

Feedback on the Complaint and Consultation Mechanism Procedures

Thank you for the opportunity to provide comments on the draft Procedure Document for the Complaint and Consultation Mechanism for the Mining Industry and Mineral Value Chain (“draft procedures”) and congratulations on the development of such an important accountability process. An effective accountability mechanism is a critical component of good governance for industries who adhere to environmental and social standards, which includes the mining industry and mineral value chains. An effective mechanism can redress environmental and social harm, promote more responsible business practices, and safeguard against ESG-washing.

We are civil society organizations who have advised communities seeking justice through accountability mechanisms. Accountability Counsel is a non-profit organization that amplifies the voices of communities around the world to protect their human rights and environment. Inclusive Development International is a non-profit organization that works to advance social, economic and environmental justice by supporting communities around the world to defend their rights in the face of harmful corporate projects. Accountability Counsel and Inclusive Development International have advised communities as they navigate accountability mechanism processes and have relied on that experience to advise on the policies and procedures of most existing independent accountability mechanisms, including the mechanisms of the World Bank Group and regional development banks, the Asian Infrastructure Investment Bank, the Asian Development Bank’s [Accountability Mechanism Framework for Chinese Financial Institutions](#), and the [grievance mechanism](#) for [Amfori’s members](#). Our organizations were also part of an expert working group that advised ANZ Bank on the establishment of its [human rights grievance mechanism](#)—the first of its kind to be established by a commercial bank. We also have extensive experience engaging companies throughout the mineral supply chain, including automobile manufacturers, to advance dispute resolution between mining companies and affected communities. Jointly, we seek for the Complaint and Consultation Mechanism for the Mining Industry and Mineral

Value Chain (“Mechanism”) process to be as effective as possible for the communities who need to access it to resolve issues and adverse impacts that arise from activities in the mineral supply chain.

Most Important Recommendations:

Our recommendations aim to ensure that the Mechanism is consistent with the effectiveness criteria in the United Nations Guiding Principles on Business and Human Rights and the very principles stated in the draft procedures, namely: lawful and compliant, equal and voluntary, neutral and professional, inclusive and balanced, and transparent and open. In addition to including all of our recommendations in the chart below, and in the spreadsheet provided for the consultation, we highlight key recommendations upfront:

- **Ensuring the accessibility of the Mechanism for community applicants:** For an industry-led Mechanism to be effective in resolving disputes and be seen as impartial, it must be accessible to all of its stakeholders, including communities that are adversely affected by respondent companies. Communities often face financial limitations, language or technical barriers, logistical issues, and fear of threats and reprisals when considering engaging in an accountability mechanism process. An effective mechanism must help address these various barriers. The draft procedures already contain provisions in this regard that are consistent with good practice at other mechanisms, including the right to representation, and the commitment to rights-based agreements. Key changes need to be made to the procedures to better ensure access to the Mechanism for communities: (1) removal of the requirement of prior engagement with respondent companies, which in some cases is not possible due to fear of reprisals; (2) additional language to ensure concrete measure of protection against reprisals; and (3) the establishment of an adequate budget for the functioning of the Mechanism so that community applicants, who are almost always poor, do not pay for the case process.
- **Ensuring community agency throughout the Mechanism process:** Because communities are rights-holders and accountability mechanisms are designed to create safe and effective channels for communities to raise environmental and social issues, an effective mechanism must permit community applicants to have agency over the case process. The draft procedures permit the parties to select which dispute resolution and fact-finding process to pursue, which helps give community applicants agency over their complaint, and they offer an objections process that communities can use. The draft procedures could better support community agency by: (1) committing to keep the identities of community applicants confidential when requested; (2) offering fact-

finding in any case that involves a community complainant; and (3) only hiring experts and service providers with the consent of community applications.

- **The governance of the Complaint Committee and Selection of Experts:** The Complaint Committee plays an integral role in administering the case process. How the Complaint Committee acts will determine whether parties have trust in the case process. For that reason, parties need to know who is on the Complaint Committee and how they were selected. We recommend that the Mechanism disclose the makeup of the Complaint Committee, establish the process for becoming a member of the Complaint Committee, and prevent the perception of a revolving door between the Complaint Committee and member companies. Similarly, there must be safeguards around the selection of experts and service providers engaged in each case. We recommend that experts be hired through an open and transparent process that involves external stakeholders in the selection committee, and in which the parties are given the power to consent to or reject proposed experts for their case and suggest their own. For all aspects of the Mechanism, reporting lines and the source of its budget should ensure independence, both actual and perceived, in order to gain trust of the parties and effectively resolve disputes.
- **Equal Access to Resources and Tools:** To meet the effectiveness criteria of equitability and predictability, the mechanism should provide resources and tools that are equally accessible to and reflect the concerns of all types of stakeholders. The draft procedures aim to provide important tools to support dispute resolution. Establishing the facts prior to or early on in a dialogue process can save time and resources debating the facts and form the basis of a more constructive discussion towards a win-win outcome. However, in the current draft, fact-finding is only available for Expert Mediation, but not Complaint Mediation. Moreover, it is unclear whether assessment and verification can offer an adequate outcome for communities and NGOs, given that they seem to be more focused on industry-related issues, not environmental and social rights of individuals. If this is the case, it would mean that complaints submitted by communities and NGOs that undertake Bilateral Dialogue and Complaint Mediation will not necessarily be entitled to any third-party assessment or fact-finding tools to support the dispute resolution. We recommend that all fact-finding, assessment, and verification processes be available to all parties no matter which route the complaint follows, and to broaden the scope of assessment and verification to include issues such as compliance with environmental and social standards and an evaluation of social and environmental impacts.

Full Recommendations:

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<p>Broad Scope of Application [Chapter 1, Section 2, Page 7-8]:</p> <p>“Individuals, communities, and other stakeholders: Individuals and communities who claim that their rights and interests have been or are likely to be adversely affected by a company’s business operations and production activities which allegedly violate the applicable standard documents of this Mechanism; stakeholders who pay attention to the due diligence and responsible business conduct of a company, including but not limited to the media, social organizations and the general public;</p> <p>The “United Nations Guiding Principles on Business and Human Rights”, the “ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy”, the “OECD Guidelines for Multinational Enterprises” and the “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas”</p>	<p>We appreciate the effort to develop an innovative industry-led complaint and communication platform that is committed to diversified participation and multi-dimensional disputes. This is reflected in the draft procedures that enshrine a broad scope of application, including the scope of Applicants and the scope of Standards. For example, Applicants include adversely affected communities, media, social organizations, and the general public. This allows a wide range of stakeholders to benefit from the Mechanism and use the complaint and consultation platform.</p> <p>Moreover, the Mechanism draft procedures govern important standards such as the United Nations Guiding Principles on Business and Human Rights, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and relevant OECD Guidelines. This is in addition to industry-specific standards. This allows stakeholders to discuss and deliberate upon a broad range of issues under the mandate of the Mechanism.</p>	<p>We recommend the language remain in the final procedures.</p>

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<p>and other internationally recognized standard documents that are consistent with the above documents.”</p>		
<p>Scope of applicants [Chapter 1, Section 2 , Para 2.1, Page 7]:</p> <p>“Upstream and downstream companies ... who believe that the misconduct of other stakeholders has infringed or is likely to infringe upon their own legitimate rights and interests, disrupted or is likely to disrupt their normal business order, or impacted or is likely to impact their due status in the market;”</p>	<p>The language used in this section could be misused to label legitimate attempts by other parties to protect their rights and interests as “misconduct.” These types of complaints would sow further mistrust between stakeholders and will negatively affect the ability of the mechanism to amicably resolve disputes on a win-win basis. We caution that impacted communities and NGOs can be particularly susceptible to unsubstantiated claims of bad faith. Given the power that corporate actors often have, any allegation of “misconduct” by an NGO or community from corporate actors can put the NGO and community members at risk. Also, the current criteria is vague and risks any advocacy or campaigns seeking corporations to comply with their environmental and social obligations as being considered actions corporations could allege constitute “misconduct.”</p>	<p>We recommend the following edits:</p> <p>“Upstream and downstream companies who face environmental and social challenges to their operations from stakeholders and wish to address or resolve these issues through the use of the Mechanism.”</p>
<p>Scope of Disputes [Chapter 1, Section 2 , Para 2.3, Page 8]:</p>	<p>The scope of disputes relates to the admissibility criteria and should only include simple and objective criteria that is widely</p>	<p>We recommend the following word be removed: “Individuals and</p>

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<p>“Individuals and communities who believe a company’s conduct does not comply with the standard documents and directly or indirectly harms their legitimate rights and interests, and hope to seek solutions through dialogue and consultation;”</p>	<p>understood. The draft procedures are in line with good practice at other mechanisms in as much as they include within their scope all cases where a company’s non-compliance with standards results in direct or indirect harm.¹ However, by including the requirement to show harm to a <i>legitimate</i> right and interest, the draft procedures include a subjective element that may result in bias or inconsistency in the Mechanism’s application.</p>	<p>communities who believe a company’s conduct does not comply with the standard documents and directly or indirectly harms their legitimate rights and interests, and hope to seek solutions through dialogue and consultation;”</p>
<p>Safeguards relating to supporting resources</p> <p>[Chapter 2, Section 2, Page 9]: “... this Mechanism selects global experts and institutions as supporting resources to this Mechanism”</p> <p>[Chapter 2, Section 2, Para 2.2, Page 10]: “The Complaint Committee selects candidates for the expert network, fact-finding institutions and</p>	<p>We appreciate that the Procedure welcomes all parties to recommend candidates to the Committee. However, to ensure that the Mechanism is impartial and is trusted by all parties, representatives of relevant stakeholders should be involved in selecting global experts and institutions as supporting resources, including the development of selection criteria and assessing the candidates. The selection criteria should be transparent to the public.</p>	<p>We recommend the following edit:</p> <p>[Chapter 2, Section 2, Page 9]: “Global experts and institutions as supporting resources to this Mechanism will be recruited through an open and transparent process that involves external stakeholders in the selection committee. The selection criteria will be</p>

¹ Multiple Authors, *Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms*, (2021), Page 42, available at: <https://accountabilitycounsel.org/wp-content/uploads/2021/12/good-policy-paper-final.pdf> (“Complainants should be allowed simply to outline how the alleged harm they are experiencing or anticipate is tied to financial institution-supported activities. Relatedly, any requirement that harm be “substantial” or “material” is subjective, risking bias or inconsistency in the IAM’s application.”).

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<p>assessment institutions globally as supporting resources to this Mechanism.”</p>	<p>Further, parties should have the ability to consent to which experts are involved with their case. We also encourage the Mechanism to consider publishing a roster from which experts can be selected.</p>	<p>developed by the multi-stakeholder selection committee and will be published on the website of the mechanism.”</p> <p>[Chapter 2, Section 2, Para 2.2, Page 10]: “The Complaint Committee multi-stakeholder selection committee selects candidates for the expert network, fact-finding institutions and assessment institutions globally as supporting resources to this Mechanism.”</p>
<p>Non-governmental organizations’ role in the Fact-finding Institutions Resources [Chapter 2, Section 2 , Para 2.1, Page 10]:</p> <p>“Independent, qualified and reputable institutions worldwide (including but not limited to consulting companies, law firms, assessment companies, research institutions and non-</p>	<p>We commend the inclusion of non-governmental organizations worldwide in the fact-finding function that is key to the mechanism. It can help ensure the fairness and credibility of the mechanism for all parties. However, such inclusiveness is missing in the Assessment Institutions Resources, which is perhaps due to the currently limited nature of the tool of Assessment and Verification which does not</p>	<p>We recommend this language remain in the final procedures.</p> <p>We also recommend that NGOs be listed as “supporting resources” to the Mechanism in paragraph 2 and Assessment Institutions</p>

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<p>governmental organizations) are selected as the institutional resources for fact- finding. They provide fact-finding services to parties in specific cases.”</p>	<p>cover issues typically concerning communities and NGOs. (Please see the recommendation regarding “available tools” below.)</p>	<p>Resources.</p>
<p>Right to Representation [Chapter 3, Section 1, Page 11]:</p> <p>“The applicant and the respondent can participate in person, or authorize in writing 1 or 2 agents to participate on their behalf.”</p>	<p>The right to representation is an important element of an effective grievance mechanism as it helps address the power imbalances between affected communities and respondent companies, the latter of whom are often advised by a team of lawyers and consultants. This right has been enshrined as good practice across other accountability mechanisms given the immense challenges faced by a community that seeks redress. “(C)ommunity members face language, resource, technological, and information barriers that make it difficult if not impossible for them to pursue a complaint independently. Given this reality, communities frequently seek advice and representation from local, national, or international civil society organizations, lawyers, economists, scientists, negotiation experts, and others.”²</p>	<p>We recommend the right to representation remain in the final procedures.</p>
<p>Submitting an Application [Chapter 3,</p>	<p>To ensure that the Mechanism is accessible</p>	<p>We recommend the</p>

² Multiple Authors, *Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms*, (2021), Page 41, available at: <https://accountabilitycounsel.org/wp-content/uploads/2021/12/good-policy-paper-final.pdf>.

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<p>Section 2, Page 11]: “An application should include the following: [...] the respondent’s full name, address or place of registration, contact details and other relevant information;”</p>	<p>for all stakeholders, it is crucial that the process of submitting an application is not onerous and can be easily done even by communities who might not have access to information about the companies involved in allegedly noncompliant activity. A complaint should not be found ineligible simply because an applicant might not have access to company details. We therefore recommend that the requirement that an applicant list detailed information about a respondent be an optional, but encouraged, piece of information.</p>	<p>following requirement be noted as optional, but encouraged: An application may should include the following: [...] · the respondent’s full name, address or place of registration, contact details and other relevant information;</p>
<p>Acceptance Criteria [Chapter 3, Section 3, Para 3.1, Para 11-12]: “The contents and materials submitted are complete and sufficient to preliminarily prove the existence of a dispute.” “The applicant has attempted to</p>	<p>An application from communities itself should be sufficient to preliminarily prove the existence of a dispute. It may be challenging for communities to provide evidence, other than their own testimony, of the adverse risks or impacts they are facing. We therefore suggest that written testimony be deemed sufficient for the acceptance of the application, and should questions arise, the Complaint Committee request a teleconference or videoconference to ask questions and seek further information to assuage any doubts. The Mechanism draft procedures require that</p>	<p>We recommend changing the second bullet point to: “The contents and materials are complete and sufficient to preliminarily prove, pertain to issues addressed by the standard documents, and credibly convey the existence of a dispute;”</p>

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<p>directly raise an objection or communicate with the respondent about the dispute, but fails to get a response, or the relevant communication process has completed but no satisfactory result has been achieved.”</p>	<p>applicants demonstrate that they had attempted to “directly raise an objection or communicate with the respondent about the dispute.” Specifically for NGO and community applicants, this requirement is not in line with good practice at other mechanisms and raises issues of accessibility and security.</p> <p>A central tenet of grievance redressal mechanisms is the right to choose the forum that communities want to access. This choice should not be predicated on prior efforts to raise complaints with other forums or a justification for why communities want to access this forum. A major reason for this, that has also been recognized by the draft procedures itself, is the security concerns communities rightly fear when they directly reach out to companies or institutions outlining the harms they face, especially given that few companies have policies or measures against retaliation. Communities should not be required to bear this risk in order to access the Complaint and Consultation Mechanism, and such a requirement would affect the overall accessibility of the Mechanism.</p> <p>Moreover, even where security concerns don't exist, reaching out to respondent</p>	<p>We recommend that the following be removed from the acceptance criteria for community and NGO applicants, although it can be kept for other applicants:</p> <p>“The applicant has attempted to directly raise an objection or communicate with the respondent about the dispute, but fails to get a response, or the relevant communication process has completed but no satisfactory result has been achieved.”</p>

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	<p>companies may prove to be extremely challenging for communities in the absence of information about companies and lack of accessible institutional channels to which communities can reach out.</p>	
<p>Pro forma review and acceptance [Chapter 3, Section 3, Para 3.2, Page 12]: “The Complaint Committee shall [...] issue a written decision to the applicant to accept or reject the application [...] If the application is rejected, the applicant may re-apply to the Complaint Committee on the same disputed matter.”</p>	<p>We appreciate the inclusion of the requirement to inform the applicant of the decision to accept or reject their complaint in writing. This is in line with good practice and promotes the principles of transparency, openness, and predictability. It is also important that applicants can re-apply to the Complaint Committee on the same disputed matter as sometimes applications are rejected due to remediable reasons. Thus the flexibility accorded to the Applicant to re-apply is a critical component of promoting accessibility.</p>	<p>We recommend this language remain in the final procedures.</p>
<p>Procedure Activation [Chapter 4, Section 1, para 1.2 page 13]</p>	<p>While we understand that the process is voluntary, we believe there should be some repercussion when a respondent rejects the invitation or fails to reply. We suggest that the Complaint Committee include in the “Notice of Not Activating the Complaint and Consultation Procedures” the reasons for non-activation, and in particular that the</p>	<p>We recommend adding the following paragraph to the section: “Notice of Not Activating the Complaint and Consultation Procedures will contain the reasons for non-activation</p>

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	<p>respondent rejected or ignored the invitation and publish the notice. We believe this will create an incentive for respondent companies to attempt to engage in the process. It will also uphold the Mechanism's principles of being "transparent and open."</p>	<p>and it will be published on the mechanism's website.</p>
<p>Evaluation and Triage [Chapter 4, Section 1, page 13]</p> <p>"Under the advice and guidance of the Complaint Committee, the two parties agree on the case triage by choosing from three processing routes: bilateral dialogue, complaint mediation and expert mediation. The two parties also decide whether to immediately use available tools such as fact-finding, assessment and verification, etc."</p>	<p>Effective accountability mechanisms provide the community applicants with the choice as to what case process to undertake. The draft procedures follow this good practice by enshrining parties' choice.</p>	<p>We recommend this language remain in the final version of the procedures.</p>
<p>Processing Routes [Chapter 4, Section 2, Para 2, Page 14-15]</p>	<p>The difference between Complaint Mediation and Expert Mediation is unclear. The criteria, such as "large in scope and involves complicated issues" and "large in scope and serious in impact, with unclear applicable standards", are too vague and subjective, while it is also unclear who decides which processing route a case is eligible to.</p>	<p>We recommend clarification, and/or simplification of the processing routes, and that the Mechanism ensures that all mediation processes are facilitated by qualified mediators, especially those who are experienced in</p>

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	<p>Moreover, it is unclear who are the “professionals from this Mechanism” who will carry out the Complaint Mediation, what qualification they have and how they are selected. Without qualified mediators, even relatively small disputes could escalate, with higher risk of reprisals.</p>	<p>protecting communities and NGOs against reprisals and threats.</p>
<p>Timeline for Mediations: [Chapter 4, Section 2, Page 14]: “The duration of the complaint mediation is in principle 3 months.” [Chapter 4, Section 3, Page 15]: “The duration of the expert mediation is in principle 6 months.”</p>	<p>The draft procedures institute timelines for the completion of mediation processes. In theory having relatively shorter timelines to ensure quick resolution can be good and increases the trust of stakeholders in the complaints and consultation process. However, in our experience the complicated nature of certain environmental and social cases may often require a longer mediation process. In such cases it is important that the procedures allow for extension of timelines to ensure that stakeholders are able to effectively and fairly deliberate upon all issues before the Mechanism.</p>	<p>Insert the following words: [Chapter 4, Section 2, Page 14] “The duration of the complaint mediation is in principle 3 months, which can be extended with the consent of both parties.” [Chapter 4, Section 3, Page 15] “The duration of the expert mediation is in principle 6 months, which can be extended with the consent of both parties.”</p>
<p>Available tools [Chapter 4, Section 3, para 1 and 2, Page 15-16]:</p>	<p>Establishing the facts prior to or early on in a dialogue process can save time and</p>	<p>We recommend the following clarifications:</p>

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<p>“Fact-finding is only recommended to be activated in the route of expert mediation.”</p> <p>“The assessment and verification is for and not limited to:</p> <ul style="list-style-type: none"> • assessing the scope and extent to which the interests of stakeholders involved in the application are damaged or affected; • dealing with common and universal issues in the industry related to assessment standards, procedures, methods, and conclusions. For this, upstream and downstream companies in the supply chain, standards institutions, and assessors can all apply for assessment and verification. In principle, the number of applicants or respondents should not be less than 3.” 	<p>resources debating the facts and form the basis of a more constructive discussion towards a win-win outcome. However, fact-finding is only available for Expert Mediation, but not Complaint Mediation. Moreover, it is unclear whether the tool of assessment and verification can offer similar function to communities and NGOs to establish, given that the it is mainly for “assessing the scope and extent to which the interests of stakeholders... are damaged or affected,” and “issues in the industry related to assessment standards, procedures, methods, and conclusions” for upstream and downstream companies in the supply chain, standards institutions, and assessors only. If not, it would mean that complaints submitted by communities and NGOs that undertake Bilateral Dialogue and Complaint Mediation will not be entitled to any third-party assessment or fact-finding tools to support the dispute resolution.</p>	<p>“Fact-finding is only recommended to be activated in the route of Complaint Mediation and expert mediation.”</p> <p>“The assessment and verification is for and not limited to:</p> <ul style="list-style-type: none"> • assessing impacts, rights violation and the scope and extent to which the interests of stakeholders involved in the application are damaged or affected; • dealing with common and universal issues in the industry related to assessment standards, procedures, methods, and conclusions, as well as compliance with standards. For this,

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		<p>upstream and downstream companies in the supply chain, standards institutions, and assessors can all apply for assessment and verification, and communities and NGOs can request that those corporate actors undertake such assessment and verification. In principle, the number of applicants or respondents should not be less than 3.”</p>
<p>Sequence in which Fact-Finding and other tools can be utilized. [Chapter 4, Section 3, Para 1.2, Page 16 and Chapter 6, Section 3, Para 3.3, Page 21]</p>	<p>We assume from the draft procedures that fact-finding, assessment, and verification can occur concurrently with bilateral dialogue, complaint mediation, and expert mediation or those processes can be sequenced one after the other. We recommend that this be clarified in the final procedures and that the decision on whether to have the processes</p>	<p>We recommend the following language be added to Chapter 4, Section 2: “Depending on the type and nature of the dispute, the scope and content of the disputed facts, the complexity of issues</p>

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	<p>occur at the same time or in a sequenced manner be a decision made by the parties.</p>	<p>concerned, the difficulty of finding a solution, this Mechanism provides three processing routes: bilateral dialogue, complaint mediation and expert mediation. Fact-finding, assessment, and verification can occur during bilateral dialogue, complaint mediation, and expert mediation or can be sequenced before or after, depending on the consent of the parties.”</p>
<p>Solutions must be rights-based [Chapter 4, Section 4, Para 1, Page 17]: “Solutions must not violate laws and regulations or internationally recognized principles and standards.”</p>	<p>The draft procedures are committed to creating a Mechanism that is lawful and compliant,³ a key element of which is to ensure that the solutions agreed-upon between the Obligor and Obligee itself are lawful and rights-compatible. During negotiation processes, it is not uncommon for communities to be pressured to accept solutions that limit their own rights. The requirement that solutions under the draft</p>	<p>We recommend this language remain in the final procedures.</p>

³ Complaint and Consultation Mechanism for the Mining Industry and Mineral Value Chain, “Draft Procedure Document”, (November 2022), Page 8, available at: <https://www.shuzih.com/pub/be5308b5badcc0e51953493d8b927935/5ff04cd893d4403c9bcbd418b516b65d.pdf>.

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	<p>procedures must not violate laws or internationally recognized principles protects the rights of communities and promotes an honest and equal complaint and consultation process.</p>	
<p>Case Closure Report [Chapter 4, Section 3, page 18]:</p> <p>'When the process ends, the Complaint Committee will issue a written notice of ending the process and a case closure report to both parties.'</p>	<p>To uphold the Mechanism's principles of being "transparent and open," we recommend that the Complaint Committee publishes the case closure report. We believe this will incentivize bona fides attempts at resolving disputes and allow stakeholders along mineral supply chain to monitor the situation and incorporate outcomes into their due diligence.</p>	<p>We recommend this addition:</p> <p>"When the process ends, the Complaint Committee will issue a written notice of ending the process and a case closure report to both parties, which will be published on the mechanism's website."</p>
<p>Enquiries and Monitoring [Chapter 5, Section 2, Page 18-19]:</p> <p>"The Complaint Committee may ask the obligor for information on progress, depending on the specific circumstances. The Complaint Committee will work to promote continuous and effective communication between the two parties and the practical implementation of the obligations set</p>	<p>Even when solutions are mutually agreed upon, communities find it difficult to ensure that the solutions are implemented in good faith, in a way that meets their expectations, and in a time-bound manner. Thus, the role envisaged for the Complaint Committee to enquire after the progress of the implementation and to promote continuous and effective communication between the two parties is critical to the effectiveness of the Mechanism.</p>	<p>We recommend the following modification:</p> <p>Based on the specific agreement and actual circumstances of the solution, The Complaint Committee actively monitors the progress and effect of the implementation on a regular or irregular basis, and updates the case</p>

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<p>in the solution.</p> <p>Based on the specific agreement and actual circumstances of the solution, the Complaint Committee actively monitors the progress and effect of the implementation on a regular or irregular basis, and updates the case closure report accordingly.”</p>	<p>Moreover, based on the “specific agreement and actual circumstances of the solution” the Complaints Committee further has a monitoring mandate. We commend the inclusion of a monitoring mandate and advise that it should be expanded to all cases, in line with good practice.⁴</p>	<p>closure report accordingly.</p>
<p>Information Disclosure [Chapter 6, Section 1, Para 1.1, Page 19]:</p> <p>“The information to disclose on individual cases includes: the region and industry of the dispute, the type of dispute, the category of participating parties, a summary of the focus of the dispute, processing status and result, summary of solution and implementation progress, etc.”</p>	<p>We commend the inclusion of a robust information disclosure provision that includes detailed information on individual cases. This will promote both transparency and accessibility of the Mechanism and allow the Mechanism to be an industry leader. For this information to be widely accessible, it is crucial that the Complaints Committee maintains a website containing this information.</p> <p>We also recommend publishing the full solution, instead of a summary of solution, to encourage commitment and implementation and allow all stakeholders along the mining supply chain to monitor the</p>	<p>We recommend that the Complaints Committee maintain an online registry of cases that is publicly available.</p> <p>We recommend the following edit:</p> <p>“The information to disclose on individual cases includes: the region and industry of the dispute, the type of dispute, the category of participating parties, a summary of the focus of the</p>

⁴ Multiple Authors, *Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms*, (2021), Page 70, available at: <https://accountabilitycounsel.org/wp-content/uploads/2021/12/good-policy-paper-final.pdf> [Mechanisms “should have the mandate to monitor the case until all instances of non-compliance have been remedied.”].

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	<p>outcomes. It also reflects the Mechanism’s principles of being “transparent and open.”</p>	<p>dispute, processing status and result, summary of agreed solution and, implementation progress, and the case closure report, etc.”</p>
<p>Decision on confidentiality request [Chapter 6, Section 2, para 2.2, Page 20]: “After receiving the confidentiality request, before a decision is made, the relevant information will not be disclosed to whom the confidentiality request is aim at.”</p>	<p>Determining what information should be kept confidential is a difficult challenge for many accountability mechanisms. Because mechanisms must ensure that affected communities can safely access them, their confidentiality rules must center the needs of communities. This means that when affected communities seek to keep their identities confidential, the mechanism must provide for this.</p> <p>Mechanisms also face the challenge of corporate entities claiming that certain business activities should remain confidential. When this occurs, it calls into question the effectiveness of the mechanism process, which must be transparent and equitable.</p>	<p>We recommend including the following words:</p> <p>“After receiving the confidentiality request, before a decision is made, the relevant information will not be disclosed to whom the confidentiality request is aimed at. In the case of rejection, the party requesting confidentiality will be informed of the decision in writing. If a party determines that a decision to reject a confidentiality request will cause safety or security risks, that party should be permitted to withdraw from the process without the information being shared to the other party. Confidentiality</p>

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	<p>Therefore, the mechanism procedures need to distinguish between individuals seeking confidentiality to protect their safety and businesses seeking to hamper the principle of transparency and the effectiveness of accountability proceedings.</p> <p>In any event, we recommend that a decision be provided in writing to the party requesting confidentiality so that the party can decide whether or not to continue in the process.</p>	<p>requests must be made in good faith and cannot be a tool to withhold relevant business activities from the other party.”</p>
<p>Right to Raise Objections [Chapter 6, Section 3, Para 3.1, Page 20]:</p> <p>“All participants have the right to raise an objection to the Complaint Committee at any time if they believe that a circumstance exists where the fair dealing of the application or the performance of obligations in the solution has been or is likely to be impaired in the procedures of application acceptance, complaint and consultation, and the implementation of solution.</p> <p>The circumstances include, but are</p>	<p>The draft procedures provide an opportunity for parties to raise risks to the good faith implementation of the Mechanism process. Making clear that there is a channel to raise objections will help increase the effectiveness of the Mechanism and bolster trust in its outcomes. We agree that this is a positive provision. However, we caution that impacted communities and NGOs can be particularly susceptible to unsubstantiated claims of bad faith. Given the power that corporate actors often have, any allegation from them that an NGO or community member is acting improperly can put the NGO and community member at risk.</p>	<p>We recommend the following edit:</p> <p>Chapter 6, Section 3, Para 3.1, Page 20]:</p> <ul style="list-style-type: none"> • one party violates the principle of good faith, or abuses this Mechanism to avoid or delay performance of obligations;or seeks other interests—unrelated—to dispute resolution; <p>[Chapter 6, Section 3, Para 3.2, Page 21]:</p>

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<p>not limited to:</p> <ul style="list-style-type: none"> • one party violates the principle of good faith, abuses this Mechanism to avoid or delay performance of obligations, or seeks other interests unrelated to dispute resolution; • when performing duties and providing services, the experts, fact-finding institutions, assessment institutions and staff of this Mechanism involved in the case handling show favoritism to and have partiality for a particular side, accept bribes, or have undue interest in the disputes which may affect their fair dealing; • one party forges evidence or conceals major facts; • the obligor violates the solution agreement in the performance of obligations.” <p>[Chapter 6, Section 3, Para 3.2, Page 21]: “Objections should be made to the Complaint Committee in writing and the party that raises an objection shall</p>	<p>To address this risk, we recommend removing the criteria of “seeks other interests unrelated to dispute resolution.” That is vague and risks any advocacy or campaigns being considered as “unrelated” to dispute resolution. Further, we encourage the Complaints Committee to receive training on how to identify good faith objections and how to protect the safety and security of all parties when objections are raised.</p> <p>We also appreciate that the draft procedures require the party raising the objection to do so in writing and to provide evidence to support its claim. We believe this is a critical safeguard against spurious objections. We want to clarify that the evidence should also be required at the time of submitting the objection. This will ensure that the Complaints Committee does not have to spend time internally investigating objections that do not have even <i>prima facie</i> evidence.</p>	<p>“Objections should be made to the Complaint Committee in writing and shall include evidence to support the claim made in the objection. and the party that raises an objection shall provide evidence to support its claim.”</p> <p>We recommend training on how to apply the objections procedures to protect the safety and security of community and NGO applicants.</p>

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<p>provide evidence to support its claim.”</p>		
<p>Threats and reprisals: [Chapter 6, Section 4, Page 21]:</p> <p>“All participants have the right to freely and fully express their views, provide evidence and respond to the disputes and claims without threat or coercion by any person or organization, nor shall they be subject to any form of retaliation or persecution because of an complaint, consultation, or objection.”</p>	<p>We appreciate that the draft procedures prohibit coercion and retaliation.</p> <p>Our experience with similar accountability mechanisms tells us that despite zero tolerance policies on reprisals, communities still regularly face threats and retaliation when they file complaints before institutional grievance redressal mechanisms.</p> <p>At minimum, threats and reprisals could be considered as an additional ground under Chapter 6, Section 3, Para 3.1 to raise objections. Beyond that the draft procedures could also include designating a member of the Complaints Committee as a point of contact for those facing reprisals, having a policy to publicly note instances of reprisals, and bring it to the notice of the experts and other professionals that are involved in the mediation. Small steps such as these could also be crucial in providing communities with protection against reprisals.</p>	<p>We recommend the following language be added to the Mechanism procedures:</p> <p>[Chapter 6, Section 3, Para 3.1, Page 20-21]: “All participants have the right to raise an objection to the Complaint Committee at any time if they believe that a circumstance exists where the fair dealing of the application or the performance of obligations in the solution has been or is likely to be impaired in the procedures of application acceptance, complaint and consultation, and the implementation of solution. The circumstances include, but are not limited to:</p>

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		<ul style="list-style-type: none"> • Risks or actual reprisals, coercion, threats, or retaliation occur. <p>[Chapter 6, Section 4, Page 21]: “All participants have the right to freely and fully express their views, provide evidence and respond to the disputes and claims without threat or coercion by any person or organization, nor shall they be subject to any form of retaliation or persecution because of an complaint, consultation, or objection. When the Complaints Committee is made aware of potential reprisals, threats, coercion, or retaliation, the Committee will make its position against reprisals clear and take follow up action as and where appropriate. The Complaints Committee will</p>

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		<p>make all efforts to safeguard identities and confidential information shared with the Committee in this regard.”⁵</p>
<p>Fee and Financial Support [Chapter 6, Section 5, Para 5.2, Page 22]:</p> <p>“Service providers can charge reasonable costs incurred for professional services such as expert mediation, fact-finding, assessment and verification provided by experts and institutions from the network, and translation services by agencies and translators. These fees shall be borne by both parties through negotiation, and shall be paid directly to the experts or institutions providing the services.</p> <p>This mechanism actively explores</p>	<p>The draft provisions envisage that the costs related to the complaint and consultation process will be shared by the parties to the disputes. This may be possible when the applicants and respondents are companies. However, community or NGO applicants should not be required to pay costs of the process. Communities affected by mining and mineral supply chain activities are almost always poor. The need to cover the costs incurred by the process will preclude their ability to use the Mechanism.</p> <p>Effective mechanisms are accessible to affected communities. The existing mechanisms that the procedures refer to on page 5 do not require communities to pay the</p>	<p>We recommend the following edits: “Service providers can charge reasonable costs incurred for professional services such as expert mediation, fact-finding, assessment and verification provided by experts and institutions from the network, and translation services by agencies and translators. These fees shall be borne by both parties through negotiation, and shall be paid directly to the experts or institutions</p>

⁵ See also, e.g., *IFC Position Statement on Retaliation Against Civil Society and Project Stakeholders*, (October 2018), available at: https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34e-f73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf?MOD=AJPERES (“When complaints of this nature are raised with IFC, we work – within the scope of our mandate – with our clients or other appropriate parties to try to address them. In such instances, we raise our concerns directly with the client or relevant party, make our position against reprisals clear, and take follow up action as and where appropriate. We will make all efforts to safeguard identities and confidential information shared with us in this regard.”)

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<p>diversified sources of funds, and encourages relevant government departments, development aid agencies, foundations, social organizations, non-profit organizations, enterprises or individuals to donate funds to ensure the daily operation of this Mechanism, to financially support disadvantaged groups participating in this Mechanism, and to better facilitate solutions and implementations.”</p>	<p>costs of mediators, independent fact-finders, or mechanism staff. Similarly, this Mechanism must have a sufficiently independent budget to cover the costs of its case process. This means a budget that is determined and prepared by the Complaints Committee and once approved, is under the effective control of the Complaints Committee. This is considered good practice among other accountability mechanisms.</p> <p>Our advice does not preclude parties from covering costs of joint fact-finding or other processes if they so agree.</p>	<p>providing the services. If a party is a community or a community member or an NGO, the Mechanism’s independent budget will pay for the case process.”</p>
<p>Topic not included in the draft procedures: Scope of Mechanism’s Application</p>	<p>This Mechanism has the potential to be a particularly effective and transformative Mechanism because of its scope covering the mining industry and mineral value chain. We applaud this ambition and agree that the Mechanism should apply to all actors governed by the standards listed on Page 6 and other internationally recognized codes for responsible business conduct.</p>	<p>We agree with and endorse the wide application of the Mechanism to any actors adhering to standards set out in page 6. On the Mechanism’s website, we recommend including further clarification as to which corporate actors are governed by the Mechanism so that all parties can predict whether they would expect to engage with the</p>

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	<p>Because of the Mechanism’s inclusive scope, we also think potential complainants considering using this Mechanism might not be aware of who the Mechanism governs, or complaints might be filed against parties not governed by the Mechanism. At minimum, it might be helpful to list organizations who are governed by the Guidelines for Social Responsibility in Outbound Mining Investments, the Chinese Due Diligence Guidelines for Mineral Supply Chain, the Cobalt Refiner Supply Chain Due Diligence Standard, and the Artisanal and Small-Scale Mining Cobalt ESG Management Framework or otherwise at least include the list of RCI members.</p>	<p>Mechanism promise.</p>
<p>Topic not included in the draft procedures: Conducting Outreach</p>	<p>For the Mechanism to be successful, potential parties need to first know that the Mechanism exists and then need to understand what to expect from the process. This requires the Mechanism to conduct outreach to potential applicants and to be available to answer questions about the process from potential applicants and defendants. Special attention should be paid</p>	<p>We recommend that the Mechanism have a budget for outreach and that the Mechanism clarify that the Complaint Committee is available to receive questions about its process.</p>

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	<p>while conducting outreach for affected communities, such as using multiple languages and different modes of outreach.</p> <p>It is standard practice at existing accountability mechanisms to conduct outreach. Many mechanisms, including the Compliance Advisory Office of the International Finance Corporation and the Accountability Mechanism of the World Bank, set budgets aside specifically for outreach.</p>	
<p>Topic not included in the draft procedures: Safeguards relating to Functional Body [Chapter 2, Section 1, Page 8-9]</p>	<p>For the Mechanism to function effectively, it must be trusted by all its stakeholders. This requires faith among its participants that the Complaints Committee operates on the principles of neutrality and professionalism.</p> <p>The Mechanism procedures can put in place safeguards for the Complaints Committee. This is standard practice at many other accountability mechanisms.⁶ The OECD</p>	<p>We recommend the following be included in the Mechanism procedures:</p> <p>(i) Disclosure of the name and contact information of the Complaints Committee, the organisational structure and the location of the committee, Complaints</p>

⁶ The CAO policy contains a good example of the types of hiring safeguards required and includes topics like selection process, pre-employment conditions, conditions for removal, immunities and compensation. Please see, Section V: Governance of the *IFC/MIGA Independent Accountability Mechanism (CAO) Policy*, (June 2021) Page 3-6, available at:

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	<p>National Contact Point system also acknowledges the importance of maintaining structural independence within government institutions and suggests that NCPs could include “representatives from the business community, worker organisations and other non-governmental organisations in the NCP.”⁷ Similar safeguards could be explored when hiring members of the Complaints Committee.</p> <p>The next column contains suggestions that could foster the principles of neutrality and professionalism among the Complaints Committee as they carry out their critical work.</p>	<p>Committee’s reporting lines, and orientation within CCCMC or any other relevant body, as well as the source of the budget.</p> <p>(ii) Inclusion of a description of the hiring process of the Complaints Committee and whether the position is term limited. The neutrality of the Complaints Committee can be protected by ensuring external stakeholders are involved in hiring committees, pre and post employment bans are in place to prevent the perception of a revolving door between the Complaints Committee and CCCMC members.</p>

<https://www.ifc.org/wps/wcm/connect/d3e7f1c4-fd6b-40fd-ae76-fb028916611d/IFC-MIGA-Independent-Accountability-Mechanism-CAO-Policy.pdf?MOD=AJPERES&CVID=nFDGwP2>.

⁷ OECD Guidelines for Multinational Enterprises, (2011), Page 71, available at: <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

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		<p>We also recommend that a board be established to govern the mechanism and that at least one independent and reputable NGO representative be on that board.</p>