



Community–company grievance resolution:
A guide for the Australian mining industry

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Front cover: Elizabeth from Oriopetana and her daughter Celeste and niece Antoinette stand next to the water tank installed near her home. They live downstream from the Tolukuma Gold Mine in Papua New Guinea. The mine discharges waste into local rivers and as a result the river water cannot be used. This tank was installed after the community and company came together to remedy community grievances. “My children are healthy now that they have access to clean water. In the past my children suffered from typhoid and diarrhoea but not any more”, said Elizabeth. Photo: Christina Hill/OxfamAUS.

Back cover: Members from neighbouring Espinar communities participate in the Dialogue Table with senior executives from Xstrata Tintaya, Peru. Photo: Shanta Martin/OxfamAUS.

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Forward

Australian mining companies operating overseas face challenges in relation to human rights, especially those that operate in conflict and post-conflict zones, and where governance is weak. This report describes the role effective grievance mechanisms can play in dealing with those challenges, and in establishing and maintaining good corporate–community relationships.

The report provides key principles, case studies and other resources to assist mining companies to design and implement effective, human rights-compatible grievance mechanisms. Oxfam Australia hopes it will provide guidance for mining companies as they develop their own company-level grievance mechanism, or strengthen or formalise existing processes and ways of working. This report focuses on mining; however, the resources it contains are equally applicable to other large-scale projects, including dams and agribusiness development.

Oxfam Australia encourages the informed and meaningful participation of women and men from mine-affected communities in the design and operation of local-level grievance mechanisms. However, Oxfam Australia recognises that the resources sector is complex, and that not all mine-affected communities and individuals will want to participate in company grievance resolution processes. Further, there are some circumstances where a mediated outcome is neither appropriate nor satisfactory. In these situations, grievances and conflict may be better addressed through an independent third-party mechanism with the authority to enforce remedies.



Community members participating in a community mapping exercise as part of the Tolukuma water supply project. Photo: Shanta Martin/OxfamAUS.

About Oxfam Australia

Oxfam Australia is an independent, non-government aid and development agency and a member of the Oxfam International confederation. For more than 50 years it has been a vehicle for Australians to help others to build a fairer and more sustainable world by fighting global poverty and injustice. The agency undertakes long-term development projects, provides humanitarian responses during disaster and conflict, and advocates for policy and practice changes that promote human rights and justice.

Oxfam Australia takes a rights-based approach to its work. This reflects the view that poverty and suffering are primarily caused and perpetuated by injustice between and within nations, resulting in the exploitation and oppression of vulnerable people. Poverty and suffering are neither natural nor inevitable, but result from systems based on injustice, inequality and discrimination, and from the violation of human rights by those with greater access to power.

The agency believes that mining must be done in accordance with rights recognised under the international human rights system, including the right of local communities to determine the development of their resources and livelihoods, and of Indigenous Peoples give or withhold free, prior and informed consent to mining activities.

Oxfam Australia believes that private sector investment is an important driver of economic growth and poverty reduction, provided appropriate regulations and controls are in place. However, without adherence to human rights standards, mining can cause loss of land and livelihoods, degradation of land and waterways, and increased violence and conflict. The most marginalised members of communities – such as women, children and Indigenous Peoples – tend to both be excluded from the economic benefits of mining, and to bear the brunt of any negative social and environmental impacts.

Oxfam Australia speaks in its own voice. It does not assume a mandate to speak on behalf of others, but aims to facilitate local and Indigenous communities to speak for themselves.

For more information please visit www.oxfam.org.au/explore/mining

1. Why grievance mechanisms?

For people to realise their human rights, it is essential that they have access to remedies when their rights are abused. The United Nations Special Representative to the Secretary-General on Business and Human Rights, Professor John Ruggie¹, has identified access to remedies as a key part of a framework to ensure protection of people and communities against corporate-related human rights abuse.

This framework,² referred to as the “UN Protect, Respect and Remedy Framework”, comprises three core principles:

- the state duty to protect against human rights abuses by third parties, including business
- the corporate responsibility to respect human rights, or to “do no harm”, and
- the need for more effective access to remedies for victims of corporate abuses.

The framework has been widely endorsed by governments, civil society and business, including the International Council on Mining and Metals.³

Access to remedies is important to both state and corporate responsibilities in relation to human rights. Remedies include judicial and non-judicial mechanisms, and company and state-based mechanisms such as the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises.

Oxfam Australia believes that the Australian Government has a role to play here, providing communities and individuals who may be affected by the operations of Australian companies overseas with access to an Australian-supported, independent third-party grievance mechanism, when company-level mechanisms either don't exist or fail to deliver a satisfactory outcome.

Business can fulfil its responsibility to respect human rights – that is, to do no harm – by ensuring that communities affected by its operations have access to remedies through a company-level grievance

mechanism. People who believe they have been harmed by a company's practices can use the mechanism to bring this to the company's attention and work towards a solution.

An 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.⁴ A company-level grievance mechanism can help identify, mitigate, and possibly resolve grievances before they escalate and greater harm is done.⁵

Grievances can and should be expected to arise where a company's activities have a complex set of impacts on the communities in which it is operating.⁶ In the case of mining, conflict is a foreseeable – and to some extent unavoidable – outcome of the complex interplays and rapid change brought about by mineral development.⁷ A recent global survey of alleged corporate-related human rights abuse shows that 28 percent of complaints⁸ related to extractives (including oil and gas), the worst of any sector (see *Box 2, Community grievances against mining operations* for some examples). Not all mining activities will cause human rights abuse; however, mining companies need a robust process to ensure that no harm is done. A rights-compatible, company-level grievance mechanism is part of the necessary due diligence process.

GETTING STARTED: FORMALISING DISPUTE RESOLUTION

PROCESSES AT SITE LEVEL

Research by the Centre for Social Responsibility in Mining at the University of Queensland⁹ shows that while the industry is increasingly better attuned to the need to establish trusting company–community relationships and to manage conflict, most companies have only informal processes for handling community complaints and grievances. Many have a robust process for registering complaints, but lack a comprehensive and consistent process for resolving them.

Operations with informal or partial complaints and grievance-handling processes may wonder whether they need to improve their current approach. Answering the following questions may provide some guidance:

1. Does the site have preventative measures to reduce the likelihood of company–community conflict (such as an inclusive and proactive engagement program) and methodologies for understanding community impacts and perspectives (such as social impact assessments and management plans)?
2. Is there a dedicated process for handling complaints and grievances?
3. Are all elements of the dispute resolution process formally documented? These might include criteria for admissibility, timelines for resolution, investigation processes including joint company and community fact-finding, protocols for communicating with complainant(s), close-out and follow-up procedures, commitments to reporting and communication.
4. Does the process reflect local preferences for dispute resolution? For example, have local communities been consulted in relation to its design?
5. Are all groups within the community aware of the process and able to access it?

6. Does the process have senior management support, and does management invest in building staff competencies in grievance handling, mediation and conflict resolution?
7. Are all departments within the operation aware of the process, and actively involved in using it?
8. When serious complaints or grievances arise, is there a process for seeking to understand contributing factors, both internal (how the operation and its actions may have contributed) and external (factors beyond the control of the operation)?
9. Does the site involve the community in finding collaborative solutions?
10. If the operation is unable to resolve the issue, is there another trusted mechanism or process that disputing parties can turn to, and does the site make this known to complainants?

A ‘no’ answer to any of the above indicates that improvement is needed.

The guides and materials listed in this publication provide comprehensive information for existing operations and start-up projects to design and implement a company-level grievance mechanism and site-level dispute resolution processes.

Box 1: A DEFINITION OF A COMPANY- LEVEL GRIEVANCE MECHANISM

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.¹⁰

Box 2: COMMUNITY GRIEVANCES AGAINST MINING OPERATIONS

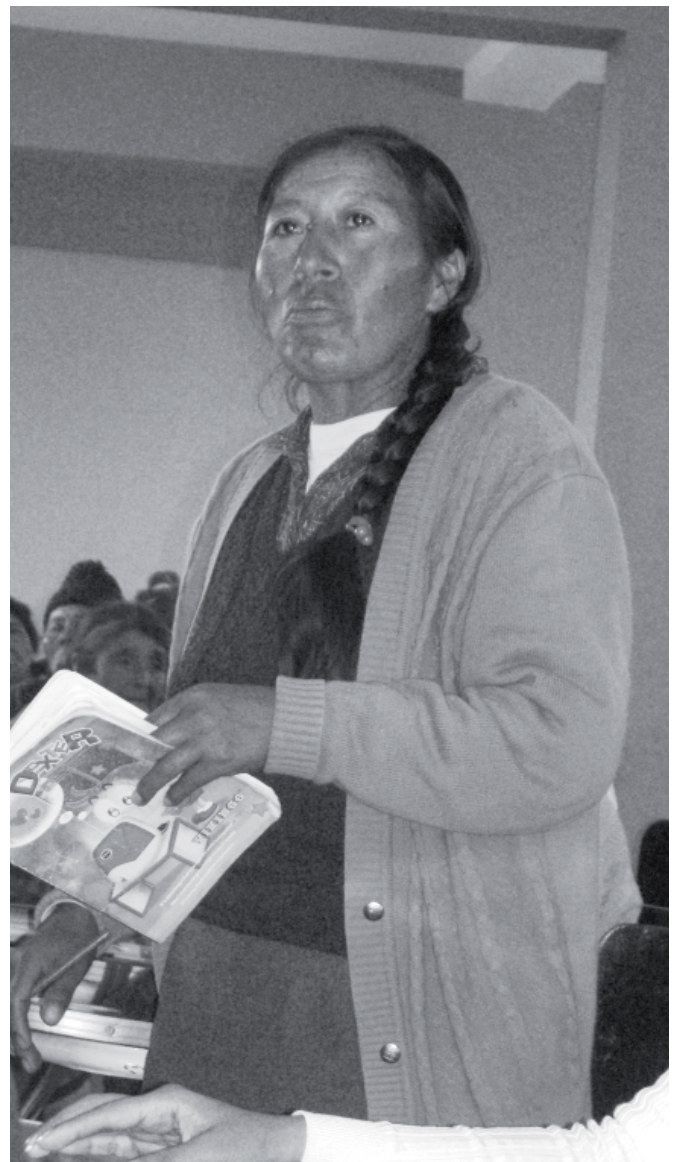
Grievances commonly expressed by communities impacted by mining activities include:¹¹

- inadequate consultation and negotiation with local people, including women and Indigenous Peoples
- little disclosure about proposed mining activities
- forced evictions
- damage to homes
- adverse health and social impacts
- harassment of community members and retaliation against anti-mine protesters
- adverse environmental and related livelihood impacts
- adverse impacts on water supply quality and quantity, and pollution of land, and
- poor management of hazardous waste and inadequate emergency response procedures.

Other emerging issues for the industry include the need to obtain the free prior and informed consent of Indigenous Peoples, revenue transparency and benefit-sharing. These have the potential to be sources of community concern, and may trigger community–company conflict if not adequately addressed in company policy and practice.

Company-level grievance mechanisms can not only contribute to the corporate responsibility to respect human rights; they can also reduce business risk, by helping to mitigate potential negative impacts of mining operations, reduce associated conflict and improve relationships with nearby communities. A grievance mechanism can help a company by “provid[ing] an avenue for building relationships and dialogue, which are critical elements of a social licence to operate”.¹²

However, such a mechanism is only one aspect of the corporate responsibility to respect human rights. Competent governance for mining companies must also include employing human rights due diligence processes. This must include: having a human rights policy, undertaking human rights impact assessments, integrating human rights throughout the company, and tracking and reporting on performance in relation to human rights¹³. The ultimate aim is to become aware of, prevent and remedy adverse human rights impacts.



Community member Dora Usca presents her views at the Tintaya Dialogue Table, Peru. Photo: Shanta Martin/OxfamAUS.

2. Company level grievance mechanisms: emerging guidance and best practice

Some Australian mining companies are beginning to develop local-level or operations-based grievance mechanisms. They incorporate it as a requirement in their corporate policies related to human rights and working with communities.

The next sections of the report include key principles, case studies, guides and other resources relevant to the design and implementation of effective rights-compatible grievance mechanisms. They provide guidance for mining companies seeking to develop their own company-level grievance mechanism, or to strengthen or formalise existing processes and ways of working.

2.1 GUIDING PRINCIPLES

The most important principle that should guide the design and implementation of a company-level grievance mechanism is that it should be human rights-compatible. This is the case regardless of whether a grievance itself has a human rights dimension. A rights-compatible mechanism is based on inclusion, participation, empowerment, transparency and attention to vulnerable people.¹⁴ However, being rights-compatible is not just about process. Many grievances do have a human rights component¹⁵ and direct impacts on livelihoods and wellbeing. Outcomes and remedies should be consistent with internationally recognised human rights standards.

The UN Special Representative to the Secretary-General on Business and Human Rights, Professor John Ruggie, has drawn attention to a set of six principles¹⁶ to guide the development of rights-compatible, credible and effective grievance mechanisms. Mechanisms must be:

1. **Legitimate:** a mechanism must have clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process;

2. **Accessible:** a mechanism must be publicised to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal;
3. **Predictable:** a mechanism must provide 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;
4. **Equitable:** a mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance resolution process on fair and equitable terms;
5. **Rights-compatible:** a mechanism must ensure that its outcomes and remedies accord with internationally recognised human rights standards;
6. **Transparent:** a mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible; non-state mechanisms in particular should be transparent about the receipt of complaints and the key elements of their outcomes.

All of these principles are important. However, companies should pay particular attention to ensuring mechanisms are equitable, as few communities will have the information, advice, support and training needed to engage effectively with a company to

identify sustainable, rights-compatible solutions to their grievances. By working to make their mechanism equitable, a company can be more confident that the resolution of a dispute will hold because the community will have had access to and understood the relevant information.

Company-level grievance mechanisms should also be based on engagement, dialogue and mediation.¹⁷ Mechanisms should focus on engagement and dialogue between the parties, aiming to both identify solutions that are acceptable to all, and to redress imbalances in power, knowledge and influence between the company and potential complainants,

to enable informed dialogue, a shared responsibility for outcomes, and a process based on respect.¹⁸

This approach also reduces the risk that a company will find itself accused of acting as both “judge and jury”, because the community is actively engaged in identifying solutions alongside company staff. This approach may also guard against less genuine complaints, simply because the complainant and company must both invest time in reaching a solution together.

Finally, companies should work with communities to design the mechanism. This will help ensure the mechanism is legitimate and culturally appropriate.

Table 1: Company-level grievance mechanisms – key resources

Author	Guide	Overview
International Council on Mining and Metals, October 2009	<i>Human Rights in the Mining & Metals Industry: Handling and Resolving Local Level Concerns & Grievances</i> www.icmm.com/page/15822/icmm-presents-new-guidance-note-on-handling-and-resolving-local-level-concerns-and-grievances	This document – written by and for the mining industry – describes key design principles and gives detailed guidance around design of a local-level grievance mechanism. It provides particularly good guidance to ensure that local-level mechanisms are strong on legitimacy, accessibility, predictability and transparency.
Centre for Social Responsibility in Mining, University of Queensland, April 2009	<i>Mining Industry Perspectives on Handling Community Grievances – Summary and Analysis of Industry Interviews</i> www.csr.m.uq.edu.au/docs/Mining%20industry%20perspectives%20on%20handling%20community%20grievances.pdf	While not a guide as such, research undertaken by the University of Queensland has resulted in the identification of key “enablers and obstacles” to responsible grievance handling, reflecting the perspectives of mining company staff in relation to practical strategies, solutions and lessons learned from past mistakes. These key enablers and obstacles are reproduced in full in <i>Appendix A</i> of this document.
The Office of the Compliance Advisor/Ombudsman for the International Finance Corporation and Multilateral Investment Guarantee Agency, June 2008	<i>A Guide to Designing and Implementing Grievance Mechanisms for Development Projects</i> www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf	This guide emphasises the importance of engagement and dialogue, and the inclusion and participation of communities in the design and operation of grievance mechanisms. It also highlights the role that third parties can play in helping to resolve grievances at the local level.
Corporate Social Responsibility Initiative, Harvard University, January 2008	<i>Rights-Compatible Grievance Mechanisms – A Guidance Tool for Companies and their Stakeholders</i> www.reports-and-materials.org/Grievance-mechanisms-principles-Jan-2008.pdf	This guide elaborates on the principles described above and provides concrete direction to companies on ensuring that these principles are reflected in the design and operation of a grievance mechanism.



Community discussion of environmental and social impacts at the Tintaya Mine, Espinar Province, Peru, 2006. Photo courtesy of David Atkins.

2.2 KEY GUIDES

Table 1 provides an overview of four key guides to designing and implementing effective and rights-compatible company-level grievance mechanisms. The list is not exhaustive, but includes material particularly relevant to the mining industry. Each guide has its strengths; we recommend that mining company staff consider the information and guidance each provides.

A range of pilot projects and case studies now available (or in development) offer additional guidance, including:

- The Oxfam Australia Tintaya and Tolukuma case studies (see the following section). These case studies review two grievance resolution processes facilitated by Oxfam Australia, reflecting on lessons learned and success factors.
- BASESwiki (Business and Society Exploring Solutions), a project which aims to advance learning about non-judicial grievance mechanisms: www.baseswiki.org/en

- Assessment of two local-level grievance mechanisms against the above principles – Newmont Mining’s Ahafo mine in Ghana, and Rio Tinto’s Weipa mine in Queensland, Australia – as part of a discussion paper commissioned by the Minerals Council of Australia.¹⁹
- A pilot project to test the principles described above for non-judicial, company-level grievance mechanisms,²⁰ including the Anglo American, BHP Billiton and Xstrata Cerrejon mine in Colombia.

All of these resources – the principles for designing effective rights-compatible grievance mechanisms, guides, pilot projects, case studies and lessons learned – form part of an emerging body of work in this area. It can help mining companies develop their own mechanism or strengthen existing processes, and can assist mining company staff to build their skills and capacities, and to implement company commitments to improving grievance handling.

3. Oxfam case studies: local-level grievance resolution processes

This section describes two former Oxfam Australia Mining Ombudsman²¹ cases that have made progress towards resolving community grievances. The grievance resolution processes used in each have been reviewed, highlighting lessons learned and success factors, which we outline below.

These cases demonstrate the value of prioritising dialogue between communities and companies, even where there has been a long history of dispute. In each case, grievance resolution processes were established after communities had escalated their grievances and invited third parties to intervene, due to an initial lack of response by the companies involved.

The case of the Tintaya mine in Peru demonstrates a successful dialogue process that has brought aggrieved community members and the company together, on an ongoing basis, to resolve community grievances. The case of the Tolukuma Gold Mine in Papua New Guinea illustrates how a company can begin to address community grievances, and describes tangible outcomes for these communities.

3.1 TINTAYA “MESA DE DIÀLOGO” – DIALOGUE TABLE

Background

There has been a long history of community complaints against the owners of the Tintaya mine in Peru. In the 1980s, the Peruvian Government took more than 2,000 hectares of land to develop the Tintaya open-pit copper mine in the high Andes region, displacing hundreds of people. The mine was subsequently privatised; at one stage it was owned by BHP Billiton, and it is now owned by Xstrata.

People affected by this mine allege that the government failed to gain their informed consent for taking the land or to adequately compensate them. Some have reported that they were forcibly evicted and threatened with violence by mine security. Others have reported

that water and air pollution from the mine and tailings dam has caused death or illness in their animals, affected their own health, and led to loss of traditional livelihoods due to loss of land. Some of these problems continued after the mine’s sale to BHP Billiton.²²

Oxfam Australia became involved at the request of affected communities through the Mining Ombudsman project in early 2000. This reflected a frustration felt by affected communities that the company did not take their grievances seriously. Oxfam Australia and others facilitated the establishment of the “Mesa de Diálogo” (Dialogue Table), where representatives from local communities, non-government organisations and the mining company (then BHP Billiton) worked collaboratively to resolve issues raised by the community.

Sub-groups, or Commissions, were established under the Dialogue Table to focus on specific issues relating to land, sustainable development, human rights abuses and the environment. Each Commission comprises delegates from communities affected by the mine, company representatives and members of NGOs who assist with the negotiation and discussion process. In 2004, all stakeholders signed an agreement to maintain the Dialogue Table as a permanent mechanism through which solutions to any conflict or problems will be sought,²³ ensuring a predictable and legitimate process. Xstrata, the current mine owner, remains committed to the Dialogue Table.²⁴

The Dialogue Table process is an example of a community–company grievance mechanism that has resolved the substance of many community grievances, including those with a human rights dimension.

Lessons learned and success factors

An earlier review of the Dialogue Table by Oxfam Australia highlighted some key factors in the success of the Dialogue Table as a mechanism to resolve community grievances, which follow.

Community capacity

Initially, communities were unfamiliar with the process of negotiation, and with the cultures of other parties involved in the Dialogue Table. Some community members lacked the capacity to effectively participate on fair and equitable terms. They also had an expectation that various support organisations would always “side with them”, rather than acting as independent parties assisting the communities and company to reach a resolution. To address this



Women from mine-affected communities at the annual conference of CONACAMI, a membership-based NGO in Peru. CONACAMI has provided training and support to community members to help them participate fully in the Tintaya Dialogue Table process. Photo: Shanta Martin/OxfamAUS.

problem, community representatives were trained in dispute resolution skills.

Support was provided to community members by third parties, including Oxfam America’s Regional Office in Peru and Peruvian NGOs CONACAMI and Cooperación. They provided capacity building, technical and financial support, information and skills training. Particular attention was paid to the role of women in community decision-making, including skills training that ensured the process was inclusive and empowering, and resulted in women’s participation in ways that may otherwise not have occurred.

Company capacity

BHP Billiton was notified of community grievances in the lead-up to establishment of the Dialogue Table. Their initial response was to defend their presence and question the truth of community claims. The company eventually accepted that the complaints were legitimate, partly because head office staff undertook their own investigations, aside from the reports from mine site staff rejecting community grievances.

Through the Dialogue Table, BHP Billiton staff acquired an understanding of, and appreciation for, culturally unique methods of seeking community approval before proceeding, rather than expecting that community representatives would make decisions on behalf of their communities. BHP Billiton trained their staff in human rights and community engagement, and staff were able

to demonstrate a commitment to working transparently, negotiating fairly and keeping promises made during the Dialogue Table.

It was critical that mining company staff were able to understand the distinct cultural aspects of the parties and communities involved. This meant, for example, investing time and resources in understanding how communities are organised and structured, and how economic, political and cultural decisions are made.

Building trust

The process of building trust has been critical to making progress and ensuring the process was rights-compatible. Oxfam America staff have noted that “the parties began to see one another as trustworthy because, by fulfilling their promises and agreements,

they demonstrated that they could be trusted ... The majority now believe that the attitude of the company has changed since the Dialogue Table; the company is more disposed to negotiate and now the communities see that the company listens to them and is seeking solutions to their complaints”.

Building consensus

The Dialogue Table uses a consensus approach to decision-making. This has been positive because it takes account of the cultural approach to decision-making by local communities. Furthermore, taking time

to reach decisions in this way ensures all parties “own” the resolutions, leading to the creation of stable and durable agreements and relationships.

Independent facilitation

The early use of an independent facilitator was important to help build trust between the parties, and to ensure that all parties were able to participate on fair and equitable terms. The facilitator helped the participants identify several key principles and ground rules, including participation, consensus-seeking, joint fact-finding and confidentiality. The facilitator ensured that all community members were able to have their say, and that open discussion occurred.

Participation of an independent, third party

All parties – both communities and the company – supported the role of an independent party to whom the communities could appeal, in this case Oxfam Australia’s former Mining Ombudsman.

3.2 TOLUKUMA WATER SUPPLY PROJECT

Background

Each year, the Tolukuma Gold Mine dumps more than 230,000 tonnes of mine tailings into Papua New Guinea’s Auga-Angabanga river system.²⁵ For communities downstream who depend on the river for drinking, washing, fishing and maintaining their vegetable gardens, the consequences can be severe. Community members attribute a range of illnesses to drinking and washing in the river. The limited availability of clean water has particular implications for children’s health and hygiene. They also report that fish have died, which poses a threat to the community’s food supply, and that changes in the river flow have led to flash flooding, making river crossings difficult and preventing access to market gardens.

This situation has implications for the human rights of affected community members. The International Covenant on Economic, Social and Cultural Rights recognises everyone’s right to an adequate standard of living and the enjoyment of the highest attainable standard of physical health. These rights depend, in part, on having sufficient, safe and physically accessible water for personal and domestic uses.²⁶ For some people living downstream of the Tolukuma Gold Mine, these rights have been violated.

Women have been particularly affected, because they are responsible for collecting water for their families. Women from some villages along the Angabanga River walk for many hours each day to collect clean water from streams and wells. This has implications for both their workloads and their safety, as they pass through land belonging to other clans.

Analysis of the river water commissioned by Oxfam Australia found the presence of arsenic, lead and other heavy metals in the water, in some cases above World Health Organization standards. Oxfam Australia, local organisation the Centre for Environmental Research and Development (CERD) and local community members demanded that the Tolukuma Gold Mine, then owned by Emperor Mines, provide community members with alternative sources of clean water. The company agreed.

In August 2007, Oxfam Australia’s former Mining Ombudsman facilitated the assessment of alternative clean water sources in two affected communities, Gagaifua and Oriropetana. The assessment team included community members and leaders, CERD, mining company staff and Oxfam Australia technical advisers. The company agreed to implement the assessment team’s recommendations, should they be acceptable to participating communities.²⁷

Recommendations were based on information and advice from, and needs expressed by, communities, coupled with technical analysis of possible solutions. Information on existing water supplies and contamination issues was collected using a number of participatory rural appraisal tools including community mapping, exploratory walks and semi-structured interviews. This process aimed to ensure the inclusion and participation of community members.

It was recommended that rainwater tanks be supplied to households to provide water for drinking and cooking, and that water for bathing and laundry be provided by hand-dug wells fitted with low-flow solar pumps.²⁸ It was also recommended that households be provided with bio-sand filters, able to remove pathogens. These filters were intended to treat water from the wells used for drinking and cooking during the dry season, when the rainwater tanks may run out. These recommendations were accepted by community members and the company.

The company, now owned by Petromin PNG Holdings,



Community members and representatives from local organisations meet to discuss their grievances with the Tolukuma Gold Mine in Papua New Guinea. Photo: Jerry Galea/OxfamAUS.

has implemented most of the recommendations. As a result, community members in Gagaifua and Oriropetana have adequate quantities of safe water in the wet season – a significant positive change.

Lessons learned and success factors

The scope of Oxfam’s work was limited to working with other parties to provide clean water in two communities; that is, on the provision of infrastructure to address a specific community grievance.

The process has not involved nor led to the establishment of a formal or permanent grievance mechanism, yet it offers many important lessons – both success factors and challenges – for those pursuing community–company grievance resolutions, including the following.

Defining and communicating roles and responsibilities

It is important to define the roles and responsibilities of all stakeholders and project partners, and communicate this with community members. This gives them a greater understanding of organisational responsibility, and supports the establishment of a formal structure of accountability. Such a structure enables community members to hold the relevant organisation or individual accountable for commitments made to resolving grievances, and helps ensure the process is legitimate and transparent.

Establishing systems to monitor project implementation and progress

These systems should be clear on who is responsible for monitoring, what is to be monitored, and how

often. Community members should be assigned some responsibility for monitoring project implementation. This encourages increased community ownership of both project activities and grievance resolution. It contributes to ensuring that community members see themselves as equal and active partners, not passive recipients, of the project.

Establishing a communication mechanism

There must be regular, culturally appropriate communication between the community, company and other stakeholders, in part to ensure that the process is accessible. It should include feedback on monitoring activities, project progress, and grievances yet to be resolved.

Antoneth Aisa lives downstream from the Tolukuma Gold Mine in Papua New Guinea. Antoneth participated in a process to identify community preferences for alternative water supplies. Antoneth can now provide her family with clean water for drinking, cooking and washing. Photo: Christina Hill/OxfamAUS.

Understanding the distinct cultural aspects of the communities

This will help ensure the project is planned and implemented in a way that is consistent with how community members live on a day-to-day basis. It is important to allow sufficient time and resources to understand both the broader cultural context, and the specific characteristics of the communities involved.

Involving a wide range of stakeholders

A range of stakeholders should be involved in the grievance resolution process, including those that others perceive to be weak, ineffective or uninterested. This contributes to the legitimacy of the process. Stakeholders include the community – including those groups or individuals who are marginalised or typically excluded – and their freely chosen representatives (such as civil society representatives), government (local, provincial or national) and the company.



4. Conclusion and ways forward

Company-level grievance mechanisms, provided that they are well designed and resourced, and human rights-compatible, can allow for the resolution of community grievances at the local level, and may prevent the escalation of disputes at an early stage.

An effective grievance mechanism at the company level forms part of the corporate responsibility to respect human rights – this means that those people who believe they have been harmed are provided with the opportunity to bring this to the attention of the company to seek remediation (or remedy).²⁹

In addition to contributing towards the corporate responsibility to respect human rights, company-level grievance mechanisms can help companies reduce risk and conflict, and their associated costs. They form part of a suite of activities required to develop and maintain good relationships with local communities. Further, through strengthened governance, mining companies can develop a competitive advantage, potentially increasing access to capital by improving investor confidence.

As the work of Oxfam Australia³⁰ and others has shown, the overseas operations of Australian-owned mining companies can be the cause of harm. Communities must have access to effective remedies to address their grievances, including alleged human rights abuses. Yet it is those situations characterised by conflict, weak governance and poor human rights protection where corporate human rights abuse is most likely to occur, and where local state-based remedies are least likely to be available. In these situations, if rights-compatible, company-level grievance mechanisms do not exist, or cannot provide adequate remedies for affected communities, abuses are more likely to occur or continue.

In this context, and that of the Australian mining industry's global reach, Oxfam Australia supports the need for an independent, third-party grievance mechanism for the overseas operations of the

Australian mining industry. Such a mechanism can complement company-level mechanisms, and could intervene – at the request of the community or individual – where there is no company-level grievance mechanism, or where it has been unable to resolve community grievances at the local level.

An independent, third-party grievance mechanism could have a number of functions. However, its key function should be to bring communities and companies together to facilitate the resolution of grievances and to enforce remedies.

An assessment of options for an independent grievance mechanism will form part of Oxfam Australia's future work. Possible options include:

- a strengthened and restructured National Contact Point for the OECD Guidelines for Multinational Enterprises
- a new area of responsibility for the Australian Human Rights Commission, or
- a new Australian Corporate Governance/ Corporate Responsibility and/or Mining Ombudsman.

Improved grievance mechanisms – both company-level and independent third-party – will be most effective when developed through multi-stakeholder initiatives and within a rights-based framework.

References and resources

- Castan Centre for Human Rights Law (2008), *Human Rights Translated: A Business Reference Guide*, Monash University.
- CommDev/Environmental Resources Management (2008), *Community Development and Local Conflict: A Resource Document for Practitioners in the Extractive Sector*, CommDev: the Oil, Gas and Mining Sustainable Community Development Fund of the International Finance Corporation and World Bank.
- Compliance/Advisor Ombudsman (2008), *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, the Office of the Compliance/Advisor Ombudsman for the International Finance Corporation and Multilateral Investment Guarantee Agency.
- Herbertson K., et al. (2009), *Breaking Ground – Engaging Communities in Extractive and Infrastructure Projects*, World Resources Institute.
- International Alert (2005), *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*, International Alert.
- International Council on Mining and Metals (2009), *Human Rights in the Mining & Metals Industry: Handling and Resolving Local Level Concerns & Grievances*, International Council on Mining and Metals.
- International Finance Corporation (2009), *Addressing Grievances from Project-Affected Communities: Guidance for Projects and Companies on Designing Grievance Mechanisms*, International Finance Corporation.
- Kemp, D. and Bond, C. (2009), *Mining Industry Perspectives on Handling Community Grievances – Summary and Analysis of Industry Interviews*, Centre for Social Responsibility in Mining, the University of Queensland and Corporate Social Responsibility Initiative, Kennedy School of Government, Harvard University.
- Kemp, D. and Gotzmann, N. (2008), *Community Grievance Mechanisms and Australian Mining Companies Offshore: An Industry Discussion Paper*, Centre for Social Responsibility in Mining, the University of Queensland.
- Kemp, D. and Gotzmann, N. (in development), *Community Grievance Mechanisms and the Australian Minerals Industry: A Second Discussion Paper*, commissioned by the Minerals Council of Australia, Centre for Social Responsibility in Mining, the University of Queensland.
- Macdonald, K. (2009), *The reality of rights: Barriers to accessing remedies when business operates beyond borders*, Corporate Responsibility (CORE) Coalition and London School of Economics and Political Science.
- Rees, C. (2009), *Report of International Roundtable on Conflict Management and Corporate Culture in the Mining Industry*, Corporate Social Responsibility Initiative Report No. 37, Cambridge, MA: John F Kennedy School of Government, Harvard University.
- Rees, C. (2008), *Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps*, Corporate Social Responsibility Initiative, Working paper No. 40, Cambridge, MA: John F. Kennedy School of Government, Harvard University.
- Rees, C. (2008), *Rights-Compatible Grievance Mechanisms – A Guidance Tool for Companies and their Stakeholders*, Corporate Social Responsibility Initiative, Cambridge, MA: John F Kennedy School of Government, Harvard University.
- Sherman, J. (2009), *Embedding a Rights Compatible Grievance Process for External Stakeholders with Business Culture*, Corporate Social Responsibility Initiative Report No. 36, Cambridge, MA: John F Kennedy School of Government, Harvard University.
- Zandvliet, L. and Anderson, M. (2009), *Getting it right: making corporate-community reactions work*, Greenleaf Publishing Ltd, Sheffield.

Appendix A

Community grievance handling: What works and what doesn't

This summary of key enablers and obstacles to community grievance handling has been reproduced in full from section 6 of Kemp, D. and Bond, C. (2009), *Mining Industry Perspectives on Handling Community Grievances – Summary and Analysis of Industry Interviews*, Centre for Social Responsibility in Mining, the University of Queensland and Corporate Social Responsibility Initiative, Kennedy School of Government, Harvard University.

Foundational work	What works	What does not work
Addressing pre-existing conflict	<ul style="list-style-type: none"> - Some operations benefitted from the work by others (e.g. NGOs) to address pre-existing, intra community conflict 	<ul style="list-style-type: none"> - Inadequate due diligence - No conflict analysis
Assumptions	<ul style="list-style-type: none"> - Acceptance that conflict and grievances will occur - Acknowledgement of different knowledge and belief systems 	<ul style="list-style-type: none"> - Failure to plan for conflict because of an assumption that the risk of conflict can be eliminated - Assuming one system of meaning-making
Pre-emptive mechanisms	<ul style="list-style-type: none"> - Systems that build understanding of the broader context - A robust management system that links data collected through other engagement processes 	<ul style="list-style-type: none"> - Limited prior knowledge through lack of social analysis - Inability to turn information into accessible knowledge
Deciding and agreeing	<ul style="list-style-type: none"> - Collaborating with local people and others about how best to handle grievances, before they escalate - Formal agreements that establish a shared framework for dispute resolution, particularly one that emphasises local solutions - Taking agreements seriously 	<ul style="list-style-type: none"> - One-sided decision making about how grievances should be handled by companies, communities or others - Ignoring or refusing to engage least trusted groups when agreeing grievance handling processes with others
The mechanism itself	What works	What does not work
Principles	<ul style="list-style-type: none"> - Taking a principled approach, including at a minimum: transparency, accessibility, timeliness, fairness and a simple/reliable recourse mechanism 	<ul style="list-style-type: none"> - No reference to principles
Model	<ul style="list-style-type: none"> - Dedicated pathways for complaints and grievances - Appropriate treatment of verbal and written complaints - Clear lines of responsibility - Robust tracking systems for complaints resolution - Methods for understanding underlying or root cause - Considering the surrounding context, not issues in isolation - Actively seeking to address historical or legacy issues and acknowledging them, even if nothing can be done to remedy them - Enough flexibility for different groups to use different mechanisms 	<ul style="list-style-type: none"> - Ad hoc grievance handling without consistent processes - Reliance on negotiation and position bargaining, rather than including dialogue to build mutual understanding - Models that are dependent on individual people - Models that ignore broader relationship-building priorities concerns - Lack of process or refusal to use agreed process - Models that do not account for the local context

Communication	<ul style="list-style-type: none"> - Broad communication about the mechanism and how it works, in a language/manner that people can understand - Timely and transparent communication about action taken on specific grievances 	<ul style="list-style-type: none"> - Lack of information - Failing to let community member(s) know outcome of internal investigation
Accessibility and outreach	<ul style="list-style-type: none"> - Encouraging people to raise issues of concern - Making it easy to lodge a complaint and solicit concerns - Providing several pathways for raising concerns/grievances - Taking a broad view of 'community', beyond immediate footprint 	<ul style="list-style-type: none"> - When companies fail to provide communities with a mechanism to lodge issues; otherwise there is a risk that communities will resort to violent or destructive behaviour to get a response - When it's difficult for people to raise issues, even with a mechanism
Third party involvement	<ul style="list-style-type: none"> - Using mutually agreed third parties if solutions cannot be reached through direct engagement - Parties agreeing to relinquish some control of the process - When third parties ensure a fair and thorough process for all, and are perceived to do so 	<ul style="list-style-type: none"> - Third parties that impose processes ill-suited to the local context
Supporting the mechanism	What works	What does not work
Relationships	<ul style="list-style-type: none"> - Grievance mechanisms established in the context of broad-based engagement that aims to establish trusting relationships - Processes that enable one-on-one relationships as well as institutional relationships - Ongoing dialogue, especially with aggrieved parties 	<ul style="list-style-type: none"> - Processes dependent only on individual relationships that are not, to some extent, institutionalised - Racism and 'othering' (e.g. emphasising 'us' and 'them') - Refusing to engage disengaged and oppositional stakeholders
Understanding	<ul style="list-style-type: none"> - Understanding 'background stories' to specific grievances - Understanding the problem, not just solving the issue - Providing cultural awareness training to increase cross-cultural sensitivity 	<ul style="list-style-type: none"> - Ignorance or refusal to learn about local culture and context - Refusal to acknowledge other world-views respectfully
Behaviour	<ul style="list-style-type: none"> - Responsive and timely behaviour and action - Delivering on commitments and promises 	<ul style="list-style-type: none"> - Community relations that act only as issue 'fire-fighters' - Words without action and follow-through - Saying one thing and doing another
Capacity	<ul style="list-style-type: none"> - A senior, experienced community relations person who can influence operational managers - Having the right individuals in the right positions (i.e. personality, knowledge and skills) - A company focused on building the social competencies for community relations practitioners as well as senior leaders 	<ul style="list-style-type: none"> - People handling community grievances with limited experience - Lack of corporate support and guidance in terms of implementing mandatory requirements - Companies ignoring lack of capacity in this emerging area

Will to learn	- Drawing on the experience of other operations in handling grievances, local to global	- Companies that are not interested in lessons learned from elsewhere
Other organisational factors	What works	What does not work
Culture	- A culture that supports a focus on community perspectives - Awareness of but not dependence on legal frameworks	- Organisational cultures dominated by a narrow disciplinary perspective, such as legal or PR - Organisational culture that does not support the dual focus of community relations personnel
Structure	- A community relations function with structural power and formally recognised authority	- A disconnected and isolated community relations function - Relying on junior community relations practitioners to hold senior managers to account for resolving issues
Leadership	- Leadership that recognises the importance of addressing community issues	- Incumbent leadership who won't accept legacy issues as part of their own management responsibilities
Management team	- Senior managers' endorsement of the mechanism - Senior managers who respect and consider views that fall outside their own area(s) of expertise - A senior management team that deals with its own internal conflicts	- Blaming and disrespectful behaviour from and within the management team - Avoidance of, rather than engagement with, conflictual situations
Reward Systems	- Incentives that encourage senior consideration of community issues	- Incentives that focus solely on resolution, overlooking prevention

Endnotes

- 1 UN Special Representative to the Secretary-General on Business and Human Rights Prof. John Ruggie's mandate includes '[identifying] and [clarifying] standards of corporate responsibility and accountability for transnational corporations . . . with regard to human rights'. Mandate of the UN Special Representative on Business and Human Rights, www.business-humanrights.org/Categories/UNIntlorgs/UNIntergovernmentalorgs/UN/UNSpecialRepresentativeonbusinesshumanrights
- 2 Human Rights Council, *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5, 7 April 2008.
- 3 www.icmm.com/page/8331/icmm-welcomes-ruggie-report
- 4 Rees, C. (2008), *Rights Compatible Grievance Mechanisms – A Guidance Tool for Companies and their Stakeholders*, Corporate Social Responsibility Initiative, Cambridge, MA: John F Kennedy School of Government, Harvard University.
- 5 Above n 2
- 6 Above n 4
- 7 Kemp, D. and Gotzmann, N. (2008), *Community grievance mechanisms and Australian mining companies offshore: An industry discussion paper*, Centre for Social Responsibility in Mining, Sustainable Minerals Institute, The University of Queensland, Australia
- 8 Human Rights Council, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Addendum, Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse*, A/HRC/8/5/Add.2, 23 May 2008
- 9 Kemp, D. and Bond, C. (2009), *Mining Industry Perspectives on Handling Community Grievances – Summary and Analysis of Industry Interviews*, Centre for Social Responsibility in Mining, the University of Queensland and Corporate Social Responsibility Initiative, Kennedy School of Government, Harvard University.
- 10 This definition draws on definitions in *Compliance/Advisor Ombudsman (2008), A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, the Office of the Compliance/Advisor Ombudsman for the International Finance Corporation and Multilateral Investment Guarantee Agency and Kemp, D. and Gotzmann, N. (in development), *Community Grievance Mechanisms and the Australian Minerals Industry: A Second Discussion Paper*, commissioned by the Minerals Council of Australia, Centre for Social Responsibility in Mining, the University of Queensland.
- 11 These grievances have been compiled based on a review of complaints made to National Contact Points for the OECD Guidelines for Multinational Enterprise, Compliance Advisor/Ombudsman for the International Finance Corporation and Multilateral Investment Guarantee Agency, and Oxfam Australia's mining advocacy work
- 12 Kemp, D. and Gotzmann, N. (in development), *Community Grievance Mechanisms and the Australian Minerals Industry: A Second Discussion Paper*, commissioned by the Minerals Council of Australia, Centre for Social Responsibility in Mining, the University of Queensland
- 13 Above n 2
- 14 Above n 4
- 15 *ibid.*
- 16 Above n 2
- 17 Human Rights Council, *Business and human rights: Towards operationalizing the "protect, respect and remedy" framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/11/13, 22 April 2009
- 18 Above n 4
- 19 Above n 12
- 20 Launch of project by the UN SRSG on business and human rights to pilot principles for company level grievance mechanisms www.reports-and-materials.org/SRSG-grievance-mechanisms-pilot-19-Aug-2009.doc
- 21 Note: Oxfam Australia has ceased the Mining Ombudsman part of its program. Oxfam Australia's new Mining Advocacy program attempts to engage with all sections of the Australian mining industry. We do this in an attempt to improve the policies and practices of companies who have operations overseas, especially in conflict, post-conflict and weak governance zones. Our Mining Ombudsman work provides a strong evidence to support our work going forward.
- 22 Macdonald, I. and Ross, B. (2003) *Mining Ombudsman Annual Report 2003*, Oxfam Community Aid Abroad.
- 23 Tintaya's Dialogue Table, *Agreement on the Consolidation of the Progress on the Process of the Dialogue Table*, December 2004
- 24 www.tintaya.com.pe/content/pagina1.aspx?PID=70
- 25 Malcolm C Hancock, *Behre Dolbear Australia Pty Limited (2007), Intrepid Mines Limited, Mineral Resources and Mineral Reserves resulting from merger with Emperor Mines Limited, Tolukuma Gold Mines, Papua New Guinea*
- 26 Economic and Social Council, *General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2002/11, 20 January 2003
- 27 Emperor Mines Limited, *statement*, 13 August 2007
- 28 Miles, L. and Bean, J. (2007), *Trip report following Phase I of assessment team visit to Mekeo communities of Central Province, Papua New Guinea 3 – 22 August 2007*, Oxfam Australia
- 29 Above n 2
- 30 See www.oxfam.org.au/explore/mining

