Resources for Managing Disputes between Companies and Communities

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I. Introduction

This paper is intended to provide good practice guidance and resources for managing disputes that can arise between companies and locally-affected communities in emerging market countries.[1]

Unsettled disputes with local communities can result in a range of reputational, financial, and liability risks. Community relations problems can affect a company's local and international reputation and hamper access to business partners and financing. Disputes may also affect a company's ability to attract and retain skilled workers. In extreme situations, communities may attempt to delay or altogether stop projects by blocking access roads, conducting civil strikes, filing lawsuits, appealing permits, or vandalizing infrastructure. Though the costs of uncontrolled disputes are sometimes overlooked because they are incurred across a range of corporate accounting categories, they can be significant:[2]

- *Lost Productivity* can occur from a forced shutdown or partial disruption of operations, subcontractor and supplier costs from delays, foregone opportunities for future expansion, opportunity cost of staff time required to manage the dispute, delays in deliveries/supplies, and greater regulatory scrutiny.

- *Capital Losses* can result if a conflict damages property, otherwise decreases property value, or forces a sale. The conflict may also make it harder to retain existing lenders, raise new equity capital, or maintain share value.

- *Reputational Risks* may result in higher expenditures on public relations to counter negative information, market share losses through impacts on brand, or declining investor confidence.

- *Personnel Costs* may take the form of hiring specialized staff dedicated to conflict management, low morale, absenteeism and stress-related effects, work stoppages or slowdowns, or higher cost compensation packages for new hires and retention.

- *Redress Costs* include court-ordered payments and fines, court administrative costs, and legal fees.

- *Security Costs* may increase due to contracting for additional security services, installing monitoring and security fences, or enhancing training programs.

- *Insurance-Related Costs* may increase due to higher premium charges, higher deductibles, or reduced coverage.

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[1]DISCLAIMER: This note and the 3rd party resources that are referenced in it are not intended to replace any OPIC policy or procedure. Moreover, parties following the recommendations contained in these resources are not assured of compliance with any OPIC policy or procedural requirement.

[2] Davis, Rachel & Franks, Daniel. (Working Paper) The Costs of Conflict with Local Communities in the Extractive Industry. SRMINING 2011: First International Seminar on Social Responsibility in Mining. 2010.

These potential costs of uncontrolled conflict warrant learning how to avoid conflicts and manage them should they arise. The tools and resources suggested below are organized according to a hierarchical framework in which the first remedy is typically some type of bilateral engagement between the company and the community. When these options do not suffice, engaging with local public, private or non-profit third parties may be helpful in countries where they are available. Where appropriate local third parties are unavailable, there may be international organizations that can help in managing disputes, particularly when the project is being supported by a development finance institution such as OPIC.

Although managing disputes is the focus of this paper, avoiding them in the first place is far preferable. The risk that disputes will arise is minimized when companies establish early, regular and open communication with affected communities. Channels of communication are maintained by consulting regularly with affected stakeholders, identifying community liaison officers, and considering appropriate ways to make communities partners in the project's success.

The availability of different resources varies from country to country and from project to project. For an example of both those resources available to both avoid and manage disputes, see the text box below.

Managing Disputes: Togo Case Study

A country-specific menu of community relations and dispute management resources is exemplified by feedback from a 2013 consultation with a project-affected community in Togo, convened by OPIC's Office of Accountability. In Togo, community members expressed a preference to have conflicts with a company addressed bilaterally. Opportunities for bilateral dialogue included traditional means through community chiefs, through the annual company meeting convened with communities to discuss its CSR program, through the company's community liaison officer, or through the project's established grievance mechanism. The importance of maintaining friendly relationships was made clear by comments from Togo community leaders, who suggested taking a more informal and personal approach to resolving local grievances. When not satisfied with bilateral arrangements, community members expressed an interest in engaging with local third parties. A specialized arbitration and mediation court, the national environmental agency, the Port Authority, or the National Workers Confederation are all examples of local third parties in Togo. When local third parties are not effective in resolving the dispute, community members could seek recourse with OPIC's Office of Accountability's problem solving service.

The following sections describe the major categories dispute resolution mechanisms available to project developers.

II. Project-Level Grievance Redress Mechanisms

Despite the best intentions of companies and communities, some sort of a grievance is almost inevitable over the life of a project. Grievance Redress Mechanisms (GRMs) are processes set up by companies as a means for local stakeholders to report and seek to resolve any grievances related to a project. GRMs are an increasingly common practice in international investment. A survey of transnational corporations with established project-level complaint mechanisms reveals that over two-thirds of them found their GRMs to be useful in resolving project-related conflicts.[3] Some international financial institutions, including OPIC, require their clients to establish project-level GRMs (see text box below).[4]

OPIC Client Perspectives on GRMS

A 2013 OPIC survey of 31 randomly selected OPIC-supported projects revealed that 11 had received grievances at some point during the course of the project. Five out of the six Category A projects, which are more environmentally and socially sensitive in nature, reported receiving and addressing grievances using a GRM. Clients found OPIC's requirement of a formalized grievance system useful as they expanded their operations. Clients emphasized the importance of adapting project-level GRMs to the local cultural context. For many clients, this means maintaining face-to-face communication and working through local-level channels. In some areas, local authority figures hold considerable sway and can play an integral role in conflict resolution.

The benefits of operating a project-level GRM extend beyond the prevention of deeper conflict. Maintaining an open channel for community concerns also alerts companies to weaknesses in their management systems or failures in their production processes – problems that may not be immediately identifiable by project "insiders" like managers or workers. Project-level mechanisms can be better tailored to the specific needs of communities, such as providing traditionally marginalized groups like women, minorities, and indigenous peoples, access to the GRM process. Furthermore, in contexts where official government redress channels are slower or more costly, a company-led GRM can lead to a more efficient resolution to conflict by reducing the span of time between the introduction of the grievance and the achievement of a settlement. When effective, the use of GRMs can substantively improve the company reputation among local stakeholders and potential lenders.

The effectiveness of a GRM may be limited in certain situations. If the local community lacks trust in the fairness of the company GRM, or fears reprisal from utilizing it, bilateral engagement may not be a viable option. In certain situations, outside tensions or parties may interfere with success of even a well-

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[3] "Building Public Trust: Transnationals in the Community," International Institute for Environment and Development (2009), http://pubs.iied.org/pdfs/17049IIED.pdf

[4] See OPIC's Environmental and Social Policy Statement, section 3.9: http://www.opic.gov/sites/default/files/consolidated_esps.pdf.

functioning GRM. Additionally, project-level GRMs cannot solve all issues that may arise; issues of a sensitive or grave nature may need to be addressed at a higher level from the outset. . To make the best use of GRMs as a risk management tool, companies should regularly evaluate and update their GRMs to ensure that they continue to meet the needs of the local community.

III. Local Third Party Options

When bilateral initiatives such as GRMs do not suffice to resolve a dispute, one or more forms of local third-party dispute resolution may prove useful. Working with the local judicial system is one option that can lend local credibility and is relatively well understood. However, this option can be costly in terms of time, company resources, social capital, and reputational integrity. Furthermore, judicial redress is unlikely to yield a durable resolution in areas where the rule of law is weak, or where the formal court system is overloaded, biased, or inaccessible to a population. Even so, official channels of redress under host country law remain a critical option for dispute settlement, and no other mechanism should contradict or interfere with a citizen's legal recourse. When judicial redress is not a viable option, stakeholders may turn to an alternative dispute resolution (ADR) mechanism. Selecting the most effective ADR mechanism depends on the need for confidentiality, the level of trust between parties, the number of parties to the conflict, the subject of the dispute, and other relevant factors.

 Arbitration is one type of ADR mechanism in which disputants provide their consent to abide by the final decision of a neutral, non-governmental third party. Since the process takes place outside the state court system, rules and procedures are flexible. Arbitration is typically best suited for conflicts in which the parties are subject to strict time constraints, the issues are highly technical, and the preservation of the relationship between the parties is not essential.

Mediation is a common form of neutral-party ADR in which the procedures are usually flexible. While mediation is often a lengthier process than arbitration, the third-party is not called upon to render a decision or provide recommendations, but rather to facilitate a settlement. Disputant participation is voluntary and the process is designed to achieve a resolution by which all parties are satisfied. Mediation is particularly well-suited for disputes in which there are more than two parties and the disputants are equally motivated to reach a mutually agreeable solution. Conciliation is a related process that borrows the mediation model with one key exception: the neutral third-party may provide recommendations for ways to settle the dispute. This process might be appropriate for instances when there is disagreement between expert opinions and the parties are interested in gathering independent advice.

Other neutral party dispute resolution resources, such as public sector ombudspersons or human rights offices, may also be available. In circumstances where complainant suspicions of outside actors runs high, disputants may find traditional community-based dispute resolution mechanisms to be appropriate.

IV. International Third Party Options

If local neutral party negotiations fail to resolve the dispute, or if the issues are of a more serious nature, an international accountability mechanism may be better equipped to address the situation. The Organization for Economic Cooperation and Development (OECD) offers the National Contact Points (NCP) resource network for dispute resolution. The NCP facilitates mediation or conciliation services for companies and stakeholders to resolve issues that concern the OECD Guidelines for Multinational Enterprises.[5] Additionally, the international nonprofit ACCESS Facility offers a database of accredited dispute resolution mechanisms available in countries throughout the world.[6]

Projects receiving financing from an international financial institution (IFI) may be eligible for the services of the IFI's independent recourse mechanism. Although these mechanisms vary in the specific services they offer, all are intended to provide a means for managing disputes that arise around environmental or social issues between locally-affected parties and the IFI's clients. These mechanisms have been established at all of the multilateral development banks, and at a growing number of bilateral development finance institutions,[7] including OPIC's Office of Accountability.[8]

V. Resources[9]

Knowledge of available resources is an important step in mitigating the risk of disputes. Depending on their situation, parties may wish to avail themselves of external expertise, engage consultants, undergo training to build capacity, or identify local organizations that help manage disputes. The information resources listed in this section are intended to serve as a starting point for avoiding and managing conflict. Given the menu of options, the information resources listed below are organized as follows:

   A. Establishment of Grievance Redress Mechanisms
   B. Tools and Guides for Neutral or Third Party Dispute Resolution
   C. Sectoral and Regional Approaches

As relevant resources are constantly evolving, interested parties are encouraged to contact the OA for updates.

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[5] OECD Guidelines for Multinational Enterprises: National Contact Points. http://mneguidelines.oecd.org/ncps/
[6] ACCESS, http://accessfacility.org/launch-access
[7] See 2012 Snapshot of Independent Accountability Mechanisms:
http://www.opic.gov/sites/default/files/files/2012-snapshot-iams.pdf.
[8] Office of Accountability, *OPIC*. http://www.opic.gov/who-we-are/office-of-accountability
[9] DISCLAIMER: The links to all 3rd party reports in this paper do not constitute or imply endorsement by the Office of Accountability or OPIC of any linked site or of any product, information, or service. OPIC and the Office of Accountability offer no guarantee or warranty concerning any product, information, or service described or available at such sites. These links and related information are offered solely as a convenience to the user.

A. Establishment of Grievance Redress Mechanisms

"A Guide to Designing and Implementing Grievance Mechanisms for Development Projects," Advisory Note, *the Office of the Compliance Advisor/Ombudsman*, 2008. http://www.cao-ombudsman.org/howwework/advisor/documents/implemgrieveng.pdf

> This note offers an alternative to ad hoc or exclusively internal processes to address grievances. It emphasizes the need for locally based grievance resolution mechanisms and provides four phases for designing and implementing them.

"Addressing Grievances from Project-Affected Communities," Good Practice Note, *International Finance Corporation*, 2009. http://www1.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC%2BGrievance%2BMechanisms.pdf?MOD=AJPERES&CACHEID=cbe7b18048855348ae6cfe6a6515bb18

> This note provides guidance on the formulation and implementation of grievance redress mechanisms (GRMs) for investors and project managers. Additional recommendations are included regarding the evaluation of GRMs and the resources required to implement them effectively.

"Building Capacity for Grievance Redress Mechanisms," *Office of the Special Project Facilitator, Asian Development Bank*, 2010. http://www.adb.org/sites/default/files/pub/2011/building-capacity-grievance-redress-mechanisms.pdf

> An overview of how to properly design and administer grievance redress mechanisms (GRMs). It emphasizes that a broader change in perceptions towards the grievance process can yield more positive results.

"Designing and Implementing Grievance Redress Mechanisms," *Asian Development Bank*, 2010. http://www.adb.org/sites/default/files/grievance-redress-mechanisms.pdf

> This guide clarifies the concept of grievance redress mechanisms and presents the rationale for their implementation. It shows how grievance redress should be built into projects' policy and institutional frameworks as well as planning models. It also describes the key elements of grievance redress mechanisms and provides step-by-step guidelines for designing and implementing them. While evolved through experiences accumulated in transport projects in Sri Lanka, the guide offers lessons which can be applied across numerous regions and industries.

"Global Review of Grievance Redress Mechanisms in World Bank Projects," *The World Bank*, 2013. http://siteresources.worldbank.org/PROJECTS/Resources/40940-1366729852427/GlobalReviewofGRMs.pdf

> This note provides a qualitative assessment of selected GRMs, a snapshot of current usage of GRMs in World Bank projects, and recommendations for improved risk management via GRM implementation and design. While specific to World Bank initiatives, the report provides useful insights regarding the problems associated with GRM implementation within IFIs, and helpful guidance for GRM improvement.

"Feedback Matters: Designing Effective Grievance Redress Mechanisms for Bank-Financed Projects, Part I: The Theory of Grievance Redress," *The World Bank, Social Development Department,* 2012. https://openknowledge.worldbank.org/bitstream/handle/10986/12524/692060ESW0P1250Effective0Governance.pdf?sequence=1

> Drawing on the experience of World Bank financing operations, this note offers an overview of the GRM process and best practices for their design and implementation. The note emphasizes the need for clear channels of communication between project sponsors and project-affected groups throughout the life of the project.

"Webinar on Grievance Redress Mechanisms," *Open Government Partnership* (2012). http://www.opengovpartnership.org/resources/webinar-grievance-redress-mechanisms

> This presentation focuses on approaches to design and implement successful GRMs. Examples of GRMs from Indonesia, the Philippines, and India are showcased to highlight various aspects of effective GRMs.

B. Tools and Guides for Neutral or Third Party Dispute Resolution

Access Mechanisms, *Access Facility.* http://www.accessfacility.org/mechanisms/all

> This webpage provides resources for dispute resolution to help companies engage and address issues with stakeholders. The country database offers accredited mechanisms locally available in individual countries that can help with dispute resolution processes.

"ADR Suitability Guide," *International Institute for Conflict Prevention and Resolution*. http://www.cpradr.org/Portals/0/Resources/ADR%20Tools/Tools/cpr%20suitability%20guide.pdf

> The guide assists businesses in determining whether a particular dispute is suitable for resolution through ADR. It is applicable to a wide range of disputes, however in some instances certain sections or questions will be more relevant to one category of disputes (such as business disputes between companies) than to another.

"Alternative Dispute Resolution Guidelines," *Investment Climate Advisory Services of the World Bank Group*, 2011. http://siteresources.worldbank.org/INTECA/Resources/15322_ADRG_Web.pdf

> The purpose of this publication is to guide its users through various considerations, policy and practice related, when setting up a system for alternative dispute resolution. The publication considers community ADR and how a company might interact with locals to resolve disputes. It highlights and draws upon experiences of many countries, and summarizes the experience of the IFC and World Bank in introducing ADR within the investment climate reform agenda.

"Corporate Early Case Assessment Toolkit*," International Institute for Conflict Prevention and Resolution (CPR)*, 2009. http://www.cpradr.org/Portals/0/Home/CPRECAToolkit2010.pdf

> CPR's Early Case Assessment Toolkit (ECA) outlines a simple conflict management process designed to facilitate more informed and expedited decision-making at the early stages of a dispute. The process calls for a team working together in a specified time frame to gather the

key facts of the dispute, identify the key business concerns, assess the various risks and costs the dispute poses for the company, and make an informed choice or recommendation on how to handle the dispute.

"Developing Capacity for Conflict Analysis and Early Response: A training manual," *Conflict Management Capacity Building Project*.
http://unpan1.un.org/intradoc/groups/public/documents/un/unpan011117.pdf

> A training manual aimed at building capacity for conflict analysis and early response design and implementation. Through a five-day training workshop it provides a step-by-step guide for building capacity for conflict analysis and early response.

James Michel, "Alternative Dispute Resolution and the Rule of Law in International Development Cooperation," *International Development Cooperation*, 2010.
http://law.missouri.edu/csdr/symposium/rol/docs/JamesMichel.pdf

> The paper describes alternative dispute resolution as a method for expanding rights and opportunities for poor people who do not fully benefit from the protection of the law in their daily lives. Other interests in ADR are commercial arbitration and court-annexed mediation in civil litigation, which have important positive implications for development. The paper emphasizes that facilitating commerce and expediting the disposition of lawsuits are valuable services and worthwhile undertakings.

"Making Monkey Business: Building Company/Community Dialogue in the Philippines," *Office of the Compliance Advisor/Ombudsman, International Finance Corporation*. http://vimeo.com/25199195.

> This film tells the story of a CAO dispute resolution process involving communities impacted by the Ambukakiao and Binga hydropower dams in the Philippines, a privatization project supported by the IFC. The film conveys the process in the voices of those who participated – the Ibaloi indigenous community, the company, SN Aboitiz Power, and government – and documents a historic agreement reached through the power of mediated dialogue, facilitated by the CAO and the Conflict Resolution Group in the Philippines.

National Arbitral and ADR Institutions, International Council for Commercial Arbitration.
http://www.arbitration-icca.org/related-links.html#05

> The International Council for Commercial Arbitration (ICCA) is a worldwide organization devoted to promoting the use and improving the processes of arbitration, conciliation, and other forms of international commercial dispute resolution. ICCA maintains a database of national ADR institutions in dozens of countries around the world, which may prove useful to investors seeking a national forum for dispute resolution.

National Contact Points for the OECD Guidelines for Multinational Enterprises, *Organization for Economic Cooperation and Development.* http://www.oecd.org/corporate/mne/ncps.htm

> The webpage provides a list of National Contact Points available to assist in resolving issues related to the OECD Guidelines for Multinational Enterprises.

"United Nations Guidance for Effective Mediation," *United Nations Department of Political Affairs, Mediation Support Unit,* 2012. http://www.c-r.org/sites/c-r.org/files/UN%20Guidance%20for%20Effective%20Mediation.pdf

> This report offers guidance on mediated intervention by drawing upon the experiences of the international community. It addresses the need for increased preparedness, inclusiveness, impartiality, and coherence through a more professional approach to mediation.

C.   Sectoral and Regional Approaches

A.A Okharedia, "The Emergence of Alternative Dispute Resolution in South Africa: A Lesson for Other African Countries," *University of South Africa,* Jan. 2011. http://www.ilo.org/public/english/iira/documents/congresses/regional/lagos2011/1stparallel/session1c/adr-southafrica.pdf

> This article explores the role of ADR in South Africa's legal and judicial systems. It focuses on the structure, functions, and processes of the Commission for Conciliation, Mediation, and Arbitration and similar institutions that resolve local disputes. Although specific to South Africa, the article provides an example of how similar methods can be used throughout Africa.

Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability. *Ernest E. Uwazie. Africa Center for Strategic Studies*, 2011. http://africacenter.org/wp-content/uploads/2011/11/AfricaBriefFinal_16.pdf

> This article is relevant to alternative dispute resolution (ADR) in Africa. It points to rampant backlog on court dockets in Africa, often requiring claimants to wait years. ADR is an increasingly popular complement to official legal channels to resolve less serious disputes in a timely manner through mediation while enhancing claimants' sense of justice.

David K. Deng, "Handbook on Community Engagement: A 'good practice' guide to negotiating lease agreements with landowning communities in South Sudan," *South Sudan Law Society*, April 2012. http://www.iccr.org/issues/subpages/pdf/SSLS_Handbook%20on%20Community%20Engagement.pdf

> The handbook offers practical tips and step-by-step instructions that could help companies successfully negotiate lease agreements with landowning communities for commercial land based investments in South Sudan. It can help communities to prepare for the changes that come with high impact projects and more efficiently harness their benefits. Additionally, it provides the government with a tool that can be used to promote responsible investment and sustainable development.

Emma Wilson, "Company-Led Approaches to Conflict Resolution in the Forest Sector," *The Forests Dialogue*, April 2009. http://pubs.iied.org/pdfs/G02510.pdf

> This paper explores the potential for addressing conflict in the forest sector through the use of company-led tools and mechanisms. The paper discusses the FPIC concept (free, prior, and informed consent) and the importance of recognizing and negotiating rights to land and resources. It offers examples of tools and approaches that are being employed by companies and non-industry players working closely with companies to address conflict-related issues.

"Indigenous Peoples and Biodiversity Governance," *Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON)*, 2001. http://www.cbd.int/doc/reports/fin-hundested-recomm-en.pdf

This source provides a list of general recommendations regarding indigenous peoples which could serve as the basis for dialogue to develop best practices in particular circumstances.

"Operational Level Grievance Mechanisms: Good Practice Survey," IPIECA (2012). http://www.ipieca.org/publication/operational-level-grievance-mechanisms-good-practice-survey

This document surveys the existing body of third-party guidance on operational level grievance mechanisms. It focuses on aspects of the literature relevant to the oil and gas industry, including the criteria for effective grievance handling, basic procedural steps, elements of good practice, and integration with existing management systems.

"Participatory Water Monitoring: A Guide for Preventing and Managing Conflict," Advisory Note, *The Office of the Compliance Advisor/Ombudsman*, 2008. http://www.cao-ombudsman.org/howwework/advisor/documents/watermoneng.pdf

The note explores monitoring impact as a means to mitigate conflict with communities. It outlines challenges to implementing monitoring programs and suggests how they can be more effective by emphasizing bottom-up approaches and publicly presenting information in a clear manner.

Talking Point: Dispute Resolution In The Middle East. *Financier Worldwide*, 2010. http://www.financierworldwide.com/article.php?id=7468&page=1

This article is a discussion on dispute resolution in the Middle East and trends in alternative dispute resolution that have evolved over time.