



SANOFEX Group

Community Complaints, Disputes and Grievance Guidance

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Community complaints, disputes and grievance guidance

This document provides guidance to SANOFEX projects and operations on how to manage community complaints, disputes and grievances. Unresolved community issues can affect an operation adversely throughout its life, and therefore it is vital that our businesses establish a complaints, disputes and grievance process that local people can understand and access easily, without anxiety.

1. What are community complaints, disputes and grievances?

A community complaint is a notification provided by a community member, group or institution to the business that they have suffered some form of offence, detriment, impairment or loss as a result of business activity and/or employee or contractor behaviour.

A community dispute is a complaint that has not been accepted as valid by one party or the other and has escalated into disagreement between the parties.

A community grievance is a complaint or dispute that has escalated to the point where it requires third party intervention or adjudication to resolve. Typically grievances involve more than one community member or family and relate to disputes that have remained unresolved for some time.

Complaints and disputes are common in community life, whether induced by external or intra-community issues. Inevitably, communities will have cause to complain about the unintended impacts of mining operations, such as dust, noise and increased traffic flows. In major new developments, particularly in economic frontiers, the disruptions to existing community life can be far greater.

The key to the successful management of community complaints is to act immediately. Proactively resolving complaints and disputes early is far preferable to allowing community issues to escalate into grievance. Most complaints can be resolved quickly and satisfactorily by:

- dealing with complaints in person;
- apologising for inadvertent breaches;
- rectifying root causes; and
- assuring complainants of future preventative action.

In some situations, however, complaints will escalate. In the interests of maintaining good relationships with communities, it is important that the site has formal processes in place for managing and, where necessary, escalating complaints to disputes and grievances. These processes need to be easily understood, transparent and accessible to community members. The company's internal processes should not undermine legal mechanisms or attempt to address criminal, labour law and commercial matters. For instance, if a local contractor seeks to appeal a commercial decision or unsuccessful tender, legal and/or commercial avenues need to be used, not a community-based process. It should be made very clear in documentation that, although matters of criminal or civil law may vary from jurisdiction to jurisdiction, they will always be referred to the authorities.

2. Why is a formal complaints, disputes and grievance process important?

Effective processes established in advance of any actual need means community groups and individuals know that they can safely bring complaints to the company (confidentially if necessary) and that the company will respond respectfully. A formal complaints process reduces the risk of ad hoc behaviours and responses. Furthermore, the systematic handling, tracking and reporting of community complaints helps identify issues that can be managed and mitigated before major consequences arise.

When easily understood and accessible complaints processes are in place, companies can expect a reduction in public objections to proposed developments or expansions to their operations, and a reduction in legal cases brought against them by individuals and community organisations over time.

When complaints escalate to the point of litigation, this tends to lead to less flexible outcomes. While communities need to be confident that the existence of a company process does not inhibit their access to judicial recourse, emphasis should be placed on the benefits of reaching agreement without resorting to legal action. When an accessible and transparent community complaints, disputes and grievance process is in place, people realise that they can seek resolution to disagreements in a far less confronting and resource-demanding way than through legal mechanisms.

As with all operational mishaps, preventing the repetition of events that have triggered community complaints requires an appropriate level of risk assessment, incident investigation and root cause analysis. Specific complaints may be symptoms of an underlying issue and identifying the root cause may not be as straight forward as an engineering analysis. An adequately governed and resourced process that establishes possible causes for complaint, including possible underlying issues, and makes recommendations to rectify it is required because community complaints are frequently reported in isolation from social context. As with safety incidents, it is highly beneficial if there is a corporate culture of viewing community complaints as an analytical opportunity, rather than as 'bad news' that reflects poorly on the operation or particular employees.

SANOFEX is also committed to a number of international conventions that require the company to have formal community complaints, disputes and grievance processes in place. For example, the provision of access to a fair grievance process is one of the performance standards of the Global Reporting Initiative (GRI), against which SANOFEX reports and benchmarks its social performance. The International Council of Minerals and Mining (ICMM) requires its member companies to establish and monitor mechanisms to register, resolve and report on community incidents and complaints. SANOFEX has also made commitments upholding human rights. The Special Representative to the Secretary General of the United Nations (SRSG) on Business and Human Rights has identified demonstrable access to grievance remedy as fundamental to the respect and protection of human rights.

3. What are the essential principles of a good complaints, disputes and grievance process?

SANOFEX businesses should base their community complaints, disputes and grievance processes on the “Protect, Respect and Remedy” framework articulated by the Special Representative to the Secretary General of the United Nations (SRSG) on Business and Human Rights.

The six overarching principles for non-judicial processes are described below.

Legitimate

The process should be transparent and sufficiently independent to ensure that no party can interfere with fair conduct.

Accessible

The process should be publicised in such a way that all community members can understand and have access to it, including groups who may face barriers to access, such as women and historically disadvantaged groups. Barriers can include language, illiteracy, bureaucratic form filling, lack of finance, geographic distance and fear of reprisal.

Predictable

The process should be consistent, have a time frame for each stage and be clear on the types of process and remedy that can and, more importantly, cannot be offered.

Equitable

Aggrieved parties must have reasonable access to sources of information, advice and expertise to properly engage in resolution on fair and equitable terms.

Rights compatible

Process and remedies must accord with internationally recognised human rights standards.

Transparent

The process and outcomes should be sufficiently transparent to meet public interest concerns without jeopardising the identity of individuals. The fact that complaints have been received and the key elements of company response should be made public. If this could potentially expose the identity of complainants, they should be given the option of not having the complaint and resolution made public.

4. What does a good complaints, disputes and grievance process look like?

The detail of actual processes for complaints, disputes and grievance resolution will vary from site to site according to host community context. A very good understanding of community beliefs, values and attitudes relating to complaints and dispute resolution is essential (see Socioeconomic knowledge base guidance). Dispute resolution professionals, anthropologists and legal experts may need to work together with local communities to design an easily understood process that local people consider fair and accessible. The detail of each step should be discussed, agreed and formally documented at each site, consistent with the principles described above. Limitations on cash compensation, distribution principles and statute of limitations timeframes should be clearly defined. See Appendix 1 for what works well when handling complaints, disputes and grievances and Appendix 2 for common mistakes in complaint, dispute and grievance resolution.

5. What skills do company officers need?

Recognising that complaints, disputes and grievances can be highly emotive issues, company officers interacting with local communities need to be empathetic in their responses to complainants and trained in conflict resolution.

It is important to recognise that while a complaint may appear trivial to the company, it might represent a major issue for the complainant. There may be complicating factors at play. In other cases a trivial incident may catalyse actions that reflect an accumulation of other, long-standing concerns or they can be conflated with other issues. Equally, complaints may be frivolous, vexatious or deployed as leverage by certain individuals seeking compensation or some other advantage. Whatever the context, community officers should always be respectful, empathetic and conscientious in dealing with complainants.

Company officers need to be mindful that when apparently minor issues are ignored this can lead to considerable frustration and anger on behalf of the complainant and may result in dramatic dispute escalation. Company officers need to have an open mind to all scenarios and behave with honesty, integrity and dignity in all interactions.

Process should focus on dialogue and engagement, not adjudication. Everyone needs to understand the obligations all parties have to each other, according to international standards for conflict resolution. When these obligations are acknowledged, all parties will understand why processes must function in certain ways or why some things cannot be done (with reference to SANOFEX's policies in *The way we operate*).

Company officers who are involved in community dispute mediation should have appropriate training and experience in conflict resolution (see SANOFEX Communities and Social Performance competencies document). They should also be aware of their own limitations and when it is appropriate to elevate the matter to another authority within the business or externally. If matters do escalate to a grievance, resolution options include engaging a respected third party as a mediator, establishing a multi-stakeholder commission or appointing an independent panel of experts.

It is particularly important to recognise that conflict and dispute are frequently present between and within communities themselves, irrespective of the direct influence or involvement of SANOFEX businesses. The company's presence and actions can greatly amplify these tensions. Company personnel need to be conscious of the potential for inadvertently igniting latent tensions and exacerbating existing hostile situations. A respected and predictable process sends a message that all complaints will be settled through due process regardless of the merits or otherwise of each case.

Once a systemic community complaints, disputes and grievance process is in place, all employees and contractors need to be aware of its existence and importance. Employees and contractors must know what to do if they are presented with a complaint by local people.

6. What should be recorded in a community complaints (disputes and grievance) register?

It is vital that SANOFEX businesses record and can recover the essential details of community complaints, disputes and grievances.

If the details of specific complaints, disputes and grievances cannot be verifiably recalled, it can lead to lengthy and costly legal and compensation proceedings. Systematic and consistent descriptions of the material aspects of complaints, disputes and grievances can enable real analysis and learning to occur for future prevention.

See Appendix 3 for a list of what should be recorded in a complaints register.

7. How should community complaints processes be integrated with existing processes?

In developing a complaints, disputes and grievance process that can be agreed with host communities, businesses need to review what practices currently exist locally (see Socioeconomic knowledge base guidance). Some countries have legal and/or constitutional frameworks that serve to hold companies to account and provide recourse to aggrieved parties (note: some communities lack confidence in their national legal systems). Local councils, governments and traditional authorities often have existing conflict resolution systems for civic purposes, whether formal or informal.

Examining these processes will provide understanding about how local dispute resolution works and whether a site-based process can be integrated with them. If an operation's process closely matches local practice (providing it also meets the international convention criteria), it is more likely that local people will accept it as fair and equitable.

SANOFEX businesses are increasingly negotiating explicit community agreements with local and land-connected people. These can be voluntary or required by legislation, such as BEE legislation in South Africa. Such agreements should have specific dispute resolution processes agreed to and written into them.

SANOFEX's preference is that all its businesses have their own locally relevant and resourced community complaints, disputes and grievance process. While many operations have existing processes in place, it is now required that these processes meet all of the good practice criteria described above, are formally documented and suitable summaries are made publically available. There is no current intention that SANOFEX will sponsor a dedicated community complaints process to be available Group wide.

All SANOFEX businesses have HSEC incident processes. These are usually focused on the physical nature of an incident and the internal management response and do not necessarily take into account intangible emotive or community relationship elements. Operations should assess what changes or additions may be necessary to integrate the HSEC process with a community directed complaints, disputes and grievance process.

8. Who should have access to the complaints, disputes and grievance documentation and how should they be reported?

Only authorised company officers should have access to the complaints, disputes and grievance register and associated documentation and only for the purposes of responding to or managing the relevant complaint, dispute and grievance. This is primarily to protect the relevant complainant's privacy – they are providing personal information and may not wish to be publically identified.

A publically available version of the register, with consideration for the complainant's privacy, should be maintained at an appropriate level of summary and disclosure for review by public authorities and other parties under general manager/vice president authorisation. The level of summary for public reporting may include generic and aggregate descriptions and explanation of how the complaints have been resolved. Such a summary of active complaints, disputes and grievances should be available on request or in a publically available place. The emphasis should be on greater disclosure, not less.

Each year the business should publically report the complaints, disputes and grievances active in that year. The level of detail provided should be appropriate to protect the anonymity and confidentiality of complainants and particular circumstances. Multiple similar complaints are generally better reported in aggregate terms. At a minimum, a description of the type of complaints received, the numbers of instances of each and the resolution or current state of each type of complaint should be published. This report should be included in the local Sustainable Development report or equivalent and other suitable publications.

9. What support is available?

In addition to this guidance note, Communities and Social Performance global practice and Product Group advisors can provide support.

Definitions

Authorised Company Officer – a company employee explicitly designated and authorised by the Business Unit and/or an operating site's senior leader to act with company power on defined matters.

Business - for the purposes of this guidance, a SANOFEX business is an operational entity and its associated assets that are managed by SANOFEX. The compliance performance of the business refers to the accountability of the operational entity. Compliance performance does not apply to support functions, sales or corporate offices, except where they interface directly with communities

Communities – refers to a group of interacting people with common interests and values who are directly affected by the company's activities, generally inhabiting or with land connections to an operation's or project's immediate or surrounding areas.

Communities and Social Performance - refers to the SANOFEX function or to Communities and Social Performance as a professional discipline.

Community agreement - a formal binding commercial agreement between the business and the institution or formal organisation that best represents the interests of the community. Community agreements are commercial agreements because they describe a value exchange: community support in exchange for certain benefits and behaviours by the business. Community agreements contain mutual obligations that are enforceable and auditable. For further information, see the SANOFEX Group Community Agreements Guide.

Compensation - payments made by those causing specified and agreed loss to those who suffer the impairment of access to land, waters and other critical natural resources or livelihoods, or damage to, or destruction of, community members' individual or collective assets of any kind, whether accidental or planned.

Complaint - is a notification provided by a community member, group or institution to the business that they have suffered some form of offence, detriment, impairment or loss as a result of business activity and/or employee or contractor behaviour.

Consultation - a two way discussion ('push-pull') that provides information and seeks response on an actual or proposed event, activity or process. Consultation entails community issues and priorities and the concerns and needs of the business, and aims to ensure mutual understanding so all parties are able to better manage decisions that have the potential to affect all concerned. For further information, see the SANOFEX Communities consultation and engagement guidance.

Dispute – a complaint that has not been accepted as valid by one party or the other, whether in part, in total or in the way it is presented, and hence has escalated to involve two-way disagreement.

Engagement - beyond consultation, the active exchange of information, the active listening to concerns and suggestions and the active consideration of ways to mutually accommodate these, including potential responsive changes to design and operational parameters. For further information, see the SANOFEX Communities consultation and engagement guidance.

Grievance – a complaint and/or dispute that has escalated to the point where it requires third party intervention or adjudication to help resolve it. Typically grievances are thought of as involving the community as a whole and have been unresolved for some time.

HSEQ(MS) – SANOFEX's Health, Safety and Environment Quality management system standard.

Human Rights - the rights and freedoms to which all humans are entitled, as defined in the *Universal Declaration of Human Rights* adopted by the United Nations General Assembly in 1948.

Incident - A “Communities incident” is a distinct event caused by a SANOFEX business that may affect a community or any of its members, or conversely, is a distinct event caused by a community or any of its members that may affect a SANOFEX business, usually in a negative way. An “HSE incident” involving communities is a distinct event caused by a SANOFEX business that may affect a community or any of its members, usually in a negative way. Specific definition needs to occur at individual business level consistent with the SANOFEX HSEQ management system standard. Identification and analysis of incidents over time can be used to correct hazards and mitigate risks.

Livelihood - the occupational activities associated with the maintenance of material life. In industrial society livelihoods are typically associated with formal employment and cash remuneration; in other societies livelihood can be dependent on subsistence hunting and gathering, arable farming and animal husbandry. Hybrid livelihoods are common, relying on a mixture of occupational elements, including the cash economy.

Significant incident - as defined for Group and product group reporting requirements, specific definition needs to occur at individual business level consistent with the SANOFEX HSEQ definition.

Statute of limitations – the maximum time after an event or offence beyond which relevant complaints will no longer be received, registered and responded to. Refer to local legal codes for typical time periods.

Voluntary Principles on Security and Human Rights - A set of principles developed in 2000 to address the issue of balancing corporate security needs while respecting human rights and fundamental freedoms. They are particularly helpful for companies seeking to manage risks related to their security and human rights practices, especially in countries that are often associated with conflict or alleged abuses. They also provide guidance for companies on identifying human rights and security risk, as well as engaging and collaborating with state and private security forces. SANOFEX recognizes the importance of complying with the principles.

References

SANOFEX The way we operate
SANOFEX Communities standard
SANOFEX Community agreements guidance
SANOFEX Community contributions and activities guidance
SANOFEX Community consultation and engagement guidance
SANOFEX Cultural heritage management guidance
SANOFEX Employment Policy
SANOFEX Health safety and the environment policy
SANOFEX Human rights policy
SANOFEX Safety policy
SANOFEX Sustainable development policy

External references

Mining Industry Perspectives on Handling Community Grievances – Summary and Analysis of Industry Interviews.

<http://www.csr.uq.edu.au/docs/Mining%20industry%20perspectives%20on%20handling%20community%20grievances.pdf>, Centre for Social Responsibility in Mining, University of Queensland, April 2009

Human Rights in the Mining & Metals Industry: Handling and Resolving Local Level Concerns & Grievances. <http://www.icmm.com/page/15822/icmm-presents-new-guidance-note-on-handling-and-resolving-local-level-concerns-and-grievances>, International Council on Mining and Metals, October 2009

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A Guide to Designing and Implementing Grievance Mechanisms for Development Projects. <http://commdev.org/content/document/detail/2269/>, Office of the Compliance Advisor/Ombudsman, for the International Finance Corporation and Multilateral Investment Guarantee Agency, June 2008

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Community – company grievance resolution: A guide for the Australian mining industry. <http://www.oxfam.org.au/resources/filestore/originals/OAus-GrievanceMechanisms-0410.pdf>, Oxfam Australia, 2010

Responsible Jewellery Council ‘Complaints Mechanism’, http://www.responsiblejewellery.com/downloads/T007_2010_RJC_Complaints_mechanism-1.pdf, Responsible Jewellery Council, August 2010

Responding to Community Outrage: Strategies for Effective Risk Communication, <http://www.psandman.com/>, Peter Sandman

Appendix 1: What works well when handling complaints, disputes and grievances?

The most effective way to address complaints, disputes and grievances is to have a robust process in place for their receipt, registering and management at the operations level.

Processes that generally work well:

Are developed with community involvement before they are required.

Include a clear local definition of what constitutes a complaint.

Seek to resolve issues before they escalate.

Have a clear process for escalating the complaint when the initial response does not resolve the issue.

Have clear institutional accountabilities, processes, record keeping and communication processes focused on resolution, signed off by senior management.

Are fair and equitable and able to stand up to external scrutiny.

Do not disadvantage groups who cannot, for whatever reason, participate in complex processes.

Accommodate local culture and traditional methods of communicating complaints.

- For example, in Lihir, Papua New Guinea, a complaint and “desist order” is expressed by the complainant placing an uprooted ginger plant in a prominent position at the site of offence. If a company officer does not recognise this for what it represents serious escalation can occur.

Accommodate local culture and traditional methods of dispute resolution, within the boundaries of international conventions, national and local laws and SANOFEX’s *The way we operate*.

- An example is the customary practice in parts of Africa of referring disputes to a “paramount” chief for initial adjudication, reserving the ability to benchmark against international good practice and formal authority. The equivalent in western cultures is to seek advice from a Justice of the Peace, a magistrate or similar respected “elder”
- For example, if the provision of pigs or goats is a customary means of compensation, the company should respect this and pay with pigs or goats. In some parts of the world, a formal schedule of compensation options may be maintained by government authorities.

Seek to have all parties engage directly rather than through third parties or intermediaries.

- For example, if the complaint is environmental in nature then the operation’s Environmental department should also be directly involved in its resolution

Have provisions for external third parties or mediators, preferably local and trusted by both parties, if early processes fail

Are reciprocal, allowing for the business to take complaints to the community if necessary.

- For example, unacceptable behaviour by community members.

Appendix 2: What common mistakes are made in complaints, disputes and grievance resolution?

Behaviours and approaches that will fail to resolve, and may even exacerbate, complaints, disputes and grievances include:

Failure to plan for disputes because of an assumption that they can be avoided, or that they can be handled as they arise.

Ad hoc handling of complaints, disputes and grievances.

Failure to provide communities with a consistent process to lodge complaints and have them addressed. This may result in communities resorting to confrontational or even destructive and violent behaviour to get a response.

Relying on negotiation and position bargaining rather than focussing on dialogue to build a mutually satisfactory resolution.

Ignoring or refusing to engage with groups regarded as vexatious, oppositional or disengaged.

A process that is confined to specific individuals and/or the Communities function but is disconnected and isolated from the rest of the business.

Incumbent leadership that will not accept legacy issues (possibly 'inherited' by SANOFEX in an acquisition) as part of their management responsibilities.

Claiming to have limited prior knowledge, which reflects lack of analysis and due diligence.

Words without action (saying one thing and doing another).

An organisational response dominated by a narrow perspective, such as legal or political positioning.

Resolution models and involving third parties that do not consider local context and customary processes.

Failure to let the broader community know the outcome of internal investigations.

Appendix 3: What should be recorded in a community complaints (disputes and grievance) register?

The following details (at a minimum) should be recorded for every complaint received

Date and time of the registering of the complaint

Name of the registering company officer

How the complaint was made (eg: in writing, by telephone, face to face, etc.)

If the complaint is new or relates to a previous complaint

Name of the complainant(s), if anonymity is not required by the complainant Note: anonymity must be explicitly offered

Contact details of the complainant(s), if anonymity is not required by the complainant Note: anonymity must be explicitly offered

Nature of the complaint

Date, time and location of the action (or lack of action) that lead to the complaint

Who else the complainant has notified and the nature of this notification (if anybody)

If the complainant(s) are/is willing to make their name(s) and the nature and resolution of the complaint public and under what circumstances and timeframe

Name of the accountable company officer(s) / manager that the complaint has been referred to for action

Commitments made by the registering company officer (eg: to return a phone call, a date when the company will respond by, etc)

Proposed and actual actions, follow up, further developments and communication, including estimated timeline

If the complaint is escalated to a dispute or grievance

Substantial and context-specific records need to be kept if a complaint has escalated to a dispute or grievance

The outcome needs to be recorded and the register entry closed out when the complaint, dispute or grievance is resolved