaijan case study in particular highlights this challenge, as respondents complained when the company explained that it was not their responsibility to resolve particular grievances but that of the government. BP may feel uncomfortable working more closely to facilitate resolution of issues between the government and land users, seeing in this a potential risk of becoming a *de facto* mediator between the two. Nonetheless, certain areas of support to government and NGOs alike, such as knowledge sharing and capacity building could be explored more in such situations, to facilitate resolution of land-related grievances, which are often the most contentious (see Section 7.8).

In the case of mining company Kaltim Prima Coal (KPC) in Indonesia, a lack of clarity between company and government roles more broadly can also be a cause of grievances. Conflicts have arisen between KPC and the local community because of a mismatch in expectations between what the community thinks the company should be delivering (in terms of community projects, for example) and what the company thinks it is responsible for delivering versus the government's responsibility. It is important to manage community expectations of what the company can deliver and what the government's role should be.

### 7.4 LOCAL COMMUNITY RELATIONS STAFF ARE ESSENTIAL TO THE SUCCESS OF A GRIEVANCE MECHANISM

In most cases, respondents noted that a key strength of the grievance mechanisms was the emphasis on maintaining regular contact with communities. Through direct engagement between community liaison officers (or social communicators) and local residents, problems can be discussed, and in many cases resolved, without further need for grievance resolution or mediation. The case studies revealed that the effectiveness of a grievance mechanism depends to a large degree on the experience and work ethic of the company's community relations staff, as emphasised in particular by Sakhalin respondents.

The CIB forestry case study in the Congo illustrates the importance of employing a local person as the first point of contact, and the need to understand the reality and politics around 'traditional' land claims. In addition to dedicated social communicators (hired from the communities themselves) and a team of social experts, CIB company managers are prepared to go out into the communities to respond directly to conflicts and issues as they arise. The Indonesia mining case study (KPC) highlighted the role of field officers in building trust and a sense of openness, as well as in establishing and maintaining more informal lines of communication between the company and the community.

## 7.5 SYSTEMATISATION IS IMPORTANT BUT SO ARE 'CULTURE' AND 'FLEXIBILITY'

The companies analysed in this book, unsurprisingly, demonstrate different levels of 'systematisation' in relation to their grievance mechanisms. The companies' different approaches reflect a wider need to balance emphasis on, and use of, internal systems with the 'bottom line' of building trust, dialogue and transparent relationships with local communities through face-to-face contact and communication.

All the case studies have provided a description of the activities encompassed by the grievance mechanism. In some cases (such as CIB in the Congo) it was less easy to draw a boundary around the grievance mechanism as compared to other cases (e.g. the Azerbaijan case and the Sakhalin-2 project). However, the case studies all emphasise the importance of having appropriate channels for complaint – including a variety of different channels, verbal and written. They also highlight the need for effective and consistent communication of the mechanism to local communities.

Computerised technologies and systems can help to systemise data collection and allow for broader analysis of grievances, as demonstrated by the Anglo American case study. This is important if the grievance mechanism is to be used effectively as a learning tool. Implementing global company-wide systems requires broad internal training, ensuring that staff at all levels appreciate the need for the systematic approach and become familiar with the software and procedures.

Experts also emphasise that just as important as the systems themselves is the need to establish a corporate culture that values genuine communication and dialogue with communities.

This can be harder to establish than 'systems' in highly technical industries. Ensuring that there are people in management positions with these 'softer' skills is critical. A key challenge is to convince top managers of the usefulness and effectiveness of grievance mechanisms. A personal belief in the inherent value of respecting the rights of individuals and communities is a key driver for successful implementation of a company–community grievance mechanism. This cultural shift relates also to the company's overall stakeholder engagement philosophy and practice.

While company-wide guidance and management-level commitment are essential, flexibility is needed in design and implementation at the local level to ensure that mechanisms can be adapted to suit their particular social, economic and political contexts. The case studies in this book demonstrate the need for a multiplicity of approaches and an overall flexibility to respond to community needs and concerns.

Moreover, centralised systems cannot replace having the local staff in place with appropriate communication skills, local knowledge and social awareness. It is vital to balance the use of, and emphasis on, systems with the need for direct and effective contact and engagement of staff with the community. This means getting the right balance of skills within a team of local staff, who may not all be good at both 'systems' and community relations. The Sakhalin case study demonstrates the value of a clearly defined yet flexible grievance mechanism that allows for local staff to focus on their strongest skills.

CIB's grievance mechanism is described as more of a 'philosophy' than a 'mechanism'. CIB has in place a number of tools that together serve as a grievance mechanism, but there are no clear guidelines for local people about what they can do and what options are open to them in different

circumstances. While the approach benefits from the flexibility that results from being responsive to local issues as they arise, the disadvantage is that local people are not always aware of their rights in the grievance resolution process, nor of alternatives to those being offered by the company. This may put them at a disadvantage during negotiation with the company, however open and 'reasonable' the dialogue is perceived to be.

## 7.6 A GRIEVANCE MECHANISM IS A VALUABLE SOURCE OF SYSTEMATIC LEARNING

The research in this book also highlights the importance – and increased tendency – of using grievance mechanisms to provide learning and a feedback loop. As Vermijs notes in Chapter 2: 'seeing the grievance mechanisms not just as a system for dispute resolution, but equally as a "learning mechanism" is increasingly recognised, and advanced as a "business case" argument, by company experts seeking to promote the use of grievance mechanisms internally' (see Section 2.4.3). Space and time are needed to ensure that mechanisms can be adapted over time as lessons on their effectiveness emerge.

While some companies are already using the grievance mechanism in this way (Sakhalin Energy and Anglo American, for example), other companies are yet to make this connection but would very likely benefit from doing so. Respondents noted that TVIRD in the Philippines and CIB in the Congo could improve the effectiveness of their grievance mechanisms by recording complaints and analysing data on the number, severity and resolution of complaints. Even where the grievance mechanism technically exists 'outside' of the company (as in the case of TVIRD for example), the company can seek to

ensure that the informal mechanism offers formal, systematic learning for the company.

## 7.7 LOCAL OWNERSHIP OF THE PROCESS IS ESSENTIAL AND TRADITIONAL APPROACHES NEED TO BE RESPECTED

All of the case studies in one way or another reinforce the need to create a sense of local ownership over the grievance mechanism. A grievance mechanism will only be effective if the communities believe it to be in existence for their benefit as much as the company's. The Sakhalin case study demonstrates this well in the sense of ownership that local indigenous peoples have over the dialogue process instituted by the Sakhalin Indigenous Minorities Development Plan.

The CIB case study demonstrates the value of respecting traditional conflict resolution approaches; engaging in open dialogue and negotiation of solutions; and the importance of respect and hospitality in diffusing conflict and tension. Similarly, the case of TVIRD in the Philippines demonstrates the value of building on local and traditional modes of communication and dispute management to create culturally appropriate grievance mechanisms. The TVIRD case demonstrates that in some cases a formal grievance mechanism is not always required; local institutions often carry more legitimacy.

The case of KPC in Indonesia demonstrates the 'governance gaps' that exist in a number of developing countries that a company–community grievance mechanism can help to fill. These gaps are also highlighted in Chapter 2. The case also illustrates the challenges that companies encounter in trying to ensure a sense of community 'ownership' and participation in the design of the grievance mechanism. This case

study points out that culturally appropriate mechanisms are also needed for communities who do not use traditional structures.

## 7.8 CAPACITY BUILDING IS OFTEN REQUIRED INTERNALLY AND EXTERNALLY

Several chapters highlight the importance of capacity building in enabling all parties to engage more effectively with one another – and thus improving the effectiveness of the grievance mechanism. Internal buy-in was essential for the Anglo American computerised system to be implemented effectively. A rigorous consultative process with employees was important, as the new system requires a culture change for some, including managers. Local staff may not be used to working with computerised and highly centralised ‘management systems’, so onsite training and awareness raising are required.

The Sakhalin case study highlighted the company’s efforts to ensure contractors were engaged in the grievance resolution process, including by requiring construction contractors to have their own CLOs during the construction phase. The Azerbaijan case study highlighted the need for greater involvement of contractors, including security service providers, in grievance resolution relating to the BTC pipeline.

The BTC project in Azerbaijan has benefited from investment in civil society capacity building through the NGO monitoring and audit programme. This greatly increased civil society capacities to understand the project and the real issues of project implementation, and this has subsequently enabled more informed and constructive dialogue between the company and civil society over the years. In the CIB case study in the Congo, community awareness-raising

sessions held by the company (on FSC rules and national laws for example) have contributed to more constructive negotiation with CIB and better decision-making on how to resolve issues.

Of course if a company seeks to build capacities of civil society, it is difficult to do this independently and without running the risk of being accused of ‘buying off the opposition’. In the Azerbaijan case, some of the NGO respondents had refused to take part in the monitoring and audit programme ‘on principle’ as it was supported by the company. The CIB case highlights alternative channels, such as the chiefs’ own peer-to-peer capacity building, which have had an equally positive effect on local understanding and ability to engage constructively. The community radio is also supporting awareness raising by sharing understandings of key issues from local peoples’ perspectives.

Several of the case studies highlight the challenge of government capacity. A company’s ability to ensure local people’s issues are addressed depends to a great extent on the legal framework and government capacities to regulate; to recognise local claims, for example to contested land; and to mediate related conflicts. Where these are lacking, companies may want to consider supporting relevant capacity building and information sharing, though this tends to work best where a government has requested this support. Another suggested area for capacity building is in strengthening third-party mediation approaches and existing independent appeals channels. More effort could be made to build local NGO capacities to support resolution of compensation and land rights issues, as emphasised in particular by the Azerbaijani respondents.

## 7.9 DIVERSE AND INDEPENDENT VERIFICATION AND REPORTING IS IMPORTANT

The case studies demonstrate the importance of different types of monitoring activities, including public opinion surveys and sustainability reporting. Companies can also increase their legitimacy by making possible third-party monitoring, and publicising the results (for example the reporting to the Sakhalin-2 project lenders, and the work of the Azerbaijan Social Review Commission).

The case studies also demonstrate the need to strengthen third-party mediation approaches and existing independent appeals channels. More could be done to build local NGO capacities to support resolution of compensation and land rights issues. Respondents in Azerbaijan also suggested that BP track and monitor resolution of grievances that are considered to be the government responsibility and 'outside the company sphere of influence'. They suggested that these be recorded separately and resolution of such grievances could become an indicator of success for the grievance mechanism overall.

## 7.10 BROADER IMPACTS ON SOCIETY AND HUMAN RIGHTS SHOULD BE ASSESSED

This is the most challenging aspect of a grievance mechanism's effectiveness to demonstrate. Nonetheless, the case studies have been able to offer some evidence of the broader influence of the grievance mechanism and wider stakeholder engagement approaches.

For example, Sakhalin respondents noted that the Sakhalin Indigenous Minorities Development Plan process overall has increased the confidence and

activism of indigenous peoples – largely through activities that build their self-reliance, such as support for enterprise development, but also due to increased awareness of their rights, and due to the participatory decision-making processes employed. There is some evidence that Gazprom is now using some of the Sakhalin experience in its engagement with local people in the region of Kamchatka, to the north of Sakhalin in the Russian Far East, which indicates that the experience of Sakhalin-2 is having influence on company practice in Russia more broadly.

The Azerbaijan case study demonstrates the influence that BP's experience of grievance resolution had on government practice. A law on land acquisition has based much of its text on BP's experience. Moreover, respondents noted an increase in the number of cases of people taking national oil company SOCAR to court. This indicates that people are more aware of their rights and empowered to assert these rights.

In the CIB case study, the peer-to-peer capacity building of the chiefs and the success of local initiatives such as the radio station indicate local cultural shifts to greater awareness about forestry practices and their relations with the forestry industry, and an inclination to engage constructively with industry on development decisions. Similarly the TVIRD case in the Philippines indicates that as a result of the dialogue process, people are more willing to sit down and talk about issues and find joint solutions. In general, the case studies have highlighted the importance of grievance mechanisms and community engagement processes in increasing local people's awareness of their rights and providing space for people to engage in dialogue to defend those rights.

## 7.11 RECOMMENDATIONS

The following recommendations thus emerge from the case study analysis:

- 1. Make use of existing guidance:** As one key respondent noted, companies seeking to implement grievance mechanisms in communities where they operate should not try to 'reinvent the wheel'. There is a lot of guidance material in the public domain. The BTC pipeline and Sakhalin-2 project have documentation online. Key guidance publications can also be found in Appendix A of this publication.
- 2. Consider a grievance mechanism as part of a broader suite of engagement tools:** Companies should think about how the grievance mechanism fits with their other community engagement strategy, and how to strengthen the grievance mechanism through other activities such as capacity building. The grievance mechanism should complement other initiatives such as any dialogue set up as part of an FPIC process, as well as social impact assessments, stakeholder engagement activities, impact-benefit agreements and community development programmes.
- 3. Timely engagement and capacity building with government and communities:** The role of government in resolving many grievances (especially those related to land use) can be underestimated by companies and communities. Companies need to develop a strategy to engage openly with government about potential challenges to resolving land issues, and establish effective lines of communication on these matters. This will help to avoid situations where companies tell communities that a land issue is not their responsibility and government subsequently fails to address the issue effectively (with communities then blaming the company). It is worth investing time and money up front in capacity building of local stakeholders, while seeking ways to ensure this support is not seen to be tied to asserting influence over those stakeholders (e.g. by setting up independent financial mechanisms or using third parties such as NGOs to channel and manage funds).
- 4. Develop internal systems and communicate consistently:** At the global level, it can be more efficient and effective (especially for the purpose of learning and internal improvement) to have a common system for multiple sites relating to core components and processes, with centrally managed procedures, reporting and oversight. Not all companies will have the capacities and resources to do this, but a degree of internal systematisation and consistent external communication about the procedure are important.
- 5. Develop grievance mechanisms on site with local involvement:** At the local site level, grievance mechanisms should be developed with the participation of local leaders and residents, so as to enhance local ownership, acceptance and use of the mechanism. A company will benefit from considering enshrined local practices and the preferred means by which communities discuss issues before formalising a grievance procedure.
- 6. Ensure staff are appropriately hired and fully trained:** A company needs to ensure that it has the 'right' local staff in place and that they are fully trained. Local CLOs and social communicators need to have a good balance of social expertise, relevant knowledge about project risks and opportunities, and be trained in how to use the grievance management systems and understand the benefits of these

systems. Similarly, a grievance mechanism needs to have the buy-in of all levels of management, who may also benefit from appropriate training.

7. **Make the most of the grievance mechanism as a learning tool:** This includes systematic internal learning from grievances and their resolution, so as to modify company practice to avoid repeating negative practices, or to ensure that positive practices can be nurtured and replicated. There are calls for greater transparency of lesson-learning, for example by making public more of the information on grievances, their severity and how they have been resolved. Monitoring and evaluation should take into account not only the number of grievances resolved, but also develop indicators that might reflect the broader impact of the grievance mechanism and the company activities on society.
8. **Ensure third-party monitoring and mediation options are in place:** The case studies demonstrate the need to strengthen third-party mediation approaches and existing independent appeals channels. More could be done to build local NGO capacities to support resolution of compensation and land rights issues. Companies can also increase their legitimacy by making possible third-party monitoring and publicising the results.

## 7.12 LOOKING AHEAD

As Vermijs notes in Chapter 2, companies are now seeking to broaden and deepen their implementation of grievance mechanisms. The broadening relates to the adoption of far-reaching, company-wide commitments to have grievance

mechanisms operating at all project sites where there are significant community risks, an example being Anglo American. The deepening relates to the increasing awareness that a grievance mechanism requires a fundamental shift in corporate culture on conflict management and stakeholder engagement.

While useful guidance and examples exist on designing grievance mechanisms, the true test is the communities' assessment of their use and effectiveness. Some companies (e.g. Sakhalin Energy) already carry out local opinion surveys on a regular basis, while others have regular third-party reviews (e.g. the Azerbaijan Social Review Commission), though these generally serve a broader purpose than assessment of the grievance mechanism alone. A next step for research should be to further explore and draw attention to local community perspectives on grievance resolution and broader company–community engagement, with more cases studies on how specific challenges have been addressed on the ground in practice, in specific contexts.

The increased engagement of the extractive industries with company–community grievance mechanisms reflects growing awareness in these industries of the need to secure and maintain a social licence to operate. This is all positive. But for companies to truly contribute to sustainable development, a constant and equitable dialogue between the company and community is needed, in order to understand how extractive industries can operate in a way that supports the long-term development and capacity of local communities. Grievance mechanisms are just one tool that can be used to support this process.

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IFC (2007) *Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets*. International Finance Corporation (IFC). Available at: [www1.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/publications/publications\\_gpn\\_grievances](http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_gpn_grievances)

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Rees, C. with Cahn, D., Sonnenberg, S. and Zandvliet, L. (2011) *Piloting Principles for Effective Company–Stakeholder Grievance Mechanisms: A Report of Lessons Learned*. CRSI Report No. 46, Corporate Social Responsibility Initiative (CSRI), Harvard Kennedy School, Cambridge, MA. Available at: [www.hks.harvard.edu/m-rcbg/CSRI/pub\\_reports.html](http://www.hks.harvard.edu/m-rcbg/CSRI/pub_reports.html)

APPENDIX A: OVERVIEW OF KEY RESOURCES ON COMPANY-COMMUNITY GRIEVANCE MECHANISMS, FROM CHAPTER 2, DAVID VERMIJIS

NAME OF ORGANISATION	BRIEF DESCRIPTION OF ORGANISATION	TYPE OF RESOURCE	KEY PUBLICATIONS	LINKS
BASSwiki	Multistakeholder wiki-style website providing information on company–community dispute resolution around the world	Reports, guides, case stories, videos	Collection of materials, including those listed in this table; The case descriptions of grievance mechanisms are unique (but see also Appendix B.)	<a href="http://www.baseswiki.org">www.baseswiki.org</a>
Business and Human Rights Resource Centre	Resource on positive and negative impacts of companies worldwide, providing news and reports; features a section on complaints mechanisms	News, reports, links	Collection of materials, including those listed in this table.	<a href="http://www.business-humanrights.org/Categories/Issues/Other/Complaintsmechanism">www.business-humanrights.org/Categories/Issues/Other/Complaintsmechanism</a>
Compliance Advisor/Ombudsman	Independent complaint mechanism for projects funded by the International Finance Corporation and Multilateral Investment Guarantee Agency of the World Bank Group	Guide	CAO (2008) <i>Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects.</i>	<a href="http://www.cao-ombudsman.org/howweework/advisor/documents/implementgrieveng.pdf">www.cao-ombudsman.org/howweework/advisor/documents/implementgrieveng.pdf</a>

NAME OF ORGANISATION	BRIEF DESCRIPTION OF ORGANISATION	TYPE OF RESOURCE	KEY PUBLICATIONS	LINKS
Corporate Social Responsibility Initiative, Harvard University	Multi-disciplinary and multi-stakeholder academic research programme	Working papers, reports	<p>Rees, C. (2008) <i>Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders</i>. Working Paper 41</p> <p>Rees, C. and D. Vermijs (2008) <i>Mapping Grievance Mechanisms in the Business and Human Rights Arena</i>. CRSI Report No. 28.</p> <p>Rees, C. (2009) <i>Report of International Roundtable on Conflict Management and Corporate Culture in the Mining Industry</i>. Report No. 37.</p> <p>Sherman, J. (2009) <i>Embedding Rights Compatible Grievance Processes for External Stakeholders Within Business Culture</i>. Report No. 36</p> <p>Rees, C. (2010) <i>Mediation in Business-Related Human Rights Disputes: Objections, Opportunities and Challenges</i>. Working Paper No. 56</p> <p>Kovick, D. and C. Rees (2011) <i>International Support for Effective Dispute Resolution Between Companies and Their Stakeholders: Assessing Needs, Interests and Models</i>. Working Paper 63</p> <p>Rees, C. with D. Cahn, S. Sonnenberg, and L. Zandvliet (2011) <i>Piloting Principles for Effective Company–Stakeholder Mechanisms: A Report of Lessons Learned</i>. Report No. 46</p>	<p><a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms,%20January%202008.pdf">http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms,%20January%202008.pdf</a></p> <p><a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Report_28_Mapping.pdf">www.hks.harvard.edu/m-rcbg/CSRI/publications/Report_28_Mapping.pdf</a></p> <p><a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_37_rees_cm_roundtable.pdf">http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_37_rees_cm_roundtable.pdf</a></p> <p><a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_36_sherman_grievance.pdf">http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_36_sherman_grievance.pdf</a></p> <p><a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_56_rees.pdf">www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_56_rees.pdf</a></p> <p><a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_63_rees%20kovick_june%202011.pdf">www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_63_rees%20kovick_june%202011.pdf</a></p> <p><a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf">www.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf</a></p>

NAME OF ORGANISATION	BRIEF DESCRIPTION OF ORGANISATION	TYPE OF RESOURCE	KEY PUBLICATIONS	LINKS
International Council on Mining and Metals	Industry-led council on sustainable development in mining	Guides	<p>ICMM (2012) "Integrating human rights due diligence into corporate risk management processes"</p> <p>ICMM (2010) <i>Good Practice Guide: Indigenous Peoples and Mining</i></p> <p>ICMM (2009) <i>Human Rights in the Mining and Metals Industry: Handling and Resolving Local Level Concerns and Grievances.</i></p>	<p><a href="http://www.icmm.com/page/75929/integrating-human-rights-due-diligence-into-corporate-risk-management-processes">www.icmm.com/page/75929/integrating-human-rights-due-diligence-into-corporate-risk-management-processes</a> or <a href="http://bit.ly/JqpoER">http://bit.ly/JqpoER</a></p> <p><a href="http://www.icmm.com/library/indigenousoepleguide">www.icmm.com/library/indigenousoepleguide</a></p> <p><a href="http://www.icmm.com/page/15822/icmm-presents-new-guidance-note-on-handling-and-resolving-local-level-concerns-and-grievances">www.icmm.com/page/15822/icmm-presents-new-guidance-note-on-handling-and-resolving-local-level-concerns-and-grievances</a></p>
International Finance Corporation	International Organisation providing financing for private sector investments in developing countries	Guides	<p>IFC (2009) <i>Good Practice Note: Addressing Grievances from Project-Affected Communities: Guidance for Projects and Companies on Designing Grievance Mechanisms.</i> International Finance Corporation (IFC).</p> <p>IFC (2007) <i>Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets.</i> International Finance Corporation (IFC).</p>	<p><a href="http://www1.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC%2BGrievance%2BMechanisms.pdf?MOD=AJPERES&amp;CACHEID=cbe7b18048855348ae6cfe6a6515bb18">http://www1.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC%2BGrievance%2BMechanisms.pdf?MOD=AJPERES&amp;CACHEID=cbe7b18048855348ae6cfe6a6515bb18</a></p> <p><a href="http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_stakeholderengagement_wci_1319577185063">http://www1.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_stakeholderengagement_wci_1319577185063</a></p>
International Institute for Environment and Development	International, non-profit, non-governmental policy research institute promoting sustainable development	Report, Discussion Paper	<p>Wilson, E. (2009) <i>Company-Led Approaches to Conflict Resolution in the Forest Sector.</i></p> <p>Schwartz, C. and Wilson, E. (2009) <i>Building Public Trust: Transnationals in the Community.</i></p>	<p><a href="http://pubs.iied.org/pdfs/G02510.pdf">http://pubs.iied.org/pdfs/G02510.pdf</a></p> <p><a href="http://pubs.iied.org/pdfs/17049IIED.pdf">http://pubs.iied.org/pdfs/17049IIED.pdf</a></p>

NAME OF ORGANISATION	BRIEF DESCRIPTION OF ORGANISATION	TYPE OF RESOURCE	KEY PUBLICATIONS	LINKS
Oxfam Australia (Mining Ombudsman Project <sup>144</sup> )	Transnational dispute resolution mechanism for Australian mining companies operation overseas	Case reports, Guide	<p>Hill, C. (2010) <i>Community-Company Grievance Resolution, A Guide for the Australian Mining Industry</i>, Oxfam Australia</p> <p>Martin, S. and K. Newell (2008). <i>Mining Ombudsman Case Report: Rapu Rapu Polymetallic Mine</i>, Oxfam Australia</p>	<p><a href="http://baseswiki.org/w/images/en/0/08/OxfamAus_GrievanceMechanisms_0410.pdf">http://baseswiki.org/w/images/en/0/08/OxfamAus_GrievanceMechanisms_0410.pdf</a>.</p> <p><a href="http://resources.oxfam.org.au/pages/view.php?ref=266">http://resources.oxfam.org.au/pages/view.php?ref=266</a></p>
The Special Representative on Business and Human Rights	United Nations Special Procedure to identify and clarify standards of corporate responsibility and accountability regarding human rights	Reports to the UN Human Rights Council	<p>Ruggie, J. (2008) <i>Protect, Respect and Remedy: A Framework for Business and Human Rights</i>. Report of the Special Representative on human rights, transnational corporations and other business enterprises, John Ruggie; UN Document: A/HRC/8/5</p> <p>Ruggie, J. (2011b) <i>Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework</i>. Report of the Special Representative on human rights, transnational corporations and other business enterprises, John Ruggie; UN Document: A/HRC/17/31</p> <p>United Nations/Office of the High Commissioner for Human Rights (2012), <i>The Corporate Responsibility to Respect Human Rights: An Interpretative Guide</i>. UN Document: HR/PUB/12/02</p>	<p><a href="http://198.170.85.29/Ruggie-report-7-Apr-2008.pdf">http://198.170.85.29/Ruggie-report-7-Apr-2008.pdf</a></p> <p><a href="http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf">www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf</a></p> <p><a href="http://bit.ly/g5nG5z">http://bit.ly/g5nG5z</a></p> <p><a href="http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf">www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf</a></p>

144. The Ombudsman project was wound up in 2009, but Oxfam Australia has continued working on community development issues around mining operations, including with a focus on grievance mechanisms. For more information, see: [www.oxfam.org.au/explore/mining](http://www.oxfam.org.au/explore/mining)

APPENDIX A: CONTINUED

NAME OF ORGANISATION	BRIEF DESCRIPTION OF ORGANISATION	TYPE OF RESOURCE	KEY PUBLICATIONS	LINKS
University of Queensland, Australia (Center for Social Responsibility in Mining)	Academic research center focusing on the impact and performance of the resources sector globally	Discussion Papers, Workshop Reports	<p>Kemp, Deanna and Nora Gotzmann (2008), s "Community Grievance Mechanisms and Australian Mining Companies Offshore: An Industry Discussion Paper."</p> <p>Kemp, D. and N. Gotzmann (2009) <i>Community Complaints and Grievance Mechanisms and the Australian Minerals Industry: Second Discussion Paper.</i></p> <p>Kemp, D. (2010) <i>Project-Level Grievance Mechanisms: Learnings from the Minerals Industry.</i></p> <p>Kemp, D. and C. Bond (2009), <i>Mining Industry Perspectives on Handling Community Grievances: Summary and Analysis of Industry Interviews</i></p>	<p><a href="http://www.csrmm.uq.edu.au/docs/CSRM_%20minerals%20industry%20grievance%20discussion%20paper_FINAL.pdf">www.csrmm.uq.edu.au/docs/CSRM_%20minerals%20industry%20grievance%20discussion%20paper_FINAL.pdf</a></p> <p><a href="http://www.csrmm.uq.edu.au/docs/CSRM%20Community%20Complaints%20and%20Grievance%20Discussion%20Paper%202009%20_FINAL%20REPORT.pdf">www.csrmm.uq.edu.au/docs/CSRM%20Community%20Complaints%20and%20Grievance%20Discussion%20Paper%202009%20_FINAL%20REPORT.pdf</a></p> <p><a href="http://baseswiki.org/en/Learnings_from_the_Minerals_Industry">http://baseswiki.org/en/Learnings_from_the_Minerals_Industry</a></p> <p><a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/other_mining_industry_perspectives_on_handling_community_grievances.pdf">www.hks.harvard.edu/m-rcbg/CSRI/publications/other_mining_industry_perspectives_on_handling_community_grievances.pdf</a></p>
Other		Guide	<p>Zandvliet, L. and Anderson, M. (2009) <i>Getting It Rights: Making Corporate-Community Relations Work.</i> Greenleaf Publishing</p> <p>Business and Human Rights Initiative (2010) <i>How to Do Business with Respect for Human Rights: A Guidance Tool for Companies.</i> The Hague: Global Compact Network Netherlands</p>	<p><a href="http://www.greenleaf-publishing.com/productdetail.kmod?productid=2830">www.greenleaf-publishing.com/productdetail.kmod?productid=2830</a></p> <p><a href="http://www.gcnetherlands.nl/report_business_human_rights.htm">www.gcnetherlands.nl/report_business_human_rights.htm</a></p>

## APPENDIX B: EXTERNAL STANDARDS AND REQUIREMENTS FOR GRIEVANCE MECHANISMS (NON-EXHAUSTIVE), FROM CHAPTER 2, DAVID VERMIJS

STANDARD	REQUIREMENT FOR GRIEVANCE MECHANISMS	REVIEW/AUDIT
<b>Certification</b>		
Bonsucro	Principle 5.8 of the Production Standard requires the, '[e]xistence of a recognized grievance and dispute resolution mechanism for all stakeholders' <sup>145</sup>	Those wishing to become certified must become a member of Bonsucro and be subject to audits by Bonsucro accredited certification bodies <sup>146</sup>
ISO 14001	Certified organisations are required to have a communications channel for environmental concerns and incidents	Independent audit by ISO auditors
Forest Stewardship Council (FSC)	The FSC Principles and Criteria state that, '[a]ppropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights' (2.3), and '[a]ppropriate mechanisms shall be employed for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local peoples.' (4.5) (FSC,1996: 5)	Independent audit by FSC auditors
<b>Project finance</b>		
International Finance Corporation (IFC)	Performance Standard 1 requires that '[w]here there are Affected Communities, the client will establish a grievance mechanism to receive and facilitate resolution of Affected Communities' concerns and grievances about the client's environmental and social performance' <sup>147</sup>	IFC monitors compliance with the Performance Standards of projects in which it has a financial interest
Equator Principles	For high or medium impact projects and those in particular countries '... the borrower will, scaled to the risks and adverse impacts of the project, establish a grievance mechanism as part of the management system' <sup>148</sup>	Monitoring should either be carried out by an independent and external expert, or by the borrower and subsequently reviewed by an independent expert
European Bank for Reconstruction and Development (EBRD)	Clients are required to '...establish a grievance mechanism, process, or procedure to receive and facilitate resolution of stakeholders' concerns and grievances about the client's environmental and social performance' <sup>149</sup>	The EBRD monitors compliance with its 'Performance requirements' of projects in which it has a financial interest

145. Bonsucro (2011) Bonsucro Production Standard, Principle 5.8, p. 11. Available through: <http://bit.ly/Kz5VAI>

146. Bonsucro website. Frequently Asked Questions. Available through: [www.bonsucro.com/faqs\\_certification.html](http://www.bonsucro.com/faqs_certification.html)

147. International Finance Corporation, Performance Standards on Environmental and Social Sustainability, p. 9. Available through: <http://bit.ly/HEcTTq>

148. The Equator Principles (2006: 4). [http://equator-principles.com/resources/equator\\_principles.pdf](http://equator-principles.com/resources/equator_principles.pdf)

149. EBRD, Principle 10: Information and Stakeholder Engagement. Available through: [www.ebrd.com/downloads/about/sustainability/ESP\\_PR10\\_Eng.pdf](http://www.ebrd.com/downloads/about/sustainability/ESP_PR10_Eng.pdf), p. 72

## APPENDIX B: CONTINUED

STANDARD	REQUIREMENT FOR GRIEVANCE MECHANISMS	REVIEW/AUDIT
<b>Rankings</b>		
FTSE4Good	Encourages adoption of a human rights policy, including a grievance mechanism	Listed companies are reviewed semi-annually by a committee of experts
Dow Jones Sustainability Indexes	The presence of grievance mechanisms is one of the scoring criteria for stakeholder engagement	Listed companies are reviewed annually for inclusion in the index
<b>Other initiatives</b>		
United Nations Guiding Principles on Business and Human Rights	Guiding Principle 29 states that, 'business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted' (Ruggie, 2011: 25).	No separate review mechanism, but integrated into other initiatives (e.g. OECD Guidelines, ISO 26000)
Global Compact	Explanation of Principle 1 states that, '[a]nother key element of due diligence is having in place effective company-level grievance mechanisms so that employees, contractors, local communities and others can raise their concerns and have them be considered' <sup>150</sup>	Self-reporting through annual communication on progress
ISO 26000	[...] 'to discharge its responsibility to respect human rights, an organisation should establish a mechanism for those who believe their human rights have been abused to bring this to the attention of the organisation and seek redress'. <sup>151</sup> [...] 'An organisation should establish, or otherwise ensure the availability of, remedy mechanisms for its own use and that of its stakeholders'. <sup>152</sup>	ISO 26000 'provides guidance to users and is neither intended nor appropriate for certification purposes'. <sup>153</sup> (commercial agencies nevertheless offer assessments)
OECD Guidelines	'Enterprises should [...] [p]rovide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts'. <sup>154</sup> [...] operational-level grievance mechanisms for those potentially impacted by enterprises' activities can be an effective means of providing for such processes. <sup>155</sup>	Specific instances (ie. alleged infractions) can be submitted for review to National Contact Points.

150. Global Compact, The Ten Principles. Available through: <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle1.html>

151. ISO 26000 (first edition, 2010) Guidance on social responsibility, 6.3.6.1 (Description of the issue), p. 27.

152. Ibid, 6.3.6.2 (Related actions and expectations), p. 27.

153. Ibid, p. vii.

154. OECD Guidelines for Multinational Enterprises, IV. 6, (p. 29). Available through: [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)

155. Ibid, Commentary on Human Rights, p. 32.

## APPENDIX B: CONTINUED

STANDARD	REQUIREMENT FOR GRIEVANCE MECHANISMS	REVIEW/AUDIT
Global Reporting Initiative (GRI)	Companies reporting according to Guidelines version 3.1 should report the '[n]umber of grievances related to human rights filed, addressed, and resolved through formal grievance mechanisms, <sup>156</sup> and 'the percentage of operations with implemented local community engagement, impact assessments, and development programs including, but not limited to, the use of (...) [f]ormal local community grievance processes. <sup>157</sup>	Self-reporting with the possibility for a review by GRI (some companies obtain assurance by third-party accountancy firms).

156. Global Reporting Initiative, G3.1 Reporting Guidelines. Indicators Protocol Set Human Rights (HR), p. 13 (pdf page 149). Available through: <https://www.globalreporting.org/resourcelibrary/G3.1-Guidelines-Incl-Technical-Protocol.pdf>

157. Ibid, Indicators Protocol Set Society (SO), p. 3 (pdf page 154).

## APPENDIX C: SUMMARY OF KEY LEARNINGS WHEN TESTING THE PRINCIPLES FOR EFFECTIVE GRIEVANCE MECHANISMS BY TWO EXTRACTIVE COMPANIES, FROM CHAPTER 2, DAVID VERMIJS

The following table provides context-specific learning based on each of the projects described. Because the projects did not reach the monitoring and evaluation phase, some of the lessons learned could not yet be captured in the report (explaining why some of the cells are empty).<sup>158</sup> [Note that the pilot project included three other companies that were non-extractive, which provided equal input for updating the principles].

PRINCIPLE	DEFINITION (BEFORE PILOT PROJECT)	DEFINITION (AFTER PILOT PROJECT)	CARBONES DEL CERREJÓN (COLOMBIA)	SAKHALIN ENERGY INVESTMENT (RUSSIA)
<b>Legitimate</b>	Having a clear, transparent and sufficiently independent governance structure to ensure that no party to a particular grievance process can interfere with the fair conduct of that process	Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes	It is important to gain internal legitimacy for the grievance mechanism, even when it concerns grievances from external stakeholders. Involvement of internal stakeholders to ensure legitimacy of the grievance mechanism was not only important during the design phase, but equally important during the testing phase	Companies need to develop the means to know, as well as to show, that a grievance procedure has legitimacy in the eyes of its users as well as in the eyes of those that have not yet used it. More detailed testing of satisfaction levels in the handling of grievances (eg. through perception surveys) should be considered. The grievance procedures should be incorporated into the corporate governance and management systems along with explicit support from company leadership
<b>Accessible</b>	Being publicised to those who may wish to access it and providing adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal	Being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access	The case demonstrated the challenge of publicising the grievance mechanism, and of providing access points to people who traditionally convey information person to person and who live spread out over a vast geographical area. This highlights the importance of integrating the grievance mechanism into the wider engagement efforts	The company need to 'know and show' that grievance procedures are accessible (e.g. the company needs to be able to ascertain that a decline in grievances reflects 'success' rather than a lack in perceived access to, or legitimacy of, the procedure). Feedback from surveys shows the importance of using a specific means of communication for different population groups

158. By definition, summaries lose some of the nuance. For the full text of the report, see Rees *et al.* (2011).

## APPENDIX C: CONTINUED

PRINCIPLE	DEFINITION (BEFORE PILOT PROJECT)	DEFINITION (AFTER PILOT PROJECT)	CARBONES DEL CERREJÓN (COLOMBIA)	SAKHALIN ENERGY INVESTMENT (RUSSIA)
<b>Predictable</b>	Providing a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome	Providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation	There is a need to clarify expectations in a context of different indigenous and non-indigenous notions of timelines related to grievance handling	There is an also opportunity to explicitly include the steps available to complainants if they do not agree (or remain unsatisfied) with the company's response to their grievance
<b>Equitable</b>	Ensuring that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms	Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms	There is a challenge of determining the triggers for third-party involvement in the grievance resolution process When people feel they have no access to remedy in a way they perceive as fair and equitable, it increases the risk that they resort to actions that affect the production process	The mechanism's practical application requires an internal discussion of how far the company is prepared to go in proactively seeking to ensure that complainants have access to external expertise in a way that is integrated into the grievance procedure, and accessible when objective criteria are being met
<b>Rights-compatible</b>	Ensuring that its outcomes and remedies accord with internationally recognised human rights standards	Ensuring that outcomes and remedies accord with internationally recognised human rights	No key learnings in the report	No key learnings in the report
<b>Transparent</b>	Providing sufficient transparency of process and outcome to meet the public interest concerns at stake and presuming transparency wherever possible; non-state mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes	Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake	The roll-out of a grievance mechanism typically raises expectations that need to be dealt with It is important to first put in place key elements, such as roles and responsibilities to address complaints, before launching the grievance mechanism and raising expectations	Transparency regarding the status of grievances within the larger process is of utmost value to individuals. Feedback from complainants signals that they perceive that the company pursuing a transparent approach throughout the process demonstrates respect

## APPENDIX C: CONTINUED

PRINCIPLE	DEFINITION (BEFORE PILOT PROJECT)	DEFINITION (AFTER PILOT PROJECT)	CARBONES DEL CERREJÓN (COLOMBIA)	SAKHALIN ENERGY INVESTMENT (RUSSIA)
<b>Based on dialogue and engagement</b>	Focusing on processes of direct and/or mediated dialogue to seek agreed solutions, and leaving adjudication to independent third-party mechanisms, whether judicial or non-judicial	Consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances	A grievance mechanism can never be a substitute for genuine stakeholder engagement. Rather, it needs to be a complementary tool	Face-to-face dialogue between trained (community liaison officers) and complainants is in order to see beyond complainants' positions (what they say they want) and also to understand any underlying interests There is an opportunity to better explain to management and the users of the grievance mechanism the various ways by which third parties can be included in the resolution of grievances through alternative dispute resolution The mediation option should be disseminated more widely to the users of the grievance procedure so that they are aware of its existence and about the conditions under which this option can be activated
<b>A source of continuous learning</b>	New principle	Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms	No key learnings in the report	Although various good process and outcome (Key Performance Indicators) exist, it is important to include the users of the grievance procedure in the discussion around indicators that best allow the company to 'know and show' performance of the mechanism

## APPENDIX D: MECHANISM DESCRIPTIONS FROM CHAPTER 2, DAVID VERMIJS

*Publicly available examples of grievance mechanisms for company–community dispute resolution in the Oil and gas and mining industries. (NB: This overview of publicly available descriptions of company–community grievance mechanisms should be comprehensive but is not necessarily exhaustive).*

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
Adaro Energy Indonesia (Indonesia)	Mining	<a href="http://baseswiki.org/en/Adaro_Energy_Indonesia_Complaints_Mechanism">http://baseswiki.org/en/Adaro_Energy_Indonesia_Complaints_Mechanism</a>	Complaints can be submitted to the External Relations or CSR Divisions. The Division of External Relations has a leading role in implementing Standard Operating Procedures to respond to public complaints. It will try to find a response in cooperation with the company's technical teams implicated by the nature of the complaint. Appeals can be made which the company will seek to resolve first at the level of local government and then at higher levels of government. (Last updated: 29 April 2011)
Aneka Tambang (Persero) Tbk (Indonesia)	Mining	<a href="http://baseswiki.org/en/Aneka_Tambang_%28ANTAM%29_Complaints_Mechanism">http://baseswiki.org/en/Aneka_Tambang_%28ANTAM%29_Complaints_Mechanism</a>	The company uses various complaints mechanisms to address community grievances. The Corporate Social Responsibility, Environment and Post-Mining Committee addresses onsite complaints. The Committee ensures that social and environmental management programmes on the site fully comply with company standards and national regulations. Complaints can be brought to the company through weekly and annual stakeholder meetings, as well as in writing. Low-risk cases are resolved unilaterally by the company, whereas more complex cases may involve community hearings and third-party mediation or arbitration. The grievance mechanism does not provide for appeals. (Last updated: 29 April 2011)
Anglo American plc (Brazil, Canada, Chile, China, India, South Africa, UK)	Mining	ICMM, 2009: 15 <a href="http://baseswiki.org/en/Anglo_American,_Social_Impact_Management">http://baseswiki.org/en/Anglo_American,_Social_Impact_Management</a> <a href="http://www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/aa_social_way.pdf">www.angloamerican.com/~media/Files/A/Anglo-American-Plc/siteware/docs/aa_social_way.pdf</a> (p. 11)	<b>Social Management System Standards:</b> As part of the implementation of Social Management System Standards, Anglo American offers locally adapted, variable means of receiving complaints. Complaints are then investigated and usually resolved by managers, ensuring that no manager is both the alleged source and the sole arbiter. Complaints classified as 'Moderate' and 'Serious' must be reported to divisional management and Group Government and Social Affairs. When appeals to solutions are heard, independent third parties should sit on the panel hearing the appeal. (Last updated: 13 July 2010)

## APPENDIX D: CONTINUED

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
BP (BTC) (Azerbaijan, Georgia, Turkey)	Oil and Gas	<a href="http://baseswiki.org/en/BTC_Pipeline,_Construction_Phase_Complaints_(ended_in_2006),_Azerbaijan">http://baseswiki.org/en/BTC_Pipeline,_Construction_Phase_Complaints_(ended_in_2006),_Azerbaijan</a>	The mechanism, which covered specifically complaints related to the construction of the pipeline, expired with the end of the construction phase of the project in 2006. Grievances could be communicated verbally or in writing and were registered by community liaison officers. The officers would communicate the complaint to the relevant department of the company and fed back its proposed solution to the complainant. Should the complainant reject the proposed solution, the parties would meet face to face. If there was still no solution, the complaint would be arbitrated by an appointed local NGO, the Center for Legal and Economic Education, which would propose a solution. No further appeal was possible within this procedure. (Last updated: 8 June 2010)
BP (Tangguh LNG Project) (Papua Province, Indonesia)	Oil and Gas	<a href="http://www.bp.com/subSection.do?categoryId=9004754andcontentId=7008844">www.bp.com/subSection.do?categoryId=9004754andcontentId=7008844</a>	<b>Grievance Tracking and Resolution Mechanism:</b> Complaints can be submitted by members of communities affected by the project. Local village representatives, appointed by the company, accept and register complaints in written and oral form; complaints can also be submitted through trusted intermediaries from the villages. The Integrated Social Programme Field Office will receive the complaint and a field manager has responsibility for its resolution. Complaints will be investigated if deemed necessary. The company has established a time frame within which to resolve the complaint. In case of appeals to the solution by the complainant, the mechanism provides for the resolution of grievances via community and stakeholder meetings. The process provides for quarterly monitoring based on a summary of lodged grievances. (Published: July 2006)

## APPENDIX D: CONTINUED

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
Carbones del Cerrejón <sup>159</sup> (Guajira Department, Colombia)	Mining	<a href="http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf">www.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf</a>	All complaints are entered into and tracked through a database managed by the company's Complaints Office. The Office assigns complaints to the relevant departments. In total, there are three mechanisms: 1) The community grievance procedure housed in the Complaints office. The office is part of the Social Standards and international Engagement Department; 2) an employee related grievance procedure, which is owned by the Human Capital Department; and 3) a procedure for resettlement issues, owned by the Resettlement Group. Mechanisms 2) and 3) are linked to separate departments, which conduct their own investigations. Complaints are resolved at different levels of management depending on their level of complexity and perceived risk. (Last updated: 23 May 2011)
ExxonMobil (Chad-Cameroon pipeline project, Cameroon)	Oil and Gas	ICMM, 2009: 19 <a href="http://baseswiki.org/en/Exxon_Mobil,_Pipeline_Project,_Chad_%26_Cameroon_2000">http://baseswiki.org/en/Exxon_Mobil,_Pipeline_Project,_Chad_%26_Cameroon_2000</a>	'ExxonMobil established a multi-party commission to establish eligibility for land compensation and address concerns and grievances relating to the company's acquisition of land (...) The commission was formed at an early stage in anticipation of potentially conflicting demands due to a complex land-use system in Cameroon that 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 it 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 non-compliance, 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.' (Last updated 30 August 2011)

159. Joint venture of Anglo American, BHP Biliton, and Xstrata.

## APPENDIX D: CONTINUED

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
Freeport-McMoRan Copper and Gold Inc (Indonesia)	Mining	<a href="http://baseswiki.org/en/Freeport-McMoRan_Copper_%26_Gold_Inc._Complaints_Mechanism,_Indonesia">http://baseswiki.org/en/Freeport-McMoRan_Copper_%26_Gold_Inc._Complaints_Mechanism,_Indonesia</a>	In 2009 the company established an online Incident Management System (IMS) for all of its sites to handle grievances. This system coordinates how the company manages grievances internally. Handling of grievances is prioritised according to their impact on the community. The company accepts all grievances brought to it through any means. The company has community liaison officers who may also receive complaints. After receipt, the company will conduct an investigation, interviews, and collecting of information to determine if there is a grievance that the company is in a position to resolve. High impact grievances go to senior management in 24 hours. Under new procedures each site will get a community grievance officer responsible for managing the IMS. (Last updated: 29 April 2011)
Marcobre S.A.C. (Peru)	Mining	<a href="http://baseswiki.org/en/Inquiries_and_Grievance_Procedure,_Marcona_Copper_Property,_Marcobre_SAC,_Peru">http://baseswiki.org/en/Inquiries_and_Grievance_Procedure,_Marcona_Copper_Property,_Marcobre_SAC,_Peru</a>	A grievance can be submitted through the office, by phone, through the web form or by email. If a grievance is deemed invalid the party will be informed and the reasons for the decisions will be communicated. If it is deemed valid the company will respond to the grievance within 15 working days by informing the party concerned of the results of the analysis and the resolution, and indicating the procedures to be followed and the estimated time it will take to complete the process. The party concerned can then accept or reject Marcobre's response. If the resolution is accepted an official agreement will be prepared advising that all parties have reached an agreement. If the party reject the resolution, this will be documented on the form, including the reasons for the rejection. If a resolution is not accepted the party can file a duly supported application for review by the general manager who will respond within 15 working days. If a grievance is deemed invalid the same procedure can be followed. (Last updated: 20 May 2010)

## APPENDIX D: CONTINUED

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
MRL Gold Philippines Inc (Philippines)	Mining	<a href="http://baseswiki.org/en/MRL_Gold_Philippines_Inc_Complaints_Mechanism">http://baseswiki.org/en/MRL_Gold_Philippines_Inc_Complaints_Mechanism</a>	<p>Currently in its exploration stage, MRL established a grievance mechanism to address complaints in gold mining in Batangas. Complaints (usually on land rights and property or where exploration activities become intrusive) are handled by the locally operated Community Relations and Development team, who live among the community to facilitate resolution through direct negotiation. There are two channels in which the company is accessed – information, communication, and education campaigns (ICEs) that link the company and the community, and the Community Technical Working Groups (CTWGs) to monitor this procedure and the performance of the company. <i>Bangaray</i> (village) councils are used for labour disputes. According to the company, the informal grievance system via the CTWGs is working well, resulting in resolved issues involving private land access and labour. As activities intensify, e.g. if the company goes into development stage, or even at the production stage, a formal grievance system has to be set up. (Last updated: 29 April 2011)</p>
Newmont Mining Corporation (Batu Hijau, Indonesia)	Mining	ICMM, 2009: 18	<p>'The mechanism comprises an internally-focused resolution process but also (...) various third party elements. [...] [C]omplaints 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'</p>

## APPENDIX D: CONTINUED

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
Newmont Mining Corporation (Ahafo and Akyem, South, Ghana)	Mining	ICMM, 2009: 16 Kemp and Gotzmann, 2009: 30 (specifically addresses Akyem) <a href="http://baseswiki.org/en/Ahafo_South_Project,_Newmont_Mining_Corporation,_Ghana">http://baseswiki.org/en/Ahafo_South_Project,_Newmont_Mining_Corporation,_Ghana</a>	This description concerns specifically the Ahafo South Project in Ghana. Admissible complaints are limited to resettlement and compensation issues linked to the project. Informal complaints are resolved through discussion between affected individuals and members of the External Affairs team. If the aggrieved individual or community is dissatisfied or the case very complex, the formal resolution process may be used. It consists of three stages or 'orders'. Complaints within the first order mechanism are resolved by the External Affairs team or another appropriate department. Complaints under the second order are usually of a more complex nature and involve traditional authorities and the company's Resettlement Negotiation Committee in its resolution. The third order involves the national courts. (Last updated: 9 June 2010)
Oceana Gold Philippines, Inc (Philippines)	Mining	ICMM, 2009: 17 <a href="http://baseswiki.org/en/OceanaGold_Philippines,_Inc_Complaints_Mechanism">http://baseswiki.org/en/OceanaGold_Philippines,_Inc_Complaints_Mechanism</a>	The grievance process is largely handled informally and locally. Grievances are usually received and handled by the Community Relations Department. The Department aims to resolve the complaints in direct negotiations with the complainants. In doing so, it may also use the local indigenous justice system of the <i>barangay</i> communities. The company also uses irregular and informal meetings with local communities to learn of grievances. At times, the company suggests to complainants to direct grievances to government Administrative Boards responsible for issues ranging from the environment to indigenous issues. The company does not keep an official record of lodged and resolved grievances. (Last updated: 29 April 2011)
Philex Mining Corporation (Philippines)	Mining	<a href="http://baseswiki.org/en/Philex_Mining_Corporation_Complaints_Mechanism">http://baseswiki.org/en/Philex_Mining_Corporation_Complaints_Mechanism</a>	The company has different grievance procedures for its mining sites. Complainants may typically approach community relations officers living in local communities. Complaints are first negotiated directly with coordination by the Community Relations Department, and decided on a case-by-case basis. If a complainant is unsatisfied with the outcome, other parties may be involved to help in negotiations, such as working groups or multistakeholder monitoring teams, which can be composed of national government agencies, local governments, sectoral groups and company representatives. (Last updated: 28 April 2011)

## APPENDIX D: CONTINUED

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
Philippine Mining Development Corporation (Philippines)	Mining	<a href="http://baseswiki.org/en/Philippine_Mining_Development_Corporation_(PMDC)_Complaints_Mechanism">http://baseswiki.org/en/Philippine_Mining_Development_Corporation_(PMDC)_Complaints_Mechanism</a>	The company has preferred to settle grievances using out of court mechanisms. To file their grievances, complainants may approach the company's project officer or National Administrative Boards to resolve complaints concerning different issues: 1) the Department of Environment and Natural Resources for environmental complaints, 2) the National Commission on Indigenous Peoples for complaints by indigenous peoples and concerning conflicts between indigenous peoples, 3) the Mines Adjudication Board for complaints involving small-scale miners, and 4) the National Mediation and Conciliation Board for complaints concerning labour issues. (Last updated: 28 April 2011)
Rio Tinto (Aluminium Weipa) (Australia)	Mining	Kemp and Gotzmann, 2009: 42–46	<b>Community Feedback Procedure:</b> Since 2007, the company's Community Relations Department is responsible for this onsite grievance mechanism. Any feedback, including complaints, can be submitted by phone or in person. It is relayed to and recorded by the Community Relations Department. The Department 'facilitates' the complaint but it should be resolved by the work area owner and the relevant department. High impact cases will be reported immediately. Action to investigate and resolve the complaint will only be taken on 'community incidents', where a Community Relations manager will be involved if it concerns an incident that is classified as serious. Incidents are also entered into the company's HSE system. The complaint will be processed confidentially and the complainant can track the case. (Published: June 2009)
Sakhalin Energy Investment Corporation Ltd. (Sakhalin II Project) (Sakhalin, Russian Federation)	Oil and Gas	<a href="http://www.sakhalinenergy.ru/en/documents/PCDP_2011_26_05_11.pdf">www.sakhalinenergy.ru/en/documents/PCDP_2011_26_05_11.pdf</a> <a href="http://baseswiki.org/en/Sakhalin_Energy,_Sakhalin_II_Project,_Russia">http://baseswiki.org/en/Sakhalin_Energy,_Sakhalin_II_Project,_Russia</a> Rees <i>et al.</i> (2011): 54-62.	The grievance mechanism consists of three procedures that merged into one in 2005: 1) community grievance procedure, coordinated by the Sakhalin Energy Grievance Officer and managed within the Department of External Affairs, 2) employee grievance procedure, managed within the Human Resources Department, and 3) whistleblowing procedure, managed within the Audit Department. Anyone may file a complaint, and all complaints are entered into a database and details of complaints under procedures 1) and 2) are communicated to the whistleblowing team. Senior management is involved through the Business Integrity Committee. The procedure was externally monitored on a periodic basis by senior lenders to the project. (Last updated: 2 April 2010)

## APPENDIX D: CONTINUED

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
Sakhalin Energy Investment Corporation Ltd. (Sakhalin II Project) (Sakhalin, Russian Federation)	Oil and Gas	<a href="http://www.sakhalinenergy.ru/en/documents/SIMDP_2_eng.pdf">www.sakhalinenergy.ru/en/documents/SIMDP_2_eng.pdf</a>	Within its community grievance procedure structure (see previous), Sakhalin Energy has a specific grievance procedures related to the implementation of the Second Sakhalin Indigenous Minorities Development Plan, a programme of sustainable development activities to benefit the indigenous minority peoples (i.e. livelihoods, participation, avoiding adverse impacts). Complaints can be submitted in many different ways (community liaison officer, mail, email, phone, website). The receipt of a complaint will be acknowledged. It will be investigated and responsibility for its resolution will be assigned internally. Sakhalin Energy will propose a solution, which can be rejected by the complainant. The Compliance Department monitors the resolution of grievances. Proposed solutions must be approved by senior management. (Published: December 2010)
TVI Resource Development Inc (Philippines)	Mining	<a href="http://baseswiki.org/en/TVI_Resource_Development_Inc._%28TVIRD%29_Complaints_Mechanism">http://baseswiki.org/en/TVI_Resource_Development_Inc._%28TVIRD%29_Complaints_Mechanism</a>	<b>Gukom:</b> In response to existing grievances, TVIR adopted a community-based grievance mechanism. Grievances are addressed first via Community Relations Department-led Information-Education-Communication (IEC) campaigns that advertise company operations and provide resource assistance to the community. Complaints are heard at Tribal Council meetings in the presence of a company representative, using a tribal court procedure called <i>gukom</i> . The Community Relations and Development Office will then act on the complaint and present solutions at the next Tribal Council meeting. Depending on the issue, independent third parties may be asked to join the company in explaining the company's conduct. The outcomes are then communicated to the community and remedies will be provided. TVIR strives to address personal and community grievances separately. (Last updated: 28 April 2011)

## APPENDIX D: CONTINUED

COMPANY (LOCATION)	INDUSTRY	LINK/SOURCE (SEE ALSO REFERENCE LIST AT THE END OF CHAPTER 2).	SHORT SUMMARY
Xstrata plc (Las Bambas) (Peru)	Mining	Rees and Vermijs, 2008: 19-21 <a href="http://baseswiki.org/en/Xstrata_Copper,_Peru">http://baseswiki.org/en/Xstrata_Copper,_Peru</a>	Only interested parties may file a complaint with Xstrata. Complaints are received by the Coordination Office, which is responsible for informing the complainant about the process. The Office appoints investigators to verify evidence submitted in support of the claim. Complainants can appeal decisions and proposed solutions and may proceed through three levels called 'instances.' Each instance may lead to a renewed investigation and a new proposed solution. In the third instance, Xstrata appoints three arbitrators to a temporary Arbitration Court which then propose a final solution that may be rejected by the complainant, but not appealed. Outcomes of complaints are monitored by a multistakeholder Monitoring Committee, consisting of community and company representatives. (Last updated: 2 April 2010)
Xstrata plc (Tintaya) (Peru)	Mining	ICMM, 2009: 19; Hill, 2010 <a href="http://baseswiki.org/en/Video/Tintaya_Dialogue">http://baseswiki.org/en/Video/Tintaya_Dialogue</a> <a href="http://baseswiki.org/en/BHP_Billiton_%26_Xstrata,_Tintaya_Mine,_'Mesa_de_Diálogo'_–_Dialogue_Table,_Peru_2004">http://baseswiki.org/en/BHP_Billiton_%26_Xstrata,_Tintaya_Mine,_'Mesa_de_Diálogo'_–_Dialogue_Table,_Peru_2004</a>	<b>Mesa de Diálogo (Dialogue Table):</b> Local community members, local NGOs, Oxfam Australia and Oxfam America and the mine owner/operator – initially BHP Billiton and then Xstrata – established the 'Mesa de Diálogo' (Dialogue Table) where representatives from local communities, non-government organisations and the mining company work collaboratively to resolve issues raised by the community. Using an independent facilitator who understands local differences, the grievance mechanism provides community capacity to negotiate at multiple levels (local, national, international). (Last updated: 20 November 2011)

# DISPUTE OR DIALOGUE?

## COMMUNITY PERSPECTIVES ON COMPANY-LED GRIEVANCE MECHANISMS

This book explores the use and impact of company–community grievance mechanisms in the oil and gas, forestry, and mining sectors. Following the work of the UN Special Representative on Business and Human Rights, Professor John Ruggie, there has been a surge of interest in company–community grievance mechanisms as a way to address and resolve human rights issues. Having identified a lack of material on the community perspectives of company-led grievance mechanisms – their effectiveness and impact on sustainable development and livelihoods locally – IIED sought to address this by undertaking and commissioning the research in this book.

The book provides an overview of recent trends in the design and use of grievance mechanisms and explores drivers for their use. It considers in detail the effectiveness of company-led grievance mechanisms related to the Sakhalin-2 oil and gas project in the Russian Far East; the Baku–Tbilisi–Ceyhan pipeline in Azerbaijan; the operations of Congolaise Industrielle des Bois in

the Congo Basin; and, in the mining sector, those of Anglo American (global), TVIRD in the Philippines and Kaltim Prima Coal in Indonesia.

The book's findings demonstrate the importance of having an open and responsive overall approach to stakeholder engagement within which a grievance mechanism can sit. It offers examples of effective approaches for enhancing dialogue – from civil society capacity building to engagement designed around traditional decision-making processes. The book also offers a number of specific recommendations on how grievance mechanisms can be designed and implemented to better meet the needs of communities and to avoid the risk and costs of community disputes for business. Innovations in implementation range from electronic systems for logging and monitoring grievances, to mechanisms designed to work with and build on indigenous community decision-making structures. The book will be of interest to businesses, civil society and governments alike.



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