

As of May 2023, people impacted by the [mining industry](#) have a new forum to raise environmental and social concerns. The new mechanism, called the **Mediation and Consultation Mechanism for the Mining Industry and Mineral Value Chain**, is also the first grievance mechanism applicable to many Chinese corporations engaged in the mining and mineral value chain. A person, community, organization, or company can file an application alleging that any actor in the mining and mineral value chain has not complied with international environmental and social standards and seek redress for negative impacts.

The Mediation and Consultation Mechanism was established by industry associations and is voluntary and consensus based, without a compliance review function. It does not have the power to require any party to participate in the process or enforce any agreement by the concerned parties.

This guide is designed to help explain the Mechanism's procedures for individuals and communities harmed by corporate behavior. This mechanism is new, currently in the pilot phase, and has yet to manage any cases. Based on the mechanism's written procedures, Accountability Counsel and Inclusive Development International offer this guide for people trying to understand what to expect from the mechanism, styled as commonly asked questions and answers. We will update this guide as and when more information becomes available.

Disclaimer: This guide is based on Accountability Counsel and Inclusive Development International's independent interpretation of the Mediation and Consultation Mechanism Procedures. In case of any doubts, please refer to the original Procedures Document. All citations below refer to the Procedures Document.

1. What is the Mediation and Consultation Mechanism for the Mining Industry and Mineral Value Chain?

The Mediation and Consultation Mechanism for the Mining Industry and Mineral Value Chain ("Mediation and Consultation Mechanism") is a forum for resolving disputes alleging companies' non-compliance with applicable environmental and social standards [Chapter 1, Section 2.2, Page 7]. The Mechanism was designed by two organizations: (1) the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ("CCCMC"), which is an industry association in China, and (2) the Responsible Critical Mineral Initiative ("RCI"), which formed out of the Responsible Cobalt Initiative and is comprised of companies focused on environmental and social safeguards for the critical mineral industry. The stated aim of the Mediation and Consultation Mechanism is "to facilitate dispute resolution through effective communication, consultation, and mediation between

stakeholders in the mining industry and mineral supply chains” [Chapter 1, Section 1, Page 6].

2. What official documents explain the Mediation and Consultation Mechanism for the Mining Industry and Mineral Value Chain?

The Mechanism is explained by the CCCMC on its website. The Procedures Document (“Procedures”), released in May 2023, explains the case process.

3. How is the mechanism managed and by whom?

A Secretariat will be set up to operate the Mechanism and handle applications [Chapter 2, Section 1, Page 8]. It is currently unclear who the Secretariat reports to. A Stakeholder Committee will also be set up to provide recommendations on the operation of this Mechanism, but it is not involved in handling specific cases. The Stakeholder Committee can include representatives of standards owners, governments, international organizations, companies, financial institutions, communities, and civil society, and media [Chapter 2, Section 1, Page 8].

4. Who can file an application?

An application is the document through which one party alleges that another party is not in compliance with international environmental and social standards and has resulted in direct or indirect harm or likelihood of harm. The Procedures allow a broad range of stakeholders to file an application [Chapter 1, Section 2.1, Page 6-7]:

- (i) Individuals and communities whose rights and interests have been or are likely to be adversely affected by a company’s business operations;
- (ii) Other stakeholders who are concerned with the due diligence and responsible business conduct of a company including media, social organizations, and the general public;
- (iii) Upstream and downstream companies in mineral supply chain who believe that the misconduct of other stakeholders has infringed or is likely to infringe upon their legitimate rights and interests, disrupted or is likely to disrupt their normal business order, or is likely to impact their due status in the market;
- (iv) Standard Owners and Assessors who hope to engage with companies regarding their performance in complying with the requirement of the standard documents. Standard Owners and Assessors are institutions that set environmental and social standards or assess a company’s compliance with existing standards.

5. Who can I file an application against?

This Mechanism aims to resolve various types of disputes that may emerge from the mining industry and mineral value chain. Among other stakeholders, impacted individuals and NGOs complaining against companies for violation of their rights can file an application to

the Mechanism. The Procedures cover four types of disputes [Chapter 1, Section 2.3, Page 7]. The two most relevant to affected communities and their NGO supporters are described below:

- (i) 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;
- (ii) Non-governmental organizations who believe that the conduct of companies, standards owners, or assessors does not comply with the standard documents and incurs serious environmental, social, and governance (ESG) risks, and hope to mitigate relevant risks through dialogue and communication.

The “standard documents” referred to include the following [Chapter 1, Section 2.2, Page 7]:

United Nations Guiding Principles on Business and Human Rights

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises 8 and Social Policy

OECD Guidelines for Multinational Enterprises

OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas

Guidelines for Social Responsibility in Outbound Mining Investments

Chinese Due Diligence Guidelines for Mineral Supply Chain

Cobalt Refiner Supply Chain Due Diligence Standard

Artisanal and Small Scale Mining (ASM) Cobalt ESG Management Framework

“[O]ther internationally recognized standard documents that are consistent with the above documents”

6. Can I only file an application in cases involving members of CCCMC and RCI?

Theoretically, under the Procedures, an application can be filed against any upstream and downstream companies in the mineral supply chain for alleged violations as described above. However, considering that this mechanism is entirely voluntary, members of CCCMC and RCI may be more likely to participate in the mechanism. To date, RCI has yet to publish its membership. As for CCCMC, there does not seem to be a public list compiling all the members, but CCCMC discloses its Council Standing Directors in English, and Council Directors in Chinese. Members are disclosed on the page of each branch (each responsible for a specific commodity) on CCCMC's website, available in Chinese only.

7. What types of applications are accepted?

An application must allege non-compliance with the applicable international environmental

and social standards [Chapter 1, Section 2.2, Page 7] that have been specified by the Procedures. An application is judged on two criteria [Chapter 3, Section 3.1, Page 11]:

- (i) The dispute falls within the scope of application of this Mechanism (as explained in Question 5);
- (ii) The contents and materials submitted are sufficient to “preliminarily prove the existence of a dispute.”

The Secretariat conducts an initial review, i.e., a pro-forma review of the application within ten working days to decide whether the application is accepted or rejected and shall issue a written decision.

8. How do I file an application?

Affected individuals, communities, and others can submit an application to the Mediation and Consultation Mechanism by email (leliayanlingli@global-rci.org), post (address not provided yet), or on-site submission (website not yet set up) [Chapter 3, Section 2, Page 11]. The applicant can choose to complete a “Mediation and Consultation Application Form” (not yet available). The application can be submitted by the affected individual/community or by their agents who have been authorized in writing. The application can be submitted in English or Chinese, which are the working languages of the Mechanism.

The application shall include:

- (i) Applicant’s full name, address, or place of registration, contact details, and other relevant information;
- (ii) Respondent’s name, address, or place of registration, possible contact details, and other relevant information;
- (iii) Facts, claims, and reasons for a specific dispute; and
- (iv) Basic evidence that can preliminarily prove the existence of the dispute.

The Mechanism does not accept any anonymous applications. However, applicants may also submit a confidentiality application alongside their application form (see Question 13 regarding confidentiality).

9. What happens during the Mechanism process?

The Mechanism provides for three types of mediation and consultation [Chapter 4, Section 2, Page 13] for communities and companies to negotiate redress for environmental and social impacts. The type of dialogue depends on the complexity of the issues raised, and the agreement of both parties. From least to most complex, the options are: (1) bilateral dialogue, (2) internal mediation, and (3) external expert mediation. These are called “Processing Routes” and are described below in brief:

- (i) **Bilateral Dialogue:** For relatively minor disputes, a bilateral dialogue relies on internal

professionals (within the mechanism) to seek a consensus-based feasible solution. The duration of the process is one month and can be extended by consensus.

(ii) Internal Mediation: For relatively major disputes, internal mediation uses internal experts with mediation experience. The duration is three months and can be extended by consensus.

(iii) External Expert Mediation: For major disputes, complex issues, and significant difficulties in communication, external expert mediation uses an external expert network with rich experience in dispute resolution. The parties can also use fact-finding tools in support of the process. The duration is six months and can be extended by consensus. Parties may apply to change routes midway through the mediation and the Secretariat will decide on whether to switch routes based on the mutual agreement of both parties. The Mechanism does not provide any other types of dispute resolution or a separate compliance review.

10. Will there be independent fact-finding during the mediation process?

It depends. The Procedures allow for an independent fact-finding process [Chapter 4, Section 3.1, Page 14] only if an External Expert Mediation occurs. The scope of the fact-finding shall be determined by the parties based on consensus. Among other things, fact-finding can include on-site investigation. In principle, the fact-finding process should be completed within three months.

For Bilateral Dialogue and Internal Mediation, any party who deems it necessary can request assessment and verification conducted by an independent third-party institution selected by the Secretariat. Assessment and verification are for, but not limited to, determining the scope and degree of damage or impact on the interests of relevant parties [Chapter 4, Section 3.2, Page 15].

The parties jointly select experts or institutions for the above processes from a list of supporting resources approved by the Secretariat [Chapter 2, Section 3, Page 9]. For selection of supporting resources, please see Question 11.

11. How are the experts and institutions selected for the fact-finding and assessment processes?

The mechanism commits to select “globally recognised and reputable experts” and “independent, qualified, and reputable institutions worldwide” to support the independent fact-finding and assessment and verification processes explained above [Chapter 2, Section 3.1, Page 10]. The Secretariat evaluates the qualifications of potential experts through a process of invitation, preliminary evaluation, public notice, and then selection. The Secretariat will consult the Stakeholder Committee on the final decision. This Mechanism

encourages professional individuals and institutions around the world to self-recommend and welcomes stakeholders to recommend candidates. Self-recommendations and recommendations shall be submitted to the Secretariat in writing [Chapter 2, Section 3, Page 9].

For a specific case, experts and/or institutions will be selected based on the recommendations of the Secretariat and the consensus of both parties [Chapter 2, Section 3.3, Page 10].

12. Can applicants have a representative advise them during the process?

Yes, applicants may be advised by one or two agents who have been authorized by applicants in writing. Agents can also submit the Application on behalf of an affected individual or individuals [Chapter 3, Section 1, Page 11].

13. Can an applicant request confidentiality?

Yes. If any party believes the disclosure of certain information may endanger personal safety or cause major business risks, they have the right to request confidentiality from the Secretariat at any time during the mediation and consultation process. All applications for confidentiality must be submitted in good faith [Chapter 6, Section 2, Page 18]. The confidentiality request should be clear on the following:

- (i) The specific content of the information requested to be kept confidential.
- (ii) Whom should the information be kept confidential from, for example, from the respondent, from the experts or institutions participating in the consultation, or from any third party and the public.
- (iii) The period or processing stage of the confidentiality request.
- (iv) The reason for requesting confidentiality.

The Secretariat shall make a decision on the request for confidentiality within three working days after the date of receiving the application. Until the decision is made, the relevant information will not be disclosed. Notably, the Procedures do not require the Secretariat to give an opportunity to applicants to withdraw their case if their confidentiality request is denied, although because the process is voluntary, the applicants could withdraw participation to halt the process.

14. Can the Mechanism require a respondent company to participate in the process?

No, the respondent company can either accept, reject, or not respond [Chapter 4, Section 1, Page 12] to the invitation. The participation of the respondent company is entirely voluntary, and the Mechanism's Secretariat cannot take any actions within the Procedures to require participation. If the respondent company does not respond, the Secretariat will

issue another invitation. In cases where the respondent company rejects or does not respond to the Invitation and follow up, the Secretariat will issue a “Notice of Not Activating the Mediation and Consultation Procedure” to the applicant [Chapter 4, Section 1.2, Page 12]. The Procedures do not provide information on how to withdraw from the process mid-way, but no party can be compelled to engage.

15. Does an applicant have to notify a respondent that it is planning to file an application?

No. The Procedures do not require the applicant to engage with the respondent in any capacity prior to filing an application.

Once an application has been filed and accepted by the Secretariat, within ten working days, the Secretariat shall issue a written invitation to Mediation and Consultation to the respondent company [Chapter 4, Section 1, Page 12]. The Applicant does not have to directly communicate with the respondent company at this stage.

If the respondent company accepts, the Secretariat shall issue a “Notice of Activating the Mediation and Consultation Procedure” to both parties.

16. How long will the case process take?

Depending on the type of mediation route taken, the case process will take (i) bilateral dialogue: one month, (i) internal mediation: three months, and (iii) external expert mediation six months. The Secretariat may decide to extend the timelines upon the application of the parties [Chapter 4, Section 2, Page 13].

Below is the summary of the timeline of the whole process following the submission of the application:

Application review: within ten working days [Chapter 4, Section 1, Page 12];

Decision on confidentiality request: within three working days of the request [Chapter 6, Section 2, Page 18];

Issuance of a written Mediation and Consultation invitation to the respondent: within ten working days from the date of application acceptance [Chapter 4, Section 1, Page 12];

Response to the invitation: the respondent shall notify the Secretariat in writing whether it accepts the invitation within twenty working days from the date of the delivery of the invitation [Chapter 4, Section 1, Page 12];

In the case of no response to the invitation, another invitation will be issued within five working days from the date the time limit expires. If the respondent again fails to give a written reply within ten working days from the date of the second serving of the invitation, it shall be deemed that the respondent rejects the invitation [Chapter 4, Section 1, Page 12];
If the invitation is rejected: a “Notice of Not Activating the Mediation and Consultation

Procedure” will be issued to the applicant in writing within ten working days from the date when the respondent rejects the invitation [Chapter 4, Section 1, Page 12];

If invitation is accepted: a “Notice of Activating the Mediation and Consultation Procedure” to both parties within ten working days [Chapter 4, Section 1, Page 12];

Preliminary assessment of the dispute by the Secretariat: within fifteen working days from the date the “Notice of Activating the Mediation and Consultation Procedure” is delivered [Chapter 4, Section 2, Page 12];

Mediation: (i) bilateral dialogue: one month, (ii) internal mediation: three months, and (iii) external expert mediation six months (timelines extendable) [Chapter 4, Section 2, Page 13];

Handling of objections: All participants have the right to raise an objection to the Secretariat at any time if they believe that circumstances exists where the fair handling of the application or the performance of obligations set in the Problem-solving Plan have been or are likely to be impaired in the procedures of application acceptance, mediation and consultation, and the implementation of the Problem-solving Plan. The Secretariat will conduct an internal investigation and evaluation and make a decision within thirty days from the date of receiving the objection [Chapter 6, Section 3, Page 18].

17. What are the potential outcomes of the mediation and consultation process?

A mediation and consultation process might result in a signed agreement, called the “Problem-solving Plan” [Chapter 4, Section 4, Page 15]. The Mechanism recommends and encourages parties to include the following in a Problem-solving Plan: the focus of the dispute and respective claims of the parties, major stakeholders concerned, applicable standards, main process of mediation and consultation, the consensus reached by both parties, obligors (the parties with specific obligations under plan) and contents of specific obligations (including but not limited to remedies and corrective measures), timeline for obligation performance and indication of outcome, feedback plan on implementation progress, and scope and methods of information disclosure, among other things. The Procedures also specify that the Problem-solving Plan must not violate laws and regulations or internationally recognized principles and standards.

The parties might not reach an agreement by the end of the mediation and consultation process, at which point the case would close.

18. How will the Problem-solving Plan be implemented?

The Problem-solving Plan is reached on a voluntary and equal basis. According to the Procedures, both parties should earnestly perform their obligations in good faith and give feedback to the other party and the Secretariat on the main steps for and outcomes of implementation of the solution [Chapter 5, Section 1, Page 17].

19. Can the Secretariat monitor the implementation of the Problem-Solving Plan?

Yes. In case the obligor (the party with the obligations under the Problem-solving Plan), fails to provide feedback to the obligee (the party to whom the obligation is owed) within a reasonable time and the attempts to communicate fail to achieve satisfactory results, the obligee may enquire from the Secretariat about the progress of the implementation. The Secretariat can collect relevant information from the obligor on the progress. The Secretariat also has the ability to monitor the progress and effect of the implementation periodically [Chapter 5, Section 2, Page 17]. It must be noted that beyond inquiry and promoting effective communication between the parties, the Secretariat does not have “power to enforce the Problem-solving Plan achieved. Neither does it have the right to take any punitive and corrective measures for the implementation of the Problem-solving Plan” [Introduction, Page 4].

20. What if community members who are impacted by a project fear or are facing reprisals?

The Procedures specify that all participants have a right to freely and fully express their views without threat or coercion [Chapter 6, Section 4, Page 20]. The Mechanism commits to adopting preventative measures such as promotion of principles of honesty and peace, risk assessment, and strict implementation of confidentiality provisions. The Mechanism also commits to responding appropriately to the greatest extent possible within its capabilities, including where necessary striving to assist in seeking support from local judicial or law enforcement agencies, and responding appropriately in case of reprisals or fear of reprisals.

Notably, the Procedures also specify that the Mechanism has no capacity to directly guarantee the physical safety of participating parties nor ensure local judicial or law enforcement take action.

21. Does the mechanism cover the costs of the process?

No. Costs of third-party professional services, such as External Expert Mediation, Fact-finding, and Assessment and Verification provided by experts and institutions from the Supporting Resources, as well as translation services by agencies and translators, are borne by the parties and paid directly to the service providers. The extent to which each party bears the cost of the service providers is decided through negotiation. The mechanism commits to actively explore diversified sources of funds to “financially support disadvantaged groups participating in the Mechanism,” but this support is not guaranteed [Chapter 5, Section 5.2, Page 20-21].

22. Where can I find information about my case and what information will be

disclosed?

The Secretariat plans to set up a dedicated website, but this is still pending. Cases are registered and recorded at key stages throughout the process. The information that will be disclosed for 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, its processing status, a summary of the Case Closure Report, and the progress of the implementation of the Problem-solving Plan, based on the specific progress and the intention of both parties [Chapter 6, Section 1, Page 17-18].

23. How can I contact the Mechanism?

The Mechanism can be contacted via leliayanlingli@global-rci.org.

Source: Accountability Counsel