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COMMUNITY COMPLAINTS AND GRIEVANCE MECHANISMS AND THE AUSTRALIAN MINERALS INDUSTRY

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Acronyms

ADB	Asian Development Bank
AHRC	Australian Human Rights Commission (Commonwealth)
ATO	Australian Telecommunications Ombudsman
CAO	Compliance Advisor/Ombudsman of the International Finance Corporation
CHRAJ	Ghanaian Commission on Human Rights and Administrative Justice
CSRI	Corporate Social Responsibility Initiative at the Harvard Kennedy School of Government
CSRMI	Centre for Social Responsibility in Mining
ESR	Environment and Social Responsibility
FLA	Fair Labor Association
FSC	Forest Stewardship Council
FOS	Financial Ombudsman Service
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
ILUA	Indigenous Land Use Agreement
MCA	Minerals Council of Australia
NCPs	National Contact Points
SOP	Standard Operating Procedure
SRSG	Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises
VPs	Voluntary Principles on Security and Human Rights

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Centre for Social Responsibility in Mining (CSRM)

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The Centre for Social Responsibility in Mining (CSRM) was established by the University of Queensland as a member of the Sustainable Minerals Institute (SMI) in response to growing interest in and debate about the role of the mining and minerals industry in contemporary society. CSRM's focus is the socio-economic and political challenges that confront companies, communities and governments when change is brought about by resource extraction. The Centre's aim is to help build the capacity of these stakeholders to manage change in more effective ways. CSRM has global reach, with particular experience in Australia and the Asia-Pacific.

Minerals Council of Australia (MCA)

www.minerals.org.au

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The Minerals Council of Australia (MCA) is the peak industry organisation representing Australia's exploration, mining and minerals processing industry nationally and internationally in its contribution to sustainable development. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative and environmentally and socially responsible. MCA's members are guided by *Enduring Value*, the industry's code for sustainable development, which aims to ensure that the industry operates in a manner which is attuned to the needs and expectations of the community and seeks to maximise the long-term benefits that can be achieved through effective management of Australia's resources.

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Executive Summary

The Minerals Council of Australia (MCA) and its members are focused on ensuring effective processes for preventing and handling community complaints and grievances. Discussion, knowledge and capacity building are integral to enabling a more professionalised approach to community relations and conflict management, and improving industry performance in this area. This report aims to contribute to this process by outlining potential ‘topics for discussion’ for further industry dialogue on rights-compatible, non-judicial community grievance mechanisms and Australian minerals companies.

There have been increasing calls from a range of stakeholders, including civil society and international non-government organisations (NGOs) – Oxfam Australia in particular – for more effective corporate accountability mechanisms. International interest in this area continues to grow. The MCA and its member companies are primarily concerned with improving operational-level approaches to resolving community complaints and grievances, however, are aware of growing interest and activity on this issue internationally, and are open to contributing to discussion on the practical aspects of third-party mechanisms, where they meet community need through suitable avenues, including the ICMM.

The focus of this research

Community complaints and grievance mechanisms are just one part of a suite of processes that aim to prevent, defuse and resolve community-company tension and conflict. This report focuses on rights-compatible, non-judicial community grievance mechanisms at two levels: (i) operations and (ii) industry. Discussion about an industry-level mechanism is centred on a third-party model; that is, a model which provides a level of independence from the industry. The active participation of the Australian mining industry is essential to understanding relevance in the Australian context.

In line with international guidelines, this report uses the term ‘grievance mechanisms’ as an umbrella phrase to describe pathways and processes for preventing and handling a range of issues along the conflict continuum, from minor concerns to more escalated conflict. The word ‘mechanism’ may suggest a technical, pre-determined or generic approach. This is not the case. In this report the term indicates a host of possible methods, responses, processes and pathways, including those that are specifically tailored to the local context, that aim to avoid escalation and achieve resolution.

Why establish dedicated community grievance mechanisms?

There are several reasons for Australian minerals companies to develop effective leading practice frameworks to address community complaints and grievances:

Reduce risk and negative social impact

Community complaints and grievance mechanisms can form part of a broader 'early warning system' for identifying and understanding community concerns that could lead to more serious conflict. An early warning system has the potential to reduce social risk (i.e. the possibility that company actions or inactions will have an adverse impact on local communities), which in turn reduces risk to the operation of disruption or closure, or damage to corporate reputation.

Community complaints and grievance mechanisms tend to work best when issues are communicated to the company in some way. There are a number of related and complementary processes (e.g. stakeholder identification and mapping, socio-economic baselines, socio-economic and environmental impact assessments, human rights assessments, risk analysis and so forth) that can assist an operation to bring to the surface issues that may not be expressed, before conflict arises or escalates. Collectively, these processes help to provide an understanding of the broader environment in which a company will be operating and, in doing so, reduce risk.

Uphold corporate commitments to respect human rights

Many community grievances sit at the lower end of the conflict continuum: for example, complaints about amenity issues such as noise, dust or traffic. There are instances where grievances have a human rights dimension. Through the MCA's sustainable development framework, *Enduring Value*, MCA members have committed to uphold and promote fundamental human rights. There is also growing attention at the international level on how companies respond to community complaints and grievances. In particular, the United Nations Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises (SRSG on Business and Human Rights), Professor John Ruggie, has highlighted that: "An effective [company-level] grievance mechanism is a part of the corporate responsibility to respect [human rights]"¹

Gain and maintain a social licence to operate

Increasingly, local communities expect that companies will avoid social harm, minimise adverse impacts, maximise benefits and respond to their complaints and grievances respectfully and systematically, using processes that the communities know and trust. A community complaints and grievance mechanism, system or framework provides an indication that the company is willing to be held accountable, which enhances the potential for establishing a lasting social licence to operate. They also provide an avenue for building relationships and dialogue, which are critical elements of this licence to operate.

¹ John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG on Business and Human Rights), 'Protect, Respect and Remedy: a Framework for Business and Human Rights', Report to the UN Human Rights Council (April 2008). UN Doc. A/HRC/8/5. Available at: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>, p.24.

Aim and scope of the research

Overview of best practice principles

CSRM's first task was to provide an overview of best practice and normative standards for non-judicial, rights-compatible grievance mechanisms relevant to mining (local to global). These principles and standards provide an essential benchmark for processes associated with preventing and handling community complaints and grievances.

Assess local-level mechanisms against best practice principles

The second task was to undertake a base-level internal assessment of two operational-level mechanisms against the principles identified in Task A. The assessment was based on corporate documentation and interviews with company personnel. Although limited in scope (for example, no external stakeholders were interviewed), the assessments provide useful insights into functions, processes, procedures and principles-in-practice of two well-established operational-level mechanisms.

Assess other existing third-party mechanisms for relevance to the Australian mining industry

Task three was to assess third-party mechanisms already in place in other industries (insurance, banking, manufacturing etc.) against best practice principles to determine their potential relevance to the Australian mining industry. The aim here was to assist the industry in its discussions about leading practice frameworks to address community complaints and grievances.

Suggested discussion points for further industry dialogue

Finally, CSRM was asked to identify issues that the Australian minerals companies could discuss as part of an industry dialogue on the topic of leading practice approaches for community complaints and grievance mechanisms.

Main Findings

Best practice principles

- International guidelines for non-judicial, rights-compatible grievance mechanisms draw on a similar set of overarching principles, largely premised on the now well-established *Protect, Respect and Remedy* framework articulated by the SRSG on Business and Human Rights. The six overarching principles for non-judicial mechanisms are that they be: *legitimate, accessible, predictable, equitable, rights-compatible* and *transparent*.
- In addition to the six overarching principles, there are a set of supplementary principles that are prominent in guidelines relating to operational-level grievance mechanisms. These principles include: *engagement and dialogue, culturally-appropriate, proportional, empowering* and *continual improvement*.

- The principles can be applied in different ways, often depending on whether the mechanism is operational-level or third-party. The report provides examples of the application of these principles in practice.
- One issue that is inconsistently canvassed in various guidelines is that of *enforceability*. Some guidelines stipulate that third-party mechanisms require enforcement capacity. Others emphasise the importance of learning and review, accountability and incentives as strategies to ensure the implementation of outcomes.

Internal assessment of two operational-level mechanisms

The two operations that voluntarily participated in the assessments were: Newmont Mining's Ahafo operations in Ghana (Africa), and Rio Tinto Aluminium's Weipa operations in Queensland (Australia). Key findings from these assessments were:

- Dedicated pathways for handling community complaints and grievances, embedded in a culturally-appropriate community engagement strategy, can help strengthen relationships with local communities and reduce social risk.
- Formalised procedures can help Community Relations personnel engage other departments to facilitate resolution where that department is the source of an issue. Formal procedures also assist in bringing emerging or unresolved issues to the attention of senior management earlier in the conflict continuum, thereby increasing the likelihood of resolution before issues escalate.
- Staff who had completed human rights and/or dispute resolution training reported improved practice on the ground. Those who had not yet received such training believed this would lead to improved practice.
- Several company staff indicated that greater access to industry-specific case studies from other mining operations would enhance knowledge and understanding of what works and what doesn't in relation to preventing and handling community complaints and grievances.

Rapid assessment of existing third-party mechanisms from other industries

- There is no single mechanism (either a stand-alone industry mechanism or one that forms part of a certification or other scheme) that can be transferred directly to the Australian minerals industry.
- Some aspects of the different models demonstrate leading practice principles and can be used to inform discussions within the Australian minerals industry as it considers the development of leading practice frameworks for community complaints and grievance resolution. Further research could usefully consider these aspects in more detail.

Suggested discussion points for future industry dialogue

Principles

- Future industry dialogue could consider the value of endorsing or aligning with an agreed set of international principles for non-judicial, rights-compatible grievance mechanisms. This could be done independently of any further dialogue regarding establishing an industry-level, third-party mechanism (see below), as the principles relate to all types of non-judicial mechanisms.

Operational-level mechanisms

- An industry roundtable or similar would provide a valuable forum in which to discuss knowledge gaps and capacity needs within the industry in relation to preventing and handling community complaints and grievances at the operational level. There is now a significant amount of guidance material that could provide the basis for training and education, and there would be value in focusing on how best to adapt and roll-out this material.

Industry-level, third-party mechanism

- Future discussions could consider the merits and limitations of establishing an industry-level, third-party grievance mechanism for communities adversely affected by the policies, actions or inactions of an Australian mining company, including those operating offshore. Issues that the industry might wish to consider in this context are:
 - effectiveness
 - purpose and scope
 - functions
 - enforcement capacity and incentives
 - governance arrangements
 - administration and costs
 - relationship between local-level and other third-party mechanisms.

Subsequent multi-stakeholder dialogues

- Industry could also consider the value of initiating a series of multi-stakeholder dialogues, as a follow-on to industry discussions. Multi-stakeholder dialogues will be essential for canvassing a wide range of perspectives on the issue of community complaints and grievance mechanisms.

Future research

The current project is intended to provide a platform for further discussion. There are many avenues for further research which could occur alongside industry discussions, including:

Operational-level mechanisms

- Research that assesses alignment of operational-level grievance mechanisms with internationally-agreed best practice principles, with a view to building understanding about leading practice and identifying opportunities for improvement. The two case studies in this report are an initial contribution in this regard.

- Research on the issues relating to the design and implementation of operational-level mechanisms, as highlighted in previous CSRM reports.² This research could focus on:
 - documenting and assessing patterns of grievance handling and dispute resolution: on either a company, country and/or issue-specific basis
 - identifying enabling and constraining factors for designing and implementing effective local-level mechanisms (such as local-level governance, the role of organisational culture and/or external factors)
 - understanding limitations of grievance mechanisms in terms of their ability to handle conflict at the higher end of the conflict continuum
 - examining the level of integration between grievance mechanisms and other operational-level systems and processes
 - understanding community and other stakeholder perceptions of operational-level grievance mechanisms, including those of people who access the mechanisms as well as those who do not.

Industry-level third-party mechanism

- Several of the mechanisms examined show some alignment with some best practice principles. There were varying degrees of alignment with: *legitimacy*, *accessibility*, *predictability*, *transparency* and *engagement and dialogue*. Further research could consider relevant aspects highlighted in this report in more detail.

² See, Deanna Kemp and Nora Gotzmann, *Community Grievance Mechanisms and Australian Mining Companies Offshore: An Industry Discussion Paper*, Centre for Social Responsibility in Mining, Sustainable Minerals Institute, University of Queensland (2008). Available at: http://www.csr.uq.edu.au/docs/CSRM_%20minerals%20industry%20grievance%20discussion%20paper_FIN_AL.pdf; Deanna Kemp and Carol J. Bond, *Mining Industry Perspectives on Handling Community Grievances: A Summary and Analysis of Industry Interviews*, Centre for Social Responsibility in Mining, Sustainable Minerals Institute, University of Queensland (2009). Available at: <http://www.csr.uq.edu.au/docs/Mining%20industry%20perspectives%20on%20handling%20community%20grievances.pdf>.

- Several of the existing third-party mechanisms examined use either an ‘elevate up’ process and/or prior participation requirement to link local-level grievance resolution to the third-party mechanism. Further consideration needs to be given to this aspect, which was outside the scope of the current research.

Suggested next steps for the Australian minerals industry in considering leading practice approaches to community complaints and grievance mechanisms could include:

- Invite feedback on this report and consider making key aspects of the feedback publicly available.
- Convene an industry discussion to consider operational-level and industry-level, third-party mechanisms, and the links between them. This report outlines a potential list of ‘topics for discussion’ as a starting point for discussions.
- One of the items for discussion could be the potential processes for a broader multi-stakeholder discussion (including possible mechanisms for engagement e.g. wiki, website, email lists, other forums, community visitations, individual targeted consultations etc.)

Note: The Canadian Roundtables could be assessed for applicability to an Australian-based process.³

It will be important for the industry to maintain its focus on understanding and applying leading practice for handling community complaints and grievances, in keeping with the MCA’s *Enduring Value* commitments. This should include a continued focus on industry capacity building and empirical research to build knowledge and understanding from the ground up.

³ For background on the Roundtables and the Advisory Group Report see the Prospectors and Developers Canada website at: <http://www.pdac.ca/pdac/advocacy/csr/index.html>, or the Oil, Gas and Mining Sustainable Community Development Fund (CommDev) website at: <http://commdev.org/content/document/detail/977/>.

1. Introduction

1.1 Background

The Australian mining and minerals sector is keen to highlight the many benefits that mining can bring to local communities and society more broadly. Leading companies are well aware of the need to gain and maintain a 'social licence to operate' and are prepared to engage on issues that relate to broader debates about respect for human rights and the inevitability of social impact. Maintaining a social licence to operate includes finding ways to understand and, where possible, address pre-existing, underlying or emerging complaints, disputes and conflict that relate to mining activities.

A company's approach to human rights, community engagement and conflict management sets the basis for how well systems, relationships, processes and responses embody internationally-agreed best practice principles for effective grievance handling. This report considers the application of these principles to operational- and industry-level mechanisms, and puts forward issues for the industry to consider as it continues to focus on leading practice.

In 2008 the Centre for Social Responsibility in Mining (CSRM) prepared an industry discussion paper titled *Community grievance mechanisms and Australian mining companies offshore*, with the aim of generating dialogue on the topic.⁴ Suggested next steps for the industry were to:

- **Convene an industry roundtable** to discuss the ideas put forward in the paper and clarify the various positions on the issue of grievance mechanisms within the industry itself.
- **Establish a research agenda** to deal with the limited knowledge about patterns of dispute resolution used within the mining industry. Three areas of research were proposed:
 - 1) documentation and analysis of company practice
 - 2) case analysis to determine benefits and limitations of different processes and mechanisms from different stakeholder perspectives
 - 3) evaluation of dispute resolution processes/mechanisms used elsewhere in the natural resources sector or footprint industries (such as agriculture, forestry etc.).

In early 2009, further research was undertaken by CSRM in collaboration with the Harvard Kennedy School's Corporate Social Responsibility Initiative (CSRI). The aim of this research was to build knowledge about the ways in which mining companies handle community grievances and community-company disputes. The research covered a full range of disputes from day-to-day problems through to those that become high-profile legal cases and/or feature in media campaigns. The resulting research report *Mining Industry Perspectives on Handling Community Grievances: A Summary and Analysis of Industry Interviews* elaborated on the need to establish a professional practice agenda – alongside a research agenda and industry dialogue – in order to

⁴ Available at:

http://www.csrmining.edu.au/docs/CSRM_%20minerals%20industry%20grievance%20discussion%20paper_FIN_AL.pdf.

build the industry’s capacity in the area of conflict resolution and grievance handling.⁵ The paper suggested that a practice agenda would usefully comprise:

- **Capacity and skills development.** Leading companies and some industry associations are already working to address gaps in this area.
- **Operational-level support for policy implementation.** High-level policy is important, but operations must be supported in their efforts to develop locally-appropriate processes.
- **Monitoring and evaluation.** Monitoring and evaluation of grievance handling to ensure that policy is being applied and is achieving what it sets out to do. Ideally, this would involve people from the local community as well as other external or third parties.
- **Greater transparency.** The industry as a whole and communities where mining takes place would benefit from increased transparency and a shared approach to learning in this area.

The MCA and its members responded positively to the initial CSRSM paper from 2008 and many participated in the CSRSM/CSRI research in 2009, reflecting the industry’s commitment to engage on this topic. The MCA subsequently commissioned CSRSM to undertake further research on grievance resolution specific to the Australian mining industry and commissioned this second discussion paper. This paper is an initial response to some of the suggestions listed above. It aims to provide one of the platforms from which the Australian industry can move forward with a more consistent leading practice approach to preventing and handling community grievances.

1.2 Scope of research

1.2.1 Deliverables

The scope of research was structured in four parts:

Research Components
<p>A) Overarching Principles: Provide an overview of best practice and normative standards for non-judicial, rights-compatible grievance mechanisms relevant to mining (local to global).</p>
<p>B) Project-level complaint and grievance mechanisms: Undertake a rapid evaluation of two operational-level grievance mechanisms against best practice principles identified in A.</p>
<p>C) Non-judicial third-party mechanisms:</p> <p>(i) Against A, undertake a broad scan of non-judicial third-party mechanisms in use in mining and other industries for their potential to be applied to the Australian mining industry.</p> <p>(ii) Provide ‘issues for consideration’ for establishing a non-judicial third party mechanism for Australian mining companies.</p>
<p>D) Industry roundtable: Compilation of an industry discussion paper (to be made available publicly), including suggestions for an industry roundtable discussion on all of the above.</p>

⁵ Available at:

<http://www.csrsm.uq.edu.au/docs/Mining%20industry%20perspectives%20on%20handling%20community%20grievances.pdf>.

The international debate about access to remedies for communities impacted by corporate activities, including mining, is complex and there is a growing literature and an active international discourse on this topic. This paper will be of interest to those people seeking to understand what constitutes leading practice in this area.

1.2.2 Research oversight

The research was overseen by the MCA's Regional and Community Development Working Group, and the MCA's Sustainable Development Committee. The Working Group and Committee members approved the scope of work, were provided with updates throughout the project, and had the opportunity to comment on draft versions of the outputs. Two of the companies represented – Rio Tinto and Newmont – facilitated access to information so that CSRSM researchers could document the two case studies that formed part of the research. Rio Tinto provided in-kind support for a CSRSM researcher to visit their operations in Weipa for the purposes of observation and face-to-face interviews with operations personnel.

Both MCA and CSRSM researchers remained in contact with the acting Mining Advocacy Coordinator during the research, given Oxfam's involvement in the first discussion paper and its ongoing focus on the extractive industries.⁶ Oxfam did not formally oversee the research, but contributed to discussion and provided valuable feedback throughout the drafting process.

1.2.3 Methodological approach, including limitations

CSRSM was asked to undertake a broad scan of issues and mechanisms, not an extended in-depth analysis. The aim of this broad scan was to produce a second industry discussion paper that would provide a platform for further discussion within the Australian minerals industry on leading practice and future possibilities in the area of complaint and grievance handling.

Other than a brief visit to Rio Tinto's Weipa site, this research is desk-top based, predominantly drawing on publicly available information. Lack of primary research data presented certain limitations; for example, community members who may or may not have accessed (or may not wish to access) the mechanisms in Ghana or Queensland were not consulted and none of those organisations responsible for the mechanisms reviewed in Chapter 5 were contacted. As a result, some aspects of these mechanisms may not have been comprehensively reviewed. While this research will be informative and helpful for discussion, further research is recommended.

New and relevant information on this topic is rapidly emerging. Several draft guidance tools were released for comment during the period of research including the International Finance Corporation's (IFC) *Good Practice Note on Project-level Grievance Mechanisms for Affected Communities*:

⁶ The Oxfam Australia Mining Ombudsman has been a function since 2000. Oxfam is currently undertaking a comprehensive review of its extractive industries program.

*Guidance on Affected Community Grievance Management for Projects and Companies.*⁷ The International Council on Mining and Metals (ICMM) was also in the process of producing a guide with a working title of *Human Rights in the Mining and Metals Sector: Preventing and Handling Community Complaints and Grievances*, which aims to draw on existing work in this area and the experiences of its member companies. The Global Reporting Initiative's (GRI) Mining Sector Supplement was also made available for comment and included new requirements for reporting on complaints and human rights. The third report by the SRSG on Business and Human Rights was released in the final stages of drafting of this report and reinforces the need to 'operationalise' key aspects of the *Protect, Respect and Remedy* framework, including non-judicial grievance mechanisms.⁸ Key points from these documents have been incorporated into this paper wherever possible.

Although the scope of the research does not include consideration of judicial mechanisms, a brief discussion about the potentially complementary relationship between judicial and non-judicial mechanisms has been included in the section on terminology.⁹

The report structure reflects the scope of work and the various deliverables.

⁷ 2009, draft currently under review.

⁸John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG on Business and Human Rights), *Business and human rights: Towards Operationalizing the "Protect, Respect and Remedy" Framework*, Report to the UN Human Rights Council (22 April 2009). UN Doc. A/HRC/8/5. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>.

⁹ Exploring the potentially complementary nature of non-judicial and judicial grievance mechanisms is a key aspect of the SRSG on Business and Human Rights' current scope of work. See, for example, SRSG on Business and Human Rights, *Towards Operationalizing Protect, Respect and Remedy*, p. 22.

2. Terminology

Terms relevant to the scope of work for the current project include:

- grievance mechanisms
- judicial and non-judicial
- rights-compatible
- third-party and operational-level mechanisms.

2.1 Grievance mechanism

In this report, 'grievance' is used to describe a concern, issue or problem that needs to be addressed. A grievance may be expressed (e.g. through a complaint or protest), and may be individual or collective. Conflict is a broader term that describes tension at a number of different levels, including low-level disagreements to more escalated and complex situations that may involve violence.

It is not always entirely obvious what a grievance 'mechanism' actually is; in other words, at what point of 'formalisation' can a company claim to have a grievance mechanism in place, as opposed to an ad hoc response to a particular issue?

For the purposes of this document, evidence that an operational-level 'mechanism' is in place may include:

- a **dedicated pathway (or pathways) and processes** of engagement for handling grievances
- **procedural elements** e.g. a documented procedure outlining steps to be taken to prevent and handle community grievances
- **records** e.g. complaints/grievance logs and data, evidence of information and communication about the mechanism or process and outcomes
- **dedicated resources** e.g. human and financial resources, formally defined responsibilities for grievance handling
- evidence of **dialogue** with aggrieved parties, and/or use of **alternative dispute resolution** techniques (e.g. negotiation, mediation, arbitration etc.) where direct dialogue is not possible or does not lead to resolution of issues
- **substantive outcomes** e.g. improved organisational practice and relationships, conflict resolution (validated by aggrieved parties).

Whether a grievance mechanism is aligned with internationally-agreed best practice principles will be determined by:

- the process of agreeing upon the pathways and processes to be used
- whether agreed processes are followed
- the ability of parties to facilitate agreed and sustainable outcomes.

2.2 Judicial and non-judicial

The current research focuses on non-judicial grievance mechanisms; that is, mechanisms that do not make determinations according to pre-existing legal rules and standards, such as litigation in court. It is important to understand the difference between judicial and non-judicial mechanisms (including remedies) and also to recognise the potentially complementary (rather than mutually exclusive) relationship between them.¹⁰

If there is a course of action in law, the benefits of judicial mechanisms can include:

- finality of outcome
- enforceability of outcome
- high profile of outcome that may contribute to deterrence of similar behaviour, precedent-setting and generating systemic change
- scope for specific remedies
- capacity to deal with large-scale and complex claims
- upholding key human rights goals such as equality, transparency and accountability.¹¹

However, judicial mechanisms can also have drawbacks. For example, litigation may not always be an accessible, affordable, timely or effective method of grievance resolution. Sometimes there is no basis in law to found a claim, and even when cases are brought, enforcement of court decisions can be difficult. While the law may facilitate general sanction, aggrieved parties may not always be able to seek personal compensation or reparation.¹² Litigation can also lead to further deterioration of relations between parties.

Non-judicial grievance resolution, by contrast, can have benefits such as being:

- able to address actual or potential issues and/or abuses of human rights before they escalate into conflict or become the subject of litigation
- less constrained by pre-determined legal procedures and precedents, able to hear complaints that do not amount to a course of action in law
- less costly than litigation
- enable companies to raise their own awareness and learn through direct and/or facilitated engagement with aggrieved community members
- contribute to earning and maintaining a social licence to operate
- more likely to provide an avenue for finding collaborative and innovative solutions
- enable those whose lives are affected to claim their rights and participate in the process of advancing their rights.¹³

¹⁰ Judicial and non-judicial mechanisms are not always or automatically complementary, as this depends on how the interface between them is managed.

¹¹ Rachel Davis and Caroline Rees, *Non-Judicial and Judicial Grievance Mechanisms for Addressing Disputes between Business and Society: Their Roles and Inter-relationships*, Background note prepared for multi-stakeholder consultation of the SRSG for Business and Human Rights, Boston, 20-21 November 2008, p. 3.

¹² SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p. 23.

¹³ See, for example, Davis and Rees, *Non-Judicial and Judicial Grievance Mechanisms for Addressing Disputes between Business and Society*, pp. 4-5.

2.3 Rights-compatible

'Rights-compatible' grievance resolution means that a mechanism is consistent with international human rights in terms of both process and substance; that is, the procedures followed and the outcomes reached.¹⁴ In essence, rights-compatibility recognises that an equitable process is a necessary precondition for an equitable outcome.¹⁵

A rights-compatible grievance mechanism is based on principles of non-discrimination, equity, accountability, empowerment and participation, particularly of vulnerable people (for example, some groups of women, children, aged, ethnic minorities and Indigenous Peoples).¹⁶ An effective rights-compatible grievance mechanism can provide a channel through which communities impacted by a company can gain recognition for legitimate concerns and engage in a process to secure acceptable outcomes and share in the ownership of that process.

The MCA's *Enduring Value* Principle 3 states that members will, "Uphold fundamental human rights and respect cultures, customs and values in dealing with employees and others affected by our activities".¹⁷ As MCA members are already committed to rights-compatibility in their interactions with local communities, rights-compatible grievance mechanisms are entirely consistent with existing commitments.

2.4 Third-party and operational-level mechanisms

In mining, the importance of operational-level grievance resolution cannot be underestimated. Given the unique circumstances and context of each host community and operation; including, for example, the cultures of a particular group of Indigenous Peoples or the nature of environmental impacts, operational-level mechanisms provide a key avenue for responding appropriately to the needs of each particular situation. The focus on local-level grievance resolution also reflects a key

¹⁴ Corporate Social Responsibility Initiative (CSRI), *Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders*, Corporate Social Responsibility Initiative, John F. Kennedy School of Government, Harvard University (January 2008). Available at: http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Workingpaper_41_Rights-Compatible%20Grievance%20Mechanisms_May2008FNL.pdf, see especially, pp. 7-8; SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p.24. For Oxfam Australia's articulation of a rights-based approach in relation to mining see, for example, Ingrid Macdonald, *Mining Ombudsman Annual Report 2004*, Oxfam Australia (2004). Available at: <http://www.oxfam.org.au/campaigns/mining/docs/2004-annual-report.pdf>. See especially, 'The framework for a complaints mechanism', pp. 16-19 and 'Appendix: Benchmarks for the mining industry', pp. 24-29.

¹⁵ See, for example, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, Adopted by the United Nations Development Group in 2003.

Available at http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf.

¹⁶ CSRI, *Rights-Compatible Grievance Mechanisms*, pp. 7-8. Drawing on UN principles such as those articulated in the Vienna Declaration and Programme of Action of the 1993 World Conference on Human Rights and the UN Human Rights Based Approach to Development Principles.

¹⁷ Minerals Council of Australia, *Enduring Value: The Australian Minerals Industry Framework for Sustainable Development: Summary Booklet* (2005). Available at:

http://www.minerals.org.au/data/assets/pdf_file/0006/19833/EV_SummaryBooklet_June2005.pdf, p. 16.

principle of sustainable development; that of *subsidiarity*.¹⁸ The concept of subsidiarity is a presumption in favour of local decision making, where power only moves to a higher level of authority when the scale of the problem or resource constraints require it. Ideally, therefore, even an industry-level, third-party mechanism would encourage local-level dialogue and alternative dispute resolution early in the third-party process.

Operational-level mechanisms are best designed and used by those at the project level; that is, companies, local institutions, community members and their representatives. Operational-level mechanisms may involve third parties (for example, independent investigators or advisory human rights experts) but third-party involvement must be distinguished from a 'third party mechanism', which has a level of independence from the parties to the dispute. This does not, however, preclude linkages between operational-level and third-party mechanisms.

Generally speaking, operational-level mechanisms have greatest potential to provide:

- a unique and tailored response to particular circumstances
- direct engagement and dialogue
- culturally appropriate strategies for empowering communities.

Third-party mechanisms, on the other hand, usually offer:

- a higher capacity for independence of the decision maker(s) from the parties involved
- a higher level of transparency and scrutiny from a variety of stakeholders other than the parties involved
- a more predictable process.

Operational-level and third-party mechanisms should be viewed as complementary. In practice, the level of complementarity will depend on factors such as the local context, level of trust between parties and, amongst other things, the perceived legitimacy of different mechanisms.

¹⁸ The principle of subsidiarity has been articulated as an integral aspect of sustainable development since the Brundtland Commission Report, *Our Common Future* (1987).

3. Emerging Developments

Large-scale development projects such as mining should engage local and affected communities. Stakeholder engagement and community-based dialogue is now considered essential for any responsible mining company from the earliest possible stages of mining development.¹⁹ Notwithstanding that community engagement is a requirement of MCA membership through *Enduring Value*, there is emerging agreement that greater sensitivity to conflict, including dedicated channels for dealing with community complaints and grievances, should be standard practice.

Until recently, the concept of conflict as central to community engagement has not had much prominence in industry and corporate-level policy frameworks. The industry has tended to emphasise its desire to establish positive relations, rather than acknowledging from the outset that a degree of conflict is an inherent characteristic of mining development – both as a pre-existing feature of society, and as a result of a mining company entering an area. However, companies are now recognising conflict-sensitivity as important to community relations, and consequently there is a growing focus on developing grievance mechanisms.

This section provides a brief overview of some of the recent developments that underpin this area of policy and practice.

3.1 The ‘*Protect, Respect and Remedy*’ framework

The issue of community access to grievance mechanisms has emerged as a focal point in the international debate most recently through the work of Professor John Ruggie as part of his mandate as SRSG on Business and Human Rights, and in particular his 2008 report, *Protect, Respect and Remedy*. The framework outlines three key principles: the state duty to protect, the corporate responsibility to respect and access to remedies.²⁰ The work on rights-compatible, non-judicial grievance mechanisms is canvassed in particular under ‘access to remedies’ and encompasses the six principles outlined in the box below. The ICMM has formally endorsed the *Protect, Respect and Remedy* framework, signalling a high degree of applicability to MCA members. Under the extended mandate of the SRSG on Business and Human Rights, ‘operationalising’ the framework will gain particular attention and practical strategies for implementing the framework have been outlined in a 2009 report.²¹

¹⁹ Engagement is defined here as a broad range of processes from provision of basic information and communication through to consultation and also full participation in decision-making.

²⁰ SRSG on Business and Human Rights, *Protect, Respect and Remedy*.

²¹ United Nations, *Preliminary Work Plan, Mandate of the Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, 1 September 2008 – 30 June 2011*. Available at: <http://198.170.85.29/Ruggie-preliminary-work-plan-2008-2011.pdf>; SRSG on Business and Human Rights, *Towards operationalizing Protect, Respect and Remedy*.

The Protect, Respect and Remedy Framework's six key principles for non-judicial, rights-compatible grievance mechanisms²²

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.

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.

Predictable: a mechanism must provide a clear and known procedure with a timeframe 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.

Equitable: a mechanism must ensure 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.

Rights-compatible: a mechanism must ensure that its outcomes and remedies accord with internationally recognised human rights standards.

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.

3.2 Emerging guidance

The last two years have seen the development of a number of guidance tools on the issue of community grievance mechanisms, many of which form the basis of the analysis in the next Chapter. Many of these guidelines are international and cross-industry, with a particular focus on large-scale development industries, including mining. These guidance tools are a significant extension of existing norms (for example, references to grievance resolution in the Equator Principles, IFC Performance Standards and so forth).²³ Most of the emerging guidance documentation focuses on project-level grievance resolution, acknowledging that this sphere provides particular opportunities to build relationships at the local level within a sustainable development and rights-based framework.

3.3 Country-level developments

The uptake of the business and human rights agenda, including the issue of grievance resolution, is reflected in several developments at the national level. In Canada, for example, following on from earlier recommendations by the 2006 Roundtables on the Canadian extractive industries,²⁴ the government recently put forward *Building the Canadian Advantage: A Corporate Social*

²² SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p. 24.

²³ These references to grievance resolution are outlined, for example, in Kemp and Gotzmann, *Community grievance mechanisms and Australian mining companies offshore*, pp. 8-9.

²⁴ For background on the Roundtables see the Prospectors and Developers Canada website at:

<http://www.pdac.ca/pdac/advocacy/csr/roundtables-background.pdf>. For more detailed information see the Advisory Group Report, *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries: Advisory Group Report* (2007). Available at: <http://www.pdac.ca/pdac/misc/pdf/070329-advisory-group-report-eng.pdf>.

Responsibility Strategy for the Canadian International Extractive Sector.²⁵ This includes a quasi grievance resolution function. The Government of Canada will appoint an Extractive Sector CSR Counsellor tasked with reviewing the CSR practices of Canadian companies operating abroad and advising industry on the implementation of CSR guidelines.²⁶ A complementary function will be served by the CSR Centre of Excellence, which will be responsible for proactively providing access to CSR tools and information for industry and government, both within Canada and abroad.²⁷

At the time of writing this report, the UK Parliamentary Joint Committee on Human Rights was undertaking an inquiry into business and human rights using the *Protect, Respect and Remedy* framework as its terms of reference.²⁸ The Corporate Responsibility Coalition (CORE), a UK civil society initiative, has also proposed the creation of a *Commission for Business, Human Rights and the Environment* that would be tasked, amongst other things, with a dispute resolution function that has the capacity to investigate complaints of alleged human rights breaches by UK companies operating abroad, including the capacity to offer remedies.²⁹

Other country-level developments include the current National Consultation on Human Rights in Australia, which has included discussions about how human rights relate to business.³⁰ For OECD countries, reform of the National Contact Points (NCPs) for the OECD Guidelines has received attention. Opportunities for strengthening the NCPs are noted in the 2009 report of the SRSG on Business and Human Rights and in several of the submissions to the UK Inquiry. In Norway, the 2009 white paper on CSR adopted by the Norwegian government, *Corporate Social Responsibility in a Global Economy*, suggested strengthening the NCP system.³¹

²⁵ Government of Canada (Foreign Affairs and International Trade Canada), *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector* (March 2009). Available at: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx>.

²⁶ Ibid. Note that the Counsellor is only permitted to undertake reviews with the consent of the parties. The mandate does not extend to reviewing companies' activities on the Counsellors own initiative, making binding recommendations, law or policy recommendations, creation of new performance standards or formally mediating between parties.

²⁷ Ibid. It is intended that the CSR Centre of Excellence will be housed within an existing institution of government, possibly the Canadian Institute of Mining, Metallurgy and Petroleum (CIM).

²⁸ The call for evidence for the inquiry and the terms of reference are available at:

http://www.parliament.uk/documents/upload/Business_and_HR_CallforEvidence.pdf.

²⁹ Kate Macdonald, *The reality of rights: Barriers to accessing remedies when business operates beyond borders*, The London School of Economics and Political Science and the Corporate Responsibility Coalition (May 2009). Available at: http://www.lse.ac.uk/collections/enterpriseLSE/pdf/reality_of_rights.pdf, p. 41.

³⁰ See, for example, Francine Johnson and Edward Santow, *Position Paper: Would an Australian Charter of Rights be good for business?*, Gilbert + Tobin Centre of Public Law, University of New South Wales, Sydney (April 2009). Available at: http://www.gtcentre.unsw.edu.au/Resources/docs/cohr/Business_Charter_of_Rights.pdf.

³¹ Norwegian Ministry of Foreign Affairs, *Corporate social responsibility in a global economy*, Report No. 10 (2008-2009) to the Storting. Available at: http://www.regjeringen.no/pages/2203320/PDFS/STM200820090010000EN_PDFS.pdf, see especially, pp. 64-69.

3.4 Mining industry developments

Developments at the industry level have also elevated the discussions around grievance mechanisms and human rights. However, linkages made by industry between human rights and grievance mechanisms remain tentative.³² An exception is the May 2009 ICMM response to the *Protect, Respect and Remedy* framework, *Human Rights in the Mining & Metals Industry: Overview, Management Approach and Issues*, which specifically links the industry's human rights commitments to access to remedy.³³

Several major companies, for example BHP Billiton, now require that operations have in place a community grievance mechanism proportional to the operation's level of risk.³⁴ Anglo American has developed a complaints and grievance procedure as part of its Socio-Economic Assessment Toolbox (SEAT).³⁵ The recently released *Community Relationships Review* by Newmont Mining recommends the development of effective grievance mechanisms for each operation as part of a broader approach to conflict management.³⁶

Despite these developments, there remains a need to better link current industry developments in the area of grievance resolution to the broader human rights framework and to identify and encourage leading policy and practice in the Australian industry in this area.

³² See, Kemp and Bond, *Mining industry perspectives on handling community grievances*.

³³ International Council on Mining and Metals (ICMM), *Human Rights in the Mining & Metals Industry: Overview, Management Approach and Issues* (2009, draft version), p. 11.

³⁴ BHP *Community Engagement Standard* (revised, forthcoming).

³⁵ The tool is available at:

http://www.baseswiki.org/@api/deki/files/42/=4A_Complaints_and_Grievance_Procedures.pdf.

³⁶ Gare A. Smith and Daniel Feldman, *Newmont Mining Corporation: Community Relationships Review: Global Summary Report* (March 2009). Available at:

http://www.beyondthemine.com/2007/pdf/CRR_Final_Global_Summary_Report_March_2009.pdf, p. 143.

4. Overview of best practice principles and normative standards

This section provides an overview of best practice principles and normative standards for non-judicial rights-compatible grievance mechanisms relevant to mining. For the purposes of the analysis, principles have been interpreted as ‘guiding concepts’; that is, those base elements that would underpin a grievance mechanism, both operational-level and industry third-party.

4.1 The research task

The research task followed this sequence:

- broad scan of relevant guidance documents and standards
- identification of five primary guidelines for analysis that relate directly and primarily to the issue of grievance mechanisms. Between them they cover the breadth from project-level specific to third-party. These guidelines were relevant to mining or large development projects generally:
 1. *Protect, Respect and Remedy* by the SRSO on Business and Human Rights³⁷
 2. *Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders* by the Corporate Social Responsibility Initiative³⁸
 3. *Guiding Principles for a complaints mechanism* by Oxfam Australia³⁹
 4. *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* by the Compliance Advisor/Ombudsman of the International Finance Corporation⁴⁰
 5. *Project-Level Grievance Mechanisms for Affected Communities: Guidance on Affected Community Grievance Management for Projects and Companies* by the International Finance Corporation (draft)⁴¹
- development of a consolidated list of commonly agreed principles through comparative analysis between the five primary references
- validation of these principles against secondary sources and supplementary literature for gaps and clarifications. Secondary documents were either early drafts or did not focus solely on grievance mechanisms and include:
 1. ICMC (draft) guide: *Human Rights in the Mining and Metals Sector: Preventing and Handling Community Complaints and Grievances*
 2. IFC: Performance Standards⁴²

³⁷ SRSO on Business and Human Rights, *Protect, Respect and Remedy*.

³⁸ CSRI, *Rights Compatible Grievance Mechanisms*.

³⁹ Macdonald, *Mining Ombudsman Annual Report 2004*. See especially, ‘The framework for a complaints mechanism’, pp. 16-19 and ‘Appendix: Benchmarks for the mining industry’.

⁴⁰ Compliance Advisor/Ombudsman of the International Finance Corporation (IFC CAO), *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* (2008). Available at: <http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf>.

⁴¹ International Finance Corporation, *Project-Level Grievance Mechanisms for Affected Communities: Guidance on Affected Community Grievance Management for Projects and Companies* (2009, draft under review).

⁴² International Finance Corporation, *International Finance Corporation’s Performance Standards on Social & Environmental Sustainability* (2006). Available at: [http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/\\$FILE/IFC+Performance+Standards.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_full/$FILE/IFC+Performance+Standards.pdf).

3. MCA: Enduring Value Framework⁴³
 4. *Framework for Responsible Mining: A Guide to Evolving Standards*⁴⁴
 5. IFC Extractive Industries Review and World Bank Management Response⁴⁵
 6. MMSD Report: *Breaking New Ground*⁴⁶
 7. International Alert: *Conflict Sensitive Business Practices: Guidance for Extractive Industries*⁴⁷
 8. CommDev: *Local Conflict Management Tool for the Extractives Sector*⁴⁸
- consolidation of a list of principles common to third-party and operational-level mechanisms drawing on both the primary and secondary documents.

Note: Case examples have been provided wherever possible. Due to a lack of case study material available in the public domain, this paper draws heavily on the cases documented by the IFC CAO as these findings are comprehensively documented and publicly available.

4.2 Main findings

4.2.1 Consistency in relation to overarching best-practice principles

International norms for non-judicial third-party grievance mechanisms draw on a similar set of principles, largely premised on the now well-established *Protect, Respect and Remedy* framework articulated by the SRSG on Business and Human Rights. These six principles apply equally to operational-level as well as third-party mechanisms and are:

1. legitimate
2. accessible
3. predictable
4. equitable
5. rights-compatible
6. transparent.⁴⁹

⁴³ Minerals Council of Australia, *Enduring Value: The Australian Minerals Industry Framework for Sustainable Development: Summary Booklet* (2005). Available at:

http://www.minerals.org.au/_data/assets/pdf_file/0006/19833/EV_SummaryBooklet_June2005.pdf.

⁴⁴ Marta Miranda, David Chambers and Catherine Coumans, *Framework for Responsible Mining: A Guide to Evolving Standards* (2005). Available at:

http://www.frameworkforresponsiblemining.org/pubs/Framework_20051018.pdf.

⁴⁵ International Finance Corporation, *Striking a Better Balance – The World Bank Group and Extractive Industries: The Final Report of the Extractive Industries Review – World Bank Group Management Response* (2004). Available at:

[http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/\\$FILE/finaleirmanagement_response.pdf](http://www.ifc.org/ifcext/eir.nsf/AttachmentsByTitle/FinalManagementResponse/$FILE/finaleirmanagement_response.pdf).

⁴⁶ International Institute for Environment and Development, World Business Council for Sustainable Development, *Breaking New Ground: Mining, Minerals, and Sustainable Development: The Report of the MMSD Project* (Earthscan Publications, 2002). Available at: http://www.idrc.ca/en/ev-86493-201-1-DO_TOPIC.html.

⁴⁷ International Alert, *Conflict Sensitive Business Practice: Guidance for Extractive Industries* (2005). Available at:

http://www.international-alert.org/pdf/conflict_sensitive_business_practice_section_1.pdf.

⁴⁸ The Oil, Gas and Mining Sustainable Community Development Fund (CommDev), *Community Development and Local Conflict: A Resource Document for Practitioners in the Extractive Sector* (2008, draft under review). Available at:

<http://www.commddev.org/content/document/detail/1801/>.

4.2.2 Differences in application of principles for different types of mechanisms

Application of the principles sometimes varies according to whether the discussion relates to operational-level or third-party mechanisms. For example, discussion of principles relevant to third-party mechanisms tends to highlight the principle of ‘legitimacy’ in terms of independence and impartiality, whereas legitimacy is often discussed as being achieved through other means for an operational-level mechanism (e.g. partisan participation and collaborative decision-making). Further research could focus on the application of ‘principles in practice’ in order to identify leading practice as well as opportunities for improvement at the operational level.

4.2.3 Supplementary principles

In addition to the SRSG principles listed above, there are several supplementary principles that tend to be more prominent in guidelines relating to operational-level grievance mechanisms, including:

1. engagement and dialogue
2. culturally appropriate
3. empowering
4. proportional
5. continual improvement.

These principles are not exclusive to operational-level mechanisms and remain relevant for third-party mechanisms. They may be considered ‘sub-sets’ of the principles of the SRSG on Business and Human Rights (for example, culturally appropriate could be included under equitable or even rights-compatible). For the purposes of this discussion paper, they have been listed separately to provide a comprehensive discussion. Separating these principles was also helpful for the analysis of the two operational-level mechanisms (see Chapter 5). However, all of the principles are interrelated and complementary and this should be borne in mind at all times.

4.2.4 Some inconsistency in relation to the issue of enforceability

Some guidelines, particularly those that focus on third-party mechanisms, stipulate that grievance mechanisms require an enforcement capacity (for example Oxfam Australia). Others emphasise the importance of learning and review, continual improvement, accountability and incentives as strategies to ensure the implementation of outcomes, rather than enforcement.

4.3 Overarching best practice principles

Drawing extensively on the work of others, this section explains each of the principles listed above. The principles should not be viewed as exclusive categories or a hierarchy. The principles are *inter-related*, *complementary* and *mutually re-enforcing*. Brief case studies have been included to highlight particular points.

⁴⁹ SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p. 24.

4.3.1 Legitimate

Trust through participation

To be effective, a grievance mechanism must be perceived as legitimate by all parties involved.⁵⁰ In relation to community grievances, the Mining, Minerals and Sustainable Development (MMSD) project (2002) argues that "...trust must be gained and not assumed... [and requires] the active participation of claimants throughout the [complaints] process, and above all, delivery of changes at the ground level", highlighting the point that both process and outcomes are important for establishing trust in a mechanism.⁵¹ In some contexts, mining operations will need to bridge the gap between operational activities and community perceptions of such activities, as conflict can often arise due to inadequate communications and a lack of transparency.

Case example: In 2004 the CAO undertook an independent review of the Don Mario mining project in Bolivia operated by the Bolivian mining company Compania Minera del Sur S.A. (COMSUR). The review was undertaken in response to a complaint by a Bolivian NGO (Coordinadora de Pueblos Etnicos de Santa Cruz) relating to environmental and social impacts, including allegations of inadequate consultation and participation.⁵² The CAO investigation found that although the company had sound practice for managing environmental issues, grievances arose because of the gap between company practice and public perception. The CAO found that public perception of the operation was negative not as a result of poor environmental practice but due to lack of consultation, limited engagement and insufficient exchange of information on environmental and social issues.⁵³ CAO recommendations pointed to a "critical need to build trust between COMSUR [the company] and local communities to provide a basis for participatory community development planning and foster ongoing relationships of mutual benefit".⁵⁴

⁵⁰ IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 1; CSRI, *Rights Compatible Grievance Mechanisms*, p. 14.

⁵¹ Marcos A. Orellana, *Code of Codes: Compliance Oversight*, Report commissioned by the Mining, Minerals and Sustainable Development Project of the International Institute for Environment and Development (IIED), p. 6. On participation and community capacity building see also, CSRI, *Rights Compatible Grievance Mechanisms*, p. 14; IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 2; Kemp and Bond, *Mining industry perspectives on handling community grievances*, p.38-39 ; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 24-29; IFC/WB, *Striking a Better Balance*, Governance Recommendation 13.

⁵² Compliance Advisor/Ombudsman of the International Finance Corporation (IFC CAO), *Review of the Capacity of COMSUR to Manage Environmental and Social Responsibility Issues* (2004) Available at: <http://web.archive.org/web/20040823110950/www.cao-ombudsman.org/pdfs/COMSUR+capacity+review+-+English+-CAOweb.pdf>, p. iii.

⁵³ *Ibid.*, p. v.

⁵⁴ *Ibid.*

Governance considerations

Creating a multi-stakeholder oversight body to administer a mechanism is one way to enhance legitimacy.⁵⁵ In the mining context, such an oversight body might include representatives from civil society and community interest groups, local government representatives, landowners or users, affected people, Indigenous leaders, company representatives and/or local suppliers and contractors.⁵⁶ Such a body may form part of the operational-level mechanism from the outset, or may serve as an appeals function.

Independent and transparent funding

For third-party mechanisms, ensuring a sufficient level of independence from all parties, including mining companies and industry associations, is one way of enhancing legitimacy.⁵⁷ Where funds for expert or advisory services are provided by the company, legitimacy can be enhanced if such funds are guaranteed and overseen through a transparent, multi-stakeholder process.⁵⁸

4.3.1 Accessible

Widely and regularly publicised

The mechanism must be widely publicised and easily accessible to all sectors of the community.⁵⁹ This means that diversity factors such as age, gender and ethnicity need to be carefully considered when determining the most appropriate forms of awareness raising. At the operational-level, social mapping, baselines and impact assessments undertaken in a culturally appropriate manner and early in the project cycle are important for mining companies to develop their own knowledge and understanding of the local social and environmental context and tailor communication about the mechanism accordingly.⁶⁰ Efforts to publicise the mechanism to those who may wish to access it should be regular and ongoing through, for example, social networks, informal discussions, community meetings, posters in public places and/or the company website.⁶¹

⁵⁵ CSRI, *Rights Compatible Grievance Mechanisms*, p. 15. See also, Alison Lombardo and Marcos Santiago, *The Mechanics of Accountability: Ad Hoc Time-Specific Stakeholder Panels*, Corporate Social Responsibility Initiative, Harvard Kennedy School (2009).

⁵⁶ CSRI, *Rights Compatible Grievance Mechanisms*, p. 15.

⁵⁷ Macdonald, *Mining Ombudsman Annual Report 2004*, p. 18.

⁵⁸ CSRI, *Rights Compatible Grievance Mechanisms*, p. 18.

⁵⁹ IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 2; CommDev, *Community Development and Local Conflict*, p. 76; CSRI, *Rights Compatible Grievance Mechanisms*, p. 21; Kemp and Bond, *Mining industry perspectives on handling community grievances*, p. 39; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 19; SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p. 24.

⁶⁰ CSRI, *Rights Compatible Grievance Mechanisms*, p. 25; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 24.

⁶¹ CommDev, *Community Development and Local Conflict*, p. 75; CSRI, *Rights Compatible Grievance Mechanisms*, p. 22. See also, IFC Performance Standard 1: 23; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 19; Kemp and Bond, *Mining industry perspectives on handling community grievances*, p.39.

A variety of access points

It is important to provide a variety of access points to access a grievance mechanism.⁶² Points of access may include: local NGOs, interest groups such as for youth or women, Indigenous representatives, hotline services, trade unions, community representative organisations and/or independent statutory bodies (e.g. Ombudsman).⁶³ The range of options will depend of the local context.

Case example: At Newmont's Ahafo project in Ghana (see case study on p. 46) grievances can be lodged either via Front Desk Officers located at the mine camp, the Grievance Officer at the Grievance Office also located at the camp, or via Community Liaison Officers who are located in local communities. These offices are located in communities to address access issues that some members may face when wanting to lodge a grievance (e.g. lack of transport).

Provision of financial resources

Complainants must be able to access mechanisms at no cost.⁶⁴ Frequently, mining operations enter environments where local communities may be financially impoverished, unaccustomed to corporate culture and/or have limited literacy skills. Best practice sees companies ensure that communities have adequate assistance that enables them to participate in community engagement and grievance resolution processes. This approach goes some way to addressing power disparities between parties, ultimately enhancing the legitimacy and effectiveness of the overall process.⁶⁵

4.3.2 Predictable

Timely and respectful

Treating complainants respectfully includes prompt acknowledgment of receipt of a complaint, timely and substantive responses, working within agreed timeframes that are clearly communicated to complainants and updating the complainant on the progress of their complaint.⁶⁶

Certainty of process

To ensure predictability of process there should be a clear procedure for all steps of the grievance handling and dispute resolution process.⁶⁷ Ideally, the procedure should be formally documented. In practice, ad hoc approaches to grievance resolution between mining companies and communities have frequently proven to be ineffective.⁶⁸

⁶² CSRI, *Rights Compatible Grievance Mechanisms*, p. 21; IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 3; Kemp and Bond, *Mining industry perspectives on handling community grievances*, p. 39.

⁶³ CSRI, *Rights Compatible Grievance Mechanisms*, p. 21.

⁶⁴ CommDev, *Community Development and Local Conflict*, p. 75; IFC Performance Standard 1: 23; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 18.

⁶⁵ Miranda, Chambers and Coumans, *Framework for Responsible Mining*, p. 72. See also Macdonald, *Mining Ombudsman Annual Report 2004*, p. 18, 25.

⁶⁶ CSRI, *Rights Compatible Grievance Mechanisms*, p. 28; CommDev, *Community Development and Local Conflict*, p. 76; Kemp and Bond, *Mining industry perspectives on handling community grievances*, p. 46.

⁶⁷ MMSD, *Breaking New Ground*, p. 406.

⁶⁸ Kemp and Bond, *Mining industry perspectives on handling community grievances*, p. 46.

Case example: The importance of procedural certainty was recently re-iterated by the South African Human Rights Commission’s findings relating to Anglo Platinum’s Potgietersrust Platinum Limited (PPL) Mine near Mokopane, Limpopo.⁶⁹ The Commission undertook an investigation in 2008 and the subsequent findings rejected an ad hoc approach to grievance resolution. The Commission found that the company’s dispute resolution mechanism for resettled persons was “technical and minimalistic” and suggested that companies need to go “beyond legalistic compliance”.⁷⁰ A key finding of the report was that, although there were a variety of channels available through which resettled persons could raise grievances, the ad hoc nature of these avenues was considered by the Commission to be insufficient.⁷¹ The Commission also made reference to the power dynamics between PPL and the communities, indicating that, as PPL was the project sponsor, there was a particular onus on the company to establish an effective grievance mechanism.⁷² The Commission noted the importance of rights compatibility in both process and substance, making direct reference to the principles developed by the Corporate Social Responsibility Initiative.⁷³

Case example: At the Don Mario mining project (see also above p. 31) the company’s inconsistent approach to handling grievances was linked directly to the receipt of vexatious or unfounded complaints.⁷⁴ The CAO undertook an investigation relating to an allegation that the original Environmental Impact Assessment had not adequately considered the ecological sensitivity of the area, that the consultation process with communities had been inadequate (particularly for the Indigenous communities) and that there had been no compensation despite the profound impacts of the project. The informal and inconsistent approach to handling complaints and the resulting lack of a predictable process were noted as factors that could encourage speculative complaints.⁷⁵

Implementation of agreed outcomes

Predictability of process also includes having in place, or agreeing upon, provisions for implementing agreed outcomes.⁷⁶ For example, where an outcome contains remedial measures there must be agreement regarding provisions for implementation, monitoring and follow up.⁷⁷

⁶⁹ South African Human Rights Commission, *Mining-related observations and recommendations: Anglo Platinum, affected communities and other stakeholders, in and around the PPL Mine, Limpopo* (2008). Available at: http://www.sahrc.org.za/sahrc_cms/publish/cat_index_41.shtml, p. iii.

⁷⁰ *Ibid.*, p. iv and vi respectively.

⁷¹ *Ibid.*, p.iii.

⁷² *Ibid.*, p.iii. See also p. xii.

⁷³ *Ibid.*, p. xii.

⁷⁴ IFC CAO, *Review of the Capacity of COMSUR*, p. v.

⁷⁵ *Ibid.*, pp. v-vi.

⁷⁶ CSRI, *Rights Compatible Grievance Mechanisms*, p. 37; SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p. 24.

⁷⁷ CSRI, *Rights Compatible Grievance Mechanisms*, p.37; CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 1; IFC Performance Standard 26.

4.3.3 Equitable

Treat every complainant fairly

A grievance mechanism should take every complaint seriously and treat every complainant fairly. This does not mean every complaint needs to be accepted into the formal process, but refusing to engage could lead to or escalate conflict. There must be ways of considering whether vexatious claims have roots in other, more systemic problems.

Where a complaint is clearly frivolous, vexatious or speculative, reasons for not accepting the complaint should be clearly and respectfully explained to the complainant. Where the complaint is not withdrawn, companies should publicly communicate reasons for rejecting the complaint.⁷⁸

Equitable process and outcome

It is important that both processes and outcomes are equitable. Considerations of what is 'fair' need to involve careful consideration of cross-cultural perspectives and diversity factors such as age, ethnicity, gender and socio-economic status. Involving the community in design of the grievance mechanism and/or integrating traditional grievance resolution processes where communities agree to do so can help establish a mechanism that is considered by participating parties to be 'fair'. Outcomes reached through engagement, dialogue, collaboration and consensus are likely to be more equitable than unilaterally determined outcomes.

4.3.4 Rights-compatible

Rights-compatible processes and outcomes

'Rights-compatible' grievance resolution means that a mechanism is consistent with international human rights in terms of both process and substance; that is, the procedures followed and the outcomes reached.⁷⁹ In essence, rights-compatibility recognises that an equitable process is a necessary precondition for an equitable outcome.⁸⁰

A rights-compatible grievance mechanism is based on principles of non-discrimination, equity, accountability, empowerment and participation, particularly of vulnerable people (for example, some groups of women, children, aged, ethnic minorities and Indigenous Peoples).⁸¹ An effective rights-compatible grievance mechanism can provide a channel through which communities impacted by a company can gain recognition for legitimate concerns and engage in a process to secure acceptable outcomes and share in the ownership of that process.

⁷⁸ CSRI, *Rights Compatible Grievance Mechanisms*, p. 29.

⁷⁹ CSRI, *Rights Compatible Grievance Mechanisms*, see especially, pp. 7-8; Macdonald, *Mining Ombudsman Annual Report 2004*, pp. 24-29; SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p. 24.

⁸⁰ See, for example, UNDG, *The Human Rights Based Approach to Development Cooperation*.

⁸¹ CSRI, *Rights Compatible Grievance Mechanisms*, pp. 7-9. Drawing on UN principles such as those articulated in the *Vienna Declaration and Programme of Action* of the 1993 World Conference on Human Rights and the Development cooperation principles.

Non-prejudice to legal recourse

A rights-compatible, non-judicial grievance mechanism should not undermine access to other existing grievance resolution processes.⁸² In particular, it must be clear that access to non-judicial grievance mechanisms does not prejudice a complainant's right to legal recourse.⁸³ Rather, non-judicial grievance mechanisms should aim to reinforce existing judicial processes in positive ways.⁸⁴

4.3.5 Transparent

Openness about the progress of complaints

It is important to be as open and explicit as possible about the progression of a complaint through the process. Complainants should be updated regularly on the progress of their specific complaint.⁸⁵

Provisions for confidentiality

While best practice encourages transparency, appropriate confidentiality is also vitally important, particularly where there are fears of retaliation. Complainant identity should be kept confidential, either as a presumption or on request.⁸⁶ In some cases, confidentiality during dialogue or negotiation sessions can also help create a trusting environment, enabling more open discussions.⁸⁷

Openness about the final outcome

Transparent communication about a grievance resolution process does not necessarily equate to making all discussions and findings public. However, key elements of investigations, deliberations and final outcomes should be made public.⁸⁸ Resolutions, such as settlements or agreements, should be confirmed with all parties involved and formally recorded.⁸⁹ Internal and external reporting can help facilitate organisational learning and improvements.

Case example: In 2005 the CAO received a complaint by local commercial fishermen about the impact of the Minera Antamina Project's port facility on the local marine environment. The mine is located in the Peruvian Andean highlands, the port facility over 300kms away in the Municipality of Huarney.⁹⁰ The CAO report,

⁸² CommDev, *Community Development and Local Conflict*, p. 76; CSRI, *Rights-Compatible Grievance Mechanisms*, p. 20; IFC Performance Standard 1: 23.

⁸³ Ibid.

⁸⁴ CSRI, *Rights-Compatible Grievance Mechanisms*, p. 20; MMSD, *Breaking New Ground*, p. 359.

⁸⁵ CSRI, *Rights-Compatible Grievance Mechanisms*, p. 23; Kemp and Bond, *Mining industry perspectives on handling community grievances*, p. 39.

⁸⁶ CSRI, *Rights-Compatible Grievance Mechanisms*, p. 24; IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 2; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 19.

⁸⁷ CSRI, *Rights Compatible Grievance Mechanisms*, p. 23; MMSD, *Breaking New Ground*, p. 406.

⁸⁸ CSRI, *Rights Compatible Grievance Mechanisms*, p. 22; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 19. MCA Enduring Value Principle 10: 3; SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p. 24.

⁸⁹ CSRI, *Rights Compatible Grievance Mechanisms*, p. 37; MCA Enduring Value Principle 10: 3.

⁹⁰ Compliance Advisor/Ombudsman of the International Finance Corporation website at: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=109.

following investigation into the complaint, recommended that possible steps to revise and clarify community grievance resolution processes could include: periodic reporting on project responses to complaints, providing guidance and clarification on the various channels for resolving complaints, and stipulating clearly how these channels work, how complaints are assessed and how outcomes are measured.⁹¹

4.4 Supplementary principles

4.4.1 Engagement and dialogue

Inclusive decision making

Generally speaking, best practice emphasises inclusive decision making and locally-owned decisions. The SRSG on Business and Human Rights states that company-level mechanisms should *always* operate through engagement and dialogue rather than the company acting as adjudicator.⁹² The ‘investigate, decide, announce’ approach to dispute resolution can reinforce power inequities between companies and communities. This unilateral approach limits procedural choices available for solving the problem, and limits the complainant’s participation in solution finding.⁹³

Case example: In 2005 the CAO undertook an assessment of a complaint from local communities in relation to the Marlin mining project in the Sipacapa municipality of Guatemala. The mine, under construction at the time, is operated by Montana Exploradora de Guatemala, S.A., a subsidiary of the Canadian company Glamis Gold Ltd.⁹⁴ The complaint related primarily to water access and pollution. One of the root causes identified as contributing to the grievances was the perception by one community that they had been excluded and isolated as the company engaged more directly with another community in the area.⁹⁵ The CAO found that limited avenues for meaningful communication, limited information and limited trust between community leaders and project personnel contributed directly to an aggressive civil society campaign: “It appears that the combination of proximity to the mine and inadequacy of reliable alternative sources of information has fuelled fear and apprehension about the project. Fear and apprehension have now spiralled into a climate of intimidation and near-violence”.⁹⁶

In some instances, a lack of engagement and consultation can result in legal sanction.

Case example: In Canada in 2006, a junior exploration company, Platinex Inc., was prohibited from undertaking further exploration until the company had adequately consulted with the First Nation group. In the first instance the Ontario Superior Court of Justice ordered that the company was not allowed to undertake exploration

⁹¹ Compliance Advisor/Ombudsman of the International Finance Corporation, *Final Assessment Report: Complaint Regarding the Antamina Mining Project in Harmey, Peru* (2006). Available at:

http://web.archive.org/web/20070705192328/www.cao-ombudsman.org/html-english/documents/Final_Antamina_Assessment_May06a.pdf, p. 14.

⁹² SRSG on Business and Human Rights, *Towards Operationalizing Protect, Respect and Remedy*, p. 23.

⁹³ IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 9.

⁹⁴ Compliance Advisor/Ombudsman of the International Finance Corporation (IFC CAO), *Assessment of a complaint submitted to CAO in relation to the Marlin Mining Project in Guatemala* (2005). Available at: <http://web.archive.org/web/20070705192245/www.cao-ombudsman.org/pdfs/CAO-Marlin-assessment-English-7Sep05.pdf>, p. i.

⁹⁵ *Ibid.*, p.37.

⁹⁶ *Ibid.*, p.38.

drilling on the traditional lands of the Kitchenuhmaykoosib Inninuwug First Nation until the specified consultations had occurred.⁹⁷ In a subsequent case, after assessing the parties' engagement since the first hearing, the court permitted the drilling to proceed on the basis that the consultations had occurred. The Court imposed on the parties a consultation protocol, timetable and Memorandum of Understanding that, amongst other things, listed participation in decision making as a compulsory requirement.⁹⁸

Research suggests that engagement, dialogue and participatory processes are associated with effective grievance resolution and sustainable long-term solutions.

Case example: The Peruvian Tintaya mine is operated by Xstrata Copper. At the request of a local community support organisation (CONACAMI) the Oxfam Australia Mining Ombudsman assisted with establishing a Mesa de Dialogo (Dialogue Roundtable) in 2000 in an effort to improve communications and resolve grievances between the mine and the community.⁹⁹ The Tintaya Mesa Dialogo is a formalised dialogue process whereby the communities and company can discuss grievances as well as other aspects of community-company relations. The most recent Oxfam Australia Mining Ombudsman report suggests that the dialogue table "has been a successful way of bringing together all stakeholders and has resolved many of the communities' grievances".¹⁰⁰

Case example: A 'decide together' approach was recommended by the CAO to resolve the grievances at the Marlin mine (see also above p. 37). In particular, the CAO stressed the importance of exploring jointly what steps would be necessary to redress the feelings of disrespect between mine and community, and the need to establish a framework for on-going dialogue and consultation that moved beyond the legal dispute.¹⁰¹

Participatory investigation, monitoring and follow-up

Engagement and dialogue is important, not only to resolve the dispute at hand, but also for building sustainable ongoing relationships between communities and mining operations over the long term. Participatory initiatives such as joint investigations into allegations of environmental degradation or joint social monitoring, have proven to be effective in contributing to grievance resolution and paving the way for more open and trusting relationships.

Case example: Since 2001, the communities around the Tolukuma mine in Papua New Guinea, owned at the time by Emperor Mines (acquired by Petromin PNG Holdings Limited in 2008), raised concerns in relation to environmental pollution, in particular the local rivers, resulting in a lack of clean drinking water.¹⁰² In an attempt to resolve the dispute the Oxfam Australia Mining Ombudsman facilitated a joint investigation in 2005 aimed at

⁹⁷ *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, 2006 CanLII 26171 (ON S. C). Available at: <http://www.canlii.org/en/on/onsc/doc/2006/2006canlii26171/2006canlii26171.html>, paragraph 138.

⁹⁸ *Platinex v. Kitchenuhmaykoosib Inninuwug First Nation & A.G. Ontario*, 2007 CanLII 16637 (ON S.C). Available at: <http://www.canlii.org/en/on/onsc/doc/2007/2007canlii16637/2007canlii16637.html>, paragraph 188.

⁹⁹ Information and reports about the Dialogue Table are available on the Oxfam Australia Mining Ombudsman website at: <http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/tintaya/>.

¹⁰⁰ *Oxfam Australia Mining Ombudsman Report 2009* (forthcoming).

¹⁰¹ IFC CAO, *Assessment of a complaint submitted to CAO in relation to the Marlin Mining Project in Guatemala*, p. 38.

¹⁰² See details on the Tolukuma case on the Oxfam Australia Mining Ombudsman website at: <http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/tolukuma>.

establishing the levels of pollution and identifying alternative water sources. The team consisted of community members, local community organisations, technical advisers and company representatives.¹⁰³ Through this collaborative and participatory approach, the communities and the company were able to come to agreement regarding the water supplies.¹⁰⁴

4.4.2 Culturally appropriate

Attuned to local culture

Any operational-level mechanism and its associated processes should be attuned to local culture as this will enhance legitimacy and the likelihood of success.¹⁰⁵ Community engagement early in the project cycle will enhance understanding about traditional ways of grievance resolution that can form the basis of, or be integrated into, operational-level grievance mechanisms, thereby building trust and legitimacy.¹⁰⁶ A culturally-sensitive approach will incorporate community preferences for or against specific resolution methods (e.g. direct or mediated dialogue).

Diversity factors

Attention should also be paid to the most vulnerable community groups, for example, some groups of women, illiterate people, ethnic minorities and Indigenous Peoples.¹⁰⁷ It may be necessary to publish information in a variety of languages, assist persons who are illiterate to lodge a complaint, or meet with certain groups separately to communicate with them about the availability and function of mechanisms.¹⁰⁸ It is important that the whole process is understandable, transparent, culturally appropriate and accessible to all parts of a community.¹⁰⁹

4.4.3 Empowerment

Address imbalances

In most cases there is an imbalance in knowledge, resources and power between companies and communities making a complaint.¹¹⁰ To be empowering a grievance mechanism must acknowledge these power differentials *and* provide avenues to address them.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ See, for example, IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 2; CSRI, *Rights-Compatible Grievance Mechanisms*, p. 15; Kemp and Bond, *Mining industry perspectives on handling community grievances*, p. 39; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 24.

¹⁰⁶ IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 2; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 24.

¹⁰⁷ IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 2; CSRI, *Rights Compatible Grievance Mechanisms*, p. 36; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 19, 25; IFC Performance Standards 1: 23 and 7.

¹⁰⁸ IFC Performance Standard 1: 23; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 19.

¹⁰⁹ IFC Performance Standard 1: 23; IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 1.

¹¹⁰ Ibid., p. 16. See also Macdonald, *Mining Ombudsman Annual Report 2004*, p. 16.

Community capacity building

To alleviate power disparities between companies and communities it may be necessary to facilitate community capacity building in order that a community, or groups within a community, are able to engage constructively in the dispute resolution process.¹¹¹ For example, it may be important for a company to assist with providing access to financial resources, human rights or technical expertise.¹¹²

In the interests of legitimacy, it is important that access to resources such as human rights or technical assistance have a degree of independence from the company.¹¹³ For example, an independent mediator/facilitator could be engaged to assist with the gathering and interpretation of technical data.¹¹⁴

Case example: At the Don Mario mining project in Bolivia (see also above p. 31) the CAO found that existing company mechanisms for dealing with complaints were “informal, inconsistent and are sometimes undermined by residual paternalism”.¹¹⁵ As a cross-cutting recommendation (i.e. one that related to all the matters of complaint), it was recommended that COMSUR develop a transparent and predictable complaints mechanism, noting the importance of adopting a more open and transparent engagement approach. The CAO also recommended drawing on international best practice and external expertise to train staff in community development and participatory approaches.¹¹⁶

Case example: At the Tintaya mine (see also p. 38) community capacity building undertaken as part of the Roundtable has included developing the dispute resolution skills of community members as well as the human rights skills of company staff.¹¹⁷ Through this emphasis on capacity building, dialogue and engagement the communities and the company have resolved many, if not all, of the community grievances, leading to improved relations.¹¹⁸

Building capacity within companies

Company personnel must be appropriately trained in conflict resolution and understand the grievance mechanism’s importance in building trust with the local community.¹¹⁹ Research shows that experienced community relations personnel with the right personality, knowledge and skills are integral to resolving community-company grievances in the mining context.¹²⁰

¹¹¹ CSRI, *Rights Compatible Grievance Mechanisms*, p. 17; IFC/WB, *Striking a Better Balance*, Recommendation 25.

¹¹² CSRI, *Rights Compatible Grievance Mechanisms*, p. 17, 34; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 25; SRSG on Business and Human Rights, *Protect, Respect and Remedy*, p. 24.

¹¹³ CSRI, *Rights Compatible Grievance Mechanisms*, p. 18; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 25.

¹¹⁴ CSRI, *Rights Compatible Grievance Mechanisms*, p. 18, 34.

¹¹⁵ Compliance Advisor/Ombudsman, *Review of the Capacity of COMSUR*, p. vi.

¹¹⁶ Ibid.

¹¹⁷ Oxfam Australia *Mining Ombudsman Report 2009* (forthcoming).

¹¹⁸ Ibid.

¹¹⁹ CommDev, *Community Development and Local Conflict*, p. 75; Kemp and Bond, *Mining industry perspectives on handling community grievances*, p. 39.

¹²⁰ Kemp and Bond, *Mining industry perspectives on handling community grievances*, p. 40.

4.4.4 Proportional

Proportion and scale of mechanism and project

Guidance documentation focusing on local-level grievance resolution emphasises ‘proportionality’.¹²¹ This means that the scale and impact of the project and local conditions should to some extent determine the design of the mechanism. For example, a large-scale complex project that has the potential to create significant adverse impacts may require a sophisticated multi-dimensional mechanism whereas for a project with limited impact, a more straightforward process may be sufficient.¹²²

4.4.5 Continual improvement

Systems and analysis

Key performance indicators should be agreed upon through the ‘decide together’ approach suggested by the IFC CAO and jointly monitored to allow stakeholders to identify the effectiveness, or otherwise, of the mechanism and the agreed outcomes.¹²³ Such indicators may include: the number of complaints registered, satisfaction with the process, the number of grievances effectively resolved, and so forth.¹²⁴ A holistic approach to assessing the effectiveness of the grievance mechanism is important.¹²⁵ For example, the successful resolution of complaints is not the only indicator of good performance. How the process is administered and applied is often perceived to be just as important.

Information collected as part of the grievance process can be analysed and used for the purposes of continual improvement. Trends in frequency, type and point of origin of complaints can assist operations to anticipate emerging issues, improve the grievance mechanism itself and also point to necessary changes to operations or policies.¹²⁶ Periodic independent review that incorporates stakeholder feedback will also be helpful.¹²⁷

Analysis of underlying or root causes

Root cause analysis and identification of lessons learnt from specific case examples should inform revisions to the grievance mechanism and company policy and systems more broadly.¹²⁸ It is important that any lessons learnt and changes integrated are reported back to the community.¹²⁹

¹²¹ IFC, *Project-Level Grievance Mechanisms for Affected Communities*, p. 10.

¹²² *Ibid.*, p. 10.

¹²³ IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 31.

¹²⁴ CSRI, *Rights Compatible Grievance Mechanisms*, p. 39.

¹²⁵ *Ibid.*, p. 38.

¹²⁶ IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 3.

¹²⁷ MMSD, *Breaking New Ground*, p. 359; IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 16; Macdonald, *Mining Ombudsman Annual Report 2004*, p. 19;

¹²⁸ CSRI, *Rights Compatible Grievance Mechanisms*, p. 40; IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 3.

¹²⁹ IFC CAO, *A Guide to Designing and Implementing Grievance Mechanisms*, p. 16.

Information may cover the types of cases, how they were resolved and changes to company policies, procedures, operations and the grievance mechanism itself.¹³⁰

4.5 On the issue of enforceability

Most of the international best practice guidelines do not stipulate that mechanisms must have the capacity to impose sanctions for non-compliance with resolutions. Instead, the guidelines emphasise the importance of certainty of outcomes, monitoring, evaluation and reporting as strategies to ensure that agreed outcomes are implemented in practice. However, the Oxfam Australia Mining Ombudsman principles highlight the importance of enforcement capacity, arguing that an industry-level, third-party mechanism will only be effective to the extent that it “can gather evidence and impose sanctions”.¹³¹

That complaint resolutions are implemented in practice is noted as important in all of the best practice guidance documentation. How this is best achieved remains a point of debate.

4.6 Issues for the Australian minerals industry to consider in relation to principles

4.6.1 Alignment with high-level principles or endorsement of these principles

In moving forward with the development of leading practice for grievance mechanisms, the Australian minerals industry could consider endorsing or aligning with an agreed set of international principles for non-judicial, rights-compatible grievance mechanisms (e.g. the *Protect, Respect and Remedy* framework and its associated principles for grievance mechanisms, or a set of similar rights-compatible principles). This could be done independently of any decision about establishing an industry-level, third-party mechanism (see below), as the principles relate to all types of non-judicial mechanisms, as the principles relate to both operational-level and industry-level, third-party mechanisms.

4.6.2 Discuss the issue of enforceability

The *Protect, Respect and Remedy* framework and other guidance tools do not canvass enforceability as a principle common to all types of mechanisms, but they do emphasise the importance of predictability, such that timeframes and outcomes are clear, as well as the importance of rights-compatibility and implementation and monitoring of outcomes.

¹³⁰ Ibid., p. 3.

¹³¹ Macdonald, *Mining Ombudsman Annual Report 2004*, p. 18. Note that others make similar arguments emphasising the importance of enforcement. See, for example, Macdonald, *The reality of rights*, p. 41.

In relation to an industry-level, third-party mechanism, the industry should discuss formal and informal processes for ensuring that outcomes are implemented, and this should include some discussion of the issue of enforceability. Negative responses from some stakeholders to the Canadian Government's establishment of an Extractive Sector CSR Counsellor on the grounds that the function has no enforcement capacity highlights the importance of translating outcomes into practice within the context of a non-judicial mechanism.¹³²

The overall aims of a discussion on an industry-level, third-party mechanism may be undermined if there is no room for a discussion of enforceability and incentives for implementation of outcomes.

4.6.3 Further research and investigation

The Australian minerals industry could more actively share examples of 'principles in practice'. For example, independent research or assessments could be commissioned to evaluate alignment of existing or emerging mechanisms against the principles outlined above. The case studies presented in this report provide two such examples, but stakeholder perspectives would be needed to provide a broader basis for an evaluation.

¹³² See for example: http://www.halifaxinitiative.org/updir/March_26_press_release-final.pdf

5. Internal assessment of operational-level grievance mechanisms against best practice principles

This section provides a base-level internal assessment of two operational-level grievance mechanisms against the principles identified in the previous section. Newmont Mining's Ahafo mine in Ghana and Rio Tinto Aluminium's Weipa mine in Queensland were assessed.

5.1 The research task

At the operational-level, a dedicated pathway (or pathways) and processes for handling community complaints and grievances may represent leading practice, but exactly *what* these pathways are and *how* these processes function is likely to differ at each site, depending on the local context. This part of the research was commissioned in order to document and assess application of high-level principles on the ground at specific operations.

The research followed this sequence:

- secure access to information from two MCA members – Newmont Mining and Rio Tinto
- review publicly available information
- review information provided by the sites involved
- discussions with company-personnel (via email, telephone and on site in Weipa)

While this research may be informative and helpful for discussion, it was not an in-depth analysis, and further research is recommended.

5.2 Main findings

Based on an analysis of Newmont's Ahafo mine in Ghana and Rio Tinto Aluminium in Queensland, the following observations can be made:

- Evidence suggests that dedicated pathways for handling community complaints and grievances as part of a culturally-appropriate community engagement strategy can help strengthen relationships with local communities and reduce social risk.
- Formalised procedures can help Community Relations personnel engage other departments to facilitate resolution where that department is the source of an issue. Formal procedures also assist in bringing emerging or unresolved issues to the attention of senior management earlier in the conflict continuum, increasing the likelihood of resolution before issues escalate.
- Staff who had completed human rights and/or dispute resolution training reported improved practice on the ground. Those who had not yet received such training believed this would lead to improved practice.

- Several company staff indicated that greater access to industry-specific case studies from other mining operations would enhance knowledge and understanding of what works and what doesn't in relation to preventing and handling community complaints and grievances.
- Assessment of operational-level mechanisms against best practice principles provides useful insights into the strengths of the mechanism, in addition to highlighting opportunities for improvement.

5.3 Case study 1: Newmont Ghana's Ahafo Operations

5.3.1 Introduction

This case study provides an overview of the Newmont Ghana Ahafo operation's grievance procedure and a base-level internal assessment of this procedure against the principles outlined in Part A. In addition, the case study makes reference to the Newmont Ghana Akyem project's grievance procedure. Ahafo has been an operational site since 2006 and Akyem is still in the exploration and project evaluation stage. Both operations have formalised grievance procedures that are outlined in a Standard Operating Procedure (SOP). These two procedures are similar but have each been adapted to reflect site-specific conditions.¹³³ Where Akyem's particular circumstances provide interesting points of comparison to Ahafo's, this has been highlighted.

5.3.2 Methodology

This case study is based on desk-top research only. Most of the documentation examined has been produced by Newmont Ghana. While there is non-corporate documentation available about Newmont Ghana generally, this material does not focus on the grievance procedures. Overall, there is limited material that discusses or analyses how project-level grievance mechanisms function, and their alignment with high-level principles.

Corporate sources used to compile the case study:

- The Ahafo Grievance Management Standard Operating Procedure
- The Akyem Grievance Resolution Standard Operating Procedure
- The Newmont Ghana website at: <http://newmontghana.com/index.php>
- The Newmont Corporate website, Ghana page at: <http://www.newmont.com/en/operations/ghana/ahafo/index.asp>
- The Ahafo Case Study in the Newmont *Community Relationships Review* available at: <http://www.beyondthemine.com/2007/?pid=470>; and the full Ahafo Case Study available at: http://newmontghana.com/images/stories/ahafo_pdf/ahafo_community_relations_review_2009.pdf

¹³³ There have been preliminary discussions between the two sites to align the two procedures when Akyem starts production.

- Correspondence between CSRM and Newmont staff at the Ahafo and Akyem operations
- The Ahafo Social Responsibility Agreement available at:
http://newmontghana.com/images/stories/pdf/social_resp_agreement_sign_08.pdf.

Non-corporate sources used to compile the case study:

- A CDA field report on the Ahafo and Akyem projects available at:
http://www.cdainc.com/cdawww/pdf/casestudy/cep_ghana_field_visit_report_Pdf.pdf
- *Managing Mineral Resources through Public Private Partnerships: Mitigating conflict in Ghanaian Gold Mining* a Woodrow Wilson School report by Karen Ballentine available at:
http://www.princeton.edu/bobst/docs/WWS591c_Final_ReportMinerals_PDF.pdf.
- IFC-CAO *Advisory Note: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* <http://www.cao-ombudsman.org/html-english/documents/implemgrieveng.pdf>



Figure 1: Location map of Newmont Ghana operations

5.3.3 Background to the Ahafo Grievance Procedure

Ahafo is Newmont’s first mine in Africa. The mine is located in the tropical region of mid-west Ghana, around 290km northwest of the capital Accra.¹³⁴ In 2007 Ahafo contributed approximately 8% of the company’s worldwide equity gold sales and it is estimated that the mine will be active for around 20 years.¹³⁵

¹³⁴ Newmont Corporate website at: <http://www.newmont.com/africa/ahafo-ghana>. For further details on the Ahafo site see also the Newmont Ghana website at:

http://newmontghana.com/index.php?option=com_content&task=view&id=12&Itemid=35.

¹³⁵ Ibid.

The project is the first large-scale mine in the Brong Ahafo Region and has led to rapid social and economic changes within the local community.¹³⁶ Newmont's recent *Community Relationships Review* (CRR) found that the development of Ahafo has been characterised by a strong corporate commitment to stakeholder engagement and maintaining a social license to operate.¹³⁷ This commitment is reflected through initiatives such as:

- *The Social Responsibility Agreement with several local communities.* The agreement makes explicit reference to conflict resolution and stipulates a commitment that parties will aim to resolve issues concerning the implementation of the agreement locally and directly wherever possible.¹³⁸
- *The Social Responsibility Forum.* A forum designed to give communities the opportunity to participate in the company's decision making and by which community concerns can be discussed and resolved cooperatively through engagement and dialogue.¹³⁹
- *The Community Development Fund.* For funding of community development projects and initiatives.¹⁴⁰
- *Adopting a unique management structure within the company that emphasises the importance of community relations.* The General Manager Operations (GMO) and General Manager Environment and Social Responsibility (GM ESR) occupy positions at the same level.

The Akyem Operation

Akyem is currently in the exploration and project evaluation stage and does not yet have formal community agreements like Ahafo. Despite the fact that the mine has not yet moved into the operational stage, Akyem's community relations team have maintained a program of community engagement and grievance management while it waits for project evaluation decisions. The Akyem community relations team comprises personnel with a mix of perspectives, including international and Ghanaian experience.

¹³⁶ Smith and Feldman, *Newmont Community Relationships Review*, p. 50. For further detail see the full Ahafo Case Study: Synergy, *Newmont Mining Corporation: Global Community Relations Review: Site-Based Assessment of Ahafo Mine, Ghana* (October 2008). Available at:

http://newmontghana.com/images/stories/ahafo_pdf/ahafo_community_relations_review_2009.pdf.

¹³⁷ Ibid.

¹³⁸ Smith and Feldman, *Newmont Community Relationships Review*, see especially, pp. 18-19. The agreement is available in full at: http://newmontghana.com/images/stories/pdf/social_resp_agreement_sign_08.pdf.

¹³⁹ For further information on the Forum see:

http://newmontghana.com/index.php?Itemid=40&id=18&option=com_content&task=section.

¹⁴⁰ For further information on the Fund see:

http://newmontghana.com/index.php?option=com_content&task=category§ionid=18&id=41&Itemid=40.

The site-specific report from Ahafo, completed as part of the CRR, outlined the main themes that comprise the mine-community relations landscape at the Ahafo mine, including:

- *A high demand for local employment.* Access to employment was highlighted as “the most important local issue in shaping mine-community relations”.¹⁴¹ Tensions relating to local employment have occasionally developed into conflict.¹⁴²
- *Ongoing claims for compensation for mine-related impacts.* The project involved the physical relocation and compensation of some 1,700 households. The construction of Ahafo Mine over the past few years has had an inevitable series of impacts on the lives and livelihoods of people living in the area.¹⁴³
- *The Ahafo Mine’s role in stimulating local social and economic development.* The Ahafo Mine’s positive relationship with its external stakeholders derives in part from the mine’s ability to promote local and economic development, beyond direct mining operations, although local expectations over the potential economic spin offs from mining are very high.¹⁴⁴
- *Identifying legitimate community representatives and institutions.* For example, some stakeholders dispute the authority of local chiefs to represent their interests.¹⁴⁵
- *The mine’s protection of the environment.* Some NGOs have raised concerns regarding the depletion of water supplies and environmental pollution.¹⁴⁶

A key factor leading to the development of the Ahafo and Akyem grievance procedures were the learnings gained from escalated and high profile disputes at other Newmont operations around the world. Such disputes led Newmont Ghana to seek external advice and independent assessment in an effort to understand these disputes and build organisational capacity to avoid their recurrence. As such, the development of the Ahafo and Akyem procedures are in one sense an acknowledgment by Newmont of the opportunity to better manage grievance and conflict resolution in their operations.

Organisational learnings have been transferred between the two sites as the Akyem and Ahafo procedures were modeled using learnings from each other. In addition, development of the procedures was heavily influenced by the experiences and expertise of particular members of staff at the two operations.

¹⁴¹ Synergy, *Site-Based Assessment of Ahafo Mine, Ghana*, p. 8.

¹⁴² *Ibid.*, p. 10. “In 2006, for example, a group of protesters sought to prevent buses from transporting workers to the site. According to Ahafo Management, the protesters were claiming that they should have also been employed. The protest became violent, leading to one person being shot by the police”.

¹⁴³ *Ibid.*, p. 10.

¹⁴⁴ *Ibid.*, p. 15.

¹⁴⁵ *Ibid.*, p. 16.

¹⁴⁶ Smith and Feldman, *Newmont Community Relationships Review*, p. 51. Citing the Wassa Association of Communities Affected by Mining (WACAM), a Ghanaian organisation, as one NGO that has raised concerns such as police and security, impacts on local agriculture, forest and pollution.

5.3.4 Description of the Ahafo Grievance Procedure

5.3.4.1 Purpose and scope

Ahafo has a formalised grievance procedure in the format of a SOP. The purpose of the procedure is to clearly define and outline the processes that must be followed when a complaint or grievance is received from a local stakeholder. The stated aim of the SOP is to build trust and understanding between Newmont and local communities.

5.3.4.2 Administration of the grievance procedure

As part of the formal grievance procedure, the roles and responsibilities of all members of staff involved in the administration of the procedure are clearly outlined.

Front Desk Officers

Staff at the Kenyasi Camp¹⁴⁷ are responsible for having a preliminary discussion with potential complainants. This can include providing them with information or clarification on any issues of concern. The Front Desk Officer receives verbal complaints and passes these on to the Grievance Officer. It is then the role of the Grievance Officer to record the complaints in the management information system (MIS-A) and assign an appropriate Resolving Officer. In addition, the Front Desk Officers are the first point of contact when any external stakeholder comes to the mine premises to either submit a complaint letter, summons from the law court and Ghanaian Commission on Human Rights and Administrative Justice (CHRAJ)¹⁴⁸ or to make inquiries about the mine. The Front Desk Officers, as well as the Grievance Officers, are situated in the External Affairs Department within the Environmental and Social Responsibility Department. There is one male and one female Front Desk and Grievance Officer.

Grievance Officers

The Grievance Officers are responsible for the overall administration of the grievance mechanism. This includes receiving written complaints, recording all grievances and associated documentation into the management information system (MIS-A), the upkeep of files, forwarding complaints to Resolving Officers, regularly following up with Resolving Officers on outstanding complaints, following any cases relating to Newmont that are being heard by the CHRAJ or the courts, representing the company at hearings of CHRAJ and the courts, providing weekly reports for management on the number of complaints made and addressed, tracking the average time taken for complaint resolution and the nature of complaints being raised. The procedure provides specific guidance on when each step is to be taken, within what time frame, and any internal and external reporting requirements. The Grievance Officers refer complaints to Resolving Officers and

¹⁴⁷ Kenyasi is a small town about 6 km from the mine and 1 km from Kenyasi #2. Newmont has a fairly large office at Kenyasi #1 as well as a community outreach centre. For more information about the local context refer to: http://newmontghana.com/index.php?option=com_content&task=view&id=46&Itemid=431.

¹⁴⁸ The CHRAJ was established in 1993 by an Act of Parliament under the 1992 Constitution of Ghana. The CHRAJ possesses broad investigative powers, including the ability to investigate complaints concerning practices and actions by persons, private enterprises and other institutions that violate fundamental Constitutional rights and freedoms. For further information see the CHRAJ website at: <http://www.chrajghana.org/>.

communicate the outcome of investigations conducted by Resolving Officers to complainants. Where the need arises, Grievance Officers facilitate field visits to verify complaint resolution. In addition, the Grievance Officers facilitate the process of the Grievances and Complaints Committee to resolve cases that are beyond the precedence and authority level of the Resolving Officers and/or cases that are appealed by the complainant(s) after the Resolving Officer(s) have attempted to find a suitable resolution.

Resolving Officers

Resolving Officers are the people assigned to respond to a grievance or complaint. Resolving Officers are usually senior staff from the External Affairs area of the ESR Department who have the expertise and capabilities to resolve disputes and have had conflict resolution and human rights training. Resolving Officers are responsible for conducting an investigation where necessary and undertaking any follow up action required. The selection of appropriate Resolving Officers is based on the specific grievance, with the aim of appointing officers who are well informed about the issues and areas from which the complaint originated.

Grievances and Complaints Committee (internal)

The Committee is made up of members of the External Affairs Management Team, including the Principal Communications Officer, Community Relations Manager and specialists as required. The Committee provides and/or authorises resolutions in those instances where a complaint falls outside the scope of authority of the Resolving Officers. The Committee is also responsible for forwarding cases to senior management where this may be required.

5.3.4.3 Lodging a complaint

Complaints can be made orally or in writing by members of the communities that are impacted by the project. Complaints can relate to any issue that has directly or indirectly resulted from mine operations.

The SOP states that all complainants are to be treated respectfully, politely and with sensitivity. Newmont says it publicises its grievance procedure through regular public engagement, such as mine staff talking to community members, small informal meetings with particular stakeholder groups and regular formal community meetings. Mine staff are required to actively encourage community members to access the grievance mechanism.

Complaints can be lodged through several avenues:

- with Front Desk Officers who are located at the Kenyasi Camp
- with Grievance Officers at the Grievance Office¹⁴⁹ on site, also located at Kenyasi Camp
- with Community Liaison Officers whose offices are located in the mine communities (Kenyasi # 1, Kenyasi #2, Ntotroso, Gyedu, Wamahinso and the other five communities of

¹⁴⁹ The Grievance Offices are run under the Administration Unit/Section of the Environmental and Social Responsibility function and are typically not associated with the Community Relations offices.

the Ahafo North Project). The Community Liaison Officers have a common office located at the Kenyasi and Yamfo Camps where they process and forward all complaints received to the Grievance Officers.

5.3.4.4 Complaints resolution process

Complaints are classified into three tiers:

- *First order complaints.* Those that can be resolved between the complainant and Newmont directly and informally.
- *Second order complaints.* Where the involvement of a third party is deemed necessary to resolve the complaint.
- *Third order complaints.* Complaints that go to the judicial system, including CHRAJ.

First order complaints

The procedure is primarily focused on first order complaints, and most complaints received fall into this category and can be resolved at this level.¹⁵⁰ Written complaints are made to the Grievance Officers. Where a complaint is made orally it is transcribed by the Front Desk Officers and forwarded to the Grievance Officers. All complaints are logged into the management information system by the Grievance Officers. The procedure requires that the complaint is acknowledged to the complainant in writing within seven days.

Community Liaison Officers provide information and respond to inquiries, and such issues are not always necessarily complaints. Where the issues are not a complaint but can be dealt with directly by Community Liaison Officers, s/he will do so. Such issues are not logged in the grievance process, but reported in the Community Relations Field Report or Issues Register. However, if the issue is about something the community member sees as unfair resulting from the activities of the company these are received and logged by the Community Liaison Officer and presented to the Grievance Officer for initiating investigation towards the resolution of the issue.

Once a complaint is received and logged, the Grievance Officers will assign a suitable Resolving Officer to respond to the complaint. In the first instance, the Resolving Officer is required to speak with the complainant and attempt to reach a resolution to the complaint through dialogue. The Resolving Officer is then required to report back to the Grievance Officers on whether the grievance can be resolved at this first level. Where this is unsuccessful the Resolving Officer will undertake an investigation in order to assist with formulating and proposing an appropriate resolution.

¹⁵⁰ From January 2008 to May 2009, 431 complaints were received, of which 254 were resolved. The majority were related to blasting vibration. In relation these types of complaints, the company has been actively engaged in dialogue, participatory monitoring and building repair.

For first order complaints, investigations and resolutions are determined in a collaborative manner between the company, complainant and at times an appropriate third party. For example, where the complaint relates to environmental issues, the company, complainant and a third party witness may be involved in formulating an outcome. A response must be formulated within 30 days and hand delivered to the complainant. Receipt and acceptance of the proposed resolution must be recorded by the Resolving Officer. If the complainant is not satisfied with the proposal s/he can repeat the process. All documentation is recorded and logged into the management information system by the Grievance Officers.

Where a resolution falls outside the scope of the authority of the Resolving Officer, the complaint will go to the internal Grievances and Complaints Committee. The Committee can either authorise the resolution proposed or ask the Resolving Officer to review the proposal. Where a review is required this may include seeking assistance from third parties. Where a proposed resolution is not within the authority level of the Committee, it must seek management approval from outside the External Affairs Department.

Second order complaints

In some instances, the Resolving Officer may decide that it is necessary to involve a third party to resolve the dispute either because of the nature of the complaint, or because resolution of the complaint through the first order was unsuccessful. Third parties nominated in the procedure include the Community Consultative Committee, Traditional Leaders, the Resettlement Negotiation Committee or the Conflict Resolution Committee under the Ahafo Social Responsibility Forum. The stated aim of involving these third parties is to draw on existing knowledge and communication structures within the community and ensure fairness and objectivity in resolution of such complaints.

Third order complaints

At any stage, the complainants have the option of taking their issues to CHRAJ or to court. The procedure for a third order complaint outlines what processes are to be followed where a complaint is taken to the Ghanaian judicial system. Where a complaint proceeds as a third order complaint, the Grievance Officers are responsible for: communicating the detailed facts of the case with the legal department; following up on the case with the Company's legal counsel; attending the CHRAJ or court hearing; and regularly updating management.

Referencing third-party and judicial systems in the complaints procedure recognises the CHRAJ, stating that Newmont will engage with it in a predictable manner if a complaint against the company is brought before the CHRAJ. Having the category of third order complaint in the procedure provides a firm incentive to try to resolve complaints at the first or second order.

The Akyem Grievance Procedure

The Ahafo and Akyem procedures are similar, but there are a few differences that reflect learning and development within Newmont's grievance resolution methodology and practice.

Purpose and scope: the Akyem procedure states explicitly that the purpose of the Grievance Office is not only to resolve grievances at hand, but also to provide a monitoring and evaluation function to avoid the repetition of unwanted behaviour, recognising that effective grievance handling is essential to a social license to operate.

Direct oral communication: The Akyem procedure places a specific emphasis on oral communication. For example, where oral complaints are received they must be read back to the complainant for accuracy. Similarly, the procedure requires that reporting back to complainants must include a verbal explanation. The importance of direct face-to-face discussion is re-iterated at the investigation stage. The procedure stipulates that wherever possible an investigation report and recommendations for solutions should be reached through face-to-face discussion between parties.

Complaints resolution process: The Akyem procedure stipulates that first order complaints cannot involve compensation. First order complaints include all issues that the community member sees as unfair resulting from the activities of the company, such as inappropriate behavior of a worker or speeding by a Newmont vehicle in communities. These complaints are received and logged by the Community Information Officer and presented to the Grievance Officer to facilitate investigation and resolution. Aggrieved persons can also lodge complaints at the Grievance Office. Grievances potentially or actually involving compensation issues must be logged as second order complaints. Second order complaints involve an initial assessment and discussion with the complainant, then an investigation to resolve the issue. Issues regarding financial payments or any form of compensation and those that are not related to compensation are all investigated during the resolution process.

Learning and review: The community relations department at Akyem holds weekly review meetings where grievances and paths forward are discussed. Because the grievance procedure is a standard operating procedure it undergoes a yearly review and is subject to internal audits.

5.3.4.5 Internal base-level analysis of the Ahafo procedure against best practice principles

Due to the limited information on which this case study is based it is not possible to provide a comprehensive analysis of the Ahafo procedure against best practice principles. However, some basic observations are noted below.

Legitimate

A central stated aim of the SOP is to ensure that local communities have an avenue by which to hold Newmont accountable for its behaviour. The Ahafo grievance procedure has a clear and comprehensive governance and administration framework. All staff roles, responsibilities and lines of reporting are defined and outlined in the procedure. The mechanism is open to involving traditional grievance resolution structures and third parties where necessary. This is likely to contribute to building legitimacy. However, there is anecdotal evidence to suggest that some traditional leaders perceive that the mechanism undermines their authority.

Legitimacy of the mechanism is enhanced by stating that a complainant has the right to all avenues of appeal open to her/him under Ghanaian law. The procedure does not preclude recourse to legal avenues of grievance resolution. This is in keeping with current best practice principles.

Accessible

The grievance procedure appears to be well publicised and accessible. Newmont states that local communities are actively informed about the availability and functions of the grievance mechanism and encouraged to access it to resolve complaints. Community education about the grievance mechanism appears to be undertaken in a variety of ways, including informal discussions and more formal, regular meetings with community members. This suggests that the intent is to make the mechanism as accessible as possible. Enabling both verbal and written complaints to be accepted enhances accessibility, as does providing multiple points of access. Moreover, communities have access to the information centres to engage more broadly as well as raise complaints with the Community Liaison Officers.

Predictable process

The process used to resolve complaints is outlined in the procedure. Each step of the process is stipulated, specific time frames and responsibilities for communicating with the complainant(s) and taking action(s) are outlined. This suggests that the process is likely to have a high degree of predictability. How disputes are elevated through the system is also clearly outlined.

The process appears to be less predictable in terms of monitoring outcomes. The procedure stipulates that a complainant must agree to the proposed outcome before the complaint is considered resolved and closed. However, the procedure makes no requirement that the implementation of an outcome is to be monitored, which reduces predictability.

Equitable

The emphasis on direct engagement and use of local staff and third parties (where necessary) suggests that the grievance procedure seeks to avoid excluding any particular groups of potential complainants. However, while traditional leadership structures can be involved in the grievance procedure, issues of community representation have been raised as a matter of concern by some stakeholders.¹⁵¹ Involving traditional leaders in grievance resolution processes where the authority to represent the community of such leaders is questioned has the potential to limit overall trust and legitimacy as well as equity. In terms of gender equity, the company has a Women's Consultative Committee, a gender-mainstreaming officer and female Front-desk, Grievance and Resolving Officers.

¹⁵¹ Smith and Feldman, *Newmont Community Relationships Review*, p. 52.

Rights -compatible

Newmont has made strong commitments in this area, for example, to the Universal Declaration on Human Rights (UDHR) and the Voluntary Principles on security and Human Rights. Linking the complaints procedure explicitly to CHRAJ also points towards rights-compatibility (in terms of both process and outcomes). A more detailed analysis of process and outcomes would be needed to assess rights-compatibility of the process itself.

Transparent

The grievance resolution process sets specific requirements for regular and direct communication between the complainant and grievance resolution staff. It also stipulates that the grievance resolution process and outcome be fully documented and recorded into the management information system. Internal lines of communication and reporting are outlined. As such, it appears that there is a reasonable level of transparency internal to the company.

There are fewer stipulations for external reporting requirements. For example, the procedure does not require any external reporting on grievances. Nor are there formalised provisions for reporting back to the community on broader grievance trends and issues.

Engagement and dialogue

The procedure focuses heavily on engagement and dialogue. All stages of the dispute resolution process have clear provisions for direct dialogue between the company and complainants and, where necessary, third parties. For example, initial receipt of the complaint involves direct communication and discussion of the issue and exchange on possible solutions. Similarly, the procedure indicates that investigations and subsequent solutions are to be reached collaboratively by engaging complainants and third parties in the investigation process and finding of solutions.

Without undertaking fieldwork it is not possible to determine how effective such engagement and dialogue is in practice.

Culturally appropriate

The mechanism appears to have been designed with consideration for local circumstances. For example, the mechanism is open to involving traditional grievance resolution structures and employs local staff. This suggests recognition of the need for the procedure to be culturally appropriate.

Empowering

Newmont's overarching commitments to community relations that are targeted at community empowerment (such as the Social Responsibility Agreement and the Community Development Fund) are likely to have an indirect impact on how the grievance mechanism is perceived and used by the community. Local communities were not formally involved in designing the mechanism.

Proportional

The procedure appears to be proportional to the scale of the development. Conflict risk issues, such as a high demand for local employment and large scale resettlement, indicate that a dedicated and sophisticated grievance procedure is desirable. Newmont appears to have responded to this by implementing a well developed, formalised, grievance procedure that is integrated into the management information system.

Continual improvement

The development of the grievance mechanism itself was critically informed by learnings from other Newmont operations and external advice and input. It is likely that internal learning and review occurs through the regular reporting by Grievance Officers to management.

The Ahafo and Akyem grievance desks have started to align their grievance procedures. As part of this Akyem Grievance Officers visited Ahafo to participate in the grievance process and it is planned that Ahafo staff will visit Akyem to do the same. The aim is to integrate the two systems into a common and a consistent grievance mechanism.

The issue of enforceability

For first and second tier complaints there are no enforcement provisions. However, there are some factors that may act as incentives. For example, it is likely that the 'elevate up' structure (from project-level resolution to involving third parties, with third-party mechanisms available at any time) acts as an incentive to resolve a dispute at the lowest level possible.

CHRAJ judgments are non-binding but do have a degree of moral authority, thus again, they may act as an incentive for implementation of outcomes in some cases. Newmont follows CHRAJ recommendations that it considers to be objective, but Newmont has appealed CHRAJ findings that it considers subjective. Any judicial findings would be binding on the parties.

5.3.5 Final observations

Publicly available information and analysis of operational-level grievance mechanisms in the mining industry is limited. Ahafo and Akyem are two of a very few sites in the industry with formally documented and publicly available procedures associated with grievance handling. Fieldwork and community consultation would extend the value of the case study and enable a more comprehensive analysis. A more detailed study of the Ahafo and Akyem grievance procedures, including differences between them, could provide a valuable contribution to further industry learning in this area.

5.4 Case study 2: Rio Tinto Aluminium Weipa Operations, Queensland

5.4.1 Introduction

This case study provides an overview of the Rio Tinto Aluminium Weipa operation's community feedback procedure and a base-level internal assessment of this procedure against the principles outlined in Part A. The formally documented feedback procedure has been in place since 2007 and is administered by the Community Relations Department. The procedure outlines the required steps for receiving and addressing positive as well as negative feedback, including complaints. For the purposes of this case study the focus will be on processes to address negative feedback which the operation categorises as *community incidents*. For clarification of the categorisation of community feedback, see the explanation at 'process for addressing feedback' below.

The Indigenous Land Use Agreement (ILUA) covering the lease areas (called the Western Cape Communities Co-existence Agreement) contains a dispute resolution clause, which pertains only to disputes concerning the interpretation and implementation of the agreement.¹⁵² This case study focuses solely on the site-wide feedback procedure and does not include consideration of the dispute resolution clause in the ILUA. Further research to examine the interaction between various avenues of grievance resolution available to communities (including the feedback procedure and the ILUA) would be useful to understand their potentially complementary role of these avenues.

5.4.2 Methodology

This case study is based on a three-day site visit to the Community Relations Department at Rio Tinto Aluminium Weipa. The site visit involved review of documentation as well as interviews and informal conversations with Community Relations personnel. No community members were consulted during the site visit. In addition to the interviews with Community Relations personnel, a number of corporate and non-corporate documents were consulted, including:

- The Community Feedback Procedure
- Records of logged feedback
- Rio Tinto Alcan Weipa *Operation and regional briefing document* and *Weipa community and cultural guide*
- Rio Tinto Alcan Weipa Cultural Awareness Training Handbook
- Rio Tinto Alcan Weipa Communities Diagnostic Workshop (March 2009)
- 'Chapter Five: Implementing and Monitoring Indigenous Land Use Agreements in the Minerals Industry: The Western Cape Communities Co-existence Agreement' by Peter Crooke, Bruce Harvey and Marcia Langton, in *Settling with Indigenous People: Modern treaty and agreement-making* (Federation Press, 2006)
- Agreements, treaties and negotiated settlements project at: <http://www.atns.net.au/>.

¹⁵² This means that the agreement's dispute resolution clause is narrower in scope than the feedback procedure.

5.4.3 Background

Comalco (known as Rio Tinto Aluminium since 2007) has been mining bauxite in the Weipa area since 1963. East Weipa and Andoom are the main current deposits and mining of a further, South of the Embley, deposit is due to commence in the next few years as mining of the East Weipa deposit draws to a close.¹⁵³ Local Aboriginal communities were excluded from the original mining agreement between Comalco and the Queensland Government. In 2001 an Indigenous Land Use Agreement was signed that includes the areas of the mining leases. The Western Cape Communities Co-existence Agreement was signed by eleven Traditional Owner groups, four Indigenous Community Councils (Aurukun, Napranum, Mapoon and New Mapoon), Comalco Aluminium Limited, the Queensland Government and the Cape York Land Council. The agreement addresses a number of aspects including Indigenous Employment, Cultural Awareness Training and Cultural Heritage.

The Rio Tinto Community Standard requires all operations to have a feedback procedure that community members can access to lodge positive and negative feedback, including complaints.



Figure 2: Location map of Weipa operations

¹⁵³ It is anticipated that mining of the South of the Embley deposit will commence within the next two years and that it will be operational for approximately 40 years.

5.4.4 Description of the Feedback Procedure

5.4.4.1 Purpose and scope

The feedback procedure outlines the processes and steps to be followed for receiving and responding to feedback from the community about the mining operation. The aim of the procedure is to capture opinions and concerns of the community about the mining operation in order to mitigate business risks and enable the operation to address community concerns before they escalate. Not all feedback received will require an immediate and remedial response, but all feedback is recorded to assist tracking the priorities and concerns of the community.

5.4.4.2 Administration of the Feedback Procedure

The Community Relations Department administers the feedback procedure and facilitates any complaints resolution. Roles and responsibilities are clearly defined in the procedure.

Community Relations Graduate and Community Relations Officer: The Graduate is responsible for ensuring that all community feedback received is documented correctly and that incidents are recorded in the electronic health, safety and environment (HSE) management system.

Community Relations Superintendent: The Superintendent oversees the complaints resolution process. This includes leading the preliminary investigation, working with the particular operational unit/area with which the complaint is concerned, establishing an investigation team and coordinating actions to resolve the complaint. The Superintendent is responsible for ensuring that actions to be taken are issued to the appropriate members of personnel and that community incidents are effectively resolved.

Rio Tinto Alcan Weipa employees responding to feedback: All employees are responsible for recording any feedback received and forwarding this to the Community Relations team.

Community Relations Manager: In the case of a serious incident the Community Relations Manager must be involved immediately. The manager is also responsible for closing out any incidents in the electronic HSE management system and reporting serious incidents to higher management.

Work Area Owner: The Work Area Owner of the relevant operational unit (for example, environment, human resources etc.) works with the Community Relations Superintendent and the Community Relations Officer to rate an incident, establish an investigation team where necessary, carrying out actions and engaging the community member(s) regarding outcomes.

5.4.4.3 Lodging Feedback

Feedback can be lodged either via a toll free phone number that is administered by the Community Relations Graduate or with any member of Rio Tinto personnel who then forward feedback to the Community Relations Department for recording in the feedback system. The toll free number is used primarily by the immediate Weipa community whereas lodging feedback with Community Relations personnel or other members of Rio Tinto staff tends to be the more common method of lodging complaints for the surrounding Aboriginal communities.¹⁵⁴

The procedure places a significant emphasis on providing a respectful response to any feedback received. The first part of the procedure deals in detail with receiving feedback and it is clearly stipulated that the community member must be engaged in a friendly and professional manner and that all feedback is to be taken seriously. This includes asking the community member whether they have any particular expectations for a response, including any suggestions for resolving the issue that they are raising as a concern.

5.4.4.4 Process for addressing feedback

Classifying feedback

Feedback is categorised into four groups:

- *Negative feedback*: negative comment or complaint concerning operations or personnel
- *Positive feedback*: positive comment regarding operations or personnel
- *Community incident*: negative feedback which requires action(s) to be carried out to address/resolve the feedback
- *Community interaction*: feedback that does not require actions.

How feedback is classified will depend in part on the nature of the feedback and in part on how the community member perceives the issue about which s/he is lodging feedback. Community incidents are further categorised according to the seriousness of the incident using Rio Tinto's standard incident classification system (CLASSICS). For category three incidents or above, the Community Relations Manager is involved immediately in responding to the incident.

Recording feedback

When feedback is received it is recorded on a community feedback form. The feedback form records details such as: date received, nature and details of the feedback, details of response by the staff member receiving the feedback, actions to be carried out and whether the community member giving feedback was satisfied with the response. Feedback that is classified as an incident will also be recorded into the electronic HSE management system. The personal details of the community member giving feedback are recorded only on the feedback form that is housed within the Community Relations Department, the record logged in the electronic HSE management system does not include any personal details of the community member giving feedback.

¹⁵⁴ Aurukun (80kms from Weipa), Mapoon (88 kms from Weipa), New Mapoon, Napranum (10kms from Weipa).

Assessing and responding to feedback

The Community Relations Department will undertake an initial assessment of the feedback and identify and contact the relevant Work Area Owner. Where feedback has been classified as an incident and has been logged in the electronic HSE management system the community member will be informed of the record number assigned to the feedback and the contact details of the relevant Work Area Owner.

The Work Area Owner and the Community Relations Superintendent will then establish an investigation team, determine the incident classification level and identify any actions that are required to be carried out in order to address the incident.

Where an incident is classified as 'significant' the Community Relations Manager, the Work Area Owner and the General Manger must be notified. A 'significant' incident is one that is recurring, unresolved or an incident that is classified as level three or above in the classification scheme. A working group is then established to carry out an incident investigation.

In responding to and addressing feedback, the Community Relations Department aims to adopt a facilitating role. That is, responsibility for resolving the incident should rest with the Work Area Owner of the operational unit to which the incident primarily relates. For example, if the incident relates to an environmental matter, the Community Relations Superintendent informs the Environment Team that the incident has been logged in the feedback system and the Environment Team is then responsible for responding to the incident. The Work Area Owner is required to consult with the Community Relations Team on actions to be taken to resolve the incident. Ideally, the incident resolution process will involve some face-to-face dialogue between the Work Area Owner and the community member who raised the incident. The role of the Community Relations Superintendent is to oversee the process, including recording of actions to be taken into the electronic HSE management system.

5.5 Internal base-level analysis of the Rio Tinto Aluminium Feedback Procedure against best practice principles

Legitimate

There are no independent third parties involved in the governance structure of the feedback system or complaints resolution processes. This has the potential to adversely affect legitimacy. The formation of a community forum to address systemic issues is under consideration. Buy-in from the community, such as through a forum, has the potential to enhance legitimacy.

In 2009, an independent assessment was undertaken following a community incident, and the findings communicated to complainants. This shows recognition of the value of independent external assessment in creating legitimacy, however, the external assessment was undertaken on an ad hoc basis and not as part of the feedback procedure. Further research would be necessary to establish whether the procedure is perceived as legitimate and trusted by the various communities.

Accessible

In principle, the feedback system is accessible to all community members. However, several barriers exist in practice that may limit accessibility to some sectors of the local communities. For example, the main method of communicating the feedback procedure is through the local newspaper advertising the toll free number. This number is used predominantly by the immediate Weipa community, rather than the surrounding Aboriginal communities. Further, anecdotal evidence indicates that some employee-community members may be hesitant to lodge negative feedback. These factors indicate that the feedback procedure needs to be more widely and diversely publicised, both internally and externally, including provisions for keeping the identity of the complainant confidential.

Predictable

The process appears to be clearly stipulated and predictable. Aligning the feedback procedure with the safety incident procedure and the HSE management system appears to have enhanced certainty of process as the steps for resolving complaints are clearly outlined. Use of this system ensures that where a complaint is not resolved in a timely manner it will be automatically escalated through to higher management. However, there is some anecdotal evidence that the procedure needs to be more clearly communicated to the community to improve understanding of the processes, including options provided by the feedback procedure, to address complaints. Provisions for appeal, monitoring incident resolutions and tracking community members' satisfaction/dissatisfaction with the processes (in addition to outcomes) could enhance predictability of process.

Equitable

There is a strong focus on taking all feedback seriously and, in principle, the procedure is available to all community members.

Rights-compatible

Rio Tinto has made strong commitments to international human right standards. The focus on direct dialogue and participation in the complaints resolution procedure is one indicator of a rights-compatible process. A more detailed analysis would be necessary to examine rights-compatibility in terms of other procedural aspects and substantive outcomes.

Transparent

Consistent with best practice principles, the procedure enables keeping the identity of the complainant and dialogue confidential where this is deemed appropriate and/or necessary to effectively address an incident. As a presumption, personal details of the complainant are accessible only to the Community Relations Department.

There are extensive internal reporting provisions. For example, new community feedback will be noted as an agenda item at each of the Community Relations teams' morning meetings and once a week the Community Relations Graduate and the Community Relations Superintendent meet to discuss new and ongoing cases. Serious incidents are reported to the Community Relations Manager, the Workplace Area Owner and the General Manager immediately and on a monthly and annual basis the number and types of feedback are required to be reported to management.

It appears that there are far fewer requirements in relation to external reporting. For instance, the procedure does not require any external reporting on grievances, nor are there formalised provisions for reporting back to the community on broader feedback trends and issues.

Engagement and dialogue

The process includes comprehensive provisions for engagement and dialogue. For example, when feedback is first received the community member is asked about their expectations in responding to the feedback, including any suggestions they may have about resolving an incident. The facilitative role adopted by the Community Relations team also indicates a focus on encouraging engagement and dialogue. Wherever possible, incidents are resolved directly between the community member and the Work Area Owner, with the Community Relations Department adopting an oversight role.

Although not part of the feedback procedure, there have been instances where the Community Relations Department has sought to resolve systemic concerns (i.e. numerous complaints about the same issue) through the formation of a working group that involves direct dialogue between representatives from various sectors of the community. This suggests a strong commitment to direct engagement and dialogue in addressing complaints.

Culturally appropriate

The procedure itself does not have any particular provisions to ensure that it is culturally appropriate. For example, it does not impose requirements to integrate local Aboriginal complaints resolution methodologies, culturally appropriate logistical arrangements and so forth. However, on a practical level the knowledge and experience of Community Relations personnel, in particular the members of staff from local Aboriginal communities, indicates significant cross-cultural awareness and integration of a culturally appropriate approach. For example, complaints do not need to be formally given but can be anecdotal, in which case the Community Relations personnel will seek clarification if the community member wants it to be logged as feedback or not.

Empowering

The adoption of a participatory approach to resolving incidents indicates that the procedure has the potential to perform well in terms of empowerment. There is a significant focus on sensitive engagement of community members giving feedback, ensuring that relevant Rio Tinto personnel assume responsibility for actions and collaborative solution finding. The establishment of working groups to deal with systemic issues of concern to communities also has the potential to be empowering for those involved.

The feedback procedure records only whether the community member was satisfied with the overall response to the feedback, and not whether they, or the relevant Work Area addressing the feedback, were satisfied with the processes used to reach the outcome. Research that involves in-depth consultation with community members would be necessary to assess whether the feedback procedure is perceived as empowering by the communities.

Proportional

The feedback system appears proportionate to the scale and impacts of the operation. However, it must be noted that the feedback system is not the only method of resolving complaints. Other possible avenues of resolving complaints include the committees of the WACCCA land use agreement and/or the dispute resolution clause in the agreement, through the Weipa Town Authority, the Environmental Protection Agency or legal recourse. How the interplay between these different avenues of resolving complaints relates to proportionality of the feedback procedure would require further investigation.¹⁵⁵

Learning and review

The procedure has been reviewed and amended once since its introduction in 2007. . Some of the opportunities for improvement were identified as a result of particular incidents. For example, in 2008 the operation received a significant amount of negative feedback in relation to dust from a tailings dam. This incident contributed directly to a review of the feedback system and enhanced advertising of the procedure in the newspaper and direct communications.

Extensive internal reporting requirements are likely to contribute to learning and review (see transparency above). The procedure itself has not been subject to independent external review.

On the issue of enforceability

In the absence of an enforcement provision there are several factors that may act as incentives or disincentives to ensure the fair and timely resolution of complaints. For example, the absence of an appeals provision may act as a factor that limits the likelihood of timely and first instance resolution of complaints. On the other hand, adoption of the safety incident classification and response system, including recording and tracking incidents through the HSE management

¹⁵⁵ For example, it may or may not be the case that in absence or dysfunction of these other avenues the feedback procedure alone would be insufficient to resolve community complaints.

system, may act as an incentive to effectively and promptly resolve incidents. Recording of feedback through this system means that where actions are not implemented or resolution is not timely, feedback will automatically be escalated through to higher levels of management.

5.5.1 Final observations

All Rio Tinto sites are required to have a feedback procedure in place, but the publicly available information about the use and utility of the procedure is limited.

A site visit to Rio Tinto Aluminium in Weipa to study the procedure provided valuable insight into how the procedure works in practice. For example, some elements of best practice, whilst not documented within the procedure itself, may in fact be applied in the dispute resolution processes adopted in practice. This indicates that the relationship between documented procedures and their application in practice requires further consideration to inform the best practice debate.

Further research through community consultation could provide a more comprehensive view of the feedback procedure and contribute to further learning in this area.

5.6 Issues for the Australian minerals industry to consider in relation to operational-level mechanisms

- Continue to focus on operational-level grievance mechanisms as part of a holistic approach to community engagement and conflict management. Local-level processes must remain the foundation for company-community interaction, even as discussions extend towards considering the merits of an industry-level, third-party mechanism. Operational-level grievance mechanisms are also an important component of a company's responsibility to respect human rights.
- Discuss knowledge gaps and capacity needs within the industry, recognising that there is now a significant amount of guidance material that could usefully provide the basis for training and education going forward.
- Consider how to address the lack of empirical research in this area. Comprehensive knowledge about grievance mechanisms and patterns of dispute resolution in the mining industry in Australia and elsewhere would assist to build understanding from the ground up – rather than relying on top-down or external guidance in this area.

6. Rapid assessment of third-party mechanisms in place in other industries

This section examines 10 non-judicial third-party grievance mechanisms for their potential applicability to the Australian mining industry. It is important to note that these mechanisms have only been examined in this context, and not in relation to their effectiveness in the industry to which they are applied. The mechanisms cover a cross-section of types, industries and geographic regions in an effort to provide a diverse base for the analysis.

6.1 The research task

The research task followed this sequence:

- identified more than 30 grievance mechanisms for potential review. The mechanisms were grouped into three categories: 1) stand-alone, 2) associated with a voluntary code and 3) associated with a certification scheme
- due to the limited scope of the project, CSRSM proposed a shortlist of 10 mechanisms that provided a spread across type and industry for further analysis:
 1. *Mesa De Dialogo Y Consenso at the Yanacocha Mine (Mesa Dialogo)*
 2. *Voluntary Principles on Security and Human Rights (VPs)*
 3. *Australian Human Rights Commission (Commonwealth) (AHRC)*
 4. *Financial Ombudsman Service (FOS)*
 5. *Australian Telecommunications Ombudsman (ATO)*
 6. *National Contact Points (NCPs)*
 7. *Forest Stewardship Council (FSC)*
 8. *Fair Labor Association (FLA)*
 9. *Compliance Advisor/Ombudsman of the International Finance Corporation (IFC CAO)*
 10. *Asian Development Bank (ADB)*
- a rapid analysis was undertaken of the 10 mechanisms based on a broad scan of publicly available information.

6.2 Main findings

6.2.1 There is no single mechanism that has the potential to transfer directly to the Australian minerals industry

There is no single third-party mechanism (either a stand-alone mechanism or one that forms part of a certification or other scheme) that provides a model to take forward and directly apply to the Australian mining industry. In this context, each third-party mechanism examined has benefits and shortcomings in terms of a) meeting best practice principles, b) relevance to the mining context, and c) capacity to deal with grievances that are collective (rather than individual) and/or trans-national in nature.

6.2.2 Some aspects of the models have relevance in terms of best practice principles

The rapid analysis suggests that some aspects of some models have relevance to the Australian minerals industry, as outlined below:

Principle	Relevance
<i>Legitimacy</i>	Some of the models appear to enhance legitimacy through separate, yet complementary and mutually reinforcing functions. For example, the IFC CAO separates the compliance and ombudsman functions to enhance legitimacy. Some of the models appear to enhance legitimacy by adopting a broader role than dispute resolution alone. For example, the advisory function of the CAO, or the community education/capacity building role of the Mesa Dialogo.
<i>Accessibility</i>	Some models, for example the FLA, appear highly accessible. The FLA ensures that the complaints mechanism is regularly and widely publicised in local factories in local languages.
<i>Predictability</i>	Some models, for example the Australian ombudsman models (FSO and the ATO) and the FSC, provide comprehensive procedural guidelines. These models also have a clear 'elevate up' ¹⁵⁶ process, including a 'prior participation' ¹⁵⁷ criteria. The FSC requires that potential complainants try to resolve their complaints directly before accessing the formal mechanism. The ATO requires scheme members to have grievance procedures in place that must be accessed prior to accessing the ATO mechanism. Complaints only go the ombudsman if they cannot be resolved via the member-level grievance procedure.
<i>Transparency</i>	The Australian ombudsman models have clear guidance and requirements on reporting. The CAO and FLA reporting requirements also appear to provide substantial detail about reporting on complaints and their resolution. These mechanisms also track the complaints process, main findings and outcomes on their websites, which has the potential to facilitate wider learning and review.
<i>Engagement and dialogue</i>	Several models, including the Mesa Dialogo, AHRC and ATO, FLA and CAO, emphasise engagement and dialogue, particularly in the early stages of dispute resolution. Most of these mechanisms seek to engage complainants in finding collaborative solutions.

Further research could consider these aspects in more detail.

¹⁵⁶ By *elevate up* we refer to processes that attempt to resolve disputes initially via direct dialogue or mediation but that enable the matter to proceed to another process, for example, investigation and/or appeal.

¹⁵⁷ The purpose of a *prior participation* requirement is to ensure that wherever possible complaints are resolved at the most local and most appropriate level(s). Prior participation clauses stipulate that complainants cannot access the grievance mechanism unless they can show that they have, prior to accessing the mechanism, attempted to resolve their complaint directly with the party against which they wish to complain. A prior participation requirement has benefits such as encouraging local, direct dispute resolution through dialogue. However, where company-community issues are complex, escalated, or the community fears reprisal a prior participation requirement may hinder, rather than assist, equitable dispute resolution.

6.2.3 Linkages between operational-level and third-party mechanisms

Several of the mechanisms examined tend to use either an elevate-up process and/or prior participation requirement to link local-level grievance resolution to the third-party mechanism. Further consideration should be given to this aspect, which was outside the scope of this research.

6.3 Third-party mechanisms in place in other industries

For each mechanism, a brief overview is provided for context, and observations made under the heading of ‘relevance to the Australian minerals industry’.

Note: This section draws very heavily on the work of Rees and Vermijs from the Corporate Social Responsibility Initiative at the Harvard Kennedy School of Government.¹⁵⁸

6.3.1 Extractive industry specific mechanisms

Mesa De Dialogo Y Consenso at the Yanacocha Mine – Peru (Mesa Dialogo)

Region	The mine site (community of Cajamarca and Minera Yanacocha)
Complaints	Not recorded numerically
Established	2001 - 2006
Core process	Fact-finding; participatory processes (e.g. dialogue, meetings)
Web link	http://www.cao-ombudsman.org/html-english/complaint_yanacocha.htm

Brief description: The ‘Mesa Dialogo’ has emerged as a method of dispute resolution between mining operations and communities in Peru. Each Mesa Dialogo is tailored to the individual mine site and community, though all emphasise engagement and participatory processes. The Yanacocha Mesa Dialogo aims to resolve conflicts between the local community and the mine with the participation of public and private institutions in an open, inclusive and transparent manner. The Yanacocha Mesa Dialogo is made up of an assembly, a board of directors and working groups. Complaints by community members can be raised through public forums, working groups or the assembly. The processes and procedures used for resolving disputes rely on dialogue and participation and include: training member institutions in dialogue and consensus building, conflict resolution workshops, assembly meetings and monitoring solutions.

Relevance to the Australian minerals industry:

- The model is specific to the extractive industries.
- The model appears to have strong potential for alignment with the principles of: legitimacy
 - as it is established primarily through partisan participation; culturally appropriate,

¹⁵⁸ See, Caroline Rees and David Vermijs, *Mapping Grievance Mechanisms in the Business and Human Rights Arena*, Corporate Social Responsibility Initiative, John F. Kennedy School of Government, Harvard University (January 2008). Available at: http://www.hks.harvard.edu/m-rcbg/CSRI/publications/Report_28_Mapping.pdf. This report relies heavily on the Rees and Vermijs summaries of the following mechanisms: Fair Labor Association, Voluntary Principles on Security and Human Rights, Asian Development Bank, National Contact Points for the OECD Guidelines and the Compliance Advisor/Ombudsman of the International Finance Corporation.

engagement and dialogue and empowerment - through capacity building workshops, participatory monitoring and public meetings.

- Australian companies operating in Peru could consider engaging in existing, or establish, a Mesa Dialogo at their operation.
- The model is as yet untested in other countries, and may not be culturally appropriate in all locations.

Voluntary Principles on Security and Human Rights (VPs)

Region	Global
Complaints	One to date
Established	2007
Core process	negotiation; adjudication
Web link	http://www.voluntaryprinciples.org/

Brief description: The Voluntary Principles (VPs) were established to foster engagement and dialogue between business, governments and NGOs around security and human rights issues in the extractive industries. The complaints mechanism is available to parties of the initiative who can raise a concern about another member's non-implementation of the scheme's participation criteria. As a first step members must attempt to resolve concerns about non-implementation of the criteria through good faith direct dialogue. Only where this fails will the secretariat facilitate formal consultations between the parties to resolve the dispute and make remedial recommendations. The dialogue process follows the Chatham House Rule (i.e. information can be used but may not be attributed to its source) and participants are obliged to report annually on their efforts to implement the principles.

Relevance to the Australian minerals industry:

- The model is specific to the extractive industries.
- The model appears to be rights-compatible as the VPs are based on international human rights standards.
- This is not a complaints mechanism for communities or affected people. The scope of review is limited to fellow participants raising concerns about lack of effort by another member to implement the principles.

6.3.2 Australia-specific

Australian Human Rights Commission (Commonwealth) (AHRC)

Region	Australia
Complaints	2, 077 in 2007-8 ¹⁵⁹
Established	1986

¹⁵⁹ The Australian Human Rights Commission was formerly known as the Human Rights and Equal Opportunity Commission. *Annual Report 2007-8* available at:

http://www.humanrights.gov.au/about/publications/annual_reports/2007_2008/AR_2007_2008_complete.pdf.

In 2007-8 the Commission received 2,077 complaints. 1,883 were finalised, of which 48% were conciliated.

Core process	Conciliation
Web link	http://www.hreoc.gov.au/

Brief description: The Australian Human Rights Commission (AHRC) can investigate complaints relating to discrimination, harassment or bullying of a person that is based on factors such as sex, disability, race or age. To be admissible, complaints must be covered by those federal anti-discrimination laws that are administered by the Commission. Complaints are resolved through conciliation and outcomes can include: an apology, compensation for wages, policy changes and reinstatement to a job. The Commission also investigates complaints of alleged human rights breaches against the Commonwealth government. The Commission has a statutory basis, but no enforcement capacity.

Relevance to the Australian minerals industry:

- This model appears to be strong on rights-compatibility as the pre-determined standards against which complaints are assessed are based on international human rights standards.
- It also appears to be strong on: legitimacy - gained primarily through its statutory basis and high levels of predictability and transparency; and engagement and dialogue - through a focus on conciliation/collaborative solution finding.

Financial Ombudsman Service (FOS)

Region	Australia
Complaints	There are no current statistics as the mechanism was only recently established ¹⁶⁰
Established	2008 (merging Banking and Financial Services Ombudsman, Financial Industry Complaints Service and Insurance Ombudsman Service)
Core process	Investigation, conciliation
Web link	http://www.fos.org.au/centric/home_page.jsp

Brief description: The ombudsman and investigatory functions of the FOS are intended to provide an independent and prompt dispute resolution forum for complaints by individuals or small businesses against scheme member financial institutions. All members that sign up to the scheme must have an internal dispute resolution service. The Ombudsman may be accessed only when these processes are exhausted. Complaints are resolved via clearly outlined procedures.

How a complaint is dealt with depends on the sector. In the case of banking and finance, the Ombudsman initially requests a response from the service provider. If this does not resolve the dispute the Ombudsman investigates and makes a final recommendation. If the consumer accepts the recommendation but the service provider does not, the Ombudsman is entitled to make a

¹⁶⁰ Note, however, that according to the *Annual Report 2007-8* of the previous Banking and Financial Services Ombudsman it is recorded that the Ombudsman received 7,911 cases during that year, of which the vast majority were considered to be within the terms of reference. The report is available at: http://www.fos.org.au/centric/home_page/publications/annual_reports.jsp, p. 9.

determination that is binding on the service provider (though never on the consumer). Parties may also elect to resolve their dispute through a conciliation conference.

Relevance to the Australian minerals industry:

- This model is restricted to complaints by individual consumers, rather than providing an avenue for dispute resolution by collectives, such as community groups.
- The model has clear and well-developed processes and procedures.
- Determinations are binding on the scheme member as a condition of membership.
- The model appears to be strong on: legitimacy - gained through a separation of functions that is intended to preserve independence and impartiality.
- The model is restricted to complaints within the Australian jurisdiction and as such has no capacity to deal with trans-national grievances.

Australian Telecommunications Ombudsman (ATO)

Region	Australia
Complaints	Received 149 742 complaints in 2007/08
Established	1993
Core process	Alternative Dispute Resolution; investigation
Web link	http://www.tio.com.au/

Brief description: The Australian Telecommunications Ombudsman (ATO) is set up to provide independent and impartial alternative dispute resolution services to small business and residential consumers to resolve complaints about telecommunications services. Complaints must be raised directly with the service provider prior to contacting the Ombudsman. A complaint that goes to the Ombudsman is initially addressed through facilitated negotiation. Where alternative dispute resolution is unsuccessful, the Ombudsman uses a formal investigation procedure and makes a determination. The Ombudsman has extensive internal reporting requirements and is required to produce a public annual report and a report to members that have had complaints brought against them. There are also requirements for reporting to various other agencies (e.g. Australian Communications & Media Authority; Competition and Consumer Commission; Communications Industry Forum). The Ombudsman is funded entirely by scheme members.

Relevance to the Australian minerals industry

- The model is instructive on the links made between membership and funding of the mechanism.
- This model is restricted to complaints by individual consumers, rather than providing an avenue for dispute resolution by collectives, such as community groups.
- The model is restricted to complaints within the Australian jurisdiction and as such has no capacity to deal with trans-national grievances.
- The model illustrates the practicalities and merit of a prior participation criteria.

6.3.3 National (other)

National Contact Points (NCPs)

Region	OECD countries and 10 non-OECD countries
Complaints	19 across all NCPs since inception
Established	1976 (revised in 2000)
Core process	Investigation; mediation/conciliation
Web link	http://www.oecd.org/document/60/0,3343,en_2649_34889_1933116_1_1_1_1,00.html

Brief description: National Contact Points (NCPs) deal with ‘implementation in specific instances’. That is, they contribute to the resolution of issues that arise in relation to implementation of the OECD guidelines by providing a forum for discussion and assistance to affected parties. The dispute resolution process involves: an initial assessment of the complaint, consultation with the parties and other relevant stakeholders, facilitating access to consensual and non-adversarial means of conflict resolution and, if need be, making recommendations. There is no formal appeal or enforcement mechanism. The Australian NCP has been criticised, in part, for its limited resources and therefore limited capacity to facilitate meaningful dispute resolution. Nevertheless the current debate at the international level about how NCPs might be strengthened may provide valuable insights into the potential role of the Australian NCP.

Relevance to the Australian minerals industry

- The current debate about how NCPs might be strengthened to better deal with trans-national complaints is highly relevant to the Australian mining industry.
- The system covers subsidiaries, i.e. all entities within multinational enterprises, which may be useful for the issue of supply chain accountability.
- The system applies in a trans-national context.

6.3.4 International industry-specific

Forest Stewardship Council (FSC)

Region	Global
Complaints	unable to source data
Established	1998
Core process	Investigation; adjudication
Web link	http://www.fsc.org/

Brief description: Complaints within the Forest Stewardship Council (FSC) system can be about: the FSC, a FSC National Initiative, Certification Body, certificate holder, or any FSC decision. Due to the broad range of potentially admissible complaints, the scheme provides strict guidelines on where each category of complaint should be taken (for example, the forest manager, certification body or the International FSC Centre). In addition, the FSC invokes a prior participation requirement which requires complainants to raise complaints informally and directly with the relevant persons before formal lodgement of a complaint. The adoption of a prior participation requirement is intended to ensure that complaints are resolved at the most local level possible. In

the interests of practicality and resource efficiency the FSC encourages complainants to avoid elevating complaints through the formal dispute resolution process. The formal dispute resolution process has two steps. In the first stage the FSC attempts to negotiate a resolution. The second stage involves a hearing by the appropriate FSC reviewing body. The FSC dispute resolution protocol is extensive and contains explicit guidance on time-frames, processes, and the bearing of costs.

Relevance to the Australian minerals industry

- The mechanism is designed to deal with compliance with certification standards rather than collective community grievances.
- The requirement for prior participation may be useful for an industry seeking to encourage local-level engagement and solutions finding.
- There is a very clear and precise procedure with an elevate-up structure.

Fair Labor Association (FLA)

Region	Global
Complaints	10 per year
Established	1999
Core process	Mediation/conciliation; investigation
Web link	http://www.fairlabor.org/

Brief description: The Fair Labor Association (FLA) is a multi-stakeholder initiative that aims to promote adherence to international labour standards. Companies party to the initiative commit to implementing the Code of Conduct, including through the supply chain. Verifiable complaints are forwarded to the FLA-affiliated company, which has 45 days to investigate and, if necessary, remediate any non-compliance. If this process does not result in an agreement the FLA proactively seeks to resolve the complaint through investigation, mediation or arbitration. Remediation plans are developed collaboratively between the FLA, company and complainant. Implementation is monitored by an assigned party.

Relevance to the Australian minerals industry

- This scheme is focused on labour standards only.
- The model appears particularly strong on: accessibility - the mechanism is widely and appropriately publicised and complainants can remain anonymous; dialogue and engagement - through an emphasis on collaborative solution finding; and legitimacy - through the tripartite governance structure.

6.3.5 International finance

Compliance Advisor/Ombudsman of the International Finance Corporation (IFC CAO)

Region	Global
Complaints	5-6 per year
Established	1999

Core process	Mediation/conciliation; investigation; adjudication
Web link	http://www.cao-ombudsman.org/

Brief description: The IFC’s Compliance Advisor/Ombudsman (CAO) mandate is to address environmental and social impacts of IFC/MIGA funded development projects by ensuring compliance with IFC Social and Environmental Policy. These standards are mandatory and contractually binding on clients of the IFC. The Ombudsman is able to hear complaints by a broad category of complainants and is at liberty to include a number of interested stakeholders in the complaints resolution process. The Ombudsman attempts to resolve complaints through collaboration with the parties and the use of a wide variety of problem-solving tools. There are extensive public reporting requirements. Where the Ombudsman determines that it is not possible to resolve a complaint through dialogue the complaint will go to the compliance function, which determines whether a non-compliance has occurred through independent investigation. The advisory role is a broad educative function.

Relevance to the Australian minerals industry

- Many issues common to development projects are directly transferable to issues in the mining sector (e.g. labour rights, community health, safety and security, land acquisition, involuntary resettlement, Indigenous Peoples rights, cultural heritage and so forth).
- The model aims to balance clear procedures with room to develop appropriate case-specific responses that emphasise collaborative solution finding.
- The model aims for a holistic approach through compliance, advisory and ombudsman functions. The separation of these functions enhances credibility and legitimacy.
- Access to the mechanism is dependent on financing links to the IFC/MIGA.

6.3.6 Regional finance

Asian Development Bank (ADB)

Region	Asia and Pacific Countries
Complaints	5 since 2004
Established	1995 (renewed 2003)
Core process	Mediation/conciliation; adjudication
Web link	http://www.adb.org/Accountability-Mechanism/default.asp

Brief description: The Asian Development Bank (ADB) aims to promote economic and social development. Its accountability mechanism has two key phases: consultation and compliance review. ADB policies and procedures are binding on ADB clients and complaints must relate to adverse acts or omissions of bank-assisted projects that relate to these policies and procedures. If a complaint meets these criteria the Office of the Special Project Facilitator undertakes a review and completes an Assessment Report, which includes recommendations on whether or not to proceed further with the complaint. The complainant can then elect whether to proceed with the consultation phase or opt for a compliance review. Consultation may include dialogue, creating a

forum for dispute resolution or mediation. Compliance reviews are undertaken by the Compliance Review Panel, which prepares a report including findings and recommendations.

Relevance to the Australian minerals industry

- Many issues common to development projects are directly transferable to issues in the mining sector (e.g. labour rights, community health, safety and security, land acquisition, involuntary resettlement, Indigenous Peoples rights, cultural heritage and so forth).
- The model has clear procedures and timeframes, including a requirement for external communication.
- A Panel monitors outcomes and reports to the ADB Board on implementation of remedial actions.

6.4 Issues for the Australian minerals industry in considering the practical aspects of industry-level, third-party mechanisms to address community complaints and grievances

6.4.1 Convene an industry discussion

It is an opportune time for the Australian minerals industry to engage in active discussion on the development of leading practice in relation to rights-compatible, non-judicial grievance mechanisms. In doing so, an industry roundtable to discuss the merits and limitations of establishing an industry-level, third-party mechanism in the Australian context should be considered. Such a discussion could take the findings and suggestions of this report into account.

Note: Discussion about an industry-level, third-party mechanism should not in any way detract from efforts to establish and strengthen operational-level mechanisms. In the context of mining, the best possible outcome is that parties at the local level resolve complaints collaboratively, respectfully and creatively, without excluding access to other remedies.

Note: The Canadian Roundtables could be assessed for applicability to an Australian-based industry roundtable.¹⁶¹

6.4.1.1 Discuss high-level parameters

An industry discussion could start by focusing on high-level parameters. This process would allow leading companies in the Australian mining industry to set some terms for the debate, countering any possible lowest-common denominator scenario. Topics of discussion may include:

¹⁶¹ For background on the Roundtables and the Advisory Group Report see the Prospectors and Developers Canada website at: <http://www.pdac.ca/pdac/advocacy/csr/index.html>, or the Oil, Gas and Mining Sustainable Community Development Fund (CommDev) website at: <http://commdev.org/content/document/detail/977/>.

Purpose and scope

An industry discussion could consider the purpose and scope of the third-party grievance mechanism. Some guiding questions that might help focus the discussion are:

Geographic scope, membership and use of the mechanism

- To whom would the industry-level, third-party mechanism apply and on what basis? For example, the mechanism could be available to any community where an Australian mining company is operating, either in Australia or offshore. Or, it could be limited, for example, by linking it to a scheme.
- What are some of the benefits, pitfalls and complications associated with these options? For example, legitimacy and equity may be affected if the mechanism applies only to a sub-set of companies belonging to a scheme. How could non-scheme members use the mechanism in situations where local communities agree to?

Mechanism functions

- Should the mechanism emphasise dialogue and alternative dispute resolution or investigations? What would be the interplay between dispute resolution and investigation functions?
- Should the mechanism be situated within a broader CSR framework that includes, for example, an advisory function? Several frameworks, such as the current Canadian CSR strategy, the Committee proposed by CORE in the UK and some mechanisms such as the IFC CAO highlight the importance of a holistic approach to grievance resolution and improvements that extend beyond the immediate dispute. Whether such an approach would be desirable and/or appropriate for the Australian mining industry could be discussed by industry.

Enforceability

- How would the mechanism ensure that outcomes are applied in practice? Would the mechanism have enforcement capacity? If so, on what basis? If not, what incentives would the mechanism provide to ensure that outcomes are implemented?
- Will the mechanism have a monitoring function to track implementation? How will outcomes be internally and externally reported?
- What is the industry's formal position on third-party models with a legislative basis? The industry should have a clear and reasoned view on this topic.

Governance, administration and costs

- Where would the mechanism be housed? What are the benefits, pitfalls and complications associated with these options? For example, how would legitimacy, accessibility and transparency be affected? What are the costing implications?

- Should third parties be included in the governance structure? For example, would it be desirable and/or practical to have a multi-stakeholder governance panel, independent investigators/mediators or provisions for regular and independent review?

Relationship of an industry-level, third-party mechanism to local-level and judicial mechanisms

- How should the industry-level, third-party mechanism be positioned in relation to local level mechanisms? For example, would there be a prior participation requirement?
- What would be the process of elevation from an operational-level mechanism to an industry-level, third-party mechanism? How would such a process affect the mechanism in terms of accessibility, volume of complaints, capacity for engagement and dialogue?
- How could the mechanism compliment existing legal mechanisms by providing a non-litigious avenue to resolve grievances and achieve mutually beneficial outcomes?

6.4.1.2 Other considerations

Once such high-level parameters are discussed there are numerous procedural and administrative aspects that will also need to be carefully considered: For example:

- complaints admissibility criteria and limitations, including categorisation of complaints, supporting evidence and so forth
- submission of complaints, including whether complaints can be received verbally or must be in writing, format (using a template or form), method (mail, fax, email, phone etc.) any language and literacy considerations
- the dispute resolution process, including whether it involves dialogue, mediation, investigation and/or arbitration
- time frames, including acknowledgement of receipt of a complaint, timing for the initial response, dispute resolution processes undertaken, reaching outcomes and appeals
- confidentiality, transparency and reporting; including the approach to confidentiality of proceedings, anonymity of the complainant, communication with complainants, and internal and external reporting
- costs and administration, including a commitment that the mechanism is accessible at no cost to the complainant
- communication, raising awareness of the availability of the mechanism with communities and companies.

6.4.2 After an industry discussion, initiate a series of multi-stakeholder dialogues

The industry should consider initiating a series of multi-stakeholder dialogues to follow any industry discussion, including possible modes for engagement e.g. wiki, website email discussion, other forums, community visitations, individual targeted consultations and so forth. Multi-stakeholder dialogues will be essential for canvassing a wide range of perspectives – beyond industry – on the issue of community grievance mechanisms.

7. Future research

The current research is a first step. There are many avenues for further research which could be undertaken in parallel to other discussions, including:

7.1 Operational-level mechanisms

- Research that assesses alignment of operational-level grievance mechanisms with internationally-agreed best practice principles, with a view to building understanding about leading practice and identifying opportunities for improvement. The two case studies in this report are an initial contribution in this regard. Further research along these lines would provide a basis for refining methods and processes that would improve the ability of companies to handle grievances and disputes more constructively.

CSRM has highlighted the need for further research on the issue of local-level mechanisms in previous reports.¹⁶² Further research could focus on:

- documenting and assessing patterns of grievance handling and dispute resolution. Such research could either be company, country and/or issue-specific
- identifying enabling and constraining factors for designing and implementing effective local-level mechanisms (such as local-level governance, the role of organisational culture and/or external factors)
- understanding limitations of grievance mechanisms in terms of their ability to handle conflict at the higher end of the conflict continuum
- examining the level of integration between grievance mechanisms and other operational-level systems and processes
- understanding community and other stakeholder perceptions of operational-level grievance mechanisms, including people who access the mechanisms as well as those who do not.

7.2 Industry-level, third-party mechanism

- Several of the mechanisms examined are instructive in terms of best practice principles, in particular: *legitimacy*, *accessibility*, *predictability*, *transparency* and *engagement and dialogue*. Further research could consider relevant aspects highlighted in this report in more detail. Attention should also be paid to reviews and changes of the mechanisms examined. For example, the recent IFC CAO review of the CAO mechanism suggested a clearer separation of the compliance, advisory and ombudsman functions was necessary to improve legitimacy. The FSC scheme, including its mechanism, is also currently under review. Ideally, research would include community perspectives on these mechanisms.
- Several of the existing third-party mechanisms examined tend to use either an 'elevate up' process and/or prior participation requirement to link local-level grievance resolution to the third-party mechanism. Further consideration needs to be given to this aspect, which was outside the scope of the current research.

¹⁶² See, Kemp and Gotzmann, *Grievance Mechanisms for Australian Companies Operating Offshore*; Kemp and Bond, *Mining Industry Perspectives on Handling Community Grievances*.

8. Suggested next steps for the Australian minerals industry

CSRSM considers that the Australian mining industry has an opportunity to demonstrate leadership by contributing to furthering the debate on the broader issue of conflict resolution, and grievance mechanisms in particular.

- Invite feedback on this report and make key aspects of the feedback publicly available.
- Consider further industry dialogue to discuss operational-level and industry-level, third-party mechanisms, and the links between them. This report outlines a potential list of ‘topics for discussion’ which could provide a starting point for discussion.
- One of the items for discussion could be the potential processes for a broader multi-stakeholder discussion (including possible mechanisms for engagement e.g. wiki, website, email lists, other forums, community visitations, individual targeted consultations etc.)

It will be important for the industry to maintain its focus on understanding and applying leading practice for handling community complaints and grievances, in keeping with the MCA’s *Enduring Value* commitments. This should include a continued focus on industry capacity building and empirical research to build knowledge and understanding from the ground up.