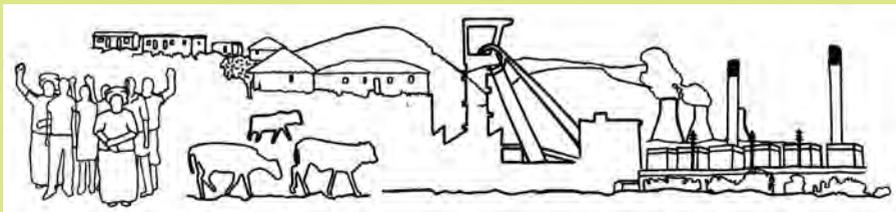


# TURNING THE TIDE

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## Independent Problem Solving Service

For Mining Companies  
and Affected Communities



**This brochure explains what the Independent Problem Solving Service (IPSS) is and how it works. The ‘nuts and bolts’ of the Service are unpacked. It also covers why we believe it stands to effectively resolve problems where all else has largely failed, along with its potential benefits.**

August 2018



**The focus of this Service is on the effective resolution of problems and issues between mining companies and communities affected by their operations.**

## **WHAT IS THE PROBLEM?**

**Much has been researched and written about what the problem is. The following is a high level summary of some of the main issues involved.**

### **From a mining sector perspective:**

- Intractable conflicts of interest prevail with ongoing interruptions to mining operations.
- Resistance to mining operations is steadily on the increase along with the associated conflict. Protests happen on a daily basis.
- A significant trust deficit prevails between mining companies and affected communities.

### **From a community perspective:**

- Heavily skewed power relations prevail between mining companies and affected communities.
- This is in the context of communities with extreme levels of poverty, inequality and marginalization. As stated in the Mining Charter, mine communities continue to live in abject poverty.
- There is a long history of communities being negatively impacted by mining operations, e.g. mining pollution of air, water and soil.
- There is an equally long history of community problems and issues not being resolved.
- Government lack the capacity to effectively deal with these issues.
- There are ever increasing levels of frustration and anger within affected communities.

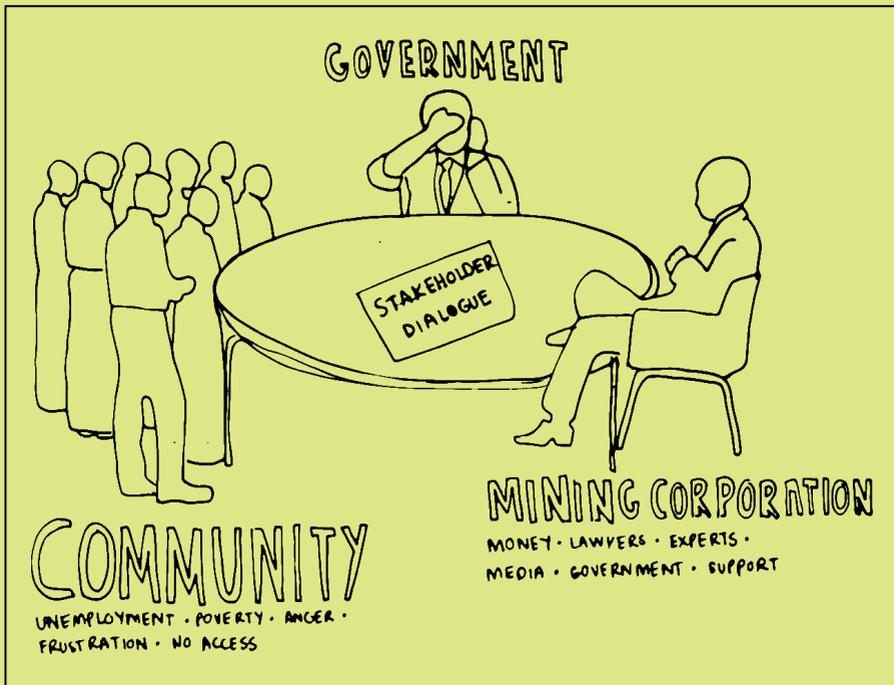
An effective problem solving facility therefore is urgently needed in the mining sector to turn the tide of unresolved problems and grievances.

*When communities are uprooted and relocated, the costs for them are enormous and include socioeconomic loss and exclusion from mine benefits; loss of ancestral land and culture shock; and loss of their way of life and a sustainable existence. Mining should mean they are better, not worse off. After all, it is their land where the minerals – worth billions – are found. (Extract from Business Day article of 3 July 2018 entitled 'Charter is a step away from the wasteland'.)*

# THE PROBLEM

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DIALOGUE IS NOT POSSIBLE IN AN UNEQUAL RELATIONSHIP



# WHAT IS OUR RESPONSE? THE INDEPENDENT PROBLEM SOLVING SERVICE

**A new ground breaking service is being established in consultation with all role players, designed to effectively resolve problems and issues between mining companies and communities affected by their operations. This is the Independent Problem Solving Service (IPSS).**

It is informed by the view that firstly, we have a problem and that it is a big problem, secondly, things cannot stay as they are and thirdly, change is urgently needed for the very survival of our society.

**The vision for this initiative** is the establishment of an independent, voluntary, multi-purpose, alternative problem solving service for communities affected by mining operations and the mines involved, informed by social justice values and principles.

**The overarching mission** is the pursuit of constructive community/ mine relations aimed at the prevention of conflict and the effective resolution of prevailing problems and issues, with facilitated dialogue as the primary mechanism.

The IPSS's social justice vision has the restoration of human dignity at its centre.

**The overall objective** is contributing to the restructuring of community/ mine relations through the opening up of democratic space to dialogue as equals.

**It consists of two main aspects:** a problem solving system consisting of a number of components and with it, the provision of the necessary support and capacity through an Independent Capacity Building Fund (ICF).

**Essential to effective problem solving** must be the parties involved engaging as equals. In order to engage as equals, communities need the required knowledge, information and skills. This is the central function of the ICF.

It will also provide the financing for impartial, suitably experienced and skilled facilitators for the dialoguing process.

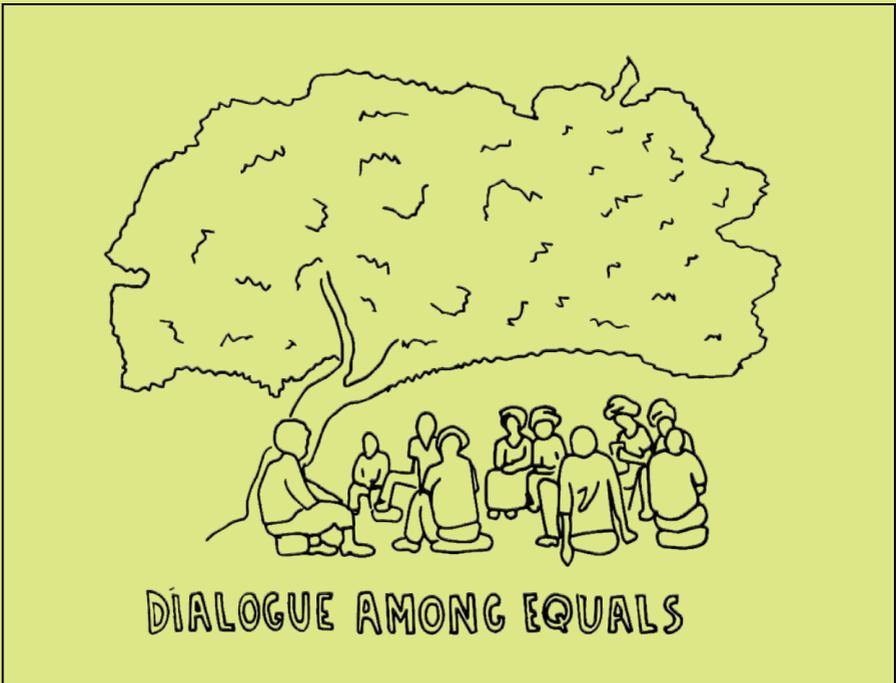
The ICF stands to facilitate informed decision-making by communities and allow for a more level playing field between the industry and communities.

**The desired outcomes** of the IPSS are sustainable, developmental solutions, aimed at going beyond remedies to address poverty and inequality in all its dimensions, including unemployment.

# OUR RESPONSE

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DIALOGUE AMONGST EQUALS OPENS THE WAY TO SOLUTIONS – THE IPSS PROVIDES THIS



# WHERE DOES THE IPSS COME FROM?

**We were first talking about an Independent Grievance Mechanism, but it was realized that a very different approach is needed to achieve what grievance mechanisms have largely failed to achieve.**

**This conclusion arises out of the Bench Marks experience and research on the local and international situation regarding the use of company grievance mechanisms.**

Much can be said about this, but the bottom line is that company grievance mechanisms (and their equivalents) for a wide range of reasons have tended to not work to the satisfaction of the communities involved, both locally and internationally. Examples are:

- company grievance mechanisms tend to be mechanistic and disempowering;
- there is generally a lack of consultation with affected communities in their establishment;
- they do not provide for dialogue and relationship building;
- they fall short of providing meaningful remedies; and
- they fail to meet international standards of fair process.

The process to establish the IPSS is taking all these factors into account, together with the harsh realities prevailing on the ground,

## OUR GUIDING PRINCIPLES

The initiative is informed by a set of guiding principles, which are in turn underpinned by the United Nations Guiding Principles on Business and Human Rights and the Bench Marks Principles for Global Corporate Responsibility.

The UN Guiding Principles provide that governments must protect human rights, corporations must respect human rights and there must be access to remedy, both judicial and/or non-judicial. In order to ensure their effectiveness, the UN Guiding Principles require that the judicial and non-judicial provisions must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and be based on engagement and dialogue.

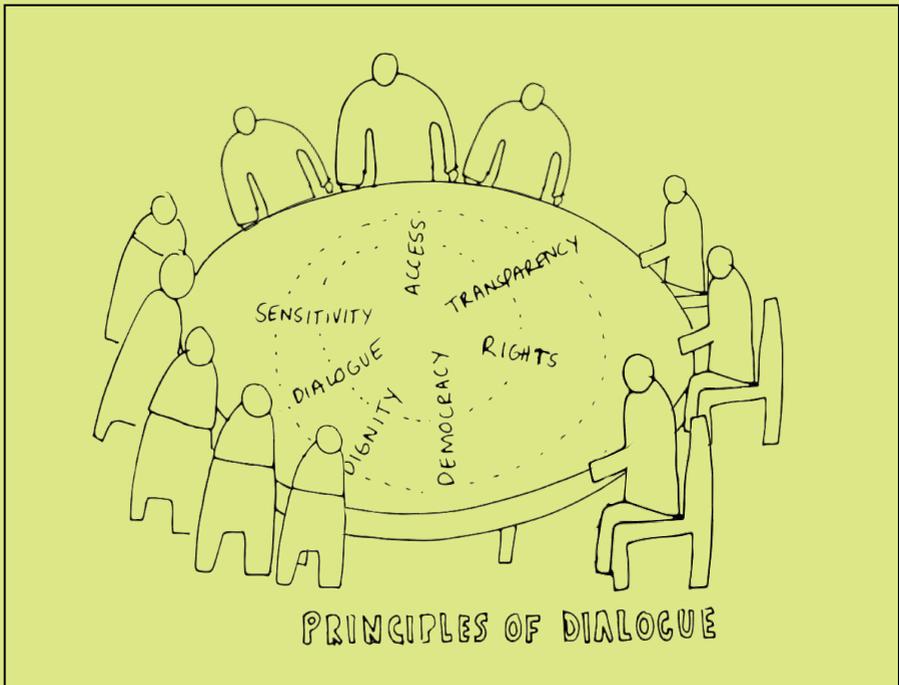
The IPSS guiding principles flow from this and are summarised as follows.

- **Dignity:** restoration and maintenance of human dignity.
- **Democracy:** all role players consulted and meet in a democratic space as equals.
- **Dialogue:** facilitated social dialogue at the centre of the Service.
- **Sensitivity:** cultural sensitivity in all aspects of the process.
- **Accessibility:** access to information and accessibility of the processes involved.
- **Transparency:** participants kept informed of developments and outcomes.
- **Rights:** the Service to not give away, limit or undermine participant's rights.

# OUR GUIDING PRINCIPLES

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DIALOGUE FLOWS FROM THE IPSS SOCIAL JUSTICE VISION AND PRINCIPLES



# WHY DOES THE IPSS STAND TO WORK WHERE LITTLE ELSE HAS?

**We believe that due to this approach and how the Service is designed, it stands to work where practically everything else has failed. This is due to a number of reasons:**

- Firstly, it is informed by the learnings and mistakes of the past. Bench Marks has carried out much research in this regard and is also drawing from its many years of experience of being exposed to challenges facing communities. This is a key strength of the Service.
- Secondly, the design and development of the Service is involving an extensive briefing and consultative process, involving community leadership, civil society organisations and mining companies. This will continue on an ongoing basis. This is also key.
- Thirdly, it is driven and informed by a social justice vision, with the restoration of human dignity at its centre. This includes all participants being treated with care and respect.
- While human dignity is at the centre of the Service's vision, facilitated dialogue is at the core of the Service practically speaking. We believe that the facilitated dialogue process is pivotal to the potential effectiveness of the Service. The international experience also points strongly towards this.
- The facilitated dialogue process involves impartial and experienced facilitators. This is also a key aspect to the problem solving process. Going forward we envisage a trained panel of experienced facilitators, who are knowledgeable on the history, communities and sectors involved.
- The facilitated dialogue process is a non-adversarial, accessible, non-legalistic dialoguing and relationship building process that will benefit the industry as much as ensuring fairer outcomes for communities.
- An important aspect to this Service is its flexibility and adaptability to all situations. The design of the problem solving process takes into account the complexity of cases, including the multiple role players involved.
- Each case is carefully diagnosed and a process specifically designed for that case is formulated, drawing from a toolbox of exercises.
- The Service is independent of mining companies. This is central to communities gaining the trust of the Service. It is also independent of communities, civil society and government.

- Great importance is placed on the problem solving components being simple and easy to understand and use. It is also aimed at being an empowering experience for participants.
- Bearing in mind the heavily skewed power relations between communities and mining companies, the Service functions within an environment where the 'playing fields' are levelled. It achieves this through technical and capacity building support for participants via the ICF. This is crucial to the successful functioning of the Service.
- Overall, the result will be better-informed communities, with increased capacity, leading to developmental outcomes and improved relations and dialogue, that not only benefit communities but also industry.
- It aspires towards sustainable, developmental solutions which include but go beyond rights-based remedies, with poverty alleviation, income generation and reduction of inequality factored in.
- The Service has pro-active and preventative aspects involving monitoring and early interventions into problem situations emerging, along with ongoing dialogue with mining companies outside of cases. This is also a key aspect contributing to the success of this initiative.

Overall, it is the combination of the Service's aspects, as described above, that is the 'secret' to its success!

***We are looking at something very practical and that works!***

# WHAT ARE THE PROBLEM SOLVING COMPONENTS?

**The problem solving process includes a number of components to draw from:**

- Diagnosis of problem and design of process;
- Facilitated dialogue;
- Grievance hearing;
- Mediation;
- Expedited arbitration.

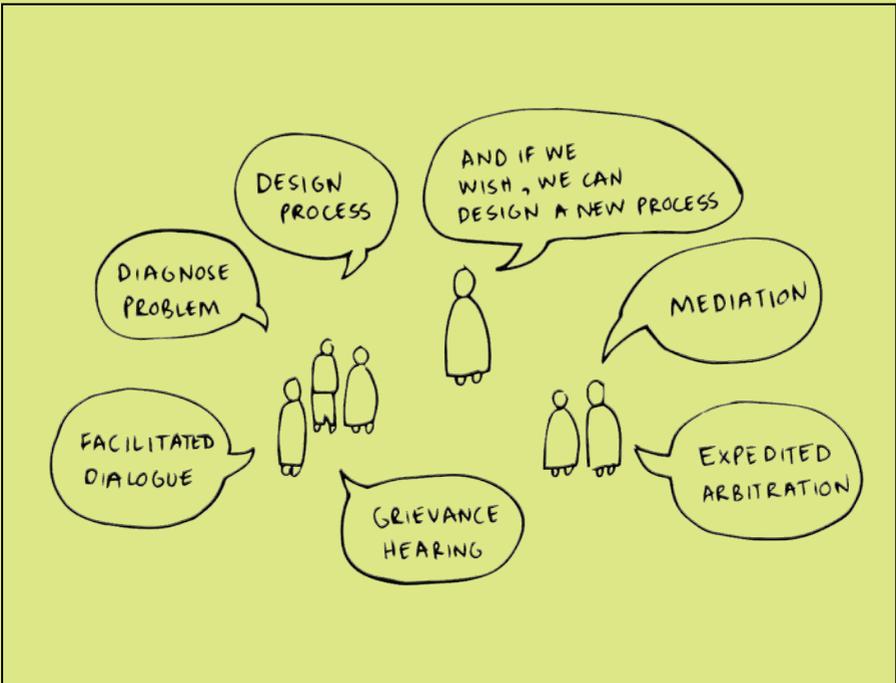
All these components will be designed and implemented informed by the Service's social justice vision, centred on human dignity. As such the principles previously mentioned apply across all components. Further components may be developed as we proceed.

***How these components are applied practically is covered next.***

# PROBLEM SOLVING COMPONENTS

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SKILLFUL USE OF DIFFERENT APPROACHES  
CREATES NEW POSSIBILITIES



# WHAT ARE THE PROBLEM SOLVING STEPS?

**This process normally starts with a community relaying the problem to the IPSS. There will then be an engagement with the community, including determining their support and capacity needs.**

**The mining company and other role players will then be engaged and all going well, Terms of Reference will be settled between the community and mining company involved. The Terms of Reference will include the process to follow, the parties involved and who will be the facilitators. Great emphasis is placed on all the principle parties involved being fully conversant with the approach and process involved.**

Great care is also taken in the appointment of facilitators. Usually two facilitators will be appointed, informed by a set of criteria and who have complimentary skills and experience. The criteria include impartiality and extensive facilitation skills and experience. The parties will be furnished with the facilitators' profiles.

The first step thereafter will be a diagnosis of the problem by the appointed facilitators involved, which will necessitate consultations and meetings with the role players involved. This usually will be carried out separately with each interest group.

The diagnosis includes determining at what stage of the conflict cycle the case is when brought to the attention of the Service and the identification of all role players involved, along with possible competing or differing interest and impacted groups within each constituency. Whether or not a grievance hearing has already been held at company level will also be taken into account, along with other attempts to resolve the matter.

This is followed by the design of a facilitated dialogue process by the facilitators, informed by the diagnosis and drawing from the toolbox of exercises. All going well, this will then be applied, as described in the next section below.

If no resolution, a further process is designed by the facilitators in consultation with the participants, drawing from the other problem solving components:

- **An alternative grievance hearing may be factored in where facilitated dialogue is not successful.**
- **Formal mediation will usually be used where a deadlock prevails, depending on the nature of the case.**
- **Expedited arbitration usually will be triggered when 'all else fails'.**

If no arbitration is held and where there is no resolution, the parties may leave the system and pursue whatever they deem to be in their best interests.

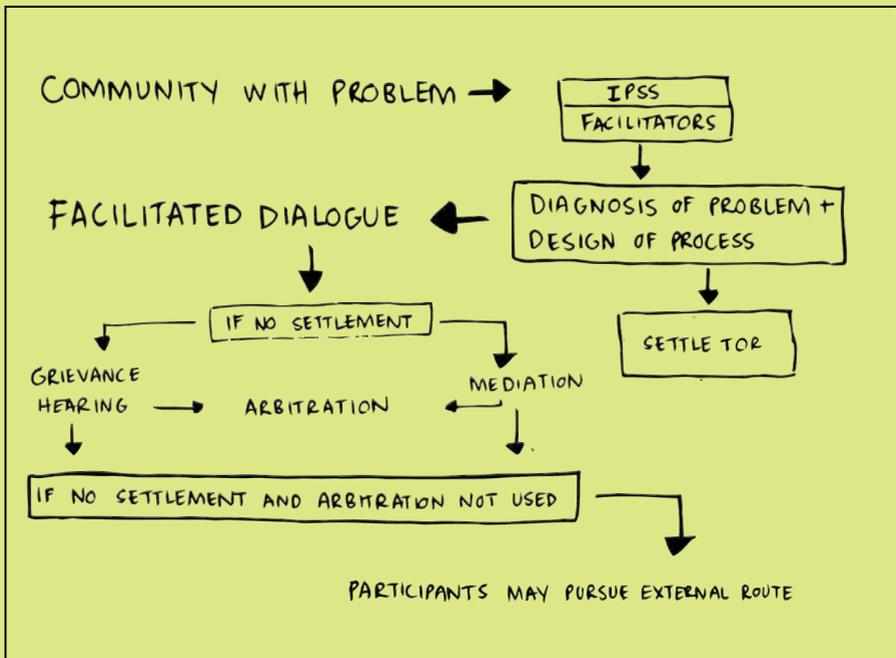
In certain cases, the facilitators, in consultation with the participants involved, may conclude that a further component not currently part of the toolbox and in combination with selected current components is the most appropriate problem solving process to follow.

## **POINTS TO NOTE**

- It is anticipated that the process up to facilitated dialogue will normally resolve the problem and it will only be in exceptional circumstances that further steps will need to be taken.
- A key aspect to this Service is its flexibility and adaptability to all situations, but overseen by the facilitators and informed by the vision and principles. A process is designed for each specific case and any combination of components can be used, but usually with facilitated dialogue at the centre.
- A key aspect is the identification of all role players and having them directly involved in the process.
- Moving from one step to the next is voluntary in nature.
- Overall, it also needs to be emphasised that as a new, initiative, there will be many learnings to be drawn and applied as further experience is obtained.
- While the focus is on mining companies and communities, government is also a key role player in resolving problems.

# PROBLEM SOLVING STEPS

A RIGOROUS PROCESS OF ENGAGEMENT WILL FACILITATE EFFECTIVE PROBLEM SOLVING



# WHAT DOES THE FACILITATED DIALOGUE PROCESS CONSIST OF?

**This involves a process where all role players get together in an environment conducive to ventilation of views, discussion, analysis of issues and problem solving.**

Participants go through facilitated exercises and activities, including:

- ventilation of issues and concerns;
- information gathering and sharing;
- story telling;
- specialist inputs;
- investigations into specific issues;
- joint problem identification, analysis and solving, which will include surfacing symptoms and causes of problems;
- debate and discussion.

The role of the facilitators is crucial in this process. This includes ensuring:

- participants feel comfortable with the environment and conversant with the process;
- agreed rules of engagement are in place to enable meaningful discussion and reflection;
- all participants are treated with respect and dignity and feel free to fully air their views;
- adequate time frames are provided with no 'rushing' of discussion;

- participants understand what the role of the facilitators is.

A key aspect is getting to grips with the nature of the problem, including symptoms and causes.

A rigorous engagement on all possible solutions is also key.

Another important aspect is the prioritisation of sustainable, developmental solutions.

As previously addressed, other important aspects to the facilitated dialogue process include user friendliness, dialoguing on an equal basis, trust in the process and cultural sensitivity.

The overall objective is to solve problems and not to prove each other right and wrong through complicated mechanisms.

Even where facilitated dialogue does not resolve the problem, it will play an important role in managing the relations between the role players and gaining an in-depth understanding of:

- the problem / issue from the perspective of all participants;
- what are the symptoms and causes;
- what are the views of the affected parties;
- the issues in disagreement;
- possible solutions.

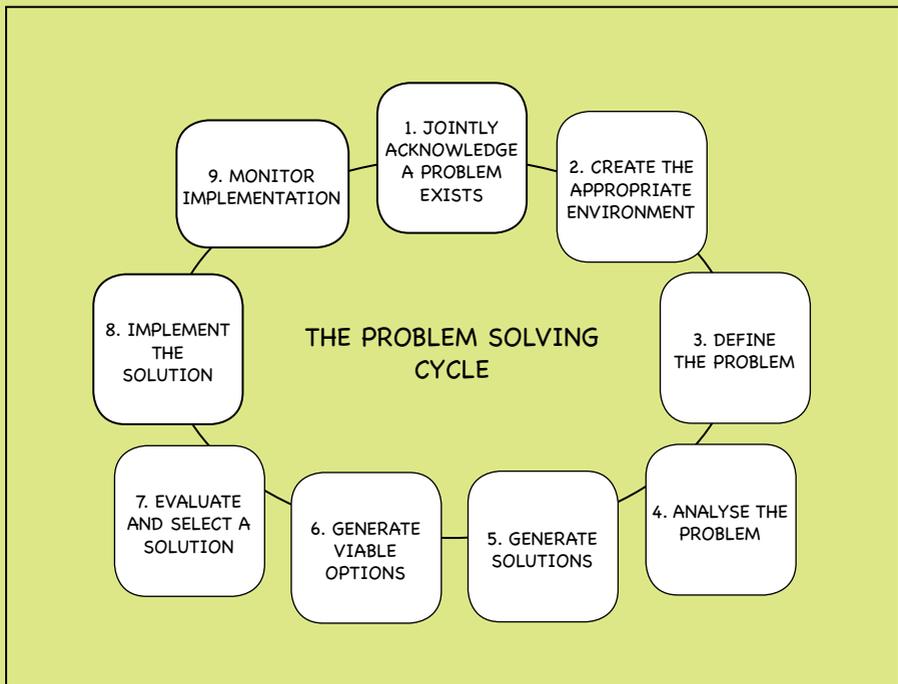
This in turn will set the scene and clear the ground for the next component, designed by the facilitators in consultation with all role players.

# **WHY FACILITATED DIALOGUE?**

The emphasis on dialogue as opposed to a grievance mechanism approach is informed by both the local and international experience pointing to dialoguing being a more successful form of engagement for effective problem solving. In the view of Bench Marks, it is also essential that this process is facilitated, considering the complexities and challenges involved, including multiple role players and skewed power relations. This is in fact the key strength of the approach.

# THE PROBLEM SOLVING CYCLE IS CENTRAL TO THE FACILITATED DIALOGUE APPROACH

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# HOW DO THE OTHER PROBLEM SOLVING COMPONENTS WORK?

## GRIEVANCE HEARING

An alternative grievance hearing, as mentioned, may be used where facilitated dialogue has not been successful. It will involve a more formal, structured process, which will include a written grievance being lodged and a grievance hearing being held, chaired by an independent chairperson/s (presiding officer/s).

This may include the conducting of investigations (which may include conducting research and obtaining specialist information) and the leading of evidence.

The independent chairperson/s will make a recommendation/s regarding a solution. While a more formal process, simplicity and user accessibility will be key aspects.

## FORMAL MEDIATION

Formal mediation will normally be used where no agreement is reached and the affected parties are in deadlock. The mediation process will include activities such as clarification of mandates, negotiation, formal settlement proposals and reality testing.

## EXPEDITED ARBITRATION

Expedited arbitration based on a non-adversarial model will normally be applied where 'all else has failed' or where it is felt that 'nothing else will work'. This is a more formal process where a suitably experienced arbitrator hears argument and evidence and produces an award, which is aimed at being final and binding on the parties involved. However, it can be subject to review under certain circumstances. This will still be a simpler and more cost effective process than going the route of the Courts.

# WHAT ARE THE BENEFITS OF THIS SERVICE?

**Due to its nature as described above, this initiative stands to get problems effectively resolved, following a developmental approach. All affected and impacted role players as such stand to benefit.**

It stands to open space for ongoing and meaningful dialogue, along with providing an opportunity to resolve problems in a non-adversarial manner.

It stands to pre-empt long, drawn out and costly legal processes.

Overall, it stands to positively change the lives of many communities, along with restructuring and improving relations between mining companies and communities.

Importantly, it has a pro-active, preventative emphasis, with ongoing monitoring and early interventions given priority. In the long term this is aimed at slowing down or even stopping the never-ending treadmill of problems arising, along with preventing problems that have arisen escalating further.

With this, it stands to make an important contribution to addressing the current levels of poverty and inequality, along with addressing the unequal power relations between communities and mining companies.

A key outcome therefore from a mining sector perspective is the creation of a more conducive environment for mines to operate and from a community perspective, more sustainable communities.

# THE CASE FOR AN INDEPENDENT PROBLEM SOLVING SERVICE IN THE MINING SECTOR

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- **We have a problem and there is an urgent need for workable solutions.**
- **There is a strong case for a new alternative, informed by experiences to date and the harsh reality on the ground.**
- **Bench Marks has carried out extensive research and consultations in this regard.**
- **Company grievance mechanisms and other provisions are not working.**
- **We are looking at something very practical and that works.**
- **A key principle is that dialogue is not possible in an unequal relationship.**
- **The IPSS is underpinned by the United Nations Guiding Principles (UNGPs) on Business and Human Rights Access to Remedy Framework and the Bench Marks Principles for Global Corporate Responsibility.**
- **Due to its design, as described in this brochure, the IPSS stands to work, with all benefitting.**
- **A shift in thinking and approach is needed – this is a challenge for all.**

# THE WAY FORWARD – TURNING THE TIDE

**This initiative is breaking new ground, with a fresh and dynamic approach. It stands to make an important contribution in turning the tide of unresolved community grievances and problems arising out of mining operations, along with restructuring relations through the opening up of democratic space between communities and mining companies.**

A new journey is being undertaken, with learnings drawn each step of the way. All role players can benefit, but undoubtedly there are many challenges involved. This is an important opportunity! However, in order for the whole initiative to work, a shift in thinking and approach is needed, informed by a vision of a new world for all South Africans.

## COMMONLY ASKED QUESTIONS

### What is the envisaged facilitated dialogue in practice?

The IPSS facilitated dialogue process essentially involves story-telling, information sharing and discussion. The overall objective is to solve problems and not to prove each other right and wrong through complicated mechanisms. Central to the approach is a problem identification, analysis and solving exercise. It starts with a diagnosis of the problem at a high level, including the identification of all interested parties and ends with a formal agreement and implementation plan. A key aspect is unpacking what actually is the problem, along with its symptoms and root causes.

### What do I need to participate?

All you need to participate is a preparedness to tell your story and a willingness to search for real solutions. People with specialist knowledge and skills will be brought in where needed to address specific aspects.

### What if the problem is not solved?

Where the problem is not resolved through facilitated dialogue, a number of other options are available, such as formal mediation and expedited arbitration. These options are also informed by the IPSS approach of simplicity, user friendliness and non-legalism. While the legal route is still possible, it is avoided.

### Is this process basically the same as CCMA mediation/conciliation?

While there are similarities, at the heart of the approach involved is facilitated dialogue and with each case having a customised process informed by the particular history and circumstances prevailing.

### How will the Service be funded?

Once established, we envisage the problem solving process, including facilitator fees, being funded through an Independent Capacity Building Fund. This Fund will also be responsible for ensuring all participants are adequately capacitated to ensure meaningful and productive dialoguing on an equal footing. Areas of envisaged support include:

- Information access.
- Community knowledge and skills building.
- Access to expertise, such as geologists, scientists, environmental experts, social impact specialists, developmental experts, Environmental Impact Assessment expertise and advice, legal practitioners and mediators.

We envisage funding for the ICF coming from a number of sources and not only the mining sector. However, we envisage the mining sector making a major contribution to this fund and we believe, bearing in mind the context, that this is part of the social responsibility of companies.

## **IPSS Advisory Board**

The IPSS is advised by an Advisory Board of eminent persons, who are as follows:

The Rt Rev'd Dr Jo Seoka - Founding Chair of the Bench Marks Foundation Board and former Anglican Bishop of Pretoria. (Advisory Board Chairperson)

Dr Asanda Benya - Lecturer in the Department of Sociology at the University of Cape Town and a research associate at the Society, Work and Development Institute (SWOP) at the University of the Witwatersrand.

Prof Tracy-Lynn Humby - Professor of Law at the University of the Witwatersrand and current Chair of the Board of the Centre for Environmental Rights.

Prof Sonwabile Mswana - Associate Professor and Head of Department of Sociology at the University of Fort Hare and a research associate at Society, Work and Development Institute (SWOP), University of the Witwatersrand.

Justice Kathie Satchwell - retired Judge of the High Court.

Prof Mavis "May" Hermanus - visiting Adj-Professor at the Centre for Sustainability in Mining and Industry (CSMI), University of the Witwatersrand.

The Advisory Board brings a wealth of experience, knowledge and skills related to mining / mineral extractives and impacted communities, including social justice, legal, environmental, sustainable development and rural social change issues.

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**The Bench Marks Foundation is a faith-based,  
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