

# RIGHTS-COMPATIBLE GRIEVANCE MECHANISMS



**A GUIDANCE TOOL FOR COMPANIES AND THEIR STAKEHOLDERS**

**Corporate Social Responsibility Initiative**

**John F. Kennedy School of Government**

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## FOREWORD

The Corporate Social Responsibility Initiative at Harvard's Kennedy School of Government is a multi-disciplinary and multi-stakeholder program that seeks to study and enhance the public contributions of private enterprise. Its research focuses on exploring new types of global governance and accountability mechanisms, especially in the area of business and human rights, and on the role of the private sector as a partner in achieving key international development goals. In January 2007, the CSR Initiative launched a project entitled 'Corporations and Human Rights: Accountability Mechanisms for Resolving Complaints and Disputes'. This guidance document represents a key output of that project. It has been authored by Caroline Rees, a CSRI Fellow and the project leader, and reflects extensive consultations with representatives of companies, international and local NGOs, governments and investment funds as well as mediators, lawyers and academics in a variety of countries. Companies consulted were drawn from the extractives, construction, heavy manufacturing, apparel, footwear, toy, electronics, agribusiness, information and communications technology, pharmaceutical, and financial sectors. The consultation process included two multi-stakeholder workshops hosted by the CSRI in April and November 2007, the reports of which are available on the CSR Initiative's website.

Special thanks are due to Caroline Rees for leading this project, facilitating the extensive consultation process, and writing the document. We are also grateful to our colleagues Alnoor Ebrahim and Dave Brown at Harvard's Hauser Center for Nonprofit Organizations who have provided valuable feedback throughout, to Simon Zadek, CEO of AccountAbility and one of our CSRI Senior Fellows, who facilitated our two multi-stakeholder workshops, and to David Vermijs and others on our CSRI team, for all their hard work. Last, but not least, we are immensely grateful to the many practitioners, policy makers, and academics who have shared with us their time and insights, and who are contributing in numerous ways to the improvement of human rights around the world.

This guidance document is designed as a living tool and may be further refined in the course of 2008 in light of the project's continuing collaboration with a range of interested stakeholders. We value your comments and feedback, which can be sent to Caroline on: [caroline\\_rees@harvard.edu](mailto:caroline_rees@harvard.edu).



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# PRINCIPLES FOR RIGHTS-COMPATIBLE GRIEVANCE MECHANISMS

## EXECUTIVE SUMMARY

An effective grievance mechanism is an essential addition for any responsible company to its tools for monitoring, auditing and stakeholder engagement. But what exactly makes a grievance mechanism effective? This guidance aims to help answer that question. It provides a tool for companies and their local stakeholders jointly to devise rights-compatible, effective grievance mechanisms that maximise the opportunities to achieve sustainable solutions to disputes. A rights-compatible mechanism integrates human rights norms and standards into its processes and is based on principles of non-discrimination, equity, accountability, empowerment and participation. It can deal with most kinds of grievances (bar those raising criminal liability), including – but by no means limited to – those that reflect substantive human/labour rights concerns. Ensuring it is rights-compatible in both its process and outcomes is vital to the mechanism’s credibility and legitimacy, both locally and internationally, as well as to its potential success in practice.

The recognition of the need for effective grievance mechanisms is nothing new in the context of corporate responsibility. Various multi-stakeholder initiatives require that their corporate members and their members’ suppliers have grievance mechanisms in place for supply chain workers. Growing numbers of financial institutions – national, multinational and international - require that their corporate clients provide grievance mechanisms for communities and others impacted by their activities. And a number of multinational companies have experimented with grievance mechanisms for these external stakeholders, often building on their experiences with internal ‘whistle-blower’ or ombudsman systems. Yet there is little or no guidance available on what makes a grievance mechanism rights-compatible and effective in practice. And having an ineffective grievance mechanism can present the worst of all worlds, raising expectations and failing to deliver.

At the same time, in an increasingly globalised context the conduct of business is under ever-growing scrutiny. Concerns that might once have remained local, such as labour conditions in factories or community displacement around a mine, are now more readily projected onto the international plane through campaigns or litigation. Meanwhile, companies’ efforts to ensure they comply with standards and avoid creating grounds for dispute have shown both the importance and the limits of the monitoring and auditing activities that have dominated this space. And while good stakeholder engagement can go a considerable way towards dispute prevention, it has proven insufficient on its own.

In short, grievances can and should be expected to arise where a company’s activities have a complex set of impacts on its stakeholders, however benign that company’s intentions. Such grievances need not be inherently good or bad; yet the manner in which they are handled can be very much one or the other, with serious knock-on implications not only for those impacted but also for a company’s operations and reputation.

Effective, rights-compatible grievance mechanisms offer a channel for those individuals or groups impacted by a company's activities to raise concerns early, openly, on an informed basis, with due protection and in an atmosphere of respect. They have the potential to limit dispute escalation, facilitate dispute resolution and contribute to the prevention of future disputes by enhancing relationships and enabling systemic learning. Indeed experience shows that the mere existence of a quality grievance mechanism can improve a company's relations with affected stakeholders and thereby reduce grievances, as it signals that the company is ready to be held accountable, to confront, acknowledge and learn from problems. The caveat is that it *must* be serious and effective, not a token gesture to quash critics and keep litigation at bay. Wherever possible, it should be in place before grievances arise and not a reaction to their occurrence.

This document is framed as a set of overarching Principles coupled with specific Guidance Points. These are broadly applicable across different sectors and contexts. In addition, it offers more detailed explanatory text, which is specifically geared towards those industries with a geographically-coherent set of stakeholders: sectors where a grievance mechanism can be physically located at the most local level. This includes, on the one hand, the natural resource and construction industries with regard to the communities around a particular asset or facility as well as their local workers; and, on the other hand, industries reliant on supply chain workers, such as the apparel, footwear, toy, auto, electrical and electronic goods and agribusiness sectors as well as heavy manufacturing. Industries that have geographically-dispersed stakeholders such as the end-users of IT services or pharmaceutical products or those impacted by the decisions of financial institutions, will find much in the explanatory text that they can draw on in considering how to structure grievance mechanisms of their own. However there will be necessary distinctions since those mechanisms cannot readily be located close to the stakeholder groups that would use them.

The guidance also proposes a number of key performance indicators, combining quantitative and qualitative data, for assessing the effectiveness of grievance mechanisms designed in line with these Principles. They will necessarily have to be interpreted in the context of other developments and variables that may affect the dynamics around grievances. Taken together, however, they should provide a fair picture of how successfully the mechanism is operating in practice.

The guidance does not seek to suggest a one-size-fits-all kind of mechanism. Any mechanism must be tailored to the industry, country, culture and stakeholders for which it is designed. These Principles and Guidance Points provide flexibility for such contextual adaptation. In translating them into practice, the key is to design the mechanism jointly with the company's local stakeholders.

Finally, it is important to underline that this guidance can offer no silver bullets. Grievances are likely, if not inevitable, in any organisation's operations. Grievance processes are as complex as the human relationships they seek to support. Yet a company has considerable influence over whether grievances are addressed early, before they escalate; whether they are addressed in a manner that enhances confidence in the company's intentions; and whether the company learns from experience and adapts its practices to avoid grievances recurring. This guidance aims to help companies – working together with their stakeholders – to achieve these objectives.

## PRINCIPLES AND GUIDANCE FOR DESIGNING EFFECTIVE RIGHTS-COMPATIBLE GRIEVANCE MECHANISMS AT THE OPERATIONAL LEVEL

PRINCIPLES	GUIDANCE POINTS
1. <b>Legitimate and trusted:</b> The grievance mechanism should be perceived as legitimate by the affected stakeholder groups who may need to access it, and should be jointly designed and overseen by the company and those stakeholder groups concerned.	#1: Create an oversight stakeholder body #3: Provide for transparent funding of expert resources #4: Avoid undermining legal mechanisms
2. <b>Publicised and accessible:</b> The grievance mechanism should be publicised to, and readily accessible by, all parties who may need to access it.	#5: Provide ease of access for complainants #6: Publicise the mechanism and its supporting resources #9: Carefully identify parties to the grievance
3. <b>Transparent:</b> The grievance mechanism should operate on a presumption of transparency of process (egg decisions on complaint acceptance) and outcomes, while allowing for dialogue to remain confidential and, where requested, for complainant confidentiality.	#7: Communicate transparently about the process as it advances #8: Allow protection of a complainant's identity where requested #21: Record and be open about outcomes
4. <b>Based on engagement and dialogue:</b> The grievance mechanism should focus on engagement and dialogue between the parties, with the aim of identifying sustainable, rights-compatible solutions that are acceptable to all.	#10: Encourage direct, informed and constructive engagement #15: Establish dialogue wherever possible #17: Agree a timeframe in which dialogue takes precedence #19: Be open in the search for resolution
5. <b>Predictable in terms of process:</b> The grievance mechanism should provide predictability in terms of the key steps and options within the process, should be time-bound where appropriate and provide for agreed outcomes to be monitored.	#11: Give overall responsibility to a member of senior management #12: Keep complainants informed #13: Treat every complaint seriously #20: Agree on provisions for implementing agreed outcomes
6. <b>Fair and empowering:</b> The grievance mechanism should seek to redress imbalances in power, knowledge and influence between the company and potential complainants to enable informed dialogue, a shared responsibility for outcomes and a process based on respect	#2: Build partners for solutions #16: Have access to neutral human rights expertise #14: Treat every complainant with respect #18: Ensure sensitivity in logistical arrangements
7. <b>A source of continuous learning:</b> The effectiveness of the mechanism should be measured and cumulative lessons from complaints should be reviewed to identify systemic changes needed to either company practices or the workings of the grievance mechanism.	#22: Agree and monitor key performance indicators #23: Integrate lessons learned into company systems #24: Revise the mechanism, as appropriate, in line with experience

<b>KEY PERFORMANCE INDICATORS</b>	
<b>INDICATORS</b>	<b>INTERPRETATION</b>
1. A significant number of complaints or grievances are brought to the mechanism in the period after its establishment;	Indicating both awareness of the mechanism's existence and confidence that it provides a credible first avenue of recourse.
2. A reduction, over time, in the number of grievances pursued through other non-judicial mechanisms, NGOs or the media.	Indicating both awareness of the mechanism's existence and confidence that it can provide a credible and effective first avenue of recourse.
3. All grievances receive (a) acknowledgement and (b) a proposed course of action or interim update within the respective short deadlines set in the grievance mechanism.	Indicating that commitments to provide a predictable process and to act with appropriate transparency are being met in practice.
4. A high percentage of registered grievances are resolved through a mutually agreed outcome.	A partial indicator of effectiveness. A low percentage may not indicate the converse, but should be interpreted in conjunction with indicator no.2.
5. A high percentage of cases are resolved without recourse to a third party neutral.	A partial indicator of complainants' satisfaction with the company's internal investigation procedures and direct negotiation practices. (Depends on the complexity of disputes.)
6. Over time, the number of grievances of the same or similar nature decreases.	Indicating that staff are learning from past mistakes and adapting practices and/or operating procedures where appropriate.
7. Audits show a reduction in incidents of non-compliance with applicable standards.	Indicating that grievance processes are contributing to the identification and remediation of non-compliance incidents.
8. A reduction in absenteeism and staff turnover and/or an increase in productivity among suppliers'/contractors' workers.	A partial indicator of reduced worker grievances and improved worker satisfaction, most relevant in relation to supply chains and contractors.
9. In a high percentage of cases the complainants report to an independent party that they considered the process to be serious, fair and respectful.	Indicating that the mechanism is working effectively, even in cases where no settlement was reached. Watch for a correlation between instances where no settlement is reached and where the complainant does not feel the process was fair and respectful.
10. Standard Operating Procedures (SOPs) have been reviewed and amended where investigations reveal significant and repeat grievances despite staff following existing SOPs.	Indicating that lessons for management systems are being learned and integrated to reduce the likelihood of the same kind of grievances recurring.
11. A reduction in stakeholder actions that aim to disrupt corporate operations whether by peaceful or other means.	Indicating that individuals feel they have an effective channel for addressing their grievances in a non-confrontational way.
13. Regular stakeholder surveys by an independent third party indicate a high and increasing awareness of the mechanism's existence and a high and increasing perception that it provides a credible, worthwhile process.	Indicating effective publicising of the mechanism and high potential that it will be used by stakeholders where they have a grievance.
14. Regular stakeholder surveys by an independent third party indicate an increase in positive attitudes towards the company.	Indicating a reduced level of grievances and an increased sense of positive, respectful relationships and mutual benefits.



# INTRODUCTION

## **Why do grievance mechanisms matter?**

There has been a growing focus over recent years on the impact companies' operations can have on the lives, livelihoods, rights and welfare of individuals beyond their immediate employees. The principle that a company has a responsibility to respect human rights in the course of its activities is broadly accepted. Yet matching practice to principle is a challenge for most companies with complex operations or supply chains. At the same time corporate impacts on human rights and welfare are gaining ever more attention from consumers, civil society groups, parliaments and investment funds. The net result is that allegations of corporate abuses of human rights abound in the media and the courts around the world.

Many companies have responded to these challenges by developing tools to enforce compliance with standards and account for their performance. These include monitoring and auditing systems as well as public reporting and verification. Such tools are vitally important in providing clarity and accountability and have spawned a considerable body of experience, analysis and learning. Yet part of that learning is that they have inherent limitations. It is notoriously difficult to identify the root causes of human or labour rights breaches through spot audits, or to tell whether a report from an overseas subsidiary includes all material information on compliance with standards. Moreover problems often begin long before they rise to the level of breaching standards that might trigger an alert.

The limitation of these tools lies in their top-down structures. They are designed to account to company management and/or external actors *about* the groups of people who may be impacted by the company's operations, based on sporadic checks and interviews linked to pre-identified standards for compliance. They do not account *to* those impacted, but leave them as largely passive objects in the process. However, a key touchstone for a thorough understanding and analysis of how a company's stakeholders are being impacted and how best to address those impacts must be precisely those constituencies affected. It is perhaps only through robust grievance mechanisms providing a constant point of recourse that this crucial source of information can be reached. They are the bottom-up mechanisms that need to complement the much more prevalent top-down systems with which most companies are familiar.

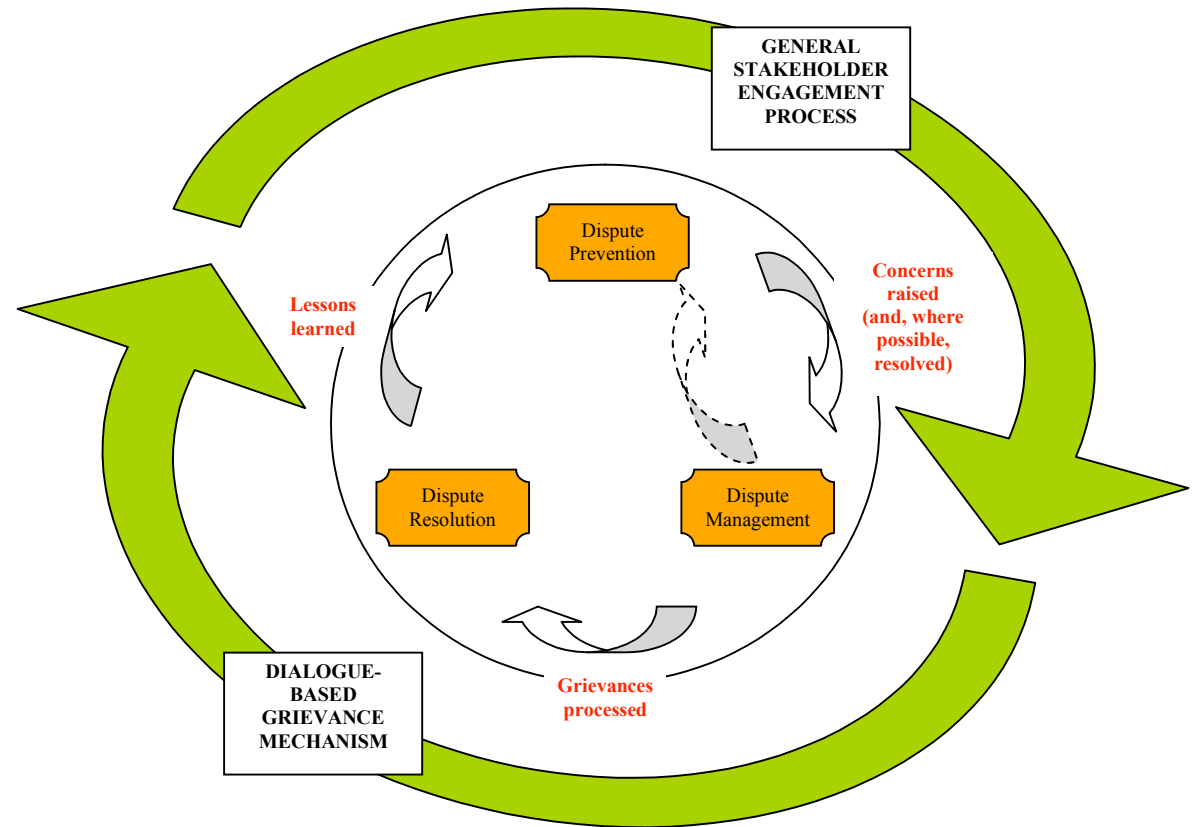
For an individual or group impacted by a company's activities, the absence of an effective mechanism to address their legitimate concerns may have a serious impact on their ability to enjoy their human rights, maintain their welfare and dignity and benefit from personal and economic development opportunities. This often leaves them little alternative than to resort to litigation (where feasible) or public protest to express their concerns. An effective, rights-compatible grievance mechanism, however, can provide an alternative channel through which they can gain recognition for legitimate concerns, engage in a process to secure acceptable solutions and share in the ownership of that process.

For a company, failing to identify grievances early and to address them effectively carries considerable risks. These range from sub-optimal productivity due to low morale, absenteeism and illness among a workforce, low worker retention and additional training due to increased employee turnover, through to preventable strikes, blockades, and even violent action against company property and staff. In addition, there is risk to corporate reputation through national or international campaigns or boycotts as well as through lawsuits,

whether under the Alien Tort Claims Act in the US or other states' domestic legislation, which is increasingly being extended to encompass corporate activities overseas. And a legacy of conflict or abuse can jeopardise a company's ability to win future contracts or realise new investment opportunities. An effective grievance mechanism is therefore, among other things, an essential part of good risk management.

In short, grievance mechanisms are a crucial tool for companies and their stakeholders alike. It is by now fairly usual for large companies – national or transnational – to have some form of grievance mechanism for their direct employees as part of their recognised duty of care. These may cover non-discrimination issues or other labour rights standards, or be channels for whistle-blowing on non-compliance with ethical standards or an in-house code of conduct. In contrast, when it comes to impacts on more remote stakeholders, such as workers in supply chains or indigenous peoples and other communities around corporate operations, such mechanisms have more usually been absent or perfunctory at best.

An effective grievance mechanism for these stakeholders must form part of a continuum with a company's wider policies for stakeholder engagement. Good stakeholder engagement can go a considerable way towards dispute prevention, which must always be the goal. But even with the best preparation and stakeholder consultations, grievances can be expected to arise wherever a company has a complex set of impacts on its stakeholders and/or limited control over supply chain partners. Providing a trusted channel for individuals or groups to raise concerns early, openly, on an informed basis and in an atmosphere of respect can not only help resolve full-blown disputes or conflicts once they have emerged (i.e. dispute *resolution*), but also identify the more minor or nascent concerns and problems and address them before they escalate into more entrenched disputes (i.e. dispute *management*). In addition, they can help restore relationships and enable lessons to be learned, contributing to future dispute *prevention*. Diagram A illustrates this mutually-reinforcing relationship between broad stakeholder engagement and a dialogue-based grievance mechanism.



**DIAGRAM A**

### **What is the focus of this guidance?**

This document provides a set of guidance for designing rights-compatible, dialogue-based grievance mechanisms at the operational level. By focusing at the operational level of a company's activities and interactions, this guidance does not and cannot include adjudicative grievance processes. The role of mechanisms that focus on providing judgments, authoritative opinions etc, whether judicial or non-judicial, is important. But these must necessarily be situated at least one step removed from all of the parties, including the company. Here the focus is on mechanisms that a company can credibly establish on its own initiative, albeit necessarily in cooperation with the other stakeholders in question. The focus is therefore on dialogue-based processes that involve direct engagement with those impacted.

### **What is meant by a 'rights-compatible grievance mechanism'?**

A human rights-compatible or 'rights-based' grievance mechanism provides a vehicle for addressing grievances – whether or not they raise substantive human rights issues – in a manner that respects and supports human rights, including. This does not mean that every grievance can be appropriately addressed through a non-judicial rights-based process (see next section), but many can.

In part, rights-based approaches are a question of **process**. Human rights principles require that processes affecting the lives, well-being and dignity of individuals and groups should be based on inclusion, participation, empowerment, transparency and attention to vulnerable people<sup>1</sup>. They also demand that any grievance process be fundamentally fair. These underlying principles are likely to prove crucial to the credibility and wider acceptance of a grievance mechanism, regardless of the nature of the complaints that come before it.

The rights-compatible quality of any grievance mechanism also goes to issues of **substance**. Many grievances have a human rights component. Labour rights complaints fall squarely in this category. Complaints linked to environmental degradation are frequently raised due to health or livelihood impacts on communities, which will often raise human rights considerations. This is not to argue that every complaint can or should be viewed through the prism of human rights. However, unless all complaints are addressed in a manner that reflects and respects human rights, including, crucially, the right to effective remedy, there is a serious risk that their solutions will prove unsustainable in practice, either because a complainant continues to feel aggrieved in his/her rights, or because wider international observers criticise settlements for breaching minimum standards. Either outcome will place the legitimacy of the mechanism itself in jeopardy.

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<sup>1</sup> These principles are articulated in a number of human rights documents, including the Vienna Declaration and Programme of Action of the 1993 World Conference on Human Rights and the UN's so-called 'Stamford Principles' on ensuring a human-rights based approach to development cooperation (available at: [http://www.undp.org/governance/docs/HR\\_Guides\\_CommonUnderstanding.pdf](http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf))

It is therefore important to recognise the human rights framework within which the company is operating. This framework will vary to some extent depending on the country and context. It will consist in domestic law on human rights and the international human rights obligations of the state, which will include at a minimum the Universal Declaration of Human Rights and the Core Conventions of the International Labour Organisation<sup>2</sup> and probably other UN or regional human rights treaties. It will also include any code of conduct or commitments taken on by the company that include human/labour rights.

Given that the specific legal and political human rights framework will vary by country, causing often unhelpful uncertainty, and that it may fall below the standards of a company's home state, the approach recommended here is that a company acknowledge the relevance to the grievance process of rights in all core UN human rights treaties<sup>3</sup>. This is not to say that these documents are legally binding on corporations – they are not. It is to acknowledge that they form the overarching human rights context within which companies and other non-state actors operate. In situations involving indigenous peoples, the UN Declaration on the Rights of Indigenous Peoples will provide an additional reference point. Where domestic law is in contradiction to any of these standards, the dialogue process within the grievance mechanism will need to look carefully at options that can fulfil the spirit of the rights to the maximum extent possible without violating domestic law.

#### **BOX 1: RIGHTS-BASED APPROACHES**

*The concept of 'rights-based approaches' emerged first in the context of development assistance where it was realised that aid activities could have unintended negative consequences on the human rights of some individuals or groups if human rights thinking was not integrated into development policies and procedures. While the development assistance arena may seem far removed from that of business, the issues that arise when managing a development project and an investment project can be surprising similar. This may be seen from an excerpt of CARE International's 'Benefits-Harms Guidebook', which elaborates tools for rights-based approaches:*

*"What happens when relief and development projects undermine people's human rights? What if an emergency food delivery attracts aggressors, putting people's physical security at risk? What if a community empowerment project unwittingly privileges one religious group over another, reinforcing discriminatory practices? What if a program to shelter displaced people encourages forced displacement? What if any of these projects focus more on project sustainability than on having a sustainable impact? Living with dignity and self-worth requires a host of different conditions – economic, social, cultural, civil, and political among them. Good programmers know this intuitively. They know it makes little sense to improve clients' well-being in one sector if the overall impact of a project is to undermine their well-being generally. It is in fleshing out this intuition that a rights-based approach to programming has a lot to offer."*

*From Benefits-Harms Guidebook. Copyright © 2001 Cooperative for Assistance and Relief Everywhere, Inc. (CARE). Used by permission.*

<sup>2</sup> The eight core ILO conventions are: Convention no. 29 on Forced Labour, Convention no. 87 on Freedom of Association and Protection of the Right to Organise, Convention no. 98 on the Right to Organise and Collective Bargaining, Convention no. 100 on Equal Remuneration, Convention no. 105 on the Abolition of Forced Labour, Convention no. 111 on Discrimination (Employment and Occupation), Convention no. 138 on Minimum Age and Convention no 182 on Elimination of the Worst Forms of Child Labour.

<sup>3</sup> The core human rights treaties are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, The Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

Finally, it is important to underline that dialogue-based grievance mechanisms are not about renegotiating minimum human rights standards. Minimum standards should set the parameters for acceptable outcomes. It is the legitimate leeway in their interpretation and implementation, along with wider interests at stake, that form the basis for dialogue, negotiation and problem solving. These are creative processes to identify solutions to grievances that can provide the optimal outcome for the parties in line with minimum standards.

### **How is this guidance structured and to whom is it relevant?**

The guidance in this document is set out at three levels of detail: overarching Principles, Guidance Points that flow from them, and more detailed explanatory text.

- The Principles provide an overarching framework that should apply to any non-judicial grievance mechanism at the operational level in any sector or context, as well as to dialogue-based grievance processes in other institutional settings, such as those associated with multi-stakeholder initiatives, lending institutions or even government-led complaints processes related to corporate responsibility. They are the essential elements for credibility and legitimacy.
- The Guidance Points elaborate upon the Principles and provide more specific guidance as to how to achieve them in practice. Where applied to grievance processes above the operational level, the institution concerned will take on some roles foreseen here for the company, such as communication functions and, when needed, the provision of resources.
- The explanatory text in this document, which follows each of the Guidance Points, goes to a greater level of detail, where sectoral differences necessarily come into play. It focuses on the practical application of the Principles and Guidance Points to disputes that arise between companies and stakeholders who constitute geographically-coherent groups. This includes groups physically located around a company's operations and groups impacted by its suppliers or contractors. In practice, this applies to two distinct groups of sectors:
  - 1) The extractive and other natural resource industries as well as the construction industry, whose operations impact communities – often indigenous peoples – around their operational sites.<sup>4</sup>

This also includes contractors carrying out work on their behalf, who should be required to have effective grievance mechanisms in place. The principles in this guidance can be directly applied by contractors and can be incorporated by the contracting company in any code of conduct it demands of those actors. However, even where work is performed by a contractor, if the main investor(s) have a large-scale presence on the ground, grievances are usually directed at them. They may therefore need to open their own, local grievance mechanism to complaints about a contractor's operations.

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<sup>4</sup> In this guidance, the phrase 'communities' will be used in the broadest sense to cover all kinds of communities local to a company's operations. It is important to note, however, that where these communities are formed of indigenous peoples, particular rights considerations will come into play, linked to their distinct status and historical, cultural and spiritual links to the land, as well as any particular rights, including to land and resources, that apply under domestic law or in line with the UN Declaration on the Rights of Indigenous Peoples.

- 2) The apparel and footwear industries, sports good, toy and electronic goods industries, as well as much of agribusiness, which make extensive use of suppliers/licensees who impact the rights and wellbeing of their workers.

In supply chain situations, the grievances of workers in a supply factory are almost always directed at the management of the supplier or licensee in question. The principles in this guidance are applicable directly to the supplier or licensee and can be incorporated by a sourcing company in the code of conduct it demands of those actors.

This said, the guidance also addresses the sourcing companies given that (a) they frequently have the leverage (and even responsibility) to ensure effective mechanisms are in place in their immediate supply chain; (b) they are sometimes an essential part of solutions, for instance where problems flow from production demands they place on suppliers; and (c) they often bear the greater reputational exposure when disputes are not managed effectively. Their role is also important in situations where the costs of effective grievance mechanisms may need to be shared, including capacity-building for suppliers to address any systemic problems identified.

### **Where should operational-level grievance mechanisms sit within the wider system for providing remedy?**

As noted, operational-level grievance mechanisms cannot credibly provide adjudication of disputes. Yet they have a comparative advantage in terms of direct engagement between all stakeholders at the local level. This guidance therefore advocates for dialogue-based grievance processes, be it direct negotiation, mediation or some other facilitated form of dialogue. However, it is essential to understand how this kind of mechanism fits into the wider system for accountability and remedy and to reflect that in its structures and goals.

Most societies provide for different vehicles for handling grievances and disputes. These include judicial systems (through the courts), public administrative systems (through governmental, quasi-governmental or independent statutory agencies) and private non-judicial mechanisms (usually through an organisation that espouses certain standards for itself and/or its members).

An effective, accessible and credible judicial process provides an irreplaceable form of public accountability backed with the power of sanction. Rights can be vindicated, precedents set and jurisprudence developed to expand on the understanding and interpretation of the law. This can in turn instil a sense of accountability and impunity across society.

Public administrative grievance systems such as a government Ombudsman, publicly-funded dispute resolution service or a National Commission may provide adjudicative or dialogue-based grievance processes. They are vehicles through which the state can take responsibility for human rights and other standards and hold both itself and non-state actors accountable for complying with them. They can help send signals across society as to the importance of standards that are rooted in legislation or regulation.

Private non-judicial mechanisms are often developed where an organisation or group of organisations wishes to promote standards that go beyond those set out in domestic law and regulations and/or to provide a common standard across different countries and jurisdictions, including those where judicial and administrative mechanisms may be weak, corrupt or non-existent. They may provide fact-finding, adjudicative or dialogue-based grievance processes. However the application of these processes is typically limited to a specific range of actors, defined by membership or financial connection. Examples are the Fair Labor Association, which maintains a code of conduct on labour rights with relation to its corporate members and their suppliers; or the International Finance Corporation, which requires certain performance standards, in part related to human rights, of companies involved in the projects it finances.

All these types of mechanism sit above the operational level with which this guidance is concerned. Yet companies and their stakeholders alike should be aware of all the avenues of recourse available to them in the event of a dispute, when one may be more appropriate than another and what they can and cannot achieve. Box 2 reflects some key considerations.

## **BOX 2: CHOOSING A MECHANISM**

*Where grievances that allege or imply criminal liability are at issue, they should be handled through the judicial system. Where grievances relate not only to corporate activities but also to those of government agents, these too may well require referral to state institutions, including the judicial system. Furthermore, where dialogue-based processes are tried but fail – as they inevitably will at times – it is essential that parties have the option of ultimate recourse to the courts.*

*There may be other instances where the courts or non-judicial grievance mechanisms above the operational level are most appropriate, such as where an individual's or group's physical safety is seen to be at risk.*

*There will also be instances where the courts are not the optimal venue for addressing a grievance. A lengthy judicial process may make effective remediation all but impossible; the associated costs may put them beyond the means of poor communities or workers. The parties may need to continue to collaborate or coexist and therefore wish to avoid the further deterioration in relations between disputants which often accompanies lawsuits. Domestic law may not provide sufficient clarity on specific points of human rights – particularly economic and social rights – to provide a basis for a lawsuit. Or there may be a high risk of a lawsuit providing a judgment without actually resolving the dispute in practice.*

*In some cultures dialogue-based approaches to dispute resolution may be more instinctive and comfortable than going to court. Whilst developed countries have perhaps moved furthest away from these traditions, even in these societies recent years have seen increasing resort to dialogue-based mechanisms both in the public and private realms, and alternative dispute resolution has a long and important history in the field of industrial relations in many countries around the world.*

### **What are the different types of alternative dispute resolution?**

Alternative dispute resolution is understood here as referring to forms of dispute resolution that involve the active engagement of the parties involved but are not litigation. They range along a spectrum that most practitioners see as extending from direct negotiation at one end, through dialogue assisted by a third-party neutral but with non-binding outcomes, to the more adjudicative process of binding

arbitration. The terms for some of the non-binding forms of dispute resolution, such as facilitation, conciliation and mediation are used differently or interchangeably in the literature. Annex A reproduces one commentator's characterisation of the different types of dispute resolution, illustrating some of the distinctions that can be made.

Rather than differentiate between types of alternative dispute resolution, some commentators see these as different styles of mediation, which may be applied according to the needs of a particular dispute or as a result of the preferences and skills of the mediator involved. These differences in style include techniques that some classify as 'evaluative' or 'facilitative'. Evaluative techniques involve the mediator drawing on his/her expert knowledge to help direct the parties towards particular options he/she deems likely to achieve a settlement. Facilitative techniques involve the mediator focusing on enhancing and clarifying communications between the parties to enable them to develop their own options for solutions. Some styles or methods involve considerable shuttling by the mediator between the parties to understand their underlying concerns and identify potential solutions, before ever bringing them together. In other instances, the focus is on the direct dialogue between the parties, aided by the mediator.

Some styles of mediation consciously provide space for specific norms to underpin the process, ensuring all parties are aware of what they are and checking that outcomes comply with them. Other styles put external standards to one side and allow that any outcome the parties agree to is acceptable. This distinction is particularly important in the context of rights-compatible grievance mechanisms, where minimum human rights standards not only cannot be ignored but must be upheld. The need for the relevant knowledge of, and/or advice on, human rights to be integrated at key points in a grievance mechanism is addressed in various of these Principles.

It may also be that the parties to a dispute agree to the most formal kind of facilitated process – arbitration. Arbitration is commonly binding on the parties, who agree at the outset to accept the outcome. In a situation of distrust and where one party feels disempowered, it is less likely they will agree to be bound by this kind of process. However, arbitration can also be used in a non-binding manner, in instances where mediation has failed to achieve an agreed settlement and the parties wish to see how the dispute might be assessed or adjudicated by an agreed, neutral third party, short of going to court. In some instances, companies have even agreed to an asymmetrical arrangement, offering to be bound by an arbitrated decision but not requiring that the other parties should be similarly constrained. Whilst seemingly counter-intuitive, this kind of arrangement can build trust on the part of the less powerful party that the process is a genuine one and that the company's wish to reach settlements is sincere.

### **What are the distinctions in terminology: complaints, grievances and disputes?**

The words 'complaint' and 'grievance' are often used interchangeably yet sometimes ascribed separate meanings. Some suggest that a complaint is an isolated or event-based concern, where a grievance is more complex or an accumulated sense of wrong. Others suggest a complaint is something that can be dealt with informally and without compensation, whereas a grievance requires compensation through a formal process. Some see a dispute as a conflict that has not risen to the level of lawsuit, while a grievance is the stuff of litigation. Others see the relationship in reverse.

Such distinctions risk at best confusion and at worst inaccurate assessments of the gravity or complexity of issues raised by stakeholders and of what outcome might be most appropriate. For the purposes of this document, the words 'complaint' and 'grievance' will be used broadly interchangeably, without presuming differences in scale or gravity, and the term 'grievance



mechanism' will be used to cover all situations. The term 'dispute' will also sometimes be used, where it is clear that there is a point of disagreement between the company and one or more aggrieved parties, as distinct from a complaint or grievance that the company may accept as legitimate.

### **How can one set of guidance meet all the different situations in which companies operate?**

The relationships, cultural context, industry sector, issues and human rights involved in any particular grievance will be distinct to that situation. It is not possible to define a detailed grievance mechanism that would fit all, or even most, of these scenarios. This guidance therefore focuses on the overarching principles and related guidance points that corporations should observe in devising their own grievance mechanisms or in defining those expected of their suppliers or contractors. It is designed not to suggest best practice to which companies might aspire over time, but principles of good practice that they should follow in their current operations. Equally, whilst it may be the case that not all guidance points are directly applicable in all instances, they are not intended as an à la carte menu for arbitrary selection. As a rule of thumb, if a company believes that variations are necessary to meet their particular circumstances, including the local culture in which they are operating, and if those variations are agreed with the company's stakeholders and the stakeholders are fully informed, then the adjustments are likely to be appropriate. Where they are not agreed with stakeholders or the stakeholders are not appropriately informed, this is unlikely to be the case.

In situations where a company operation or supplier/contractor relationship is already underway, it should be possible to 'retrofit' these principles to create a standing grievance mechanism. It will be considerably harder to use these principles to optimal effect on an ad hoc basis, as grievances arise. However, where applying the principles directly to a pre-existing grievance is unavoidable, the process may provide an opportunity to initiate practices and arrangements that can then be embedded and institutionalised for the longer term in a standing grievance mechanism.

### **What can this guidance achieve?**

Whilst this guidance should help ensure a company's grievance mechanism is rights-compatible and effective, it cannot offer any silver bullets. The only certainty is that most companies are likely at some point to face grievances from those whose lives they impact, and many will do so frequently. This is not to detract from the enormous economic and social contributions companies can and do offer to many of these same groups. It is simply to recognise that since there will always be grievances there will always be a need for effective grievance mechanisms. And whilst there are no silver bullets, a company has considerable influence over whether grievances are identified early enough to address them before they escalate into major conflict; whether they are addressed in a way that enhances rather than undermines confidence and trust in the company's actions and intentions; and whether they are likely to recur in the future. It is the aim of this guidance to help companies ensure that they achieve these objectives and empower their stakeholders to ensure that they do so.

## THE PRINCIPLES AND GUIDANCE

PRINCIPLES AND GUIDANCE FOR DESIGNING EFFECTIVE RIGHTS-COMPATIBLE GRIEVANCE MECHANISMS AT THE OPERATIONAL LEVEL	
PRINCIPLES	GUIDANCE POINTS
1. <b>Legitimate and trusted:</b> The grievance mechanism should be perceived as legitimate by the affected stakeholder groups who may need to access it, and should be jointly designed and overseen by the company and those stakeholder groups concerned.	#1: Create an oversight stakeholder body #3: Provide for transparent funding of expert resources #4: Avoid undermining legal mechanisms
2. <b>Publicised and accessible:</b> The grievance mechanism should be publicised to, and readily accessible by, all parties who may need to access it.	#5: Provide ease of access for complainants #6: Publicise the mechanism and its supporting resources #9: Carefully identify parties to the grievance
3. <b>Transparent:</b> The grievance mechanism should operate on a presumption of transparency of process (egg decisions on complaint acceptance) and outcomes, while allowing for dialogue to remain confidential and, where requested, for complainant confidentiality.	#7: Communicate transparently about the process as it advances #8: Allow protection of a complainant's identity where requested #21: Record and be open about outcomes
4. <b>Based on engagement and dialogue:</b> The grievance mechanism should focus on engagement and dialogue between the parties, with the aim of identifying sustainable, rights-compatible solutions that are acceptable to all.	#10: Encourage direct, informed and constructive engagement #15: Establish dialogue wherever possible #17: Agree a timeframe in which dialogue takes precedence #19: Be open in the search for resolution
5. <b>Predictable in terms of process:</b> The grievance mechanism should provide predictability in terms of the key steps and options within the process, should be time-bound where appropriate and provide for agreed outcomes to be monitored.	#11: Give overall responsibility to a member of senior management #12: Keep complainants informed #13: Treat every complaint seriously #20: Agree on provisions for implementing agreed outcomes
6. <b>Fair and empowering:</b> The grievance mechanism should seek to redress imbalances in power, knowledge and influence between the company and potential complainants to enable informed dialogue, a shared responsibility for outcomes and a process based on respect	#2: Build partners for solutions #16: Have access to neutral human rights expertise #14: Treat every complainant with respect #18: Ensure sensitivity in logistical arrangements
7. <b>A source of continuous learning:</b> The effectiveness of the mechanism should be measured and cumulative lessons from complaints should be reviewed to identify systemic changes needed to either company practices or the workings of the grievance mechanism.	#22: Agree and monitor key performance indicators #23: Integrate lessons learned into company systems #24: Revise the mechanism, as appropriate, in line with experience

# GUIDANCE POINTS AND EXPLANATORY TEXT

## DESIGN AND OVERSIGHT OF THE MECHANISM

### Guidance Point #1: Create an oversight stakeholder body

**#1: CREATE AN OVERSIGHT STAKEHOLDER BODY: Have in place a representative stakeholder group that can both participate in the creation of the grievance mechanism and take an oversight role in its functioning.**

A company is a stakeholder in the communities, groups and/or societies that its activities, products and services impact. Conversely, those communities, groups and/or societies become stakeholders in the company's operations. Any credible grievance mechanism at the operational level will require engagement with representatives of these locally affected stakeholder groups.

Where a company has already established an appropriate and representative local stakeholder forum, that forum should play a significant role in establishing and overseeing the grievance mechanism. This forum may involve a wide range of actors. Around a mining site it might include representatives of different civil society and community interest groups, local government representatives, indigenous or traditional leaders as well as representatives of the company and any relevant contractors. Or it may be a much more circumscribed group, for instance trade union and/or other legitimate worker representatives along with company management in the case of a supply factory. The quality of the process of identifying representative and legitimate stakeholder representatives while respecting existing leadership structures is crucial to the credibility of the forum and should be guided by recognised, expert tools.<sup>5</sup>

Where no such Stakeholder Committee (in business-to-community settings) or Worker-Management Committee (in supply factory settings) already exists, this should be created, even if only for the purposes of the grievance mechanism. First and foremost, this Committee should be involved in the design of the mechanism, in line with this guidance. Where the Committee involves a large or complex set of stakeholders or relations are particularly tense or challenging, it may be desirable to involve a third-party neutral expert to facilitate the design process. This could be a widely-respected local figure, a qualified mediator or an individual or organisation with expertise in stakeholder identification and engagement.

Where a company and its management staff are not from the area where it is operating, the Stakeholder Committee can play a crucial role in helping ensure that any grievance process is attuned to the local culture, so as to enhance its legitimacy and potential success. Dispute resolution processes are most likely to succeed where they are aligned with local customs and practices.

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<sup>5</sup> See, for example, AccountAbility's AA1000 standard and the International Finance Corporation's Stakeholder Engagement Good Practice Handbook as well as SA8000 guidance for workplace situations.

The Committee should also become a venue for discussing complex issues that might typically give rise to future grievances. Good grievance processes start with the anticipation and prevention of grievances or disputes wherever possible. Subsequent roles for this body in the grievance mechanism can include providing oversight of any corporate funding of external services (Guidance Point #3); acting as one point of access for grievances (Guidance Point #6); receiving updates on the progress of grievance processes at key points (Guidance Point #8); and monitoring the implementation of agreed settlements (Guidance Point #21).

In designing the grievance mechanism, the Stakeholder or Worker-Management Committee should also set out how this mechanism will relate to other possible paths of recourse for disputes, including any complaints mechanisms available through lending institutions, industry or multi-stakeholder organisations to which the company or project is linked, as well as any arbitration, administrative or judicial processes that are available

## INFORMATION/EXPERT RESOURCES

**Guidance Point #2: Build partners for solutions**

**Guidance Point #3: Provide for transparent funding of expert resources**

**#2: BUILD PARTNERS FOR SOLUTIONS: Ensure that the necessary information, training, education and advice on human rights and technical issues are available to potential users of the grievance mechanism, in order to build their capacity to engage effectively in the dispute resolution process.**

Sustainable solutions are more easily achieved by parties to a dispute where they have a minimum sense of equality in their capacity to engage and influence. Yet where an individual or group has a grievance regarding a company's operations, there is usually an inherent imbalance in the knowledge, resources and power between the two (or more) sides. Ignoring this imbalance, or seeking to exploit it for advantage carries serious risks. A grievance that appears to have been resolved may rear its head again if the affected party comes to believe that he/she has been misled or short-changed. Furthermore, where the power imbalance is perceived by the weaker party (as it always is), distrust inevitably increases. Any technical data supplied by the company regarding the dispute – such as current water pollution levels or production cost constraints – will likely be disregarded as self-serving, however well-founded. Suggestions for possible solutions to the dispute will likely be treated with the strong suspicion that they are heavily weighted in the company's favour. Agreements will therefore be harder to achieve and acrimony may increase.

By contrast, where a community or workers have knowledge of relevant issues – their human rights, other rights, avenues for recourse, and how to access expert advice and factual data – this can enable them to build the necessary level of confidence to engage with the company at an early stage and before problems escalate and entrench, becoming harder to resolve. Moreover, it enables them to understand not only the options but also the constraints on what is possible in addressing their concerns; and it facilitates constructive and respectful exchanges between the parties.

It is therefore in a company's interests to ensure that those parties who may wish to bring complaints have the requisite resources available to them to do so in an informed and constructive manner and to engage as a partner in dialogue.<sup>6</sup>

Companies may fear that empowering workers or communities in this manner will lead to an increase in complaints or grievances. This may be the case, at least in the short term. Yet grievances are rarely conjured out of thin air. Even those that may not appear well-founded are usually a signal of some other problem. The main question is therefore not whether, but how, to address them. This is not to ignore the fact that in some circumstances complaints may indeed be vexatious or frivolous (see Guidance Point #13). However, well-informed stakeholders are better placed to identify such cases when raised by one of their number and to ensure they do not gain traction through wider support. And where a company has a proven record of addressing grievances equitably, such vexatious cases will be more easily exposed and more readily acknowledged as such.

*In Mexico, Hewlett Packard works with the Center for Reflection and Action on Labor Issues (CEREAL), a local NGO, to identify and address the grievances of workers in their supply factories. CEREAL, in collaboration with a private university, provides training and a diploma in human/labour rights for the workers. They will also represent worker complaints to the factory management and others involved in the grievance mechanism. Hewlett-Packard, through another local organization, provides training to human resource managers in its supply factories on implementation of the Electronic Industry Code of Conduct.*

There are two primary kinds of information resource relevant to ensuring a rights-compliant grievance mechanism:

1. Information and qualified advice on the constituents' rights and on avenues and options available to them in claiming their rights. This resource may be provided by a respected community organisation, NGO, trade union, training organisation, consultancy, individual expert, legal or academic institution or other. The information may be conveyed via specific training and/or ad hoc advice that can be accessed as needed.
2. Technical information or expertise. In supply chain scenarios, it may be that the providers of information and advice on the relevant labour rights can also provide wider technical expertise, such as on health and safety issues. But in many situations, this expertise will lie with different individuals or organisations to those versed in human rights, be it academic institutions, international/regional organisations with a local presence (egg UN environmental experts), or professional associations.

### **Choosing these resources**

The company will be in the strongest position to secure such information, advice, and expert resources as it requires on issues related to complaints. The senior management should ensure that those staff most in need of access to these resources are made aware of

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<sup>6</sup> There are other elements to the power imbalance that also need attention. These are addressed at various points throughout this guidance, in particular under Guidance Point #6 on ease of access, Guidance Points #11 and #15 on direct engagement and dialogue, and Guidance Point #16 on neutral expertise.

them and provided with the requisite training. This includes human resources staff, those responsible for handling grievances, as well as those whose routine activities typically impact stakeholders.

Stakeholder groups impacted by the company's operations will need their own, independent source of information, training and advice on human/labour rights. This must be freely chosen or agreed upon by the groups that will be drawing on their services and based on knowledge of who the possible providers would be.

Technical expertise is often not needed on a standing basis, but sources should be identified and known for when the need arises. The expert source might provide exclusively the community/workers with independent assessments and advice such that they can engage on an informed basis with the company's own experts. In this case, they alone would select or agree on the source. Alternatively, it might be an expert source selected jointly by both company and stakeholders, with the task of acting as a neutral assessor of technical data that all actors will use as their default point of reference when technical issues form part of a dispute. This reduces the delays in, and additional arguments over, identifying such sources once a dispute has arisen.<sup>7</sup>

The choice of individuals or organisations that provide these resources should be subject to periodic review by the parties using them in order to ensure they remain content with the quality of their services and that no conflicts of interest have emerged.

*In 2006, Oxfam Australia's Mining Ombudsman (OAMO) took up the case of communities downstream from the Tolukuma Gold Mine in Papua New Guinea (PNG) who alleged that the discharge of tailings was polluting the river system, affecting their drinking water, health and food supply. The OAMO gained the consent of the affected communities and Emperor Mines to take part in a joint assessment of alternative clean water supplies. They then took a key role in facilitating the assessment process in view of the high level of mistrust between the community and mining company. Under the terms of reference, the assessment team consisted of one person from the local Centre for Environmental Research and Development (CERD); two technical experts from Oxfam Australia; two mining company representatives with the qualifications and experience for a community-based water assessment; and community members. All parties agreed to refer to World health Organisation standards and prescriptions on water quality and access. Emperor covered the costs of the assessment while CERD and Oxfam Australia provided in-kind technical and cultural expertise.*

*When Dow Chemical faced pressure in the late 1990s from local activists in Michigan to address pollution at its plant, the company engaged the activists in an initiative to seek agreement on means to reduce emissions. As part of this process, the local stakeholders identified a pollution prevention expert as their chosen adviser in the process. Dow Chemical had no say in the choice but agreed to pay the expert to perform this role. This ensured that the stakeholders had an adviser they trusted and the company had someone with whom their own experts could engage at a professional level.*

<sup>7</sup> In cases where a jointly accepted resource for technical data can be agreed at a very early stage in an investment, for instance at the stage of prospecting for minerals in a concession area, the company might usefully consider using this same source either to draw up or verify their baseline technical data for the project.

**#3: PROVIDE FOR TRANSPARENT FUNDING OF EXPERT RESOURCES: Ensure that where funds for expert or advisory services need to be provided by the company they are, as far as possible, ring-fenced on a regular (egg annual) basis and overseen through a transparent, multi-stakeholder process.**

There are various ways in which these expert resources that underpin the grievance mechanism can be provided, depending on the context and circumstances.

- 1) Where there is a government or national agency that is in position to provide them, with the requisite credibility and acceptance among the parties, this may be an ideal solution, reinforcing the role of government authorities. Such bodies might include a national human rights institution, a national or local ombudsman, an environmental agency, a legal or citizens' advice office, or a labour rights advisory service. Such services would typically be funded by the government authorities in question.
- 2) In some cases, local, national or international NGOs, national unions, academics or international organisations may be able to provide appropriate advice on human/labour rights or environmental issues. This function may be funded from their external sources (egg government donors, foundations, public donations etc).
- 3) In supply chain situations, information, advice and training to workers and/or management at the supply factory may sometimes be provided and/or funded in whole or part by a sourcing company or a collective of companies sourcing from the factory. Evidence suggests that where funding is one step removed in this manner there may be sufficient trust in its independence.
- 4) It may be that the only viable source of funding for these resources is the company that will itself be directly involved in the grievance process. This raises potential conflicts of interest that need to be addressed transparently. There are three key considerations in providing safeguards:
  - a) The driving consideration must be for the community or workers to be able to make an independent, informed choice about any source of information and advice on which they alone will draw, and to take an equal and uncoerced part in choosing any agreed, shared source of technical expertise, in both cases through transparent<sup>8</sup> and democratic means.
  - b) A core provision of funds for these services should be ring-fenced at the stage of establishing the grievance mechanism rather than their availability being decided on a case-by-case basis.<sup>9</sup>
  - c) Wherever there may be suspicion of corporate manipulation of funding, the oversight of funds should be conducted with full transparency to ensure there is confidence that funding is not linked to outcomes. It may be advisable for the funds to be established in an independent account or 'trust', with their dispersal overseen by the Stakeholder or Worker-Management Committee or some other independent body.

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This could help ensure an accepted basis for the comparison of subsequent data such as changes in local population numbers, water levels, soil quality, air pollution, road damage etc.

<sup>8</sup> 'Transparency' here means that the process should be known and clear, but not that a selection process must necessarily be public. It may be that a secret vote is deemed most appropriate.

<sup>9</sup> It will not be possible to foresee with precision what the legitimate demands on these funds will be. Should additional funds be needed, this will therefore need to be decided on an ad hoc basis, preferably in cooperation with the Stakeholder or Worker-Management Committee. However, the provision of a core pool of funds up-front will reduce the need for this and help build trust in the company's commitment to address reasonable resource needs in a neutral manner.



Where a number of companies in the same industry are clustered together in one area or region or a number of sourcing companies are buying from one or more suppliers, they may be able to join together in providing funding for these services from external providers, thus spreading any costs that arise and further mitigating potential conflicts of interest. However, the caveats above should still apply.

### **Mediation and Conciliation experts**

The third kind of resource on which the parties to the grievance may wish to draw is that of an external, neutral facilitator or mediator. As with sources of technical expertise, there is benefit in identifying individuals or organisations that can provide this role at the outset of creating a grievance mechanism with the agreement of all stakeholder groups. The choice of specific individuals should be left to the specific cases. But where a roster or group of qualified individuals is identified in advance, this may speed the process and avoid further arguments and delay once a dispute arises.

Organisations of mediation and conciliation professionals exist in many countries, and there is a range of other skilled and respected individuals around the world who have been engaged in this kind of role, be they from government or statutory bodies (egg labour conciliators, national human rights commissions, ombudsmen), local NGO members, academics, lawyers, mayors, leaders, or other respected local, national or international figures. The question of the particular human/labour rights knowledge that these neutral individuals may need to have, or have access to, in some instances is addressed under Guidance Point #16.

A third-party neutral has a role to play in redressing any remaining imbalances in advice and expertise between the parties, by ensuring relevant questions are explored, advice sought and information shared. This is without prejudice to the need for the facilitator/mediator to be able to talk separately and in confidence to each party in turn as part of a mediation process.

Depending on the provider, these services may be free of charge. Where that is not the case, it will probably be necessary for the company to fund them. In many instances, the act of reaching agreement on who the facilitator/mediator should be in a specific dispute, together with the objective conduct of that individual, should ensure that all parties are confident of his/her

*In December 2001, workers at the BJ&B textile factory in the Dominican Republic filed a complaint with the Worker Rights Consortium alleging that the company had illegally fired 20 union leaders. The Fair Labor Association became involved shortly afterwards when three of its member companies and sourcers from BJ&B – Nike, Reebok and Adidas – expressed their own concerns over non-compliance at the factory. The FLA retained the former Minister of Labour in the Dominican Republic, Dr Rafael Alburquerque, as a mediator in the case. He worked with the parties over a period of months. His involvement was widely credited with the settlement reached in 2002 reinstating the fired union leaders and bringing improvements in factory conditions, followed by the signing of a collective bargaining agreement in March 2003.*



independence, regardless of funding. However, where there is a risk of creating a perceived conflict of interests, it will be advisable to ring-fence funds for this purpose when the grievance mechanism is established and at regular points thereafter (egg annually) rather than case-by-case, and to provide for joint oversight of their dispersal by the Stakeholder or Worker-Management Committee or another independent body.

## ACCESS

**Guidance Point #4: Avoid undermining legal mechanisms**

**Guidance Point #5: Provide ease of access for complainants**

**Guidance Point #6: Publicise the mechanism and its supporting resources**

**#4: AVOID UNDERMINING LEGAL MECHANISMS: Make clear that access to the grievance mechanism is without prejudice to a complainant's right to legal recourse.**

If aggrieved individuals believe that accessing a grievance mechanism will preclude them from legal recourse, they may be less likely to avail themselves of this channel for addressing their concerns. The grievance mechanism, as made public, should therefore be clear that it is without prejudice to individuals' right to go to court. Given the primary responsibility of the state to protect the human rights of citizens, including through domestic legislation and an effective judiciary, the company must ensure it does nothing to undermine these processes and institutions.<sup>10</sup>

**#5: PROVIDE EASE OF ACCESS FOR COMPLAINANTS: Provide one or more well-publicised points of access to the grievance mechanism, at least one of which should be independent of the company management.**

It will usually be appropriate to have more than one point of access to a grievance mechanism. Company representatives should not be the sole point of contact. There must be an assumption that some individuals with a grievance may feel too intimidated – often through no fault of the company or designated representative – to lodge a complaint directly with the company. In a supply chain situation, it is quite common that workers have fewer fears about complaining to a locally- or regionally-based representative of a sourcing company than to the supplier/contractor. However, it is also best if this is not the sole alternative. At least one clearly independent point of access should be available to complainants. This could be a local NGO, a hotline service, a

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<sup>10</sup> This is without prejudice to Guidance Point #18, which observes that once a complainant opts to use the dialogue-based grievance process, the parties should agree a defined period when alternatives such as legal recourse will be temporarily suspended or precluded in order to enable the parties to explore openly the options for mutually-agreed solutions, without fear that what they say may be used against them in court.

trade union or other worker representative, a community representative or organisation, an independent statutory body (e.g. Ombudsperson) or a non-corporate member of the Stakeholder or Worker-Management Committee.

*In 2005, Phulki, a Bangladeshi NGO focused on the rights of women and children, was engaged by Reebok as an access point for grievances in their local supply factories. Phulki's work in helping introduce daycare services in factories in line with Bangladeshi law had allowed them to build up the confidence of both the workers and the management. Engaging Phulki in this capacity – in addition to Reebok's own field staff – provided a trusted access point to which workers could bring their grievances. In Reebok's 2005 Human Rights Report, their Senior Manager for South Asia commented that "[T]his provides an alternative, secure channel which workers can use to contact us about workplace issues. Phulki provides us with valuable feedback from workers that makes it easier for us to engage the factory in remediation." In the same report, the Executive Director of Phulki notes that, "We decided to work with Reebok staff on this project because they recognize the importance of worker participation in dispute resolution... Our role is to gain the workers' trust so that they feel comfortable speaking about problems in the workplace. This is important, as many employees are hesitant to voice concerns for fear that they will be punished or even lose their jobs. We also work closely with management so we can become mediators between management and workers and improve communication."*

If a trade union representative is a point of access, this should either be open to non-members of the union or other options should be provided in addition. It will be to the benefit of the grievance process if those who provide the points of access have skills in dispute handling. Issues of gender should also be considered: providing all-male access points where a factory's workers are overwhelmingly women, or where women in a community are already disempowered, is likely to limit their confidence in registering their concerns and compound their marginalisation.

Forms for registering a complaint should be clear and simple, and assistance in completing them should be available for the illiterate, together with safeguards to ensure they can confirm that their complaint has been accurately registered. Where a complaint is registered by a person acting on behalf of the aggrieved individual(s), efforts should be made to ensure that the representative is authorised to act in this manner. Where the reason for this representation is to protect the anonymity of the complainant (see Guidance Point #9), a legitimate third party will need to seek this confirmation – be it an external point of access or a facilitator to the dispute.

**#6: PUBLICISE THE MECHANISM AND ITS SUPPORTING RESOURCES: Make information about the existence and functioning of the grievance mechanism, as well as supporting resources and their funding, publicly available and accessible, including through channels aimed at those who may wish to use it.**

A grievance mechanism cannot be accessed if its existence is not known. The mechanism and how it works should therefore be actively publicised by the company to all those who may wish to use it at some time, in all appropriate languages. A company

may have its own internal guidance on particular steps to be taken by individual officers once a complaint is registered. However, all steps relevant to external parties should be public, including the contact details for points of access, how to register a complaint, the various stages of the mechanism, timelines, the information, advisory and expert resources available in support of the mechanism (as well as how they are funded) and the points at which stakeholders can expect to receive communications on progress.

Publicising this information should be an on-going effort to ensure it remains in the awareness of all stakeholders, including new arrivals into a community, group or workforce. Local NGOs, unions and other external bodies can play an important role in ensuring it reaches everyone.

*Xstrata Copper in Peru recently established a grievance mechanism for communities affected by its activities at the Las Bambas project, starting at the exploration and feasibility stage of their work. The terms of the mechanism require their local Community Relations Officers (CROs) to provide workshops for communities in their language in order to explain the various stages of the grievance process. The CROs also distribute written guides explaining the procedures. Any complainant who cannot read or write is able to lodge a complaint verbally and the official receiving it is required to record it on the registration form and read it back to the complainant in his/her language for confirmation of its accuracy.*

## TRANSPARENCY

**Guidance Point #7: Communicate transparently about the process as it advances**  
**Guidance Point #8: Allow protection of a complainant's identity where requested**

**#7: COMMUNICATE TRANSPARENTLY ABOUT THE PROCESS AS IT ADVANCES:** Provide for confidentiality of the dialogue (negotiation/mediation) itself and the appropriate protection of all parties from disclosure. Otherwise, work on a presumption of transparency. Above all, communicate to the complainant(s), within clear deadlines, (a) when their complaint is registered, (b) when a proposal for a course of action is made, and (c) when an outcome is agreed (if they are not present in the dialogue). Always make the key elements of the final outcome public and consider making public the first two stages as well.

Grievances raised through this kind of mechanism will often raise human rights issues, whether of substance or process. Since human rights are a public good, the outcomes of these grievance processes should rarely, if ever, be purely private transactions. Furthermore, grievance mechanisms grow in their perceived legitimacy and therefore their effectiveness through trust in the process they provide and the outcomes they produce. An adequate level of transparency is therefore essential to a rights-compatible mechanism.

## The dialogue-based process

Clearly, processes of dialogue, negotiation and/or mediation are either difficult or impossible if conducted in public view. Confidentiality to the parties involved is essential for them to have the confidence to explore the concerns and constraints on all sides as well as the options for solutions. Traditional provisions of mediation whereby all parties commit to the confidentiality of the dialogue will therefore need to apply. This should usually include a commitment that if the dispute goes to litigation, no parties will disclose information provided or offers made solely during the negotiation/mediation process, nor require a facilitator or mediator to give evidence of the content of any conversations that formed part of that process.

This is the only part of a dialogue-based grievance process where an assumption of full confidentiality should automatically apply. At other stages, the presumption should be in favour of transparency, first and foremost to the immediate parties to the grievance; secondarily to the company's wider stakeholders; and thirdly to the public at large.

## Transparency points

The following are key points in the grievance process requiring partial or full transparency.

### 1. Registration of the complaint:

When a complaint or grievance is registered, receipt of it should be acknowledged in writing with the complainant(s) (as well as orally where literacy is a problem). A standard deadline should be set in the design of the mechanism, typically in the range of 2 to 7 days. It would be advisable to make the registration of grievances routinely known to the Stakeholder or Worker-Management Committee linked to the grievance mechanism. The company may also choose to make them public.

### 2. Proposal for a course of action:

The direct parties to the grievance should be informed once the company has investigated the issues at stake and identified a proposed course of action, be it implementation of a specific remedy or some form of dialogue-based process involving the parties concerned. It would be advisable to communicate this proposal also to the Stakeholder or Worker-Management Committee linked to the grievance mechanism. The company may also choose to make it public. Again, a standard, set deadline should be defined in the design of the mechanism by which time the parties are either informed of the company's proposal, or, if more time for investigation is

*The grievance mechanism established by Xstrata Copper at Las Bambas in Peru provides for communication with the complainant as soon as a complaint is registered, informing him/her of the detail of the actions that will be taken in addressing it. After a maximum of 20 days the company must revert to the complainant with a proposed resolution of the complaint and the complainant has 15 days to consider whether to accept it or not; if rejected, the complaint moves to further investigation by an independent Complaints System Defense Counsel with a deadline of 30 days for a proposed resolution to be submitted to the parties, or a notification that more time is needed. Complaints that still remain unresolved at that stage and are backed by the community as a whole may then proceed to arbitration by a panel jointly selected by the company and communities, with a 3 month deadline to produce a judgment.*

required, receive an update and explanation. This deadline would typically be a period of 1-4 weeks, depending on the size of the company and the complexity of its structure and operations.

3. The outcome:

The parties to any dispute should normally be aware of, and have agreed to, the outcome of any dialogue-based process by dint of their direct or indirect involvement in it. If this might not be the case for any reason, steps should be taken to ensure they are informed (by their representatives or the company). Information on the key elements of the outcome should then be made available to the grievance mechanism's Stakeholder or Worker-Management Committee. It should finally be made public, as promptly as possible – preferably in its entirety and at least in its key elements, including any agreed deadlines for follow-up action.

*While BTC in Azerbaijan did not publicise the outcomes of grievance processes on an individual basis, they included a summary in their 2006 Sustainability Report of the numbers and type of complaints received and percentages resolved to the satisfaction of the complainants. The report states: 'We recognise that our activities may have a significant impact on local communities. Ongoing consultation through the [Community Liaison Officers], pipeline technicians and field security advisors allows us to receive, log and address legitimate concerns raised by individuals affected by our activities. A grievance mechanism captures complaints and community concerns from these consultations and allows us to address and resolve legitimate complaints. In 2006, a total of 121 complaints related to construction of the BTC/SCP pipelines were received from land owners and land users along the Azerbaijan BTC right-of-way. Most complaints concerned irrigation (31%), land use and compensation (25%). Others involved damage to infrastructure (22%), land reinstatement (6%), damage to property (7%), recruitment (6%), and other issues (3%). Among the complaints received in 2006 there were five complaints related to EPPD [state security] activities along the pipelines right-of-way. These were addressed with the co-operation of EPPD officials and by following the same Azerbaijan Pipelines Complaints Management Procedure that is used to manage grievances related to our own activities. All five of the grievances have been resolved to the satisfaction of the complainants. In 2006, we also considered 14 complaints which remained unresolved from 2004-2005. At the end of 2006, in total there were 21 complaints unresolved.'*

**#8: ALLOW PROTECTION OF A COMPLAINANT'S IDENTITY WHERE REQUESTED: Allow for the confidentiality of a complainant's identity whenever this does not preclude an ability to address the complaint in a reasonable manner.**

In some circumstances, a complainant may wish to remain anonymous due to fear of retaliation by the company. This must be respected. The more legitimacy and trust a grievance mechanism has gathered, the less likely it is that such requests will be made. In straightforward complaints, which can be verified without reference to the complainant's individual circumstances (egg complaints about general working conditions) and can be remedied without dialogue, anonymity can be easily preserved. Communications can be transmitted via the 'point of access' with whom the complaint was registered or through an authorised representative.

Where the complaint requires dialogue for any progress towards an agreed outcome, but this can be taken forward by a legitimate representative such as an elected union official, anonymity is also readily preserved. In other instances, the inability to engage in dialogue with a complainant and explore fully his/her concerns, any rights that are at issue and potential remedies may hamper a grievance process. It may be necessary to engage an external facilitator who can shuttle between the parties without requiring that they meet.

## REPRESENTATION

**Guidance Point #9: Carefully identify the parties to the grievance**

**Guidance Point #10: Encourage direct, informed and constructive engagement**

**#9: CAREFULLY IDENTIFY PARTIES TO THE GRIEVANCE:** Be sure to identify all those who are legitimate parties to a specific grievance. Where independent unions are not present, ensure that methods for electing worker representatives with regard to a complaint are in line with ILO standards. Consider whether a sourcing, contracting or partner company should be involved as observers or parties to the process. In more complex disputes requiring negotiation or mediation, seek to involve appropriate central or local government officials in support of the process.

Once a complaint or grievance is registered by an affected stakeholder, it is important to identify and focus on those who are directly involved. In complex situations it may not be immediately clear. It may be necessary to conduct exploratory discussions with the complainants and others who appear to be affected either by the matter at issue or potential remedies, in order to clarify who should be included in the process. One option – particularly advisable in difficult, multi-party disputes – is to mandate an external facilitator to undertake this ‘mapping of the parties’. Any such assessment or mapping should be kept under review in case new divisions or interest groups emerge. Care should always be taken not to undermine existing representational and leadership structures in indigenous and traditional communities.

### **Supply chain situations**

In supply chain situations, the aim of the sourcing or contracting companies at the top of the chain should be to encourage effective grievance mechanisms, in line with these principles, at the level of the supplier. Where grievances are particularly sensitive and complex or appear to be escalating, it may well be appropriate for a representative of the sourcing/contracting company to become involved in a dialogue-based process with the parties, either as an observer or as an active party. This is particularly likely to be necessary where the issues relate to difficulties created in part by the sourcing company as a result of contractual requirements or their purchasing or other business practices. It may also be appropriate where providing remediation or avoiding a recurrence of the



problem requires capacity building for the supplier with financial or technical support. Naturally, this will depend to some extent on whether the sourcing/contracting company is a major partner for the supplier/contractor or takes only a small proportion of its business, and how far the sourcing/contracting company is implicated in or impacted by the dispute. In some situations it may make sense for multiple sourcing/contracting companies using the same supplier or contractor to work together in support of a grievance process, using the collective leverage and assistance they can bring to the situation.

In supply chain situations where independent trade unions are not active or allowed to operate in a supplier/contractor facility and a dispute relates to generalised issues of worker rights, questions arise over who should represent the workers. The guiding principle should be that representatives of workers must be elected freely and democratically by the workers, without management interference. Standards in this regard are set out in the ILO Convention on Freedom of Association. Any process to identify representatives that is seen as deliberately undermining legitimate union structures will undermine the grievance process as well. At the same time, representatives fairly chosen can be a vehicle for bringing grievances pertaining to union representation to the table. In situations of this kind, the involvement of the sourcing company in building confidence between the parties and supporting rights-compatible outcomes can be especially important. A widely-trusted local NGO, a senior representative of a multi-stakeholder initiative that promotes labour rights, or some other third-party facilitator could also take on this role, but will do so most effectively if they have the backing of the sourcing company.

***Gap Inc. provides guidelines on grievance policy and procedures to the management of its supply factories in Lesotho and trains personnel managers to implement them. When union representatives take complaints or grievances to Gap's Social Responsibility Manager for the region, she will first usually encourage the union to take up the issue directly with factory management and will follow up with both parties where that is done. Where this fails and the Gap Inc. Manager still needs to become involved, she can review documents, make factory visits, talk to the parties and provide advice. Where there is a breach of Gap Inc.'s Code of Vendor Conduct or domestic law she requires the factory to remediate the situation. Where there is no such breach, she may assist the parties in negotiations and possible conciliation, either shuttling between them or bringing the parties together in dialogue.***

### **The Role of Government**

Where disputes raise issues related to the application of human rights law or other domestic law and regulations, state authorities should have an interest and a role to play. In states with strong regulatory and oversight institutions, the relevant officials can play an important role in advising parties such that standards are understood and assured in any grievance process, and may provide alternative grievance-handling venues that can directly ensure those standards. In areas of weak governance, bringing appropriate officials into the operational-level grievance process, whether as observers or as active parties, may also help ensure that outcomes are compatible with domestic law and regulations, including the human rights and environmental law obligations of the state. It can also build the capacity of those officials to take on their appropriate functions of regulation and oversight, reducing the need for the grievance mechanism to become a proxy for those same roles. In areas of bad governance, where authorities are corrupt or otherwise undermining of law and standards, their involvement is much less likely to be supportive of the grievance process and may undermine it. Where there are questions about the legitimacy or conduct of government officials, including where their presence might pose a threat to one or more parties to the dispute resolution process, their inclusion should only be sought with the agreement of all involved.

In some complex disputes, it may well be that the grievances in question are to some degree an extension of, or even a proxy for, wider political conflicts, whether violent or not. Even where this is not the case, external political conflicts may impinge on the dynamics of how the parties to a grievance present and pursue the issues at stake. These are particularly difficult operating environments and dispute resolution processes need to cater for the additional challenges. This may heighten the need to involve a neutral facilitator or mediator to assist in the dialogue process. He/she may also help assess how far the issues can and should be addressed between the non-state actors involved, whether government officials need to be involved and /or whether the issues might best be transferred to other political or legal fora.

**#10: ENCOURAGE DIRECT, INFORMED AND CONSTRUCTIVE ENGAGEMENT:** Allow for all parties to be accompanied by someone of their choice during any dialogue-based process, to ensure they feel informed and supported. At the same time, encourage an environment where the parties engage directly in the dialogue and not through lawyers or advisers. Ensure as far as possible that the parties – including the company representative – have the maximum authority possible to reach agreements.

Any direct party to a particular grievance should be able to be supported by a person of their choice, be it an adviser – legal or other – or just a friend or colleague for moral support. Where parties to the grievance consist of entire groups, they will almost certainly need to identify a representative to speak for them in any dialogue. On the side of the company, it is essential that there be clarity on a single company representative who is in the lead. As with other parties, he/she should be free to include an adviser or colleague, in support. All parties to the grievance process should have the authority, as far as possible, to reach agreements in the course of the dialogue. This said, particularly in complicated processes and where individuals represent large groups, they will need space to confer back with their constituents on proposed agreements.

*In the dispute between Emperor Mines Ltd and communities affected by pollution of the river downstream from the Tolukuma Gold Mine in Papua New Guinea, Oxfam Australia's Mining Ombudsman (OAMO) worked with and through a local partner, the Centre for Environmental Research and Development, to seek the consent of local communities both to take part in a joint assessment of alternative water supplies and to allow Emperor Mines representatives to enter their villages for this purpose. The OAMO's aim was to gain the direct participation of the communities in identifying the solutions that best met their needs in the circumstances, by ensuring they were advised and assisted by an organization they trusted. The process enabled direct communications between the company and the communities to be established after a long period of acrimony. The OAMO subsequently negotiated with the company that it would implement the assessment team's recommendations should they be acceptable to the participating communities. This proved to be the case and implementation and monitoring are now underway. Emperor Mines subsequently committed in 2007 to have zero impact on the river system within three years.*

It should be borne in mind that a dialogue-based system, whether direct negotiation or facilitated by a third-party neutral, is explicitly and importantly not a court process. It is not appropriate, nor should it be necessary, for any party to turn up with a whole group of lawyers. Numbers on all sides should be strictly limited and balanced. It is also highly undesirable, and will usually limit the chances



of a successful outcome, for the parties to speak *through* legal advisers, since the purpose of dialogue is to understand underlying positions and concerns and establish relationships of engagement. This applies whether in direct negotiation or in a facilitated setting.

## HANDLING OF COMPLAINTS

**Guidance Point #11: Give overall responsibility to a member of senior management**

**Guidance Point #12: Keep complainants informed**

**Guidance Point #13: Treat every complaint seriously**

**Guidance Point #14: Treat every complainant with respect**

**#11: GIVE OVERALL RESPONSIBILITY TO A MEMBER OF SENIOR MANAGEMENT:** Designate a single, senior representative of the company with oversight of, and ultimate responsibility for, the handling of complaints/grievances; communicate this to other stakeholders, and ensure this individual and those working to him/her have the requisite training.

Once a complaint is registered with the company – either directly or via another ‘point of access’ – it is then essential that a single clear structure with authority to handle it should exist. Whilst there may be a team of individuals who process complaints and manage internal investigations, a single senior manager should be given oversight and ultimate responsibility for the appropriate handling of grievances.<sup>11</sup> The name of that individual should be communicated to stakeholders. Where a process moves to conciliation or mediation, the relevant grievance officer or the senior manager with oversight (as appropriate) will need to be directly involved and to have the maximum authority possible to reach agreements on behalf of the company (advised, as necessary, by any legal counsel). To perform this function

*At BP Colombia’s operations, where local concerns and complaints often relate to security issues, both the Security and the Communications and External Affairs Divisions come under the same Vice President. The company has a Unit in each of the three municipalities through which their operations and infrastructure run, and the Head of each Unit – a BP employee from the local region – is responsible for handling complaints. Any complaint identified by anyone in the company must be directed to the relevant Head of Unit. Once the complaint is registered, it is entered into a computer system which generates a series of requirements for action, with deadlines. If a deadline is missed the system generates an alert that goes to the General Manager.*

<sup>11</sup> Where a multi-national corporation is structured such that only the Head of each of its overseas offices or subsidiaries is part of the corporation’s senior management structures, this is not to say that he/she must be the designated person with responsibility. A senior individual (close) beneath the level of the Head of Office (however called) may take this role. The key is that he/she have seniority within the local structures and can involve the Head of Office when major issues arise. It is strongly advisable that there should also be a member of Senior Management at the corporate headquarters to whom all those who lead on grievance mechanisms at the country/site/project level are required to report, and who carries overall responsibility for ensuring that the appropriate structures, procedures, staff and training are in place.

effectively it is essential that he/she be provided with the appropriate training in stakeholder engagement and/or worker relations and, wherever possible, in conflict prevention and resolution.

**#12: KEEP COMPLAINANTS INFORMED: Acknowledge every complaint or grievance within a brief, set deadline after receipt. Ensure the internal systems are in place to enable the lead officer to obtain quickly the necessary information from the relevant company departments on the issues raised. Provide a substantive response to the complaint within a standard, pre-agreed deadline, or an update on progress towards that end.**

Every complaint or grievance should be acknowledged on receipt, within a standard deadline and in the appropriate language. Where the complainant is illiterate, this acknowledgement should, in addition, be communicated verbally, either directly or via the complainant's representative.

The company will need to put in place internal procedures to ensure that the main grievance officer can quickly contact, and get the necessary inputs from, those company staff with close knowledge of the subject of the grievance. An appropriate, fixed deadline for this phase, the purpose of which is to establish the key facts and characteristics of the grievance from the perspective of the company, should be written into the grievance mechanism.<sup>12</sup> The company should revert to the complainant by this deadline with a proposed course of action to address their complaint (egg direct remedy, meeting, negotiation, external recourse) or, if necessary, with an update pending further internal investigation. Company procedures should ensure that the oversight exists to ensure these deadlines are met.

*According to Gap Inc.'s guidelines for its supply factories in Lesotho, which set out steps the factories should follow in their workplace grievance processes, workers - assisted if they wish by the shop steward or a worker representative - should first raise complaints with their supervisor or with that person's supervisor, who has 2 days to investigate it and seek a solution. If unresolved, the complaint is put in writing and goes to the Departmental Head or Manager, who has 3 days to talk to the parties and seek resolution. If still unresolved, it moves to the Company manager or his nominee – always a senior management person – who has 5 days to make a decision. If still unresolved, Gap Inc.'s regional Social Responsibility Manager may become involved and/or the issue can go to external, statutory mechanisms.*

Where complaints of particular urgency arise, for instance suggesting imminent physical harm to an individual or group, these will need to be given immediate priority. In the event of physical harm to an individual, the provision of medical aid should never be prevented or withheld pending the outcome of this or any other grievance process.

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<sup>12</sup> It is important that both this deadline and the deadline for acknowledging receipt of complaints or grievances be agreed with the Stakeholder or Worker-Management Committee and written into the grievance mechanism's procedures that are publicly available. The appropriate periods will vary according to circumstance, including the size of the company and the complexity of its operations. In the case of a small supplier factory, it is likely to be 2-3 days for acknowledgement and a week or so for a proposed course of action or interim update. In the case of a major operational site, it might be five to 7 days for acknowledgement and up to four weeks for a proposed course of action or interim update.

**#13: TREAT EVERY COMPLAINT SERIOUSLY: Do not reject any complaint from a local stakeholder out of hand, so long as it relates to the company's activities. Where a thorough assessment suggests it is genuinely vexatious or otherwise unacceptable, explain this assessment to the complainant and, if the complaint is not withdrawn, explain it publicly.**

No complaint from an affected local stakeholder should be rejected out of hand so long as there is some nexus with the company's activities.<sup>13</sup> Even where a complaint appears at first sight to be ill-founded, frivolous or vexatious, it may be an expression of an underlying, legitimate grievance that warrants addressing. Indeed, the very posture of refusing to engage can become a source of grievance leading to opposition and protests. Wherever possible, it will therefore be advisable for a company representative to engage directly with the complainant(s), supported as necessary by legal counsel, to gain a closer assessment of the nature of the complaint. This might be done directly or with the use of a third-party neutral facilitator. If this process confirms an assessment that the grievance is frivolous, vexatious or in some other way entirely inadmissible, this assessment and its reasoning should be made clear to those bringing the complaint, registered with the Stakeholder or Worker-Management Committee and made public. If necessary, other paths of recourse, such as litigation, may then be pursued.

**#14: TREAT EVERY COMPLAINANT WITH RESPECT: Ensure that the company has in place the necessary, trained staff to handle the grievance process in a respectful, transparent and inclusive manner. Ensure that aggrieved parties have access to them to enquire about the status of their complaint/grievance.**

Experience consistently shows that a respectful process that leads to no settlement may carry as much or more credibility with the complainant in question than one where he/she reaches a settlement but feels manipulated. This distinction is certainly likely to be felt by wider observers. And it is a key determinant of the sustainable success of a grievance outcome. Since the credibility of each grievance process, and by extension of the whole grievance mechanism, is itself an asset in the effective settlement of disputes, this should be an important consideration.

Establishing respectful relations requires strong interpersonal skills and clear, honest communications. On the part of the company involved, this requires staff who have strengths in these skill areas, have the time and propensity to interact proactively with the stakeholder groups concerned, as well as being trained, wherever possible, in stakeholder engagement and dispute resolution. The value of placing the right people in these jobs cannot be overstated.

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<sup>13</sup> The caveat here is a very limited one (provided the complainant comes from an identified local stakeholder group). It can happen that local individuals or groups use a corporate complaints mechanism to lodge grievances that relate solely to the government, eg over rates of local taxation. This is clearly not a matter for the corporate mechanism. As noted previously, if complaints relate to military or police forces acting in protection of a company's facilities, this does relate to a company's activities. Depending on the state, this may require referring the matter to the relevant authorities for appropriate action through their own channels, considering the ramifications for corporate security policies and practices, and/or involving local authorities in a collaborative grievance process, bringing the company's leverage to bear in favour of rights-compliant outcomes.

## CLASSIFYING COMPLAINTS AND PROPOSING A PROCESS

**Guidance Point #15: Establish a dialogue wherever possible**

**Guidance Point #16: Have access to neutral human rights expertise**

**Guidance Point #17: Agree a timeframe in which dialogue takes precedence**

**Guidance Point #18: Ensure sensitivity in logistical arrangements**

**#15: ESTABLISH DIALOGUE WHEREVER POSSIBLE:** Assume that in the majority of grievances, some form of direct dialogue between the company and the complainant(s) or their representatives should take place. Assess the form of dialogue likely to be most appropriate according to the characteristics and complexity of the grievance.

One of the most common inadequacies of grievance mechanisms is that they are structured to leave the company in the position of power and the complainant in a position of dependency. Complaints boxes, hotlines and similar mechanisms allow complainants to submit their grievance, and can provide a starting point for interaction. But too often the company then unilaterally decides on, and informs the complainant of, any response, whether positive or negative. In the eyes of the complainant, this makes the company both defendant and judge. In many instances, even the communication regarding the company's decision is not guaranteed.

Where the grievance relates to, or reflects, a feeling of disempowerment, this kind of one-way process can reinforce that negative sentiment and hence the grievance. Furthermore, since the initial submission of a grievance will often reflect incomplete information, the company's unilateral decision on how to respond may well be inappropriate, further aggravating the situation.

Evidence suggests that including a process of dialogue in any grievance mechanism is usually beneficial and sometimes essential in achieving sustainable solutions. The focus, extent and nature of that dialogue will vary considerably according to the circumstances, including the preferences of the parties. In some situations, aggrieved parties may have difficulty engaging with formal processes, and it may be possible to identify other ways of meeting and discussing issues that facilitate their involvement.

The introduction and Annex A provide further information on types and styles of dialogue-based dispute resolution. The following suggests a broad scheme within which to assess the timing and type of dialogue that might be needed for any particular grievance.

### **Classifying complaints**

For the purposes of this guidance, complaints or grievances are classified according to four broad characteristics – 'issue', 'party' 'acceptance' and 'solution' – and two broad levels of complexity – 'simple' and 'complex', which can be applied to each (see Fig.1).

**Fig.1**

	Simple	Complex
<b>Issue</b>	Single-issue	Multi-issue
<b>Party</b>	Single-party	Multi-party
<b>Acceptance</b>	Grievance recognised by company as legitimate	Grievance contested by company in whole or part
<b>Solution</b>	Specific solution either requested or evident	Specific solution either not requested or contested or unclear

It is always risky for one of the parties in a dispute to make assessments as to the nature of that dispute. Even the broad classifications offered above are likely to need some investigation or clarification to avoid misapprehensions. For instance, it may be that a seemingly single-issue grievance is one superficial manifestation of a wider, underlying set of concerns. Whilst a single party may have brought a complaint, there may be others who share it, have competing concerns or would be variously affected by a proposed remedy. Whilst a complainant may define a specific solution he/she seeks, this may be through ignorance of alternatives. Hence the only factor that the company can unilaterally assess with certainty is whether they accept the grievance as well-founded and whether they agree with any remedy proposed. Yet if they have based this assessment on misapprehensions regarding other characteristics of the complaint, even this may be poorly judged. Caution is therefore essential.

### **Proposing a process for addressing the complaint**

The most straightforward scenario is one in which all the components of the grievance fall in the 'simple' category, as in Fig.2.

**Fig.2**

	Simple	Complex
<b>Issue</b>	<b>Single-issue</b> ✓	Multi-issue
<b>Party</b>	<b>Single-party</b> ✓	Multi-party
<b>Acceptance</b>	<b>Grievance recognised by company as legitimate.</b> ✓	Grievance contested by company in whole or part
<b>Solution</b>	<b>Specific solution either requested or evident</b> ✓	Specific solution either not requested or contested or unclear

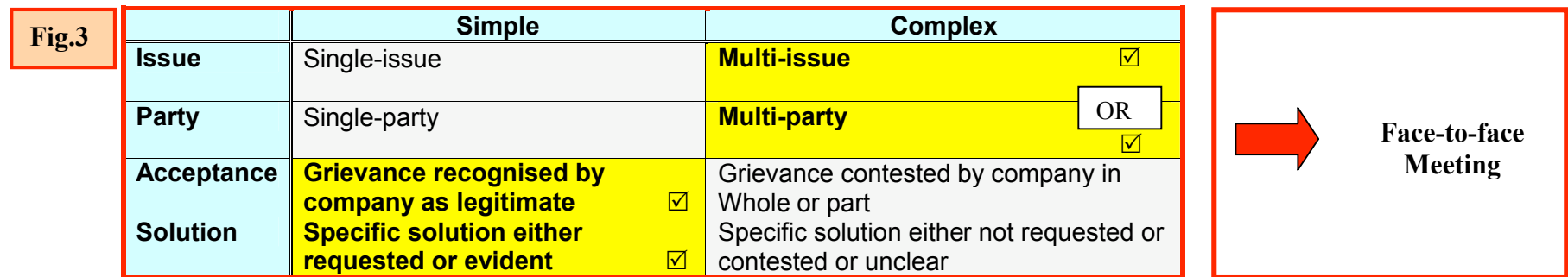


**Direct Action  
Or  
Face-to-face  
meeting**

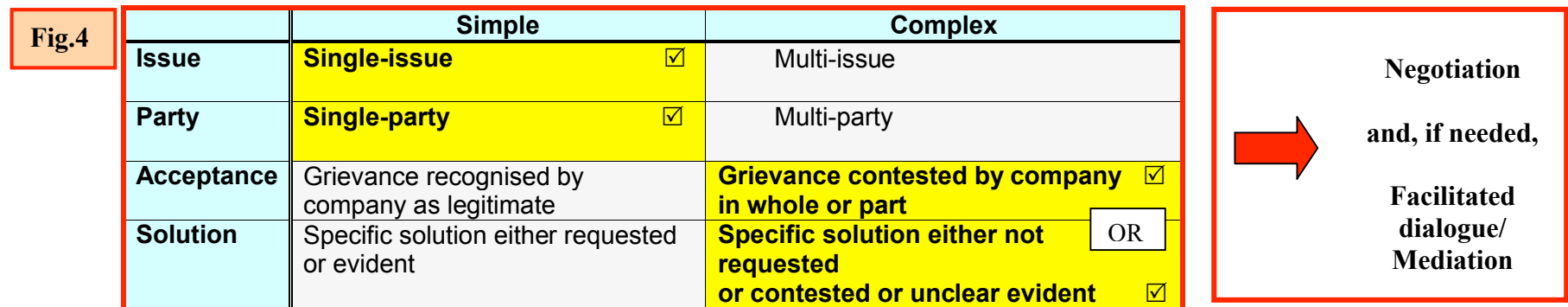
In such cases, the company may judge it most expedient to proceed immediately to implement the requested or evident remedy. Yet even in such instances it is advisable, where possible, to meet with the complainant(s) rather than just communicate the outcome. A face-to-face meeting provides an opportunity to ensure that the complainant has been aware of sources of advice available regarding his/her rights. A later discovery by complainants that a remedy they sought and received was based on patently inadequate or

inaccurate understandings of their rights might well engender repeat and more entrenched grievances. Even if the meeting is simply to clarify understandings and confirm a course of action, the face-to-face contact can help to build a sense of respect that can foster positive relations for the future. It also sends a message to others that the company is serious about its efforts to engage with the community or workers to address complaints, including human rights issues.

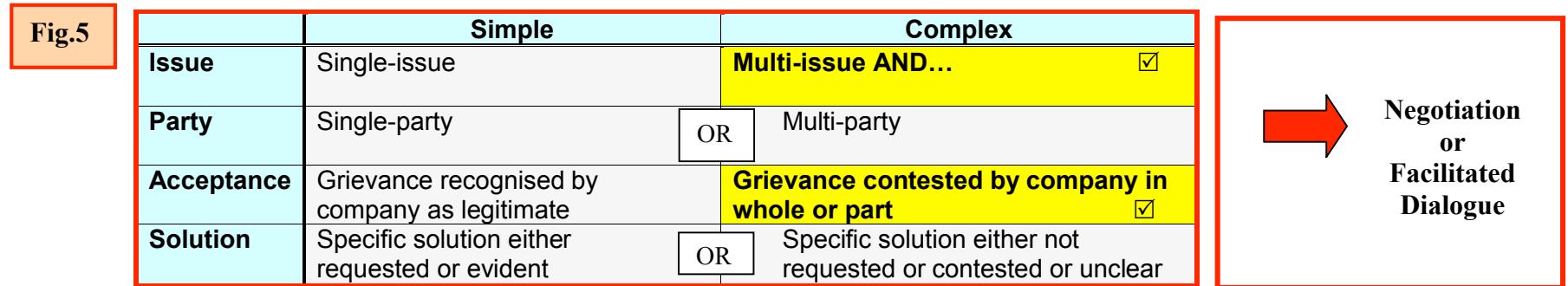
Once any single one of the four components of the dispute can be characterised as ‘complex’, dialogue will be essential (see Fig. 3). If there are multiple issues or multiple parties, then even where the grievance is accepted as legitimate and a clear and acceptable solution has been requested, a dialogue with the parties should take place to ensure that the issues and remedies are clear to all. If discrepancies or unforeseen complexities emerge, it will be necessary to move to negotiation or even toward a facilitated exchange.



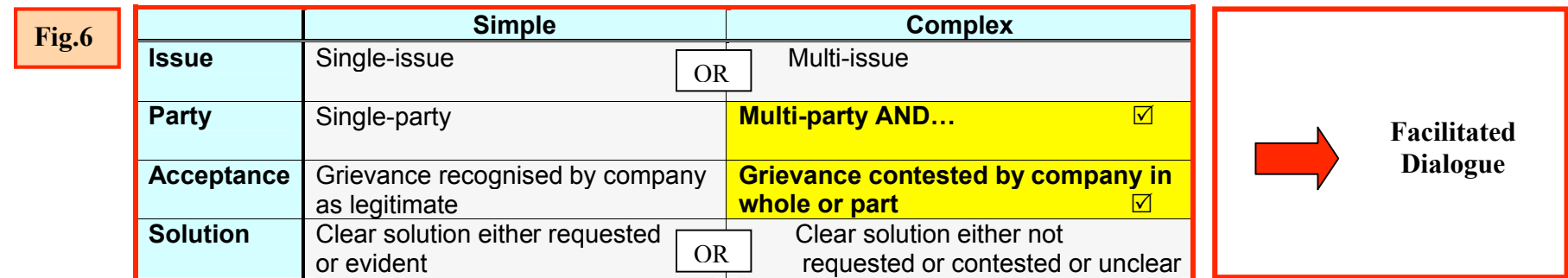
Where there is only a single issue and party involved in a grievance, but the company contests either the substance of the grievance or a requested remedy (see Fig. 4), a face-to-face meeting will be required to explain the company’s position, hear the counter evidence and – unless recourse is sought to some external body – engage in negotiation to explore the potential for agreement. If a settlement or progress in that direction is not readily achieved, it will be advisable to seek agreement to a facilitated process, using a third-party neutral.



Where the complaint is not only contested, but there are also multiple issues in play (see Fig. 5), it may be possible to make progress initially through a direct negotiation, but the rationale for moving straight into a facilitated process will be stronger.



At the greatest level of complexity, where the company contests the complaint and there are multiple parties (and may be other 'complex' characteristics as well), it is most likely that a third-party facilitator will be needed in order to assist the parties in reaching a settlement (see Fig. 6). An initial meeting or negotiation might simply aim to agree on whose services to seek in that role.



The above attempts to provide no more than a rule of thumb and assist companies and other stakeholders in a dispute to assess the likely level of complexity of any grievance and what initial form of engagement may be advisable. Each case will be specific, and may suggest different likelihoods of success of different types of process. It will be up to all parties to agree whether to move to a facilitated process. At any stage the parties may assess a need to move forward to the next type of dispute resolution process.



*The grievance mechanism initiated by Hewlett Packard in Mexico within the electronics industry provides for an elevation path for complaints, bringing external facilitation into the process as it advances. At the first stage, the NGO CEREAL will raise a complaint on behalf of a worker with the factory management, CEREAL review the information available from both parties, allow the company the opportunity to do an investigation and then seek to negotiate a solution directly. If this fails, they can take the complaint to the Chamber of the Electronic Industry, CANIETI. CANIETI representatives mediate between factory, CEREAL and worker(s), and encourage a settlement in line with labour rights standards. If there is still no resolution, the brand companies sourcing from those factories are notified and work with the factory and CEREAL, bringing their leverage to bear, in a final effort to reach a settlement. The option of legal recourse remains open to complainants throughout.*

### **The dialogue process**

It is suggested here that only in the most complex situations or where the foundations for direct engagement have substantially eroded, is it likely to be desirable to bring in a neutral third-party facilitator from the very start of a grievance process. The first default in most situations should be direct dialogue and/or negotiation between the company and aggrieved party or parties. This not only demonstrates (and requires) that the company – including those in the departments whose activities have led to the grievance – takes responsibility for seeking solutions, but also that the other stakeholders do so as well. This will require that the lead company staff have adequate training in dispute resolution. Indeed, enabling such training to be available for community leaders or worker representatives is also likely to be to the advantage of all.

### **The facilitated process: joint and separate meetings**

Where direct negotiation does not bear fruit and a facilitator or mediator is brought in, the type of dialogue will depend on the choice of the parties and the style of the particular third-party neutral engaged. In many instances the facilitator/mediator may hold separate meetings with the different parties in order to understand and explore their particular concerns and constraints as well as what rights are at issue. It is the norm for any party to be able to request that some issues they reveal in those ‘caucus’ discussions should be kept confidential. This is a usual part of a mediation process and can be instrumental in assisting the mediator to explore solutions where there is an environment of distrust.

**#16: HAVE ACCESS TO NEUTRAL HUMAN RIGHTS EXPERTISE: Ensure that the requisite expertise in human/labour rights is available to the dialogue process, as needed, either through a facilitator/mediator or other appropriate sources of expertise, to ensure any settlements are in line with and supportive of human rights standards.**

Mediation, as most often portrayed, tends to focus the dialogue process on interests and personal values, rather than rights, in the quest to find optimal solutions that can benefit all parties. In the case of a grievance mechanism that may be addressing issues related to human rights standards, these standards must form a fundamental part of the framework in which any mediation takes place. There are two primary ways to ensure that this is the case.



First, if entering into a facilitated dialogue, it may be possible to identify a neutral third-party facilitator with an appropriate level of expertise in human/labour rights standards. It should be clear to them that part of their task is to help ensure that the options for solutions to the dispute fall within the parameters of these standards. Where the facilitator/mediator does not possess this expertise, he/she can seek the agreement of the parties on a neutral source of expertise who can provide this function. It may be that an accepted national body, such as a human rights ombudsman or a national human rights commission or a labour rights inspectorate, can play this role.

Secondly, where the dialogue consists in direct negotiation, the parties can agree either that each will have their own source of qualified advice and/or that they will agree to use a neutral expert as a point of reference regarding the relevant standards (see Guidance Point #2). Again, an accepted national expert body may be able to take this role.

*In Cambodia, the Labour Inspectorate's officials may provide the role of conciliator in disputes between a company and one or more of its workers, ensuring that outcomes respect labour standards. Under Cambodian Labour Law, an individual dispute between a worker and his/her employer must go to conciliation before it can go to court. Collective disputes must also go first to conciliation, facilitated by an expert from the Labour Inspectorate. If unresolved, they then go to the Arbitration Council unless there are alternative provisions in a Collective Bargaining Agreement.*

It may be the case that disputes of an environmental or technical nature also raise significant rights issues for individuals or groups affected. In such cases, care should be taken to ensure that human rights expertise is sought alongside any technical expertise.

**#17: AGREE A TIMEFRAME IN WHICH DIALOGUE TAKES PRECEDENCE:** Seek to agree a limited period during which all parties will suspend most or all alternative courses of action (particularly litigation) regarding the grievance, in order to maximise the chances of success for the dialogue-based process.

In most instances, it will be difficult for any dialogue-based grievance process to succeed if one or more of the parties is pursuing action through other avenues, be it litigation, another adjudicative process or hostile campaigning. Yet there may well be a natural reticence on the part of some parties to delay or suspend such alternate actions if they fear that engaging in dialogue is a potentially unending process or – worse – a ruse precisely to force the suspension of these alternatives. It will therefore be important in most instances to agree a clear timeline for a process of dialogue, beyond which the parties can walk away, but during which they commit to focus their efforts on the dialogue-based process. This time period can always be extended if the parties believe useful progress is being made and agreement is within reach. It will be up to the parties to agree an appropriate timeframe, and this will depend, among other things, on the complexity of the issues and the number of parties involved. If necessary, a facilitator might include the task of reaching agreement on this timeframe as part of his/her initial engagement with the parties.

If a certain parallel course of action is considered acceptable while the dialogue is proceeding, there must be flexibility to allow for this. This will be the case most often where such action does not inhibit a party from engaging in open dialogue in the search for solutions to the grievance, for instance where the parallel action is a strike. It will be least possible in situations where it necessarily inhibits this level of engagement, for instance where the parallel action is litigation. This is without prejudice to the fact that complainants must

retain the right to take a dispute to court either instead of using a non-judicial mechanism or if such a mechanism should fail to achieve resolution.

**#18: ENSURE SENSITIVITY IN LOGISTICAL ARRANGEMENTS: Pay attention to the venue and other arrangements for any dialogue among the parties to a grievance, to ensure that they do not compound feelings of intimidation, disempowerment or other grievance.**

Any dialogue requires a venue and logistical arrangements. Where the services of a third-party facilitator are engaged, he/she could take a role in discussing with the parties where and under what arrangements they are comfortable to meet. If the company is organising the physical arrangements, it will need to ensure that they are conducive to a constructive process. Holding a meeting on the company premises or at a high-grade conference centre, where poor community representatives might feel ill-at-ease or intimidated, is unlikely to assist the process. Producing information on arrangements for the meeting only in written documents when some of those attending are illiterate will only further embed resentments and hostility.

The Stakeholder or Worker-Management Committee should therefore seek to agree on the broad arrangements for grievance processes, such as venue and communication methods, when the grievance mechanism is established, or at least to agree a process by which they will be identified for each specific case. Where this has not been done, the company should identify these arrangements with the requisite care, sensitivity and consultation.

There may need to be an initial round of negotiation to agree the ground rules for the dialogue, including the timeframe for the process, what sources of external expertise might be brought in to assist, and how initial views and positions will be presented. Again, a facilitator/mediator can also help the parties reach agreement on these points of process.

## OUTCOMES

**Guidance Point #19: Be open in the search for resolution**

**Guidance Point #20: Agree on provisions for implementing agreed outcomes**

**Guidance Point #21: Record and be open about outcomes**

**#19: BE OPEN IN THE SEARCH FOR RESOLUTION: Be open to any outcome that is acceptable to all parties and in line with the relevant human rights and other standards.**

A broad array of outcomes is possible from this kind of dialogue-based process, which has the flexibility to explore solutions most suited to the needs and interests at stake. Yet where grievances raise issues of human/labour rights, possible outcomes must also be circumscribed by minimum rights standards, just as the equivalent boundaries will apply where environmental standards are in play.

That said, there is also often no single interpretation of human rights standards, especially in the area of economic and social rights. There is no set definition of what constitutes adequate housing, fair compensation, or an adequate standard of living. Such assessments will vary by circumstance and be the legitimate subject of dialogue and negotiation, within certain boundaries of national norms and reasonableness. However, if the outcome of a grievance process can reasonably be assessed by wider interested parties to fall below minimum international standards, not only the immediate settlement, but the legitimacy of the grievance mechanism itself, will be called into question. As reflected above, the safeguards to ensure that outcomes comply with and are supportive of human rights standards consist in: (a) ensuring that stakeholders and complainants have access to relevant information and advice on their rights in domestic and international law; (b) where appropriate and possible, seeking a mediator or facilitator who has the relevant human/labour rights expertise and is able to ensure that outcomes respect minimum standards; (c) alternatively, and/or in complex cases, agreeing a neutral source of human/labour rights expertise whom all parties to the dialogue will accept as a point of advice in the course of the dialogue.

**#20: AGREE ON PROVISIONS FOR IMPLEMENTING AGREED OUTCOMES: Where relevant, seek to include in any settlement an agreement on how its implementation will be monitored or followed up, and what recourse the parties will take if they believe others have not met their commitments.**

Settlements should, where possible, include agreement on how their implementation will be monitored. The company should also have its own systems in place for following up to ensure it meets its commitments. Settlements should seek to include an agreed avenue of recourse in the event that any party believes that another has not met its commitments. This might be an agreement to revert to direct dialogue and negotiation or go straight to mediation, arbitration (binding or non-binding) or – where appropriate – litigation. If mediation or arbitration, the basic parameters for how this should proceed should be set out in clear and simple terms in the agreement. The more complex a grievance process and the more constrained the levels of trust between the parties, the more likely it is to be beneficial to seek the signature of all parties to the final settlement. Without this, it may be difficult to implement an agreement to mediate or arbitrate an alleged breach of the settlement.

**#21: RECORD AND BE OPEN ABOUT OUTCOMES: Ensure that the settlements to grievances are written down, confirmed with all parties and formally recorded. Unless agreed otherwise by the parties, make the key elements of the outcome public.**

The outcome of any grievance process should be written down, confirmed with all parties and formally recorded. Unless all parties agree otherwise, it should be made public – preferably in its entirety, but at least in its key elements (see also Guidance Point #8). The company should also consider identifying an independent means for gaining feedback from the complainants on how they viewed the process, quite separately from any written agreement they sign on the substantive settlement. This could be undertaken by an external body – an NGO advisory body, a non-corporate member of the Stakeholder or Worker-Management Committee, or similar. The point is to capture how far the complainant felt that the process was serious and respectful, regardless of its success in achieving a settlement.

It will not always be possible to resolve a grievance through this operational-level mechanism. However, it is generally wise not to assume a priori that resolution by these means is not feasible, with the important exception of grievances that raise criminal allegations or where a mechanism directly involving the company cannot offer a fair process in fact and in appearance. These situations apart, evidence suggests that even the most seemingly entrenched disputes can often reach resolution through dialogue and mediation. That said, if this ultimately proves impossible, it should be clear to all stakeholders what their alternative paths of recourse are, be it external, non-judicial mechanisms, national administrative processes or the courts.

*Under Xstrata's grievance mechanism at Las Bambas in Peru, a settlement reached at any stage in the process is written down as a formal agreement between the parties. The individual complainant or community may choose to advance its grievance up each stage of the system if unhappy with the previous outcome (although only a complaint backed by the community may go all the way to arbitration). Complainants retain the right ultimately to take the matter to court. However, Xstrata will not contest the solution proposed at any stage of the process.*

*In addition, the mechanism provides for a Complaints System Follow-Up Committee composed of a representative of Xstrata and representatives of each of the communities in the region of the project. The Committee is independent of all the different levels of the complaint mechanism itself and has the sole task of monitoring and/or overseeing the process and its outcomes. The Committee is responsible for reporting to the General Manager, Community Relations Division or Head of Human Resources on the state of complaints at each stage in the process. This enables the company to ensure that the necessary resources are being made available to resolve complaints at the lowest instance possible.*

## CUMULATIVE LEARNING

**Guidance Point #22: Agree and monitor key performance indicators**

**Guidance Point #23: Integrate lessons learned into company systems**

**Guidance Point #24: Revise the mechanism, as appropriate, in line with experience**

**#22: AGREE AND MONITOR KEY PERFORMANCE INDICATORS:** Identify, with the Stakeholder or Worker-Management Committee some key performance indicators that can enable the company and other stakeholders to assess whether the grievance mechanism is proving effective, and, if not, why.

It will be important to measure the success of the grievance mechanism. This is not as simple as the number of grievances settled, though that is naturally one component. As highlighted above, other important factors include the perceived legitimacy of the process and the extent to which it makes aggrieved parties feel they are being treated with due respect. To some extent these are subjective, qualitative indicators, but they should be captured as far as possible. Suggested indicators might include those set out in the table below.

## KEY PERFORMANCE INDICATORS

INDICATORS	INTERPRETATION
1. A significant number of complaints or grievances are brought to the mechanism in the period after its establishment;	Indicating both awareness of the mechanism's existence and confidence that it provides a credible first avenue of recourse.
2. A reduction, over time, in the number of grievances pursued through other non-judicial mechanisms, NGOs or the media.	Indicating both awareness of the mechanism's existence and confidence that it can provide a credible and effective first avenue of recourse.
3. All grievances receive (a) acknowledgement and (b) a proposed course of action or interim update within the respective short deadlines set in the grievance mechanism.	Indicating that commitments to provide a predictable process and to act with appropriate transparency are being met in practice.
4. A high percentage of registered grievances are resolved through a mutually agreed outcome.	A partial indicator of effectiveness. A low percentage may not indicate the converse, but should be interpreted in conjunction with indicator no.2.
5. A high percentage of cases are resolved without recourse to a third party neutral.	A partial indicator of complainants' satisfaction with the company's internal investigation procedures and direct negotiation practices. (Depends on the complexity of disputes.)
6. Over time, the number of grievances of the same or similar nature decreases.	Indicating that staff are learning from past mistakes and adapting practices and/or operating procedures where appropriate.
7. Audits show a reduction in incidents of non-compliance with applicable standards.	Indicating that grievance processes are contributing to the identification and remediation of non-compliance incidents.
8. A reduction in absenteeism and staff turnover and/or an increase in productivity among suppliers'/contractors' workers.	A partial indicator of reduced worker grievances and improved worker satisfaction, most relevant in relation to supply chains and contractors.
9. In a high percentage of cases the complainants report to an independent party that they considered the process to be serious, fair and respectful.	Indicating that the mechanism is working effectively, even in cases where no settlement was reached. Watch for a correlation between instances where no settlement is reached and where the complainant does not feel the process was fair and respectful.
10. Standard Operating Procedures (SOPs) have been reviewed and amended where investigations reveal significant and repeat grievances despite staff following existing SOPs.	Indicating that lessons for management systems are being learned and integrated to reduce the likelihood of the same kind of grievances recurring.
11. A reduction in stakeholder actions that aim to disrupt corporate operations whether by peaceful or other means.	Indicating that individuals feel they have an effective channel for addressing their grievances in a non-confrontational way.
13. Regular stakeholder surveys by an independent third party indicate a high and increasing awareness of the mechanism's existence and a high and increasing perception that it provides a credible, worthwhile process.	Indicating effective publicising of the mechanism and high potential that it will be used by stakeholders where they have a grievance.
14. Regular stakeholder surveys by an independent third party indicate an increase in positive attitudes towards the company.	Indicating a reduced level of grievances and an increased sense of positive, respectful relationships and mutual benefits.

It will generally be helpful for the company's senior management to review performance against these indicators with the Stakeholder or Worker-Management Committee. This will facilitate transparency and may throw up ideas on how to improve the mechanism.

Certain kinds of indicators (not in the table) should be treated with care. A reduction in the number of complaints received may indicate a reduction in the number of grievances, but may also indicate an increase in intimidation of complainants or suppression of complaints, and as such should not form a primary indicator of performance as it risks creating inappropriate incentives for staff. Any such reduction should be assessed in conjunction with indicators on stakeholder satisfaction with the mechanism and the number of grievances taken to external mechanisms or to a public campaign. A reduction in the number of patently bogus complaints may also be an indicator of a respected mechanism. It is important that genuinely bogus claims be revealed as such, in order to reduce the likelihood of their recurrence and ensure that resources are focused on those grievances with substance. However this assessment cannot rest on the company's assertion alone – it must be validated by an informed review on the part of the Stakeholder or Worker-Management Committee as a whole if it is to be credible.

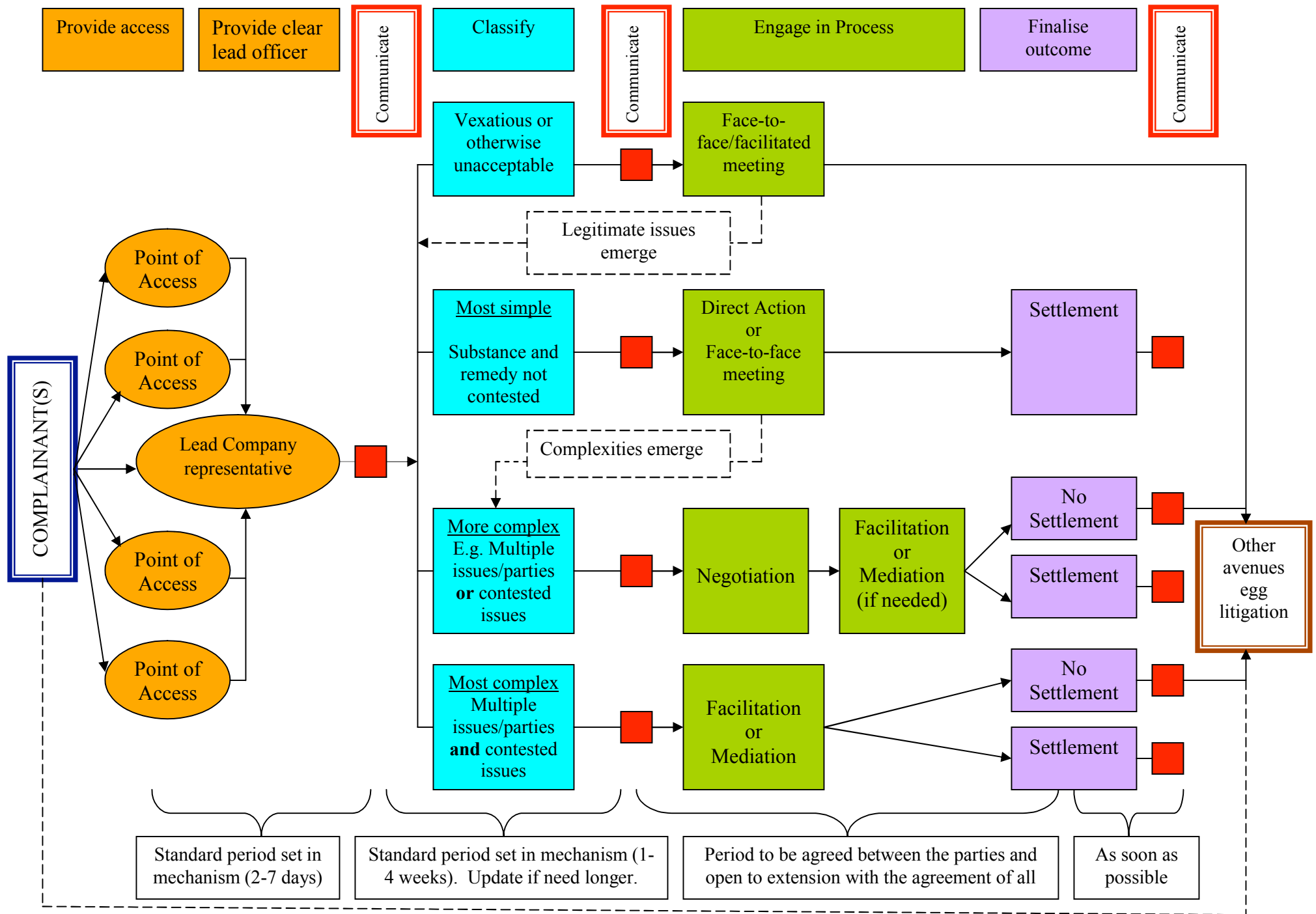
**#23: INTEGRATE LESSONS LEARNED INTO COMPANY SYSTEMS: Identify the lessons emerging from individual grievance processes that indicate where systemic changes may be needed to the company's operations or management systems.**

Mediated processes do not lend themselves to building a consistent body of jurisprudence in the same manner as lawsuits often do (at least within one jurisdiction). The outcomes will be driven in many regards by the specific circumstances in which the grievance or dispute in question arose. However, provided the outcomes of grievance processes are in line with applicable human rights and other standards, they may still provide insights into how these standards are being interpreted in the context of corporate responsibility. They can therefore provide a useful source of learning for all involved as well as for other actors (companies, communities, workers, NGOs, governments etc) who are, or may in future be, involved with similar grievances and disputes.

One of the greatest benefits of effective grievance mechanisms is their capacity to get to the root causes of grievances and thereby identify any systemic problems in the company's operations or operating environment that may need addressing. This, in turn, helps ensure that the same or similar grievances do not recur or can in future be identified and addressed at an earlier stage. The company should therefore seek systematically to absorb any lessons from the outcomes (and conduct) of grievance processes in their management systems and staff training. Where the company is a subsidiary or affiliate of a larger company, it should consider the scope for sharing this learning across the wider system, and corporate parents or headquarters should be alert to, and encourage, such cross-fertilisation. In supply chain settings, the sourcing or contracting company has a potentially important interest and role to play in supporting the integration of lessons learned into the supplier's/contractor's business practices and monitoring this over time.

**#24: REVISE THE MECHANISM, AS APPROPRIATE, IN LINE WITH EXPERIENCE: Identify lessons from cumulative experience with grievance processes that suggest how the company's grievance mechanism can be improved, and discuss these with the Stakeholder or Worker-Management Committee to agree on any adjustments.**

A company's experience with grievance processes over time will also suggest ways in which their overarching grievance mechanism itself can be improved and fine-tuned. This kind of learning and adjustment should be undertaken together with the Stakeholder or Worker-Management Committee.





## ANNEX A

Excerpt from 'Alternative Dispute Resolution for Organizations', Alan Stitt, Ontario 1998:

**Negotiation** – Negotiation is communication between individuals for the purpose of arriving at a mutually agreeable solution that is better for both individuals than no resolution. In negotiation, the disputants themselves attempt to resolve the dispute.

**Mediation** – Where the disputants cannot negotiate a solution to the problem, they may engage the assistance of a third party or mediator to assist them to overcome the barriers to a negotiated agreement. The parties remain ultimately responsible for deciding whether they wish to enter into an agreement to resolve their dispute.

**Conciliation** – One model of mediation requires that the disputants remain in separate rooms while the mediator shuttles back and forth between the rooms. This process is sometimes called conciliation or shuttle diplomacy. The mediator (or conciliator) may exchange offers between the disputants or may engage in private discussions with the disputants to learn facts that may assist him or her to settle the dispute.

**Facilitation** – A facilitator helps people in a meeting to communicate more effectively and to reach consensus. The facilitator ensures that one person speaks at a time, that everyone has an opportunity to be heard, and that the participants remain focused on issues to be resolved.

**Med/Arb (Mediation/Arbitration)** – Not all mediations result in agreement. As a result, a process called Med/Arb has developed where the disputants agree at the outset that if the mediation fails to result in agreement, the mediator or another neutral third party will act as an arbitrator and be empowered to reach a binding decision for the disputants.