



JOINT FACT-FINDING



PREFACE

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the private sector arms of the World Bank Group, the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA). CAO reports directly to the President of the World Bank Group. CAO's mandate is to address complaints from people affected by IFC/MIGA projects in a manner that is fair, objective, and equitable, and to enhance the environmental and social outcomes of those projects. A detailed description of CAO's mandate, functions, and procedures can be found in CAO's Operational Guidelines.

The main objectives of CAO's Dispute Resolution function are to help resolve issues raised about the environmental and/or social impacts of projects supported by IFC/MIGA and to improve outcomes on the ground.

CAO's Dispute Resolution function provides a nonjudicial, non-adversarial, impartial, and independent forum through which communities and companies (the "parties") can seek mutually satisfactory solutions to disputes. CAO and the relevant stakeholders may use a number of different approaches in attempting to resolve these disputes, such as confidential meetings, public meetings, joint fact-finding, or shuttle diplomacy. Each approach is chosen in consultation with the parties with the objective of creating a process that promotes self-determination and encourages voluntary decision making. Typically, CAO's role is to convene meetings to facilitate communication, negotiation, and joint problem-solving among the parties. Figure 1 depicts a typical dispute resolution process convened by CAO (see p. 2).

CAO's Reflections from Practice series has two primary goals: to provide guidance for CAO Dispute Resolution staff, mediators, and consultants; and to inform the parties participating in CAO dispute resolution processes about foundational principles.

Each publication in the series is organized along similar lines:

1. **Introduction**
2. **Principles**
3. **Common Challenges**
4. **Strategies and Tools**

The diversity of cases, issues, and stakeholders engaged with by the CAO makes it difficult and inappropriate to develop guidelines that will apply in every case. This series is intended as a useful resource. The relevance and application of any specific part will depend on the professional judgment of individual staff and mediators, as well as the knowledge of the stakeholders involved. In most cases, the general guidance provided by these publications will need to be tailored to the context and specifics of each particular case.





INTRODUCTION

Development-related conflicts involving disputes of fact occur across all sectors, from mining and agribusiness to infrastructure and manufacturing. These disputes are often caused by concerns about project impacts. Project operators may find themselves in conflict with neighboring communities over a range of topics, such as the predicted environmental, social, and health risks of the project; the quality of environmental and social impact assessments; the experts hired to conduct such studies; or the broader analysis of project impacts given climate change.

BOX 1

AN ILLUSTRATIVE DISPUTE OF FACTS: VOICES FROM COMMUNITIES AND COMPANIES

Community: *"The river has been polluted by the mining company."*

Company: *"The lab results are published on our website, and there is no pollution."*

Community: *"The company will divert the river and leave us without water."*

Company: *"The independent experts we have hired tell us there is sufficient water for all users."*

Community: *"Agrochemicals used by this company have made us sick."*

Company: *"We wanted to investigate this situation a long time ago, but no one would believe the results of our studies."*

Disputes about facts can occur between any actors—for instance, a disagreement between a company and government authorities, or between a company and a civil society organization. The parties may disagree about what information is relevant (*Is this water safe to use? Is it safe to live here?*) or about whether the information itself is trustworthy (*This water expert was paid by you! You chose the monitoring company!*). Particularly among communities, lack of trust—both in the project operator and in the validity of information publicly available about the project and its environmental and social impacts—can further fuel fears about the implications of a project. This may make it difficult for the parties to engage constructively and can escalate a disagreement about facts into a larger dispute.

Dispute resolution can provide an opportunity for the parties to explore ways to jointly collect, analyze, and interpret information in a manner that is mutually credible and agreed upon.¹ This process is known as Joint Fact-Finding (JFF). It typically involves the parties working together to explore technical and scientific issues in

¹Designing an appropriate process and identifying the right tools for the parties to use in resolving the issues of concern is critical in any CAO dispute resolution process. See another publication in the CAO Reflections from Practice series, "Getting Started with Dispute Resolution": http://www.cao-dr-practice.org/reports/CAO_1_GettingStarted.pdf.

a way that ensures information is jointly trusted and understood. JFF therefore can be an important tool to help resolve conflicts when facts are in dispute (see box 2). The process may involve a number of elements, including gaining access to information that was previously not shared, reviewing the credibility of existing information, or even generating new information through scientific inquiry. Another potential benefit of JFF is that the results can be considered credible and trustworthy by other stakeholders, such as government, civil society, and other private sector companies that may be involved in, or influential with respect to, the dispute. CAO has utilized a JFF approach in the context of larger dispute resolution processes.



WHAT IS JOINT FACT-FINDING, HOW DOES IT WORK, AND WHO PAYS FOR IT?

Joint Fact-Finding (JFF) is a collaborative process in which parties in conflict work together with experts to address disputes of fact, differing expert opinions, or disputable scientific information. Typically, the parties jointly identify the issues, define the scope of the engagement, select the experts, provide inputs to the design of the process, and participate in fact-finding activities.

Typically, initial steps include discussion and agreement on:

- Questions that the experts will need to answer and/or information that needs to be collected, analyzed, and clarified
- Criteria for the selection of experts
- Discussion of who pays for the JFF process and how to establish a structure for payment of experts that retains transparency and protects the credibility of the process and the experts
- Process design, including how the technical and scientific information will be gathered and reported to the parties, and whether and how local community knowledge could be used
- The level of confidentiality the parties would like to apply: confidential, public, or a combination of both
- The binding nature of the findings (for example, whether they are final and binding on the parties, or if there is access to appeal)
- The integration of findings back into the overall dispute resolution process.

Typically, the parties will jointly discuss the questions they would like the experts to answer, develop terms of reference (which should include a description of the expertise required) for Joint Fact-Finding, and oversee the selection of technical experts, as described under the Strategies and Tools section later in this document. CAO's experience has shown that when choosing experts, consideration of both the experts' subject matter knowledge and their ability to present a work plan that is participatory in nature will help the parties build trust in one another and the experts. Once the experts have been jointly selected by the parties, they can work with them to further define the methodology for gathering information, as well as identify opportunities for the parties' participation, the extent of which can vary from case to case.

In terms of financing the costs of JFF, CAO dispute resolution experience and cases provide a number of different examples and models. In some cases, the private sector company has paid all the related JFF expenses. In other cases, parties have managed to agree on a collaborative, cost-sharing structure with some costs being covered by third parties such as government agencies, industry associations, international organizations, civil society organizations, or private foundations.

To retain transparency and protect the credibility of the process and the experts, it can be helpful, in the early stages of the process, for parties with the support of the mediation team to agree on a system for hiring and paying the experts, whether through an intermediary organization or directly.

When and How JFF May Be Appropriate in a Dispute Resolution Process

Joint Fact-Finding may be appropriate in a variety of cases. Some examples follow:

- Local communities and a large agribusiness or mining company disputing the company's impact on local water supplies
- Local communities and a company or government disagreeing about a socioeconomic baseline study and its methodology as it relates to potential resettlement and calculation of "full replacement cost" for land and other assets lost
- Communities and company and/or government disagreeing on impacts of a hydropower plant on the local ecosystem, downstream wildlife and environment, and local tourism-related businesses
- A company and employees disagreeing on workplace hazards and risks to employees' health

As the parties are trying to determine whether JFF may be an appropriate tool for their specific situation, these are some questions the mediation team may want to discuss with the parties:

1. Would mutually trusted and credible technical findings assist parties in resolving their dispute?
2. Does a company or government need consent from local communities to proceed with a project?
3. Is it feasible that mutually trusted, independent experts can be found with the relevant expertise and knowledge?
4. Are sufficient financial resources available to finance the JFF process?
5. Is JFF likely to help prevent conflict from escalating?
6. Is there a need to integrate local, indigenous, or "nontraditional" knowledge with a scientific method?
7. Are parties willing to address any power imbalances and disparities in technical knowledge and expertise in an inclusive, participatory, and collaborative manner?

The more of these questions that can be answered "Yes," the more likely JFF is to succeed in meeting parties' needs.

Boxes 3 and 4 illustrate two examples of CAO cases in which parties agreed to use a JFF process. In the case described in box 3, the parties worked through a JFF process to conduct an assessment of project impacts, which was carried out by jointly selected experts. The process brought knowledge to the parties and helped them overcome their disagreement about the impacts of the company's operations on community livelihoods and access to water.



JOINT FACT-FINDING EXAMPLE FROM MONGOLIA: ASSESSMENT OF PROJECT IMPACTS

Between 2013 and 2017, CAO Dispute Resolution convened a mediation process in Mongolia among local nomadic herders, local government, and the Oyu Tolgoi copper and gold mine in response to two separate complaints filed with CAO. As part of the mediation process, local parties agreed to engage in Joint Fact-Finding (JFF). Two separate JFF processes were undertaken, one for each of the two separate complaints. In both cases, the local parties negotiated and agreed on the terms of reference for hiring independent technical experts and then jointly selected the experts.

The initial JFF process was carried out to assess the project's impacts on three important water sources—the Undai River, the Bor Owoo spring, and the Haliv-Dugat River—because the herders were concerned about how those impacts would affect their pasture, access to water, and water quality. The second JFF engagement was more comprehensive and sought to independently and objectively map the changes over the previous decade in livelihood and socioeconomic conditions of Khanbogd

Soum herder households, and subsequently to determine which changes were caused by or attributable to Oyu Tolgoi company operations. In addition, the study aimed to assess the adequacy of Oyu Tolgoi's compensation programs, cumulative impacts on regional water and pasture resources due to diversions of the Undai, Khaliv, and Dugat River, and impacts from Oyu Tolgoi's mine tailings storage facilities.

CAO provided training for the local parties and the experts in JFF methodology. The experts carried out their work in a participatory manner, coordinating closely with the parties and the broader community throughout the process. Local parties actively communicated the results and findings of both JFF engagements to other external key stakeholders, including national government agencies.

The JFF work and findings greatly helped the parties narrow their scope of disagreement and make informed decisions. Final agreements for both CAO complaints were signed in May 2017.

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In the case described in box 4, the CAO example illustrates parties' participation in a JFF and how the parties remained flexible as they tried different approaches.²



JOINT FACT FINDING EXAMPLE: FACILITATING PARTIES' PARTICIPATION AND FINDING AREAS OF AGREEMENT

In one confidential Joint Fact-Finding exercise associated with a CAO case, parties disputed whether and how noise pollution could be affecting people living in areas neighboring a company's operations. Drawing from this case, parties voluntarily agreed to try and address the concerns through mediation. During the mediation, the parties understood that to overcome a battle of experts over the affects of noise pollution (i.e. producing studies with contradictory results) the best approach was for them to jointly agree on technical experts and define the questions they needed the experts to answer—a diagnosis of the problem and findings that could help the parties determine whether any action was needed to reduce the noise. The parties, consequently, agreed that JFF would be useful to move the issues forward. The mediator guided the discussion to help the parties determine the qualifications the technical experts needed to have and helped them discuss and agree on the terms of reference for the technical experts.

The parties initially thought it was easier to just have one party choose the experts and assumed the experts would be independent

and objective. This proved challenging, as neither party was satisfied with the objectivity and quality of work delivered by the expert. The parties had to shift the course of action by proposing several expert candidates and then jointly selecting the final expert team to conduct the JFF work. Once the technical experts were jointly selected, the parties discussed who would pay the experts. The parties ultimately agreed that the company would hire the technical experts on the condition that the process was transparent, and the independence and objectivity of the technical experts was not impaired. Once the experts were commonly chosen and hired, the JFF process started and the task of designing a methodology for the work ahead became the responsibility of the experts. The mediator followed up on the JFF process and observed that the timelines and commitments were fulfilled. As the JFF process provided the parties with a better understanding of the situation at stake, the parties discussed options moving forward and reached an agreement. The mediator monitored implementation of the agreements and kept the parties informed in a timely manner.

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² Given the parties' agreement on a confidential JFF process, no information regarding the Company or country of operation can be provided.

There is no fixed, rigid methodology for JFF. Figure 2 provides a typical flow of a JFF process as an illustration.

Figure 2. A Typical CAO Joint Fact-Finding Process





PRINCIPLES

When developing a JFF process, the following principles should be considered:

- *Parties' participation and ownership of the process:* JFF is a collaborative process that requires parties and experts to share information, work in close collaboration, and communicate effectively, both as the JFF process unfolds and as findings are communicated. Representatives of both parties should be involved and well informed when making the initial decisions about selecting experts, framing research questions and the scope of the process, designing and carrying out the technical inquiry, and identifying, generating, analyzing, and interpreting the technical information.³ Parties are expected to participate and act in good faith, while acknowledging that they may have their own respective objectives when considering or participating in JFF. To ensure meaningful and equitable participation for all participants, additional support may be required for those without relevant technical expertise or training. This is discussed in more detail in the section on Strategies and Tools.
- *Structure and predictability:* Structure and predictability are inherently important in this process in order to generate information that is trusted by all parties. Predictability is aided by the participatory nature of the process, which ensures the involvement of all relevant parties in planning and execution at every stage.
- *Inclusivity:* JFF is an integrated process that can draw on different types of knowledge, information, and data, depending on the parties' interests and needs. The process will often involve combining the scientific method with more traditional, local knowledge and location-based stories and anecdotes. Since JFF is an inclusive process, it can be particularly complex when other stakeholders need to be consulted or informed or invited to participate and/or observe the methodology design and/or certain steps in its implementation. Those stakeholders can be government representatives, regulators, other communities, or other private sector entities.

Inclusiveness also involves integrating the social values, cultural norms, local practices, and goals of affected communities into a process that can develop technical questions, putting a premium on local knowledge to inform and enrich the technical questions. Local and affected stakeholders should be included from the beginning and throughout the process.

- *Accepting the limitations of science or evidence:* In a JFF process, there may be questions that cannot be answered. In some instances, this can be disappointing or frustrating for the parties.

³ For more on representation, see another publication in the CAO Reflections from Practice series, "Representation." (http://www.cao-dr-practice.org/reports/CAO_2_Representation.pdf).



COMMON CHALLENGES

CAO has observed a number of common challenges in creating and implementing a JFF process in its different cases. These are discussed next, followed by some strategies and tools to address such challenges.

- *Unrealistic expectations:* Parties may have unrealistic expectations about what the experts or the process can produce, as well as about how long the technical inquiry and research may take. The level of effort and the number and diversity of technical experts needed are also often underestimated. See Strategies and Tools 1, 5, and 7.
- *Creating joint ownership:* It can be challenging to reach mutual understanding between the parties, and between the parties and the technical expert(s), about the research questions that a JFF process should address, the appropriate methodologies to use, and the results that ensue. See Strategies and Tools 1, 2, 3, 6, and 7.
- *Lack of trust:* Parties in a dispute often start out with limited trust. Building trust between the parties, and between them and the expert(s), is therefore critical if the results from a technical inquiry and research are to be accepted and beneficial. See Strategies and Tools 1, 2, 3, and 5.
- *Capacity constraints:* A JFF process can take time. It is important to understand the parties' respective capacities, interests, and limitations from the outset. This may include understanding the parties' available time and resources, organizational and coordination capacity, technical knowledge, and level of motivation to be involved in the process. See Strategies and Tools 1 and 4.
- *Effectively communicating technically complex information:* It can prove very difficult to explain complex technical and scientific information and methodologies to people who do not have training or expertise in the relevant fields. Experts may need the assistance of the parties, the mediator, and translators in preparing reports and presentations that are easily accessible and understandable by a broad audience. See Strategies and Tools 4 and 5.

- *Keeping broader stakeholders involved and informed:* Despite its participatory nature, a JFF process may still face challenges in communicating effectively with the broader community and the public about the process, its limitations, and its outcomes. In some scenarios, the parties may decide to keep the details of the process confidential, and only publicize agreements or outcomes reached. Regardless of the level of confidentiality the parties would like to apply, it can be challenging to decide what and how to communicate about the process. This can be particularly challenging when the JFF process might involve broader policy questions or political interests. See Strategies and Tools 4 and 5.
- *Integrating JFF into a larger dialogue process:* Transitioning smoothly from the results of a JFF exercise to agreement on specific next steps and actions can present a challenge if not discussed upfront in the JFF process. Parties sometimes think or expect that technical experts will solve the conflict for them or tell them how to solve it. In fact, JFF usually presents parties with mutually credible data and information, which the parties still need to use to make joint decisions, often considering other factors such as parties' values and goals, policy implications and limitations, competing interests, and trade-offs. This challenge can also arise when the JFF process does not deliver conclusive answers and the parties did not agree upfront what to do in this scenario, or if one of the parties does not like the results and chooses to ignore them. See Strategies and Tools 7 and 8.



STRATEGIES AND TOOLS

This section discusses some of the key strategies and tools that can be used to help ensure a successful JFF process that has the support of all participating parties. They are summarized in figure 3.

Figure 3. Key Strategies and Tools for Ensuring a Successful JFF Process

- 1 Before Beginning the JFF Process, Establish a Joint Understanding of What Can Be Achieved, by When, and How It Will Be Done
- 2 Clearly Frame the Questions: What Should the JFF Process Address and Is New Knowledge Required?
- 3 Ensure that the Methodology Is Participatory: Work with Technical Experts to Guarantee that Information Is Gathered or Generated with Involvement of the Parties
- 4 Map Who Needs to Be Involved and Informed within the Project Operator and the Community
- 5 Establish Communication Protocols within the Process, and Communicate Effectively with the Parties, the Community at Large, and the Public
- 6 Remain Flexible: Adapt the JFF Methodology to Specific Needs and Circumstances
- 7 Measure the Effectiveness of the Process and its Outcomes
- 8 Determine What Will Happen with the JFF Findings after the Study

1. Before Beginning the JFF Process, Establish a Joint Understanding of What Can Be Achieved, by When, and How It Will Be Done

It is helpful if all participants come together at the outset to discuss and agree on a number of issues. This can be done with a joint kick-off meeting and training to inform the parties about the JFF process and how it is used as a tool in dispute resolution. This type of early joint meeting creates ownership and trust in the process, helps the parties unpack their expectations and set realistic ones, and starts to address capacity constraints from the beginning of the process.

Discussing Expectations

The list of topics and expectations that could be discussed and addressed in the first meeting(s) may include:

- the experts' terms of reference and the required expertise;
- the parties' expectations of the process and each other, including the certainty of finding conclusive answers;
- nomination and selection of the experts;
- payment of experts, process to pay, and implications of payment structure;
- development of a detailed work plan, and what to do if deadlines are not followed;
- opportunities for participation by the parties in the activities; and
- how information about the JFF process will be communicated.

It may also be good practice for the parties to discuss whether any additional tools and/or resources are required before the JFF process begins, such as a code of conduct for the independent expert(s) and communication tools (such as posters, flip charts, computer graphics, and other means for local communities to draw on, or document, their experience and knowledge). Parties should also discuss what happens after the JFF process concludes, and how it ties in with the larger dispute resolution process.

Process for Selecting the Experts

In this initial stage, parties may also work together to jointly and proactively design a clear process and methodology for defining expertise required, nominating, short-listing, evaluating, and selecting the experts, who will later need to be accepted by both parties. Finding technically capable and credible experts who also understand the dispute resolution process could be a challenge. Parties may need to reach out to a broad range of sources such as advocacy groups, development agencies, research institutions, industry associations, or other groups suggested by the parties, in order to find suitable candidates.

Either during the selection process or once the experts have been chosen, parties may want to discuss with the experts how certain it is that the process will generate conclusive answers, and how long this could take. This conversation with the experts can be an opportunity to help the parties understand the limitations of JFF in their specific situation. In the experience of the CAO, parties in conflict may expect the answers to be obvious or simple to determine and may not appreciate or understand the complexity of the work and research and the length of time required to get answers.

While parties in conflict will typically prefer to jointly select independent experts, if both sides have the expertise required, it may be possible for the parties' experts to work together collaboratively in a JFF process.

Discussing and addressing parties' expectations can help address power imbalances and better prepare each party to participate. Taking the necessary time up front in the process is important to understand the interests and values of the different parties and ensure that there is some level of mutual understanding of each side's capacity and limitations. If this is not done, the trust needed to move forward will not be there, and the process could break down at a later stage.

2. Clearly Frame the Questions: What Should the JFF Process Address and Is New Knowledge Required?

When faced with disputes of fact in a conflict situation, parties often have differing understandings of the technical aspects of the project. They may each be informed by different studies or influenced by the opinions of different people, in addition to their own perceptions of the facts. This can contribute to a lack of trust among the parties and further polarization of their positions.

What Should the JFF Process Address?

For example, where water is a concern, the parties may wish to explore questions related to water quality or quantity, or for emissions, independent testing for pollutants to air, water, or soil may be useful. Discussing these questions in advance with inputs from experts who can help refine the scope will help build trust between the parties and in the JFF process itself. Adequate time is needed for review, discussion, and refinement of the technical questions that the parties need to explore, with support from the selected experts or other external support requested by the parties. This helps prepare the parties to better understand specific technical issues and their complexity. It also can lead to a more effective and tailored JFF process that addresses the most pertinent questions of interest to the parties.

Reassurance from experts about the questions being asked can also help build trust and create joint ownership. Parties will be reassured if the experts provide feedback regarding the questions, particularly in cases where the questions cannot be answered because of scope, geographical limitations, or other reasons.

Is New Scientific Knowledge Required?

In some situations, the parties may come to the realization that their dispute is about an issue for which new scientific knowledge must be generated. In such cases, it may be helpful for the parties to discuss whether this is feasible within the JFF process considering time and cost, and if they are prepared to accept and work with this new information. Because it may not be possible to foresee such a need at the early stages of a JFF process, the convener of the process should periodically check in with the parties on questions of certainty and time needed to generate new scientific knowledge, and whether the parties would be supportive of new information being produced within a JFF process that has already begun.

Instances where new scientific knowledge may be required can arise where alleged project impacts relate to an issue that has not been previously explored in the Environmental and Social Impact Assessment (ESIA) or impact study. Potential scenarios include an emerging community health issue or a downstream impact that has not been studied.

Box 5 illustrates a CAO case in which parties learned, through the JFF process, that new scientific information was needed. In this case, this insight helped the parties realize that they needed to move from blaming each other to collaborating on finding answers to the causes of a disease.

As happened in Nicaragua (box 5), if a JFF process reveals that new scientific knowledge is needed, this may also lead to other actors becoming involved to address the issue—such as government entities or regional actors or institutions with a specific focus and expertise in the issue. This realization also can lead to a dynamic shift between the parties, toward an interest in cooperation, and present new opportunities within the overall dispute resolution process (of which the JFF is just a part).



GENERATING NEW SCIENCE: JOINT FACT-FINDING IN NICARAGUA TO RESEARCH A CHRONIC HEALTH ISSUE

From 2009 to 2012, CAO worked with a client of the International Finance Corporation (IFC), Nicaragua Sugar Estates Limited (NSEL), and local community members in Nicaragua through a Joint Fact-Finding (JFF) process designed to find more information about the causes of chronic kidney disease (CKD), which was affecting the company's labor force. The parties jointly considered research proposals from nine highly qualified institutions, and together chose Boston University School of Public Health to conduct a set of independent research activities that were agreed to by the parties. CAO facilitated the competitive evaluation and selection process of the experts.

Once selected, the scientists presented the methodology for each study to the parties, who accompanied the scientists in many of their research activities. The draft reports of the scientists' studies were presented to the parties for comment, and the scientists regularly visited the complainants' larger group of constituents to share more information about their findings.

The research revealed that no single specific trigger for the disease could be identified and, in fact, new scientific knowledge needed to be generated to identify what had made these workers sick.

This information helped shift the conflict dynamics, moving the parties from casting blame toward cooperation. While the scientists were not able to identify the causes of the disease in this case, risk factors associated with heat stress and dehydration were flagged, which led the company to introduce significant improvements in work practices.

The process also served as a catalyst for other institutions, such as the Pan American Health Organization (PAHO), together with the government to engage more broadly with the issue and help seek solutions. After CAO concluded its involvement in the case, the parties have continued to work together to help those affected by the disease, including pursuing further scientific studies.

The process also prompted other international institution such as the Pan-American Health Organization to engage with the government more broadly with the issue to seek solutions.

3. Ensure that the Methodology Is Participatory: Work with Technical Experts to Guarantee that Information Is Gathered or Generated with the Involvement of the Parties

In a JFF process, some level of participation by the parties in the experts' work is crucial for generating trust. A participatory process helps the parties to not only trust the experts, but also to develop joint ownership of the scientific process and its conclusions and to achieve better outcomes.

Beyond preparing the parties for a JFF process, the mediation team also needs to prepare the experts. The experts will need to clearly describe their methodology. The mediation team can ensure that the experts' approach supports participation and engagement by the parties. This is typically done through upfront training and bilateral or group meetings. It may be helpful to include the selected experts in an initial training or kick-off event with the parties to jointly review and discuss JFF principles and approach, and to help plan their work together. The JFF approach may be a new experience for many experts.

When the experts are explaining their methodology, for example, they can reflect on how and where there will be opportunities during the process for the parties to be involved. Developing a timetable and sticking to it is also important. It may be helpful that the parties and experts discuss how to handle delays or the need for more time and agree on a revised time frame. Transparency and managing expectations are essential in this regard.

Some technical experts will shy away from engaging with the public regarding their work. They may not want to appear to be influenced by public opinion because science and technical expertise are objective. JFF employs technical and scientific best practice. Values and opinions may influence the questions—not the findings or conclusions. Discussing with the experts and the parties how the findings will be communicated and how to handle the public nature of this process may be important.

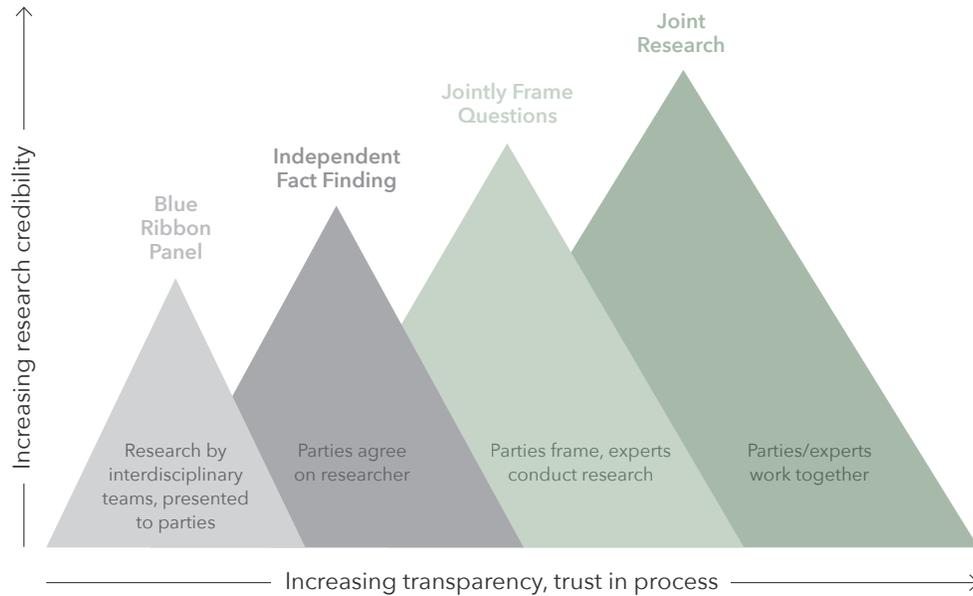
If the complainant group has a large number of constituents, they should be regularly updated about the process. Keeping people informed helps them remain engaged and collaborative; if they are not kept informed, there is a higher chance that they will lose faith in the process and their representatives. There may be situations where it is necessary to provide additional support and training to representatives and the larger group of constituents to ensure there is clear and equal understanding about the process, progress achieved, and results.

The degree of participation that is required for the process and its outcomes to enjoy the trust of the parties may vary depending on the situation. In some cases, it may be sufficient for the parties to agree on the expert to carry out the research, without being deeply involved in the formulation of questions or the research itself. In other cases, especially where the stakes of the outcome are very high, the parties may need to be involved at every step to ensure that they support the outcome of the process. In addition to building trust and credibility, greater participation by the parties can improve the quality of research and analysis and lead to better decision making and outcomes for companies and communities. Furthermore, communities are often best placed to explain how they experience impacts in very practical terms.

While more extensive involvement of the parties is usually desirable, in some cases the parties may want to be less involved because of the time, effort, and/or opportunity cost that participation requires. Each case will find its own balance among these competing needs. Parties may start with less involvement and later move to a higher level of involvement, or vice versa, until they reach a satisfactory level of comfort.

Figure 4 illustrates how different levels of involvement by the parties correspond to increasing levels of credibility, ownership, and trust in the process. However, it is important to note that JFF also allows for different levels of involvement by the parties. For example, communities could participate by observing how samples are taken, or they could take some of the samples themselves.

Figure 4 . How Greater Levels of Involvement by the Parties Generates Greater Credibility, Ownership, and Trust



Source: Larry Dixon, Independent Consultant on Corporate Social Responsibility (CSR) and Stakeholder Engagement and Consultant with Triple R Alliance, presentation to CAO on JFF, October 2016.

Box 6 illustrates a CAO case in which parties have worked with the technical expert to ensure that information was gathered in a participatory manner from the beginning of the process, and throughout.



JOINT FACT-FINDING IN ALBANIA TO UNDERSTAND SEISMIC ACTIVITY

In March 2013, CAO received a complaint about oilfields in Albania operated by Bankers Petroleum Ltd. (the company), a client of the International Finance Corporation (IFC). The complaint maintained that the company's drilling and production techniques might be responsible for earthquakes and other seismic movements, which were cracking buildings and impairing local irrigation networks. The community members and the company agreed to engage in a CAO dialogue process and decided to explore options for a Joint Fact-Finding process aimed at addressing concerns about seismic activity, as well as broader social and environmental issues related to the Patos-Marinëz oil field.

Through the dialogue process, the company committed to install two seismometers to provide the communities with crucial information regarding the nature and depth of the earthquakes near the oilfield and enable the parties to jointly identify solutions. Consequently, the parties wrote

a joint letter to high-level government officials seeking clearance for the installation of the seismometers and the upload of seismic data to the national grid. An agreement to connect the seismometers was executed between the company and the relevant government bodies, and data is now available through reports produced by the Albanian Institute of Geosciences, Energy, Water and Environment.

Following the installation of seismometers, an expert with the necessary skills to undertake an impartial assessment and conduct research about the history and trends of seismic tremors in the region was appointed by the company. The expert's report was released to the parties and to the public.

The seismometers installed through the process have also been instrumental in a government-initiated study to investigate the causes of the seismic activity in the region and possible correlations with the company's drilling and production techniques.

The seismometers installed have also been instrumental in a government-initiated study to investigate the causes of the seismic activity in the region and possible correlations with the company's operations

4. Map Who Needs to Be Involved and Informed within the Project Operator and the Community

As noted above, JFF is an integrated process that may encompass different types of knowledge, information, and data, depending on the needs of the parties and the dispute. Therefore, it is important that relevant managers for the project operator and relevant individuals within the community are appropriately involved and informed throughout the process.

When drafting the terms of reference for the experts, the relevant managers for the project operator, such as legal, procurement, environmental, health and safety, and community engagement staff, should be involved to avoid potential gaps in coordination.

Similarly, it is helpful to understand the communities' capacity and limitations to address power imbalances or the perception of power imbalances at the early stages of the process. The mediator and/or the expert(s) can also work with the communities to map out who within the community needs to be involved or informed throughout the process. This could involve keeping a group of elders or a neighboring community association informed and involved during the process.

The mediator and/or the expert(s) will help the parties develop a clear understanding about whether local and national authorities need to be kept informed during the process, particularly if there are any relevant legal requirements. The mediator and/or the expert(s) will follow local practices to keep the authorities informed and involved, if needed.

5. Establish Communication Protocols within the Process and Communicate Effectively with the Parties, the Community at Large, and the Public

Establishing Communication Protocols within the Process

Along with the workplan, parties should develop a plan that describes how they and the expert(s) will exchange information, provide feedback, and build consensus. The workplan should also include clear procedure for what to do if there is no consensus regarding unforeseen scenarios, such as if the findings are not conclusive or if the expert(s) can no longer continue with the process due to personal reasons.

Parties need to understand that there will be opportunities to provide feedback to the expert(s) and mediator about the process and how information is being communicated, as well as to raise questions if information is not understood, by either the group of representatives or the larger group of constituents. If there is a fluid and structured space for constant interaction among the parties and experts, this will empower the parties and, in turn, help them in trusting the process. However, in most cases, parties will need to acknowledge and respect the independence, professional judgement, and expertise of the experts from the beginning of the JFF process, regardless of the level of parties' involvement in the JFF process or feedback provided to the experts.

Communicating Scientific and Technical Processes and Findings to the Community and Public at Large

From the beginning of the JFF process, it is important to pay attention to how the scientific and technical processes and their findings will be communicated to the community and the wider public. This may be as important as the research itself.

Ineffective or incomplete communication about progress in the process could create information gaps that could lead to misrepresentations by those not participating in the process. The spread of such incorrect information can damage and destabilize the process and erode the trust that has been built.

Effective communication is particularly relevant for JFF processes that potentially affect a larger group of individuals, involve a larger group of complainants (hundreds or thousands of people), and may be relevant for the public sector and government policies. In cases where the parties have agreed to keep their conversations confidential, but to inform the public at large about the agreements and outcomes reached, it is important to work with the parties about how the JFF process and its findings will be communicated effectively to avoid misunderstandings.

Parties will want to look for experts who are skilled in communicating and explaining complex scientific or technical information in simple and clear terms to audiences without a technical or scientific background. In some cases, parties may also need to consider inviting an additional, mutually trusted resource person who can help bridge communication gaps, such as science teachers, academics, government civil servants from technical or regulatory agencies, nongovernmental organizations (NGOs), or private consultants. While this resource person may not have the deep expertise or formal training to meet the terms of reference for technical requirements, they can provide sufficient understanding to help parties understand how the scientific method or technical expertise works (role of evidence, known information versus unknown information, observation, measurement, and testing hypotheses). The resource person can also help experts understand what parties need and expect, and how the experts can clearly present their information and findings in an accessible way. This resource person can build the parties' knowledge and capacity at an early stage of the JFF process, which can also strengthen parties' confidence in the overall process.

While each party could be expecting clear-cut answers that will ratify its respective beliefs, such as "the company's operations have no impact on local water resources," experts will state their findings in accordance with the evidence they have found. Thus, it is useful to have someone who can communicate technical results clearly and precisely to avoid ambiguity and misunderstandings and to clarify expectations from the start. Mediators and parties can also help coach and advise experts when they are preparing reports and presentations, with an eye to making the information as easily understandable and accessible as possible. Conducting practice trial runs of presentations can also be very effective. Finally, selecting a capable interpreter is key when dealing with a community that speaks a different language than the expert(s).

6. Remain Flexible: Adapt the JFF Methodology to Specific Needs and Circumstances

While the preceding strategies and tools are usually fundamental for parties, their application may vary and JFF may not always be a neat, linear process. For example, if the parties and/or expert(s) begin their work and learn new things or acquire previously unknown information, or something significant changes in the external environment, or parties' priorities change, the original terms of reference for the expert(s) may need to be revised or updated by mutual agreement. To accomplish this, it may be important that the original terms of reference include terms that allow the parties to make revisions as needed, whether it is to change the methodology or simply to make changes and updates. The originally chosen expert(s) may also come to a point where they need an additional expert from another specialty or discipline that was not foreseen. When selecting experts on a competitive basis, parties may realize that the work they are requesting is significantly more expensive than expected and may have to revise their plans and priorities based on resource constraints or trade-offs. CAO's experience shows that while working in local communities, the expert(s) and parties may realize that the research methods had to be made even more participatory than originally planned in order to attain credibility and better understanding across the broader community and stakeholders. Parties may decide at the beginning of a JFF process that they will keep the findings confidential, but upon conclusion realize there is more value in making the findings public. The main point here is that parties and experts will often need to work together to adapt the JFF process to their specific needs and ever-changing local circumstances. In such situations, the parties will need to return to the fundamental principles they have agreed on and make decisions jointly and consistently with those principles, while remaining flexible and adaptable in their application.

7. Measure the Effectiveness of the Process and its Outcomes

Parties should think in advance about how they will measure the success of the process and determine whether to develop effectiveness and outcomes indicators. This discussion will help parties express their expectations about results, compare these expectations with outcomes, and focus on details that relate specifically to the JFF process.

The result of this discussion could be that the parties are not ready to agree on indicators because of lack of information or fear of committing so early in the process. If that is the case, the parties can agree to postpone the discussion until they feel sufficiently knowledgeable and prepared to proceed.

When the parties feel that they have sufficient knowledge to agree on how they will measure the effectiveness of the process and its outcomes, the mediation team will guide the conversation. In preparing the parties for this, the mediation team can conduct a survey to understand what aspects of the process are relevant for each party and their expectations regarding the outcomes. The mediation team can also conduct bilateral meetings with the parties to debrief on findings, possible outcomes, and what would be important for each party when monitoring implementation of actions. With all these inputs, the mediation team can better guide the parties' discussion.

8. Determine What Will Happen with the JFF Findings after the Study

Typically, the aim of a JFF process is to enable the parties to overcome a dispute about facts that is harming their relationship and their ability to solve problems together. At the conclusion of the JFF process, parties will have to move forward based on the knowledge gained by the process. The mediator can help the parties transition from the results of a JFF exercise to agreeing on specific next steps and actions.

To enable the parties to have this conversation, experts need to be clear about what they have learned, and which questions they were unable to answer. Parties can then discuss how to proceed based on the findings. Where the findings of the JFF process can resolve a dispute of fact, and parties have agreed for the expert(s) to provide recommendations, the next step after the JFF process is for parties to negotiate and jointly decide what is to be done with the recommendations and results. Agreeing on a time and format for this conversation in advance is important because it allows the parties to know from the beginning that the conversation will take place and builds the expectation that they will work together to find a way forward.

JFF efforts, overall, can help the parties establish a longer-term joint practice that goes well beyond the dispute resolution process. For example, rather than a once-off effort, a company could agree to introduce participatory water or environmental monitoring as its new standard. If parties agree on such a goal, and depending on the level of conflict and complexity, an initial JFF effort can start small and be used as a training opportunity, with the aim of strengthening parties' efforts as they implement and learn from their experience.



CONCLUSION

CAO has seen firsthand how companies and communities have been able to utilize JFF in a variety of contexts to their mutual benefit. That noted, JFF is not appropriate or feasible in every situation. The experience and insights in this publication are offered to help others determine whether JFF might be a useful tool and approach, and if so—being mindful of the challenges—how to implement it in a way that is more likely to succeed.

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