

Corporate Mechanisms and Access to Justice

This module has the following objectives:

Enable the participants to

- Discuss the grievance mechanisms created by companies to address human rights issues; and
- Analyze the operations of mechanisms established by companies in cooperation with the communities to resolve business-related human rights impacts.

Time: 4 HOURS AND 45 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Documents on examples of corporate grievance mechanisms.

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I. Procedure

a. Opener - 45 MINUTES

Ask the participants to do the “Issues, Rights and Solutions” game. Ask them to form three lines. Give each line an assigned topic, namely,

1. First line - issues in the company,
2. Second line - human rights involved in those issues, and
3. Third line - ways to solve the issues.

The first person in the first line will say an issue, the first person in the second line will respond by saying the corresponding human rights involved in the issue raised, and the first person in the third line will respond with measure to solve the issue. This is repeated until the last persons in the lines have spoken. The answers must be short, as much as possible one-word answers.

List the answers of the three groups on the board as in the sample list below:

| Issue | Human/labor rights | Solution |
|--------------|--------------------|----------------|
| Low pay | Adequate pay | Strike |
| Harassment | Security | File complaint |
| Loss of land | Livelihood | Negotiate |

Using the answers in the game that were listed on the board, examine in the plenary if they were appropriate answers. Try to correct what can be considered inappropriate answers.

b. Activity A – Group Discussion - 1 HOUR

Display three big size papers on the wall with short description of three community-company mechanisms, such as the following:

1. Pro-active consultation/survey

C Company is a successful flat-glass company in China with six production facilities across provinces. It has a Grievance and Communications Management Process that conducts stakeholders’ satisfaction surveys on an annual basis with the goal to improve quality, environment, and occupational safety and health management systems and demonstrate to the community that it takes feedback seriously. To receive grievances, it keeps open phone, website, and e-mail channels that are publicized on a large outdoor advertisement board on the company building. It believes that a grievance mechanism helps organize environmental management more proactively and keep up as people’s general awareness on environmental issues rises. It also believes that seeking stakeholders’ input and feedback, as opposed to fixing issues under pressure, ensures smooth operations and helps build a good public image.

2. Third party/Mediator

Third parties such as non-governmental organizations, community-based organizations, local governments, local community and religious organizations and councils – can sometimes be involved in companies’ grievance mechanisms. They can serve

as process organizers, places to bring a complaint to be passed on to the company, or as facilitators, witnesses, advisors, or mediators. In some cases, it may be beneficial to place part of the responsibility for the process on external entities - formed within the communities themselves or acceptable to them – while the company maintains ultimate responsibility and accountability for the process. Third parties can help increase the level of trust from communities as well as overcome certain limitations of project level mechanisms, such as lack of transparency, insufficient company resources, possible conflict of interest, and biases, provided that they themselves are perceived to be not biased and impartial to both the company and the communities.

3. Multistakeholder Advisory Group

The Multistakeholder Advisory Group (MSAG) is a multi-stakeholder body that monitors the effectiveness of the resettlement and income restoration program activities for the people and communities affected by the resettlement program of a special economic zone (SEZ) project. In addition, MSAG discusses countermeasures for issues identified in the process of the resettlement and income restoration program activities, and advises to Income Restoration Program Implementation Subcommittee (IRPISC). Some of the MSAG's objectives are:

- To identify and assess potential issues, concerns and complaints from Project Affected Persons (PAPs) with the implementation of the resettlement program and recommend corrective measures or other actions required to resolve such issues, concerns or complaints;
- To bring to the attention of the relevant implementing agencies and authorities any issues, concerns and complaints that PAPs and other stakeholders have regarding the SEZ Phase 1 project.

Ask the participants to read the description of the three mechanisms and stay in front of the mechanism they like the most. Randomly ask the participants on the reason for choosing a particular mechanism. Note which mechanism is most popular, and which reasons are most impressive.

Ask the participants to discuss in small groups the grievance mechanisms displayed on the wall and determine their advantages and disadvantages in terms of community participation and the mechanism's capacity to resolve issues. One group discusses one mechanism.

Provide the participants with additional information on the grievance mechanisms using Annex A.

Instruct them to cite in their group discussion specific cases/examples of similar grievance mechanisms that exist in Northeast Asia/country.

c. Activity B – Role Play - 1 HOUR

Tell the participants to role play the results of the group discussion. Give a guide on how to do the role play particularly on the following:

1. Assignment of group members to act out different roles (workers or members of the affected community, company officials, NGO workers, local government officials, etc.);
2. Creation of a story that would present
 - i. human rights impacts;

- ii. use of grievance mechanism to resolve the human rights impacts;
- iii. role of the workers or members of the affected community in the grievance mechanism; and
- iv. outcome of the action(s) taken.

Ask the groups to do the role play in plenary, and seek questions or comments from participants on the content of the role play.

Organize on the board the key points raised in the role play and in the comments and questions of the participants, particularly regarding the following:

1. Features of the mechanisms that address the grievances of the affected people (workers or members of community);
2. Role of the affected people in the operation of the mechanisms;
3. Advantages and disadvantages of the mechanisms portrayed in the role play.

d. Input - 1 HOUR

Provide an input on characteristics, principles, and experiences in using grievance mechanisms that are relevant to companies, their workers and the people affected by their operations. Stress the relevance of human rights principles in these grievance mechanisms in line with the human rights-based approach to access to justice perspective.

Before presenting the principles of grievance mechanisms, show a video on an experience on grievance mechanism.

Possible videos to show:

1. *“Making Monkey Business:” Building Company/Community Dialogue in the Philippines* (Corporate Social Responsibility Initiative at Harvard Kennedy School, available at <https://vimeo.com/25199195>)
2. *Corporate-Community Dialogue: An Introduction* (Corporate Social Responsibility Initiative at Harvard Kennedy School, available at <https://vimeo.com/43661831>)

The principles of grievance mechanism may cover the following elements:

Principle 1: Proportionality: A mechanism scaled to risk and adverse impact on affected communities;

Principle 2: Cultural Appropriateness: Designed to take into account culturally appropriate ways of handling community concerns;

Principle 3: Accessibility: A clear and understandable mechanism that is accessible to all segments of the affected communities at no cost;

Principle 4: Transparency and Accountability to All Stakeholders;

Principle 5: Appropriate Protection: A mechanism that prevents retribution and does not impede access to other remedies.

(Source: *Addressing Grievances from Project-Affected Communities - Guidance for Projects and Companies on Designing Grievance Mechanisms* [Washington: International Finance Corporation, September 2009], pages 7-15.)

From the UN Guiding Principles, the following can also be discussed:

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

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

Operational-level mechanisms should also be: (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

(Source: *The Corporate Responsibility to Respect Human Rights – An Interpretative Guide*, United Nations, 2012, pages 73- 74)

For a brief explanation of operational- or project-level grievance mechanism see Annexes B and C.

Question and Answer session follows. The resource person may answer questions and/or add explanation on the mechanisms.

e. Activity C – 45 MINUTES

Ask the participants to discuss in the same groups the following question: How can the principles of grievance mechanisms presented in the input be applied to the sample grievance mechanisms earlier discussed in the groups? Determine which of the principles are likely incorporated in the mechanism and which principles can be still be incorporated; and give reasons for the answers.

Instruct the participants to put their answers in the following report format:

Name of grievance mechanism: _____

| Incorporated principles | Principles that can be incorporated |
|-------------------------|-------------------------------------|
| | |
| | |
| | |

Ask them to present their group reports in plenary and explain the reasons for their answers.

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

1. The general characteristics of the grievance mechanisms that companies should establish;
2. The key issues on grievance mechanisms that arise in Northeast Asia in addressing human rights impacts, especially those related to affected communities;
3. The role of the affected communities in the operation of the grievance mechanisms.

Annex A

Examples of community-company mechanisms

1. Stakeholder Satisfaction Surveys

China Glass Holdings (CGH) is a successful flat-glass company in China with six production facilities across provinces. During its rapid growth, the company is striving to attain international standards and practices in the areas of energy efficiency and environmental management. An Environmental and Social Management system is part of CGH official policies and includes a Grievance and Communications Management Process. As part of this process, CGH conducts stakeholders' satisfaction surveys on an annual basis with the goal to improve quality, environment, and occupational safety and health management systems and demonstrate to the community that CGH takes feedback seriously. In addition to the affected communities, the Survey seeks feedback from government institutions, suppliers, and staff on the same issues. To receive grievances, CGH keeps open phone, Web site, and email channels that are publicized on a large outdoor advertisement board on the company building. CGH staff also visits communities to inform them about the company's procedures and policies as well as to disseminate "stakeholders' satisfaction questionnaire" forms. Through the survey, the company seeks feedback from communities on how effectively their issues are being resolved. Investigation and analysis of survey results are conducted by the planning department, and reported in the management review meetings. The surveys also help ensure internal accountability of the units involved in handling grievances and taking corrective actions. For example, CGH's Production Department has an Accident Unit that is held responsible for acting on environmental impact complaints in conformance with the company's Accident Investigation and Handling Process as well as Correction & Prevention Measures and Control Process. CGH believes that a grievance mechanism helps organize environmental management more proactively and keep up as people's general awareness on environmental issues rises. Seeking stakeholders' input and feedback, as opposed to fixing issues under pressure, ensures smooth operations and helps build a good public image. For example, when a complaint was received regarding dust fallout from the raw materials plant resulting in lower harvest in a nearby orchard, the grievance-handling and corrective action procedures facilitated immediate action on dust-collector maintenance and enclosure of plant windows and doors. The complainant was satisfied with the outcome.

(Source: Addressing Grievances from Project-Affected Communities - Guidance for Projects and Companies on Designing Grievance Mechanisms [Washington: International Finance Corporation, September 2009, page 26.]

2. Third party/Mediator

The Baku-Tblisi-Ceyhan (BTC) pipeline project in Azerbaijan is operated by the British Petroleum (BP). In its construction phase, BTC created a complaint mechanism with the help of local non-governmental organizations (NGOs) and experts. The mechanism provided for community members to raise grievances, including human rights-based grievances. Any communities or community members along the pipeline who claimed to have been impacted by the pipeline construction could register a complaint. Complaints could be brought regarding the activities of the BTC consortium or a contractor engaged by them on work related to the construction of the pipeline. No complaints were excluded and the BTC did not make any prima facie judgments

on their legitimacy. The only requirement was to have a name and a contact point for the complainant so that a response could be provided.

The complaints are resolved through a dialogue process – concerned parties meet to seek a common settlement. In case the dialogue does lead to an agreed settlement,

BOX 3.1: OVERVIEW OF THE AZERBAIJAN PIPELINES COMPLAINTS MANAGEMENT PROCEDURE

Structure:

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

Procedure:

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

Dissemination:

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

Responsibility:

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

Accountability:

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

Source: Emma Wilson and Emma Blackmore, editors, *Dispute or dialogue?* (London: International Institute for Environment and Development, 2013), page 53.

and where the issue in dispute relates to land, compensation or other primarily non-technical issues, the complainant(s) can take the matter to the Center for Legal and Economic Education (CLEE), a local NGO engaged by BP to provide the function of an arbiter in such situations. CLEE would review all documents related to the complaint and produce a finding or opinion on the appropriate outcome. Neither side would be bound a priori to accept that finding, but BP/PTC did so in practice in every case.

(Source: Caroline Rees and David Vermijs, *Mapping Grievance Mechanisms in the Business and Human Rights Arena* (Cambridge: Harvard University, January 2008), pages 8-9.)

3. Community-driven Grievance Mechanism and Multistakeholder Advisory Group

To address the impacts of the first phase of the Thilawa Special Economic Zone (SEZ) Project on the affected community, a proposal has been made to develop a model for operational-level grievance mechanisms (OGMs) that are designed primarily by the affected populations themselves to meet their needs and expectations as rights-holders seeking an adequate remedy. This approach will ensure that OGMs provide adequate, appropriate remedies for human rights abuses, through a process that is considered legitimate by the affected communities and complies with international human rights law. The scope of the OGM, the processes by which it functions, the people who staff it, and the outcomes of individual grievance complaints will all be dictated by the communities themselves, based on international human rights principles and their own traditional conceptions of fair process and just outcomes.

(Source: Earth Rights International and SOMO, Community-Driven Operational Grievance Mechanisms discussion paper for a new model, page 4)

This model reinforces the position that remedy is not a gift bestowed on a community from a charitable company, but rather the most basic right of affected stakeholders because it secures and ensures the realization of all other substantive human rights. (Jonathan Kaufman and Katherine McDonnell, Community-Driven Operational Grievance Mechanisms, 2015, page 131)

To address the impacts of the first phase of the Thilawa Special Economic Zone (SEZ) Project in Myanmar, a community-driven operational grievance mechanism (CD-OGM) is being established by which the local community can play a leading role in the design and implementation of the mechanism. Where grievances fall outside of the scope of the CD-OGM or cannot be resolved through it, the Multistakeholder Advisory Group (MSAG) may have a role to play in elevating the issues or finding solutions. The Multistakeholder Advisory Group (MSAG) aims to strengthen stakeholder coordination and advise on the resettlement aspects of implementation of the Thilawa Special Economic Zone (SEZ) Project. It responds to continued civil society interest and concerns about the resettlement program and the recognition of the governments of Myanmar and Japan that broader stakeholder engagement will assist in making progress of Income Restoration Program (IRP) and resolving some of the ongoing challenges that have arisen, as well as providing lessons learned for the next phase of the SEZ.

MSAG has the following objectives:

- To create a broad dialogue between relevant key stakeholders of the Thilawa SEZ Phase 1 project with the intention to improve policies, priorities and processes that govern the project and ensure the success of the SEZ and benefits to affected communities;
- To identify and assess potential issues, concerns and complaints from Project Affected Persons (PAPs) with the implementation of the resettlement program and recommend corrective measures or other actions required to resolve such issues, concerns or complaints;
- To bring to the attention of the relevant implementing agencies and authorities any issues, concerns and complaints that PAPs and other stakeholders have regarding the Thilawa Phase 1 project;

- To monitor implementation of resettlement and income restoration activities to ensure they fulfil the obligations set out by relevant Myanmar and international commitments;
- To help promote and facilitate improved outcomes for PAPs of Thilawa Phase 1 resettlement program including by encouraging good international practice in resettlement and income restoration activities;
- To promote good international practice in stakeholder engagement including disseminating information to generate a better understanding of Thilawa SEZ Phase 1 project and reduce the risk of conflict and misunderstandings;
- To identify lessons learned from Thilawa Phase 1 project to inform planning and implementation of the Phase 2 project.

The MSAG structure and its relations to the stakeholders in the SEZ Phase 1 are still evolving. The envisioned operations of MSAG are shown in the illustration below.

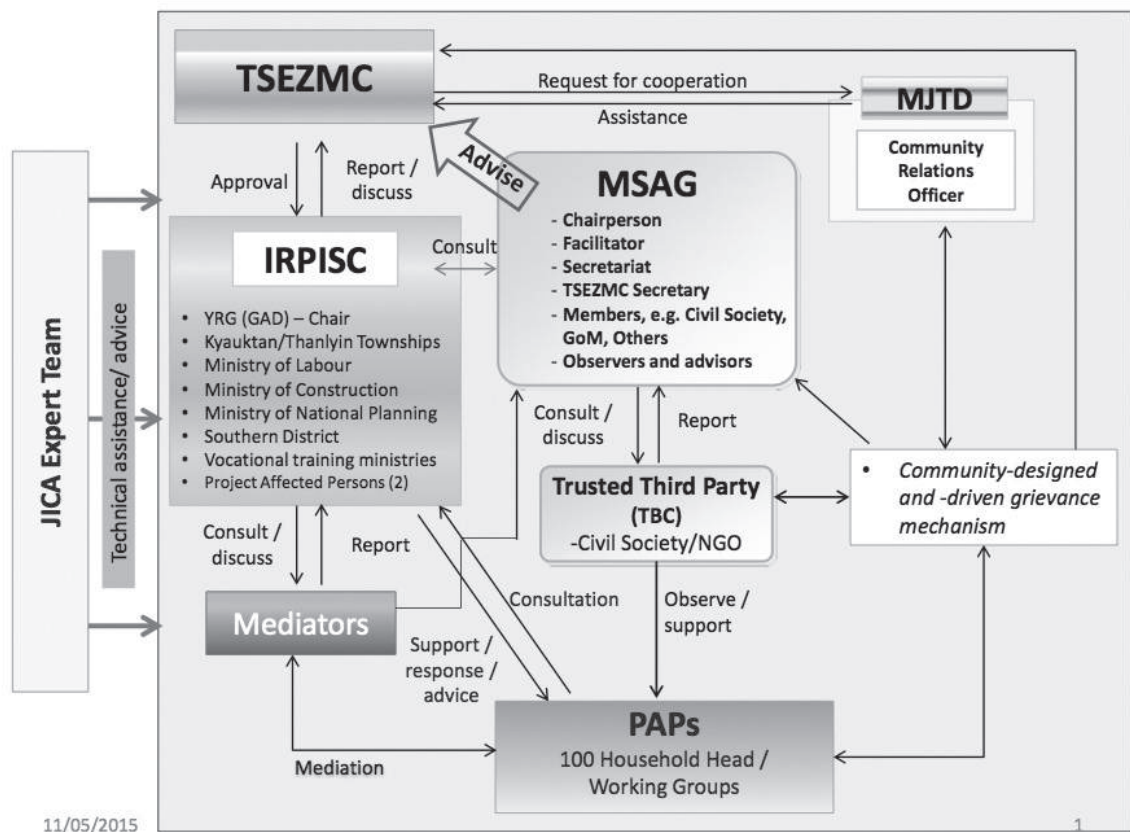


Illustration on the operation of the MSAG

Key Questions/Guiding Principles for the Multistakeholder Advisory Group (MSAG):

1. Will the action/advice benefit PAPs or other target communities?
2. Is the action/advice informed by relevant international standards (e.g. World Bank Group social safeguard policies on community engagement and land acquisition and involuntary resettlement)?
3. Will the action/advice support the achievement of good international practice in resettlement, livelihood restoration and community engagement?
4. Does the action/advice contribute to livelihood restoration of PAPs?
5. Does the action/advice contribute to improving the standard of living of PAPs?

6. Have PAPs and other relevant stakeholders been consulted to develop the action?

7. Does the action consider and recognise the differential benefits and impacts on women and other potentially vulnerable groups? Have special provisions been made to support vulnerable people?

8. Will the action/advice address or contribute to meeting other needs of the community (e.g. Host Community or others)?

9. Is the action/advice locally appropriate to the target communities and does it respect the local culture and traditions?

10. Is the action/advice based on or supported by an objective and professional, third party study, assessment or opinion of the benefits of the action?

11. Is the action/advice consistent with Myanmar laws and regulations?

12. Will the action/advice avoid or reduce conflict and disagreement with the GOM, and promote achievable win-win solutions?

(Sources: Proposed terms of reference of the Thilawa SEZ Multistakeholder Advisory Group, www.myanmar-responsiblebusiness.org/pdf/MSAG/TOR.pdf and Thilawa Special Economic Zone (Sez), Myanmar, submission on the session on “Stakeholder Engagement Across All Three Pillars (Case Studies),” UN Forum On Business & Human Rights, 16 November 2015, www.ohchr.org/Documents/Issues/Business/ForumSession4/ThilawaSpecialEconomicZoneMyanmar.pdf)

Annex B

Commentary

OPERATIONAL-LEVEL grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They may also be provided through recourse to a mutually acceptable external expert or body. They do not require that those bringing a complaint first access other means of recourse. They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm.

Operational-level grievance mechanisms perform two key functions regarding the responsibility of business enterprises to respect human rights.

First, they support the identification of adverse human rights impacts as a part of an enterprise's ongoing human rights due diligence. They do so by providing a channel for those directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely impacted. By analysing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly;

Second, these mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating. Such mechanisms need not require that a complaint or grievance amount to an alleged human rights abuse before it can be raised, but specifically aim to identify any legitimate concerns of those who may be adversely impacted. If those concerns are not identified and addressed, they may over time escalate into more major disputes and human rights abuses. Operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice (Principle 31).

These criteria can be met through many different forms of grievance mechanism according to the demands of scale, resource, sector, culture and other parameters. Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.

(Source: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. United Nations, HR/PUB/11/04, 2011, pages 32-34)

Annex C

What Is a Project-Level Grievance Mechanism?

A PROJECT-LEVEL grievance mechanism for affected communities is a process for receiving, evaluating, and addressing project related grievances from affected communities at the level of the company, or project. In the context of relatively large projects, this mechanism may also address grievances against contractors and subcontractors.

Project-level grievance mechanisms offer companies and affected communities an alternative to external dispute resolution processes (legal or administrative systems or other public or civic mechanisms). These grievance mechanisms differ from other forms of dispute resolution in that they offer the advantage of a locally based, simplified, and mutually beneficial way to settle issues within the framework of the company-community relationship, while recognizing the right of complainants to take their grievances to a formal dispute body or other external dispute-resolution mechanisms. It should be noted, however, that complex issues that arise from high environmental and social impacts are seldom resolved in a relatively simple way. In such cases, projects should anticipate involvement of various third parties in the resolution process to achieve solutions with affected communities. These include, but are not limited to, various national and international mediation bodies, independent mediators and facilitators with sector- and country-specific expertise, and independent accountability mechanisms of public sector financiers.

A project's grievance mechanism should be specifically designed with a focus on local communities affected by the project. The task of understanding who will be potentially affected by project operations, and who will therefore use the company grievance mechanism to raise complaints, is not always straightforward and depends on the project's particular circumstances. Thus, it is beneficial to review who may be affected by the project, and the nature of the potential impact, during the broader stakeholder analysis phase of the Social and Environmental Assessment. Early and strategic interaction with communities will help ensure that the grievance mechanism is culturally acceptable to all affected groups within communities, integrates traditional mechanisms for raising and resolving issues, and reasonably addresses accessibility and other barriers that may prevent communities from raising their concerns.

(Source: Addressing Grievances from Project-Affected Communities - Guidance for Projects and Companies on Designing Grievance Mechanisms [Washington: International Finance Corporation, September 2009, pages 4-5. Footnotes deleted.]

References

Caroline Rees, *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned* (Cambridge: Harvard Kennedy School, May 2011). Available at www.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf.

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