REPORT

Exploring the Remedy Gap in the Mining Sector – The Role of Grievance Mechanisms to promote Human Rights in Mineral Supply Chains

IGS INITIATIVE FOR GLOBAL SOLIDARITY

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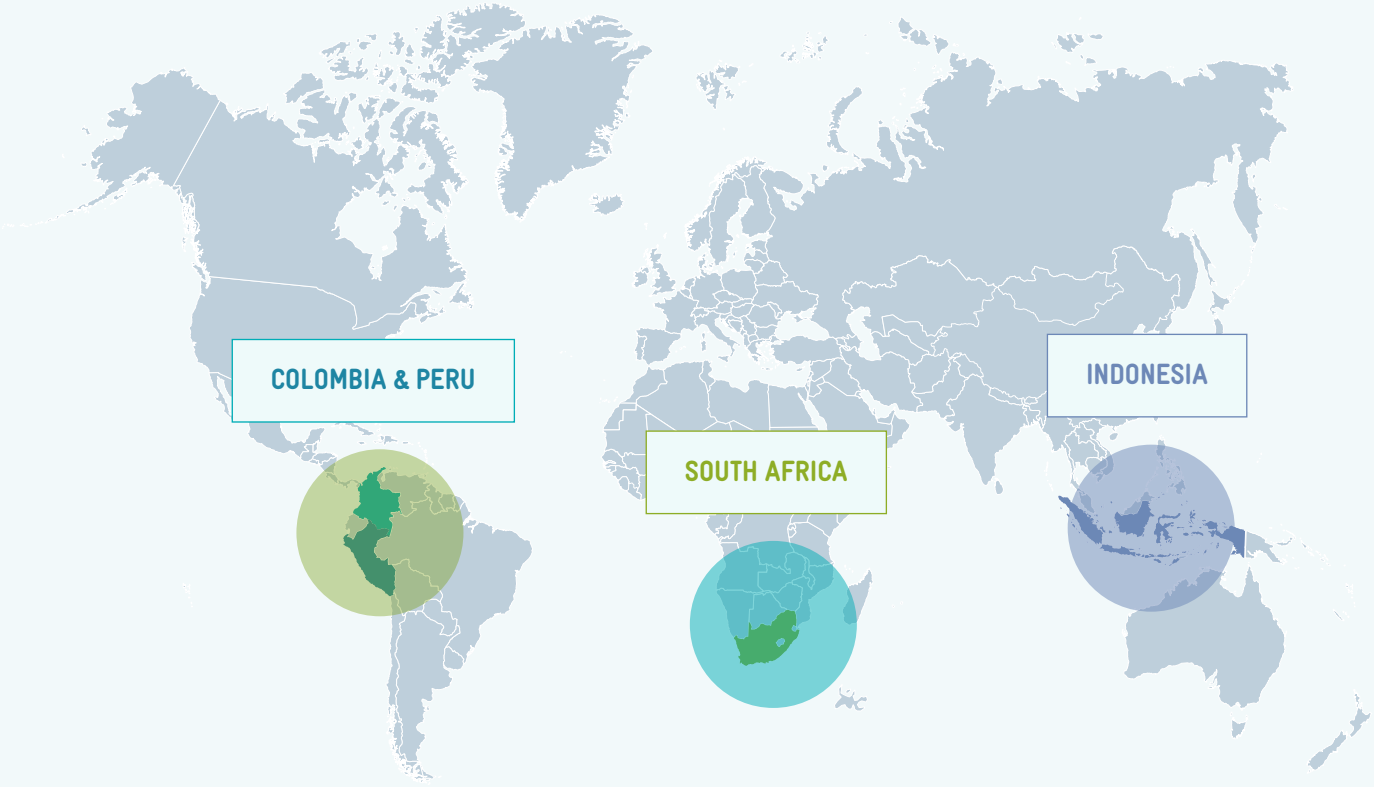
LIST OF ABBREVIATIONS

ACM	Asociación Colombiana de Minería (Colombian Mining Association)
ADR	Alternative Dispute Resolution
ASM	Artisanal and Small-Scale Mining
ASI	Aluminium Stewardship Initiative
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe (Federal Institute for Geosciences and Natural Resources, Germany)
BHRRC	Business and Human Rights Resource Centre
BMZ	German Federal Ministry for Economic Cooperation and Development
CAO	Compliance Advisor Ombudsman
CCMA	Commission for Conciliation, Mediation and Arbitration, South Africa
CSO	Civil Society Organisation
CERA	Certification of Raw Materials
CONFIEP	Confederación Nacional de Instituciones Empresariales Privadas (National Confederation of Private Business Institutions, Peru)
CREER	Centro Regional de Empresas y Emprendimientos Responsables Regional (Centre for Responsible Business and Entrepreneurship, Colombia)
DC	Development Cooperation
DGDH	Directorado General de Derechos Humanos (General Directorate of Human Rights, Colombia)
CDF	Community Development Forum, South Africa
DMRE	Department of Mineral Resources and Energy
EIA	Environmental Impact Assessment
ESDM	Kementerian Energi Dan Sumber Daya Mineral (Ministry for Energy and Mineral Resources, Indonesia)
FPIC	Free, Prior and Informed Consent
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
GMs	Grievance Mechanisms
HRDD	Human Rights Due Diligence
ICJ	International Commission of Jurists
ICMM	International Council on Mining and Metals
IDI	Inclusive Development International
IFC	International Finance Corporation
IKI	Internationale Klimaschutzinitiative International Climate Initiative, Germany
IRMA	The Initiative for Responsible Mining Assurance
IWIP	Indonesia Weda Bay Industrial Park
KLHK	Kementerian Lingkungan Hidup dan Kehutanan (Ministry of the Environment and Forest, Indonesia)

KPK	Komisi Pemberantasan Korupsi (Corruption Eradication Commission, Indonesia)
LSM	Large-scale Mining
MAC	Mining-affected communities
MACUA	Mining affected communities united in Action, South Africa
MEM	Ministry of Energy and Mines, Peru
MIGA	Multilateral Investment Guarantee Agency
MPRDA	Mineral and Petroleum Resources Development Act, South Africa
MSI	Multi-Stakeholder Initiative
NAP	National Action Plan on Business and Human Rights
NCP	National Contact Point
NGO	Non-Governmental Organisation
NHRAP	National Human Rights Action Plan
NHRI	National Human Rights Institute
NSBNJ GMs	Non-state-based non-judicial grievance mechanisms
OECD	Organisation for Economic Co-operation and Development
OEFA	Environmental Evaluation and Oversight Agency, Peru
OEM	Original Equipment Manufacturer
OHCHR	The Office of the High Commissioner for Human Rights
OLGM	Operational-level grievance mechanism
PSC	Production Sharing Contracts
SAHRC	South African Human Rights Commission
SGSD	Secretariat for Social Management and Dialogue, Peru
SLAPP	Strategic Lawsuits Against Public Participation
SLP	Social and Labour Plans
SNMPE	Sociedad Nacional de Minería, Energía y Petroleo, Peru (National Society for Mining, Energy and Petrol, Peru)
UN	United Nations
UNGP	United Nations Guiding Principles on Business and Human Rights
WAMUA	Women Affected by Mining, South Africa

EXECUTIVE SUMMARY

The report provides an analysis of the effectiveness of non-state-based non-judicial grievance mechanisms (NSBNJ GMs) within the extractive sector, focusing on their capacity to provide access to adequate remedy for rights holders adversely impacted by mining activities. Over the last decade, the adoption of the United Nations Guiding Principles on Business and Human Rights (UNGP) has spurred the integration of both voluntary and binding tools, like National Action Plans on Business and Human Rights (NAP) and mandatory human rights due diligence (HRDD) laws, aimed at mitigating adverse impacts associated with business operations along global supply chains. The report analyses the potentials and limitations of NSBNJ GMs in upholding human rights within the large-scale mining industry – a sector marked by its significant and complex social and environmental footprint.



The study focuses on Colombia, Indonesia, Peru, and South Africa, where mining is a critical economic sector often associated with high levels of social conflict.

The assessment involved a multi-faceted approach comprising document analysis, semi-structured interviews with different stakeholder groups, as well as country-specific analyses with regard to context, legal framework and landscape of NSBNJ GMs within the four countries and at the international level. The effectiveness of NSBNJ GMs was assessed by analysing their compliance with the effectiveness criteria formulated in the UNGP and further important criteria such as cultural appropriateness and gender sensitivity of Grievance Mechanisms (GMs). In addition, the scope of operational-level grievance mechanisms (OLGMs) was analysed and conclusions, including recommendations were drawn. The findings of this report provide insights into the current landscape of NSBNJ GMs in the mining sector, an understanding of their effectiveness as well as current challenges and pending improvements.

KEY FINDINGS

The report reveals that rights holders only have access to a limited selection of NSBNJ GMs.

NSBNJ GMs at the International Level covering the entire Supply Chain

At the international level multinational banks, multi-stakeholder initiatives (MSIs), and standard-setting bodies provide NSBNJ GMs. In addition, National Contact Points (NCPs) of countries adhering to the OECD Guidelines for Multinational Enterprises receive grievances from different economic sectors, including the mining sector. However, the number of cases from the mining sector of the four countries presented to these internationally available NSBNJ GMs is small and interviews revealed that these mechanisms are not well-known, difficult to access and/or rights holders do not perceive them as effective in providing remedies. Additionally, rights holders need expert support to adequately prepare and present cases which increases the barriers to use them.

Since mineral supply chains are very complex, involving multiple stakeholders, intermediaries, and spanning over international borders, there are not yet any NSBNJ GMs that cover entire mineral supply chains from the mine to the end product. A pilot project on a cross-company GM covering the supply chain of the German automotive industry and implemented jointly by different stakeholders in Mexico and Germany has been facilitated by the German Federal Ministry of Labour and Social Affairs with support from the German Federal Ministry for Economic Cooperation and Development (BMZ). The pilot project was launched in May 2024 and aims to address and mitigate human rights risks prevalent within the automotive supply chain in Mexico.

Some Multi-Stakeholder Initiatives (MSIs) which certify mining companies such as the Initiative for Responsible Mining Assurance (IRMA) or the Aluminium Stewardship Initiative (ASI) are promoting approaches to comprehensive complaints-mechanisms: besides the obligatory implementation of an OLGM at all certified mine sites, allegations of misconduct by IRMA certified mines and audit firms can be presented to IRMA's GM. ASI employs a similar complaints mechanism which strives to encompass the whole aluminium value chain from bauxite mining to original equipment manufacturers (OEMs). However, the number of complaints received by these mechanisms is low since these GMs are not well known, difficult to access for rights holders and lack effective, remedial measures as the capacity of these MSIs to enforce remedies are limited.

NSBNJ GMs at the National and Operational Level

At the national level, the landscape of NSBNJ GMs in the four countries assessed is mostly limited to OLGMs and there are only a few other NSBNJ GMs available to rights holders in these countries. However, the respective National Human Rights Institutes play an important role in receiving and handling grievances arising from corporate misconduct. It is a weakness that the different grievance systems are mostly not interlinked and do not act in a complementary way.

While the governments in the four countries assessed have started to promote responsible corporate business conduct through different measures such as the implementation of National Action Plans on Business and Human Rights, these endeavours are still recent and there is a prevalent shortfall in incorporating human rights due diligence into national business and human rights legislations. Thus, under national law the establishment of OLGMs is a voluntary exercise that mining companies are not obliged to do. For transnational companies, some binding regulations abroad such as the recently passed due diligence directive of the European Union make it obligatory to establish OLGMs. This might be one of the reasons why transnational companies tend to be more advanced and have more robust OLGMs in comparison with smaller, national mining companies.

When analysing the compliance of mining companies' OLGMs with the UNGP criteria, the picture is very diverse: While some companies have made good progress in incorporating human rights considerations into their corporate practices, others are dealing with the issue in a more technical, superficial way without making the respect of human rights a core priority of the company. Some companies comply with several of the UNGP criteria but none of the companies assessed complies with all criteria. Some important tendencies include:

- **Accessibility** of the OLGMs for rights holders remains insufficient in many cases due to various factors such as a lack of information, lack of capacity to use the grievance mechanism (GM), cultural and gender constraints.
- **Legitimacy** of the OLGMs is a crucial issue and at the same time hard to achieve since rights holders often have a conflictive relationship with the mining company characterised by mistrust and rejection.
- **Equitability:** Third parties are often not included in the grievance process which negatively impacts on the legitimacy and equitability of the OLGM.
- **Dialogue-based:** Rights holders are rarely involved in the design and implementation of the GMs and are not viewed as interlocutors that can act on eye level.
- The serious **lack of transparency** makes it difficult to look deeper into specific grievance processes and to assess whether the remedies provided are adequate.

Since the effectivity of OLGMs is an important precondition to provide rights holders with effective access to remedy, the deficits in compliance with the UNGP aggravate the gap between existing grievance channels and actual remedial actions for rights holders.

Besides the UNGP criteria, other factors such as **cultural appropriateness** and **gender sensitivity** of the OLGMs were analysed and indicate that Indigenous and traditional communities often struggle with OLGMs due to language and cultural barriers. Moreover, gender disparities hinder the effective use of GMs, as the specific needs and perspectives of women are frequently overlooked.

When analysing the scope of OLGMs, the findings of this report indicate that they are capable of providing compensations to rights holders for damages and tangible harms and addressing specific issues of low complexity. They are also an appropriate instrument to address labour issues and suppliers' complaints. Rights holders tend to use OLGMs preferably for issues that can be solved on a bilateral basis with the mining company while in most cases, they do not regard them as adequate for addressing more complex issues such as human rights violations that affect communities on a large scale. However, since the landscape of NSBNJ GMs is limited and access to the judicial system is often a major hurdle in the countries assessed, rights holders often fail to get access to adequate remedy especially in those cases where their human rights are violated.

The Remedy Gap

The 2017 report by the UN Working Group on Business and Human Rights underscores the necessity for effective remedies for rights holders impacted by business operations, especially in the mining sector. The report introduces the concept of a "bouquet of remedies," advocating for a range of responsive, victimisation-free remedial mechanisms. Despite the variety of state-based and NSBNJ GMs available at national and international level, substantial barriers persist for rights holders to get access to adequate remedy – particularly in cases of serious human rights allegations.

Key obstacles include a lack of awareness about the existence and potentials of the different GMs, alongside financial, technical, linguistic, cultural and gender barriers. Rights holders are usually in the challenging situation having to prove the harms caused by or linked to mining activities. This highly complex task that requires expensive investigations as well as significant financial and technical support – a provision neither adequately met by states nor by Non-Governmental Organisations (NGOs) – which often lack the resources to provide support in the numerous cases.

The remedies provided by mining companies' OLGMs often fail to meet the requirements for adequate and effective remedies as suggested by the UN Working Group on Business and Human Rights. They are mainly limited to financial or non-financial compensations while they should encompass apologies, rehabilitation, and guarantees of non-repetition against future violations. Power asymmetries frequently enable influential stakeholders to enforce substandard remedies upon communities, who feel the need to accept them due to fears of receiving no remedy at all.

In the assessed countries, there is a lack of governmental oversight of grievances in the mining sector and governments neither assume an active role nor intervene in more complex grievance cases. The absence of a mandate for mining companies to disclose information on grievances obscures transparency and makes it impossible to evaluate the adequacy of remedies provided. States often leave rights holders alone and exacerbate the remedy gap by placing the burden of proof of state-based GMs on inadequately equipped rights holders, rather than shifting it to the companies responsible.

As demonstrated in Peru and South Africa, when rights holders and communities face barriers to accessing adequate and effective remedies, they frequently resort to de-facto measures such as demonstrations, road blockades, and other direct actions. The high number of social conflicts in mining regions indicate that many communities still consider this type of action to be more effective than using the formal complaint mechanisms.

KEY RECOMMENDATIONS

To increase the effectiveness of NSBNJ GMs and close the remedy gap, the following recommendations should be implemented.

Companies

Companies should deepen the integration of a human rights framework within their management systems, prioritizing HRDD at senior management levels and across all operational areas. Companies should strive to comply with all the effectiveness criteria of the UNGP. This involves specific strategies to increase the accessibility, legitimacy, and equitability of the OLGMs. Staff interacting directly with rights holders should have the authority to make binding decisions, ensuring that agreements are reliable and enforceable.

To improve OLGMs, companies should:

- View rights holders as active contributors, not just beneficiaries and involve them in designing and operating OLGMs thus incorporating diverse perspectives and assuring the technical and cultural appropriateness of the GM and the adequacy of remedies provided.
- Engage in continuous dialogue with rights holders right from the beginning of the mining operations thus fostering trust and strengthening the legitimacy of the OLGM.
- Ensure accessibility for all persons affected, including women and vulnerable groups.
- Establish independent advisory committees or collaborate with external bodies like NGOs, trade unions or MSIs to enhance legitimacy, equitability and transparency of the OLGM.
- Disclose information on the types of grievances received and the remedies provided.
- Regularly evaluate the effectiveness of OLGMs, involve third parties in these evaluations, and openly share results to refine processes continuously. Emphasis should be placed on analysing the adequacy and fairness of remedies, especially from the perspective of the rights holders.

National Human Rights Institutes

To close the remedy gap, it is central to involve a more autonomous authority that has the necessary thematic expertise, enjoys legitimacy and trust of rights holders, is well-known and easily accessible for rights holders and involves third parties. This autonomous authority should have the mandate of acting as an **independent grievance coordination office** on the national level. In countries with a strong National Human Rights Institute (NHRI), which includes Human Rights Commissions or Ombudspersons, this institution could assume the role of the independent grievance coordination office. However, not all the mining countries have strong NHRIs. It is therefore necessary to do a country-based mapping to identify which institution can best assume this role. If the NHRI does not fulfil the requirements or is not adequately equipped, an MSI, an academic institute or an NGO can also be chosen to assume this role.

Civil society

NGOs play a critical role in empowering rights holders to engage effectively with NSBNJ GMs by facilitating participation and enhancing dialogue-based grievance processes. NGOs should monitor the NSBNJ GMs in their countries, assess the effectiveness of these mechanisms and advocate for improvements based on collected data and experiences.

Development cooperation

One of the fundamental challenges with NSBNJ GMs is the power asymmetry among the different stakeholders. Development cooperation (DC) can play a crucial role in mitigating this imbalance and helping to establish a level playing field by supporting equitable dialogue among stakeholders, including Indigenous organisations. Efforts like those of the German DC have shown success in enhancing the capabilities of governmental and non-governmental bodies. Continued collaboration among private sector, state institutions, and civil society is crucial for designing participatory and dynamic grievance mechanisms.

Furthermore, DC should focus on:

- Supporting human rights advocates to assist rights holders in using and combining different grievance mechanisms on a national and international level.
- Creating collaborative multi-stakeholder platforms to share lessons learnt and improve grievance mechanisms. These platforms should also include rights holders to incorporate their experiences and views.
- Integrating these mechanisms into just transition processes in regions producing critical minerals, ensuring that community rights are protected.
- Conducting thorough analyses of existing remedy gaps in mineral supply chains to enhance system effectiveness and stakeholder empowerment, with a specific focus on the perspectives of rights holders.

Comprehensive grievance system

To close the remedy gap, the grievance system should have several layers:

- A robust, independent judicial system that is accessible for rights holders and guarantees a fair and impartial process.
- OLGMs to handle specific grievances and serve as early detection systems for grievances caused by mining companies.
- An independent grievance coordination office to oversee, monitor and intervene in grievance cases, ensuring adequate remedies and advising on system improvements.
- International mechanisms to complement national systems.

1. INTRODUCTION

A decade after the UNGP[1] were launched, various instruments have been promoted to operationalize this global (albeit voluntary) agenda, providing an intelligent mix of voluntary and binding tools, such as NAPs and HRDD laws. The UNGP outline the responsibilities of states and businesses to respect, protect, and fulfil human rights. Endorsed by the UN Human Rights Council in 2011, they provide a framework for preventing and addressing adverse human rights impacts linked to business activities.

The UNGP consist of three pillars:

Figure 1: UNGP Framework

The UNGP highlight the crucial role played by GMs to provide channels through which individuals and communities can raise concerns about human rights abuses linked to business activities.

GMs are important because they ensure that victims of human rights abuses have a pathway to seek redress for harm suffered and have access to different types of remedies.

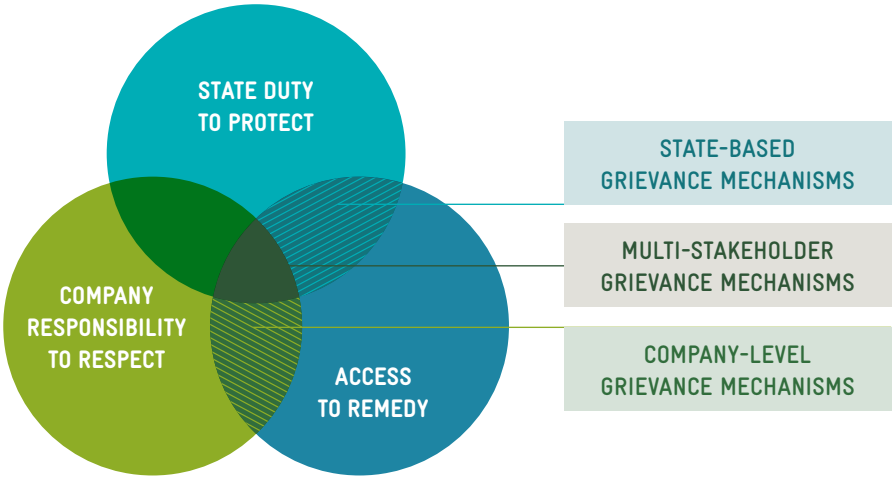


Figure 2: GMs in the UNGP Framework[2]

1 *https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf*

2 Based on ICMM Human Rights Due Diligence Guidance, May 2023, p. 16

According to the UNGP, remedy '*may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.*'[3]

In the mining sector, where impacts can be extensive and complex, effective and accessible GMs play a critical role in managing social and environmental risks and ensuring the rights and well-being of affected communities and other stakeholders. For the private sector, they are an important instrument for detecting negative impacts of their operations and for maintaining the social licence to operate.

GMs are likely to become increasingly important in the framework of a just transition as, for instance, the successful phasing out of coal relies heavily on the active participation of communities in the affected areas. GMs could serve as a crucial tool for ensuring their involvement and addressing their concerns effectively. With new areas entering production to meet the demand for critical minerals essential for building carbon-neutral economies, it becomes imperative to incorporate GMs into the very fabric of the just transition process.

3 UNGP 2011

Other international references for GMs have been developed in line with the UNGP or aligned with them, such as the Guidelines for Multinational Enterprises on Responsible Business Conduct established by the Organisation for Economic Co-operation and Development (OECD).[4] There are also sector specific guidelines, such as the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas[5] or the HRDD Guidance of the International Council on Mining and Metals (ICMM)[6] as well as mineral specific guidelines such as the Aluminium Stewardship Initiative[7]. All these guidelines and directives play an important role in promoting responsibility, sustainability and ethical behaviour in the mining sector. Furthermore, due diligence laws such as the German Supply Chain Due Diligence Act[8], the European Union (EU) Conflict Minerals Regulation[9] or the EU Batteries Regulation[10], make it compulsory for companies to establish GMs in the supply chain.

GMs can be divided into four categories:

- **State-based judicial:** A common example is a lawsuit filed in a national court system against a company or government entity for alleged human rights abuses or violations. For instance, individuals or communities affected by environmental pollution from a mining operation may file a lawsuit in a national court seeking damages and remedies.
- **State-based non-judicial:** These include administrative bodies and national human rights institutions (NHRI) appointed by the government to investigate complaints related to human rights violations by businesses or government agencies. For example, in some countries, there are human rights commissions or labour departments that accept complaints from individuals regarding workplace discrimination or exploitation.
- **Non-state-based judicial:** Arbitration courts are an example for a judicial GM that is non-state-based.
- **Non-state-based non-judicial (NSBNJ):** These include operational-level GMs (OLGMSs) established by companies and GMs developed by industry, civil society, multi-stakeholder and other collaborative initiatives.

PURPOSE OF THE REPORT

The report aims to assess the effectiveness of NSBNJ GMs in the extractives sector, particularly in terms of their ability to provide adequate remedies for rights holders. It delves into the potential of these mechanisms and identifies the requisites for implementing successful and impactful NSBNJ GMs in the extractive industries, considering the intricacies of complex mineral supply chains. The report concludes with recommendations for enhancing the involvement of DC in this realm. To evaluate the interaction of NSBNJ GM with state-based and customary grievance or conflict resolution mechanisms, this report addresses state-based structures as well.

4 *https://mneguidelines.oecd.org/mneguidelines/*
5 *https://www.oecd.org/corporate/mne/mining.htm*
6 *https://www.icmm.com/website/publications/pdfs/social-performance/2023/guidance_human-rights-due-diligence.pdf?cb=58439*
7 *https://aluminium-stewardship.org/*
8 Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (Lieferkettensorgfaltspflichtengesetz – LkSG) dated 16.07.2021 published In: Bundesgesetzblatt Jahrgang 2021 Teil I Nr. 46, Bonn, 22. Juli 2021
9 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas
10 Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC (EU Batteries Regulation)

2. METHODOLOGY

The report is based on a thorough examination of existing studies, reports on GMs, and legislative texts pertinent to the sector. Semi-structured interviews with experts from various relevant fields such as representatives from DC projects, government agencies, non-governmental organisations (NGOs) / human rights organisations and mining companies provided a nuanced understanding of the effectiveness of NSBNJ GMs, their weaknesses and potential avenues for improvement. To ensure confidentiality, the identities of the interviewees have been anonymised in this report. Consequently, their responses are referenced using numerical identifiers only.

To examine the differences and similarities between GMs and the specific challenges they pose across diverse geographical and political landscapes, the analysis focused on Colombia, Indonesia, Peru, and South Africa. The selection of these countries was based on several criteria: the significance of the mining sector in the national economy, the presence of various types of GMs, access to reliable information, access to a broad range of stakeholders, and the involvement of German DC. Additionally, the analysis included an assessment of two GMs developed as part of standards initiatives or multi-stakeholder initiatives aimed to establish sector-wide GMs or addressing grievances within the value chain. The data collected from the document analyses, interviews and cross-country analyses were comprehensively evaluated to discern patterns, trends, and critical aspects regarding the mechanisms' effectiveness and deficiencies.

The assessment of the effectiveness of the GMs was mainly based on the criteria in the UNGP:

The effectiveness criteria for Non-Judicial Grievance Mechanisms

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

- **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.[11]

Additional criteria such as cultural appropriateness and gender sensitivity of the GMs were included due to their relevance for access to remedy. Beyond the UNGP criteria, the effectiveness of GMs was assessed by analysing their scope and capability to provide adequate remedies to rights holders. To this end, two case studies have been analysed and conclusions have been drawn.

LIMITATIONS OF THE REPORT INCLUDE:

- Accessibility of information: Obtaining comprehensive data on grievance outcomes was hindered by a lack of public disclosure from companies. Most companies do not provide detailed information about the outcomes of grievance processes, posing challenges to obtaining a complete picture.
- Virtual interviews were carried out to include the perspectives of different stakeholders. However, virtual interviews have limitations with regard to offering in-depth insights into the situations on the ground.

11 United Nations Human Rights – Office of the High Commissioner (2011) Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework, P.33

3. NSBNJ GRIEVANCE MECHANISMS IN THE MINING SECTOR

In the context of large-scale mining, various NSBNJ GMs are employed to address concerns and conflicts that arise in connection with mining activities. These mechanisms are designed to offer alternative routes for dispute resolution, especially in areas where access to formal judicial systems may be limited or ineffective.

NSBNJ GMs can be effective in providing accessible, flexible, and sometimes faster alternatives to formal judicial processes. However, their effectiveness might be limited by factors such as lack of trust on the part of rights holders, lack of independence, lack of transparency and accountability.

3.1. TYPES OF NSBNJ IN THE MINING SECTOR

The following types of NSBNJ GMs can be found in large-scale mining:

- **Company-Level / operational-Level GMs (OLGMs):** More and more mining companies are establishing OLGMs to address complaints from employees, suppliers, sub-contractors, local communities and other stakeholders.
- **Independent monitoring and complaint boards:** Independent bodies have been set up to monitor mining activities and provide a neutral platform for lodging complaints. The Office of the Compliance Advisor Ombudsman (CAO) deals with complaints financed by the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). Equivalent bodies in German DC include the Independent Complaints Mechanism of KfW DEG (Deutsche Investitions- und Entwicklungsgesellschaft mbH) and the Independent Complaint Mechanism of the International Climate Initiative (IKI).
- Various **Industry Standards** in mineral supply chains require mining companies to establish OLGMs. There are standards initiatives for the whole mining sector (e.g. Certification of Raw Materials – CERA 4in1) and mineral-specific standards for certain minerals such as copper (e.g. Copper Mark), aluminium (ASI) and others. The standards differ significantly in their ambition to address grievances. Some of these mineral-specific standards are **Multi-stakeholder initiatives (MSIs)** bringing together various stakeholders, including mining companies, governments, NGOs and communities, to collaboratively address grievances. Some MSIs develop their own GMs, for example, the Initiative for Responsible Mining Assurance (IRMA) or ASI.
- **NGO-facilitated dispute resolution:** NGOs establish mechanisms to help resolve disputes related to mining operations, focusing on issues such as environmental impact and human rights. For example, Electronics Watch receives grievances and assists communities affected by mining in having their grievances addressed at the national and international level.[12]
- **Traditional dispute resolution:** In areas where traditional law and leadership are recognised, disputes may be resolved through customary practices and local leaders. For instance, in many mining communities in Sub-Saharan Africa, traditional councils and local chiefs enjoy great trust among the population and play a significant role in resolving disputes related to land and resource use.

12 https://electronicswatch.org/en

Figure 3: Flow Chart: Typical Course of a Complaint Procedure at the company-level

Each of these types of mechanisms serves to address grievances that can arise in the context of large-scale mining, from labour issues and environmental concerns to community impacts and human rights violations. While most GMs focus solely on the operational mine site, a few initiatives, such as the ASI, aim to tackle issues across the entire value chain. Another MSI which aims to address the whole value chain is the German "automotive sector dialogue". This initiative is working with relevant national institutions in Mexico together with GIZ to establish a sector-wide complaints mechanism for the industry which has been launched in May 2024.[13]

Despite of the variety of NSBNJ GMs in the mining sector, the mining companies' OLGMs are the ones that play the most prominent role among the NSBNJ GMs in the countries assessed. Therefore, a strong focus of this report has been put on assessing the effectiveness of mining companies' OLGMs, while other NSBNJ GMs have been analysed to a smaller extent.

13 The German Automotive Sector Dialogue is conducted by the German Federal Ministry for Labor and Social Affairs (BMAS) and the current implementation of the MSI steered pilot project in Mexico is supported by the German Federal Ministry for Economic Cooperation and Development (BMZ).

3.2. RIGHTS HOLDERS IN THE MINING SECTOR

In the context of the mining sector 'rights holders' typically refer to individuals, communities or groups who hold certain human rights related to land, resources, environmental and health protection as well as labour rights including a variety of international rights and legal principles.

Indigenous Peoples:

Indigenous Peoples often have collective ancestral or customary rights to land and resources in areas where mining activities take place. They also have specific rights related to cultural heritage and self-determination. These rights may be recognised under national laws, international conventions, or traditional governance systems. This includes the internationally recognised human-rights based principle of free, prior and informed consent (FPIC).[14] FPIC and other Indigenous Peoples' rights that have often not been respected in mining regions are a frequent source of dispute.

Local communities:

Local communities residing in or near mining areas also have rights that can be affected by mining operations. These rights include access to clean water, a healthy environment, food security, safe livelihoods and the protection from negative impacts such as pollution, displacement, social disturbances and cultural consequences.

Workers:

Miners and workers employed in mining operations have labour rights such as the rights related to safe working conditions and fair wages. These rights are often protected by national labour laws, international labour standards and industry-specific regulations. Moreover, according to the international core conventions of the International Labour Organization, workers have the right to organise and collectively bargain for better working conditions and wages.

Women:

Women and marginalised groups in mining-affected communities may face unique challenges and vulnerabilities, including discrimination, gender-based violence, and limited access to resources and decision-making processes. Women working in and around mines have the right to equal pay and a safe working environment. Recognising and protecting their rights is essential in promoting gender equality and social inclusion in the mining sector.

Children:

Children living in mining areas have specific rights under international conventions, such as the right to education, protection from child labour, and safeguarding against exploitation and abuse. Mining activities can pose risks to children's wellbeing, including exposure to hazardous substances, displacement and interruption of schooling.

Environmental rights advocates:

Environmental rights advocates and activists play a crucial role in advocating for the protection of ecosystems, biodiversity and natural resources affected by mining activities. They engage in legal action, grassroots organising, and public awareness campaigns to hold mining companies and governments accountable for environmental degradation and violations of environmental laws.

Human rights defenders:

They monitor, document and publicly denounce human rights abuses associated with mining, including land grabs, forced evictions and violations of human and Indigenous Peoples' rights. Human rights defenders often face threats, harassment and violence due to their activism.

14 FPIC is a principle protected by international human rights standards that refer to the right to self-determination and is backed by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity and the International Labour Organization Convention 169.

3.3. COMMON GRIEVANCES IN LARGE-SCALE MINING

Large-scale mining operations lead to grievances among rights holders arising from a range of social, economic, environmental and human rights concerns associated with mining activities and have been documented by numerous national and international NGOs and confirmed by various UN Special Rapporteurs[15], the Inter-American Commission on Human Rights[16] and other international bodies.

Many grievances stem from the failure **to consult and involve communities, workers and other rights holders** in the early phase of the mining cycle: Communities feel excluded from information, discussions on project planning, environmental impact assessments (EIAs) and benefit sharing agreements, leading to distrust and resentment towards mining companies and authorities. During implementation, mining projects might be associated with **human rights abuses**, including forced displacement, illegitimate seizure of land, intimidation and violence against local communities, Indigenous Peoples and human rights defenders. Other grievances related to large-scale mining include:

Resettlement and loss of livelihoods:

Open pit mining projects require significant land acquisition, leading to the displacement of communities and the loss of traditional livelihoods such as farming, fishing and hunting.

Environmental degradation:

Mining activities can cause significant environmental damages, including deforestation, soil erosion, water pollution, and habitat destruction. Local communities often experience adverse effects relating to water quality, air pollution, and loss of biodiversity that impact their health, livelihoods and cultural practices.

Health and safety risks:

Mining operations can pose health and safety risks to workers and nearby communities, including exposure to hazardous chemicals, dust, noise, and accidents. Poor occupational health and safety practices, inadequate protective equipment and insufficient emergency response measures can lead to injuries, illnesses and fatalities among workers and residents.

Water access and contamination:

Large-scale mining operations require large quantities of water for processing and may compete with local communities for limited water resources. Discharges of mine wastewater, tailings and toxic chemicals can contaminate water sources, affecting drinking water quality, agricultural irrigation and ecosystem health.

Social conflict and divisions:

Large-scale mining projects can exacerbate social tensions and divisions within affected communities, leading to conflicts over land, resources, and benefit sharing. Disputes may arise among different stakeholders, including community members, government authorities, mining companies, and other interest groups, resulting in protests, litigation, and violence.

Unequal distribution of benefits:

Local communities often perceive that they do not receive their fair share of benefits from mining projects, including employment opportunities, infrastructure development, royalties and social investments. Benefits may accrue disproportionately to external stakeholders, government officials and elite groups, exacerbating social inequalities and disparities in wealth distribution.

15 Report of the Special Rapporteur on the rights of indigenous peoples: Extractive industries and indigenous peoples (2013)

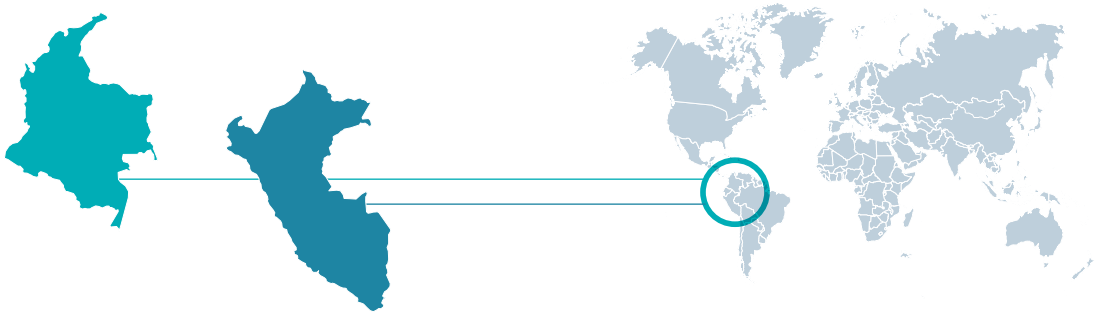
16 *https://www.oas.org/en/iachr/media_center/preleases/2016/048.asp*

4. NSBNJ GMs IN MINERAL SUPPLY CHAINS IN PERU AND COLOMBIA

4.1. COUNTRY CONTEXTS

Mining is one of the most important industrial sectors in Peru. The country is among the world's leading producers of copper, gold, tin, molybdenum, zinc, silver, lead and iron. The contribution of the mining sector to the gross domestic product (GDP) is 10 %.[17] In the last decade, it has accounted for nearly 60 % of exports, 11 % of private investments, 11 % of national production, 8 % of tax revenues and 5 % of the labour force.[18]

Mining plays a less important role in Colombia. The annual contribution of the mining sector to GDP has averaged 2.2 % over the last few years. The biggest share comes from the extraction of coal, gold and copper. Between 2002 and 2014, foreign direct investments in the mining sector amounted to more than USD 2 billion per year but fell from 2016.[19] Artisanal and small-scale mining (ASM) plays an important role in Colombia. According to the 2011 Mining Census, 63 % of the mining units assessed did not have a legal title.[20]



4.2. CONFLICTS RELATED TO MINING

Despite the economic importance of the mining sector in Peru, it is not perceived as a positive industry by many local communities. The activities in the sector have caused severe environmental problems. More than 8.400 environmental liability claims that have officially been registered by the Ministry of Energy and Mines (MEM) in 2020 bear witness to this.[21] The way mining operations were introduced in the past, without the FPIC of Indigenous communities and without providing relevant information, engaging in dialogue with the local population or ensuring their participation has led to widespread resistance to mining. Mining projects have led to severe social and health impacts and rising inequality in mining areas. The failure of the mining sector to boost the local economy or to provide jobs for the local population is in stark contrast with the promises that companies used to make in an attempt to get the 'social license' for their operations.[22] As a consequence, the expansion of the Peruvian mining sector has been accompanied by an enormous increase

17 *https://www.gob.pe/institucion/minem/informes-publicaciones/3614950-inversion-minera*
18 IPE (2023)
19 CREER (2021)
20 Ibid.
21 Ibid.
22 FIO (2024)

in social conflicts.[23] In fact, Peru has one of the highest numbers of conflicts associated with mining in Latin America. It is important to highlight that these conflicts develop in a social, political and cultural context that is notoriously characterised by discrimination against people from rural areas, a weak state presence and the failure to address social demands, a situation that has persisted for decades and even centuries. This has led to a generalised mistrust against institutions and high levels of social polarisation.[24] Social conflicts have repeatedly escalated into violent incidents which caused 300 deaths and left 5456 people injured in the period from 2006 to 2021.[25]

The Peruvian Ombudsman's Office publishes monthly reports on social conflicts in the country. The majority are socio-environmental conflicts (more than 60 %) and approximately 67 % of these are linked to mining. In December 2023, the Ombudsman reported 215 social conflicts, 90 of them relating to mining.[26] While some conflicts concerned illegal or informal mining, the great majority referred to medium- and large-scale mining operations and involved companies with foreign capital, including like Antamina, Barrick, Las Bambas, Chinalco, Southern Peru Copper Corporation, Yanacocha, Gold Fields, Minera Anabi and Antapaccay.

Conflicts have become a major risk for mining investments. According to an assessment carried out by the Peruvian mining association, 11 mining operations in 8 regions were paralysed due to social conflicts between 2021 and the first quarter of 2023. This led to economic losses that impacted GDP with a reduction of around USD 1.8 billion. Conflicts in just four regions[27] accounted for almost 80 % of this figure.[28]

Over the past 20 years, the Peruvian Government has failed to establish strategies to prevent conflicts and address them properly. A long-standing former member of the Ombudsman's Office stated that the number of social conflicts has not decreased despite a number of regulatory changes, the creation of new institutions to control mining activities, the promotion of HRDD through the NAP and the establishment of OLGMs in many of the bigger mines.[29] The following graph confirms this.[30]

Figure 4: Number of Social Conflicts in Peru (2006-2023)

23 World Bank (2015)
24 FIO (2024)
25 Ombudsman's Office (2021)
26 Ombudsman's Office (2023)
27 The four regions are: Apurímac (Las Bambas mine), Cusco (Constancia and Antapaccay mines), Ancash (Antamina mine) and Moquegua (Cuajone mine)
28 IPE (2023)
29 Interview GM_12
30 Observatory on Mining Conflicts in Peru (OCM) (2023)

In Colombia, as in Peru, the extraction of mineral resources, such as gold, coal and copper, is the cause of a large number of social conflicts. Between January 2022 and March 2024, 249 social conflicts were registered by the Observatory of Social Conflict of the Ombudsman's Office and 41% of these conflicts were associated with the mining sector. The conflicts referred to: labour conflicts or conflicts over the contracting of goods and services (44%); environmental conflicts (32%); the demand for more rigorous regulation and control of mining activities (11%); demand for state investments (8%); respect for communities' rights to self-determination and participation (8%) and others.[31] Conflicts arise not only between mining companies, state and affected populations, but also between ASM miners and LSM miners and within socially divided communities. [32]

The dynamics of these conflicts in the mining sector are often similar to those in the neighbouring Peru, particularly with regard to the high numbers of social conflicts and the frequent use of measures such as road and railway blockings, protests etc. This indicates that the mechanisms to prevent and deal with grievances in the mining sector are still inadequate.

Colombia is also the second most dangerous country in the world for human rights defenders: The database of the Business and Human Rights Resource Centre (BHRRC) lists 181 attacks against human rights defenders who raised concerns about businesses' conduct between 2015 and 2019. Mining is one of the industry sectors where human rights defenders are frequently targeted.[33]

4.3. REGULATORY AND INSTITUTIONAL FRAMEWORKS

International Frameworks

Over the last 20 years, with the growth of the mining sectors in Peru and Colombia, the concept of corporate social responsibility (CSR) has gained in importance and international debates and the adherence to international frameworks have shaped public policies on corporate responsibility in both countries. Peru's adherence to the OECD Guidelines for Multinational Enterprises in 2008 and the establishment of a National Contact Point (NCP) in 2009 were important steps in promoting responsible business conduct. More recently, based on Peru's adoption of the UNGP, the government has formulated a NAP[34] to further promote respect for human rights by companies. Colombia established its NCP in 2012 and was the first country in Latin America to adopt a NAP in 2015.

The growing number of binding due diligence regulations that have been passed in other countries in recent years means that it is mandatory for transnational companies to implement HRDD processes. This development has contributed to setting a new due diligence standard for smaller companies too.[35]

National Legislation on Business and HRDD

Peru and Colombia have agreed to take measures to incorporate the UNGP into their national frameworks. To this end, they have both developed NAPs. However, to date, neither country has passed binding national legislation that makes it mandatory for all companies to implement HRDD and/or establish OLGMs that comply with the criteria set out in the UNGP.

31 Ombudsman's Office, Colombia (2024)
32 GIZ (2022)
33 BHRRC (2020)
34 *https://cdn.www.gob.pe/uploads/document/file/2399831/Plan%20Nacional%20de%20Acci%C3%B3n%20sobre%20Empresas%20y%20Derechos%20Humanos%202021-2025.pdf?v=1636730881*
35 GIZ (2022)

In recent years, Peru has passed several laws with the aim of enhancing sustainability in the mining sector. However, the focus is more on environmental issues and less on human rights. An important milestone was the law on the right of Indigenous Peoples to free, prior and informed consent (FPIC) which was passed in 2011. Up to now, 34 FPIC processes have been concluded in the mining sector.[36]

In 2022, the members of the Peruvian Civil Society Platform on Business and Human Rights prepared a legislative proposal to regulate human rights and environmental due diligence for companies in Peru.[37] It was introduced to the Congress but, due to the country's political crisis, has received little attention and the members of the Civil Society Platform consider it unlikely that national legislation on due diligence will be passed in the next few years.[38]

Similarly, in Colombia, the Ombudsman's Office, together with the Office of the High Commissioner for Human Rights (OHCHR) in Colombia and the Latin American Observatory on Business and Human Rights of the Externado University in Colombia[39] have proposed a law on HRDD. However, the legislative project has never been presented to parliament and insiders have stated that it seems unrealistic at this moment that the law will be passed.[40]

National Action Plans on Business and Human Rights

Colombia's second NAP for 2020-2022 was published in 2020.[41] It emphasizes that '*the national government seeks to strengthen both the judicial system as well as all those non-judicial mechanisms that ensure conflict resolution and guarantee remedy for all victims of human rights violations*'. The NAP includes measures to strengthen the existing NSBNJ GMs. The Ministry of Mines and Energy has publicly announced its commitment to protect, respect and promote human rights and outlined a roadmap for the adoption of a HRDD process.[42] However, there is no systematic monitoring of progress in implementing the NAP 2020-2022.

Peru's NAP 2021-2025 was formulated by an MSI involving government institutions, companies, Indigenous Peoples' organisations, trade unions and civil society organisations (CSOs) under the leadership of the Justice Ministry's General Directorate of Human Rights (DGDH). The NAP sets out five strategic guidelines and 97 concrete actions. One of the guidelines refers to designing and strengthening mechanisms to ensure that those affected by human rights violations have access to judicial, administrative, legislative and other means of redress. This includes strengthening government mechanisms as well as creating and enhancing mechanisms at the company level.[43] An evaluation carried out by the Civil Society Platform on Business and Human Rights shows that only 10 % of the NAP actions that should have been completed by the end of 2023 have been fully implemented, and a further 20 % have been partially implemented.[44] The political crisis in Peru and the numerous changes in the Ministry of Justice, which is in charge of coordinating NAP implementation have considerably delayed progress, and it is uncertain how the process will evolve over the next two years. In view of this delay, the regional governments of Ica and Piura have taken the initiative and passed regulations for the implementation of the NAP at the regional level.[45] These have declared NAP implementation and the mainstreaming of a business and human rights approach into public policies to be issues of regional interest. Further regional regulations are expected to follow in Cusco and Ucayali in the course of 2024.

36 *https://consultaprevia.cultura.gob.pe/proceso?title=&netapa=All&departamento=All&entidadespromotoras=All&tema=88*
37 Fernández-Maldonado (2022)
38 Interview GM_8
39 *https://www.uexternado.edu.co/observatorio-latinoamericano-de-derechos-humanos-y-empresas/*
40 Interview GM_27
41 *https://derechoshumanos.gov.co/Areas-Trabajo/Empresas-DDHH/Paginas/300121-Descripcion-PNA-EmpresasyDDHH.aspx*
42 Ministry of Mines and Energy, Colombia (2020))
43 NAP Peru 2021
44 Plataforma de la Sociedad Civil sobre Empresas y Derechos Humanos en Perú (2023)
45 Ica Regional Government (2023); Piura Regional Government (2023)

Other Laws that Reinforce GMs

Although there are no specific regulations on HRDD or access to remedy in Peru, some laws do support the creation of complaints mechanisms, for example the law on EIAs stipulates that companies must have an information office to take up community complaints.[46] Some companies have included a GM in their EIA social management plans on a voluntary basis. This creates a legal obligation for them that allows the Environmental Evaluation and Oversight Agency (OEFA) to control the implementation.[47]

The Role of Constitutional Courts

In Colombia, the Constitutional Court has made important references to the UNGP, recognising them as binding guidelines for the Colombian Government. Several judgments that contribute to incorporating HRDD and access to adequate remedy into the Colombian justice system.[48]

The Constitutional Court of Peru recognised the UNGP as a binding due diligence standard in relation to the right of Indigenous Peoples to FPIC for the first time in June 2023. In its judgement, the Court refers to jurisprudence created by the Colombian Constitutional Court on the application and recognition of the principle of HRDD.[49]

In Peru and Colombia, the internal frameworks for HRDD and access to remedy are still evolving and, at present, there are considerable gaps that must be addressed to make it mandatory for companies to establish OLGMs, provide access to effective remedy and to disclose information on grievances and the outcomes of grievance processes.

4.4. LANDSCAPE OF GMs

NSBNJ GMs

In Peru and Colombia the most frequent NSBNJ GMs in the mining sector are the company OLGMs. The Peruvian mining association reports that almost all its associated members have an OLGM. However, it is difficult to verify this since there is no publicly accessible register showing which company has or does not have an OLGM.[50] A study published by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH analysed 81 mining companies in Peru and found that almost half of them (48 %) have a formalised GM, 16 % have established channels to receive complaints and 36 % do not have a GM or do not publish information on it.[51] In Colombia, the study analysed 24 associated members of the National Mining Association (ACM): More than half of them (58 %) have a formalised GM, while the remaining companies do not have a complaints or GM or do not publish information on it.[52]

Besides the OLGMs, there are **no NSBNJ GMs available on the national levels**. The national mining associations of Peru or Colombia do not have a GM of its own. Peru's National Society for Mining, Energy and Petrol (*Sociedad Nacional de Minería, Energía y Petroleo* – SNMPE), as a member of ICMM requires its members to respect and promote human rights in the course of their business activities.[53] In 2019, a human rights principle was included in the code of conduct.[54]

46 GIZ (2022)
47 Ibid.
48 Tole Consultores (2024)
49 Tole Consultores (2024)
50 CREER (2021)
51 GIZ (2022)
52 Ibid.
53 NAP Peru 2021
54 GIZ (2022)

The association offers guidance on how to establish an OLGM and also developed a human rights policy model for its members.[55] This has incentivised companies to establish their own OLGMs.[56] In addition, a number of NGOs, institutions[57] and MSIs[58] in both countries have also developed guidelines on HRDD and OLGMs. However, guidelines alone are not enough to promote HRDD. Since the establishment of NSBNJ GMs is voluntary and not regulated by law, the availability of these GMs and their quality depend very much on the good will of the individual company. Besides the companies' OLGMs, there are no other NSBNJ GMs in the mining sectors of the two countries.

State-Based Non-Judicial GMs

Two important state-based mechanisms that deal with grievances in the mining sector are worth mentioning: In Peru, **roundtable dialogues** ("*Mesas de Diálogo*") play an important role because communities affected by mining see them as a space to express grievances. The roundtables dialogues are established in situations of crisis, to get to know the needs and interests of the stakeholders involved and to come to joint agreements.[59] When the government decides to formalise a dialogue roundtable, regulations are drawn up for their operation, stipulating their functioning, the roles of the actors and procedures.[60] With the growing number of social conflicts, roundtable dialogues have emerged all over Peru. Despite their high number, they are often set up too rapidly and without having established the necessary conditions to ensure their effectiveness. Usually, they result in a catalogue of agreements that are documented in a report. However, since the degree of implementation of the agreements tends to be less than 50 %,[61] the level of discontent is very high.[62] The lack of a more systematic approach has led to a loss of credibility of these dialogue fora, to frustration and discontent. Nevertheless, since many communities affected by mining do not trust the OLGMs of mining companies as a space for handling their grievances or do not consider the available GMs to be effective, demonstrating, protesting, blocking roads and using other de facto measures is a widespread way of expressing grievances: the state rewards it with the installation of roundtable dialogues where agreements are made and protesters succeed in enforcing at least some of their claims. A member of the Ombudsman's Office calls this a "perverse incentive".[63]

An institution that plays a very important role in dealing with complaints from the mining sector, but also other areas, is the **Peruvian Ombudsman's Office**[64]. Although it is a state-based non-judicial GM, the institution is included in this chapter because it is the best known and frequently used complaint mechanism in Peru. The institution has enjoyed great institutional autonomy since its foundation in 1996. Although this independence is currently being challenged under the government of Dina Boluarte, its constitutional mandate requires it to be on the side of citizens in order to balance power asymmetries.[65] Through its work to defend citizens' rights, the Ombudsman's Office has gained and maintained a high level of credibility and legitimacy in the public eye, and its decentralised structure makes it easily accessible to rights holders. In 2022, the Ombudsman's Office received 32,185 complaints. The work of the municipal authorities and the

55 NAP Peru 2021
56 GIZ (2022)
57 For example, the Ombudsman's Office, Fundación Ideas para la Paz and the Regional Centre for Responsible Business and Entrepreneurship (CREER) in alliance with the Presidential Council for Human Rights in Colombia and with the support of the British Embassy have published a guideline on "Elements of a comprehensive system of non-judicial remedy in business and human rights".
58 For example, "Guías Colombia" is a MSI whose mission is to contribute to improving the situation of human rights and international humanitarian law in the country. The MSI has published guidelines on various issues related to HRDD and a guide on how to establish OLGMs.
59 *https://prodialogo.org.pe/blog/mesas-de-dialogo-y-mesas-de-desarrollo-espacios-para-el-ejercicio-democratico/*
60 Ibid.
61 Ombudsman's Office, Peru (2021)
62 Interview GM_1
63 Interview GM_12
64 Ombudsman's Office, Peru *https://www.defensoria.gob.pe/*
65 Ombudsman's Office, Peru (2021)

health and education sectors were the subject of the largest numbers of complaints.[66] It monitors the social conflicts in Peru and publishes monthly reports which provide details on the number and type of conflicts in the mining and other sectors. The Ombudsman's Office also assumes a mediatory role in disputes.

Similarly, the **Ombudsman's Office in Colombia** plays an important role in the protection of human rights in the country, including in situations related to mining conflicts: It monitors the development of social conflicts in Colombia, promotes roundtables dialogues thus trying to prevent conflicts from escalating and promotes the transformation of conflicts. It can intervene to ensure that the rights of local communities affected by mining activities are respected, investigate allegations of human rights violations in mining contexts and advocate for just and fair solutions.

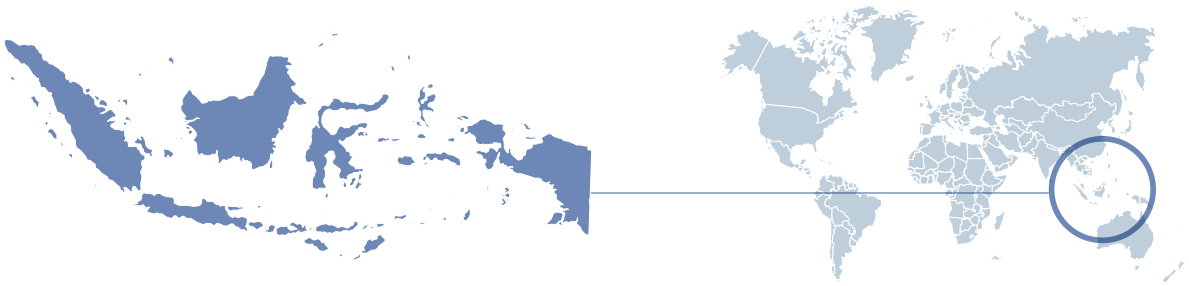
In summary, both Ombudsman's Offices in Peru and Colombia fulfil crucial functions in terms of conflict monitoring and resolution processes and provide at the same time high levels of legitimacy and trust among the populations, which suggests to further strengthening their roles in receiving and dealing with grievances in the mining sector.

66 Ibid.

5. NSBNJ GMs IN MINERAL SUPPLY CHAINS IN INDONESIA

5.1. COUNTRY CONTEXT

Indonesia is a resource-rich country with extensive reserves of minerals such as tin, nickel, cobalt, gold and copper, as well as coal for energy. The mining sector has played a crucial role in the country's economy for decades. The mineral and coal sector accounted for 6.2 % of the country's GDP in 2021.[67] With 36 % of global nickel production (Central Sulawesi) and 23 % of global tin production (Bangka Belitung), it is a leading producer of critical minerals for the energy transition.[68] Indonesia's role in the global energy transition is ambivalent. On the one hand, coal used locally and coal exports generates massive CO_2 emissions, while on the other hand, the nickel mined in Indonesia is of key strategic importance for the electrification of the global mobility sector. One of the strategic goals of the Indonesian government is to improve the value-added of nickel production by banning the export of unrefined nickel and developing nickel refining and value-added industries.[69] However, there are significant environmental and social costs associated with mining, which have not been adequately addressed in the context of the country's corruption problems. This has resulted in soil erosion, deforestation, pollution of water sources and a lack of social responsibility on the part of mining companies, as well as a lack of state control. Most of Indonesia's coal mines are open-pit and are associated with some of the highest observed rates of deforestation, both on and off site.[70]



67 EITI 10th Report, 2021 Fiscal Year, *https://eiti.org/countries/indonesia*

68 Ibid.

69 This has been challenged by the EU at World Trade Organisation dispute settlement: "On 22 November 2019, the European Union requested consultations with Indonesia regarding various measures concerning certain raw materials necessary for the production of stainless steel, as well as a cross-sectoral import duty exemption scheme conditional upon the use of domestic over imported goods. The request covers the following alleged measures: (a) restrictions on exports of nickel, including an actual prohibition to export; (b) domestic processing requirements for nickel, iron ore, chromium and coal; (c) domestic marketing obligations for nickel and coal products; (d) export licensing requirements for nickel; and (e) a prohibited subsidy scheme" *https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds592_e.htm#:~:text=This%20dispute%20concerns%20Indonesia's%20imposition,DPR)%20for%20all%20nickel%20ore*.

70 Sievernich et al. (2021)

5.2. CONFLICTS RELATED TO MINING

Reports issued by the Extractive Industries Transparency Initiative (EITI) highlight conflicts surrounding Indonesia's extractive sector. These include concerns such as the environmental ramifications of mining, the dynamics of cost recovery within oil and gas production sharing contracts, the intricacies of crude oil trading, and issues surrounding subnational financial transfers and social expenditure. Of particular significance are the intersecting interests of mining permits with the land rights of local and Indigenous communities, alongside the preservation of forested and protected areas, which are areas of major concern in Indonesia. For instance, Indigenous communities in Kalimantan face serious challenges stemming from the clearance of land for open-cast coal mining. Traditionally living in the lush forests of Kalimantan, these communities, e.g. including the Dayak, have long relied on agriculture as their primary livelihood. However, relentlessly expanding coal mining operations have encroached on their ancestral lands, forcing the Dayak to move elsewhere. As noted by the Indonesian NGO mining network, JATAM, this encroachment has led to tangible changes in agricultural landscapes, resulting in a marked decline in crop yields, particularly rice production.[71] Despite these pressing issues, there is a notable absence of regulatory frameworks governing the prudent limitation of coal mining activities in specific regions, except for prohibitions on mining within designated protected areas.[72]

The adverse repercussions for both the environment and local communities are starkly evident in the case of the Grasberg Mine in West Papua, one of the world's largest gold and copper mines. Operated by the US-based company Freeport-McMoRan, this mine has been a centre of controversy since its inception. In 1967, Freeport became the first foreign company to engage in a contract with the Indonesian Government for the exploration and exploitation of natural resources. Consequently, it has benefited from extensive fiscal incentives and enjoyed the backing of the Indonesian military. However, this partnership has resulted in the severe marginalisation and disenfranchisement of the local population, accompanied by flagrant human rights abuses and widespread environmental devastation. The ramifications of these activities have sparked vehement protests and violent confrontations between the Indonesian military and the Free Papua Movement (Organisasi Papua Merdeka – OPM).[73] This ongoing strife underscores the urgent need for comprehensive re-evaluation of the practices and policies governing extractive industries in such regions, with a paramount emphasis on equitable resource distribution, community empowerment, and environmental preservation.

Some grievances are rooted in historical injustices under the Suharto regime (1967 – 1998) and aggravated by a climate of fear. This has been underlined by a report of Climate Rights International on the situation in the vicinity of the nickel mine and the smelting operations at the Indonesia Weda Bay Industrial Park (IWIP). Affected people complained that the *"process of land acquisition has been marred by land grabbing, little or no compensation, and unfair land sales. People living near IWIP have had their land taken, deforested, or excavated by nickel companies and developers without their consent. Some community members who refused to sell their land or contested the set land price offered then experienced intimidation, received threats, and faced retaliation from company representatives, police officers, and members of the military."*[74]

Trade union voices often go unheard in mainstream media discussions. Workers in the coal industry continue to regard it as an economically attractive sector. Significantly, despite frequent mine accidents, there are considerably more protests from local communities than from coal mine workers. Moreover, there is a conspicuous absence of information regarding demands or protests from workers' unions advocating for a smooth transition towards renewable energy sources. This lack of visibility underscores significant shortcomings in representing the voices and concerns of workers in the discourse surrounding mining and energy transition policies.

71 https://www.jatam.org/en/extractive-oligarchy-and-the-declining-quality-of-peoples-life/
72 Großmann, et al. (2017).
73 Ibid.
74 Climate Rights International (2023) p.6

5.3. REGULATORY AND INSTITUTIONAL FRAMEWORK

The Indonesian nation is the owner of the country's natural resources, which are controlled by the state and should be used for the welfare of the people (Article 33 (3) of the 1945 Constitution). In exercising control rights over natural resources, the government has public duties and responsibilities. In order to fulfil them, it has adopted a number of measures to improve governance, including in the mining sector, for example the decentralisation of mining in 2001, which gave provincial and district governments the authority over mining licences.[75] The aim was to ensure that local communities benefit from mining resources, to bring the decision-making process closer to them, and to improve accountability mechanisms between local governments and communities. This important change was followed by the enactment of the Mineral and Coal Mining Act (Minerba) in 2009, which provided guidance on the granting of mining licences at the regional level, including the division of powers between government agencies in the various sectors and levels involved. Under the revised 2020 Mining Law, the Indonesian Government, through the Ministry of Energy and Mineral Resources (ESDM), now has again sole authority to issue licenses in the mining sector. The law aligns with the government's agenda of stimulating value adding downstream industrialisation.[76] It provides that all mining industries are required to follow a community development and empowerment programme.[77] The Corruption Eradication Commission (KPK) conducted a massive review of thousands of mining licenses and revealed that more than 90 % of mining companies did not deposit the obligatory environmental rehabilitation funds, 24 % did not have a taxpayer identification number and more than a thousand operated in forest areas without proper licenses, entailing potential government revenue losses of IDR 15.9 trillion (USD 1.1 billion) per year.[78]

75 Government Regulation (GR) Number 75/2001 on Delegation of Mining Concession to Local Government.
76 *https://www.iea.org/policies/16957-mining-law-no-32020*
77 Angel et al. (2023)
78 PWYP Indonesia (2017)

5.4. BUSINESS AND HUMAN RIGHTS

The implementation of the NAP in Indonesia has evolved through various stages. Initially, an unofficial plan was developed through a collaboration between the National Commission on Human Rights (Komnas HAM) and the Institute for Policy Research and Advocacy (ELSAM), which involved public consultations with various stakeholders. Despite its creation, this initial plan lacked formal recognition from most Indonesian government institutions.

In response to the need for a more official framework, the Indonesian Ministry of Law and Human Rights, supported by the European Union and the United Nations Development Programme, launched a draft National Strategy on Business and Human Rights in 2020. This strategy aimed to integrate human rights into business operations more effectively and included public consultations for feedback.

The culmination of these efforts was the Presidential Regulation Number 60 of 2023, which formally established the **National Strategy for Business and Human Rights** for 2023-2025.[79] This strategy is designed to support the implementation of human rights in business practices across Indonesia and involves both national and regional task forces to aid in its enforcement and awareness.[80]

The promotion of HRDD amongst business actors is a key aspect of the strategy. Regulation Nr. 60 establishes obligations of ministries, institutions and regional governments to protect human rights in business activities, the responsibility of businesses to respect human rights, access to redress for victims of alleged human rights violations arising from business activities and special funds for implementing the strategy.

The current strategy is centred on the following priorities:

- Increasing understanding, capacity building, and promotion in relation to business and human rights for all stakeholders
- Develop regulations, policies, and guidelines that support the protection of and respect for human rights

Strengthen effective redress mechanisms for alleged human rights violations associated with business operations.[81]

Although the strategy does not impose a mandatory requirement on businesses to conduct HRDD, it emphasises its grounding in the UNGP framework. The Regulation No. 60 and the strategy envisage the potential introduction of further implementing regulations. In order to coordinate the implementation of the strategy at the national level, the regulation established a National Task Force on Business and Human Rights, which is expected to provide the Indonesian government with annual progress reports.[82] The strategy has gained renewed significance in the light of Indonesia's recent steps towards OECD membership, which could result in its adherence to the OECD Declaration on International Investment and Multinational Enterprises.

79 *https://peraturan.go.id* (only in Bahasa Indonesia), *https://leap.unep.org/en/countries/id/national-legislation/presidential-regulation-no-60-2023-concerning-national-strategy*

80 *https://globalnaps.org/country/indonesia/*

81 *https://www.kompas.id/baca/english/2023/10/31/en-implikasi-perpres-stranas-bisnis-dan-ham-pada-pengelolaan-korporasi*

82 *https://www.herbertsmithfreehills.com/insights/2024-03/Indonesia-s-National-Strategy-on-Business-and-Human-Rights-and-expectations-in-relation-to-human-rights-due-diligence*

5.5. LANDSCAPE OF GMs

In Indonesia, parties are generally encouraged to attempt mediation or alternative dispute resolution (ADR) processes before resorting to litigation in court. While there may not be a strict legal requirement to undergo mediation before filing a grievance in court, parties are often encouraged to explore mediation as a means of resolving disputes more efficiently and cost-effectively. Indonesia has enacted laws and regulations that recognise and support the use of ADR mechanisms, including mediation, arbitration, and conciliation. For example, the Indonesian Supreme Court issued Supreme Court Regulation No. 1 of 2016 concerning procedures for the settlement of civil disputes through mediation.[83] It provides guidance on the procedures for conducting mediation and encourages parties to resolve their disputes amicably through mediation. It encourages courts to refer civil disputes to mediation, and judges may actively promote mediation as a means of resolving disputes efficiently.

As a public authority, the ESDM has a public information service channel to meet the information needs of the public with regard to the extractive sector.

NSBNJ GMs

Major mining companies have implemented GMs, albeit with variations in scope, transparency, and management. For instance, PT Timah, a state-owned Indonesian tin mining company, has established a mechanism focussing specifically on environmental issues. Complaints are addressed by the Safety, Occupational, Health, and Environment Division. Notably, in 2022, the company reported receiving no complaints regarding environmental impacts, while at the same time the company has been alleged with corruption which resulted in environmental damages which are calculated at US $ 17 billion summing ecological losses, economic losses and cost of environmental recovery from 2015 to 2022.[84] According to the Jakarta Post, PT Timah, "which controls more than 90 % of tin reserves in the country, mostly located in Bangka Belitung, allegedly facilitated illegal mining in its concession in the province from 2015 to 2022 and later conspired with third parties to channel profits to the company's senior officials."[85] Those third parties channelled the illegal tin production through fake transactions of smelting services and CSR funds. This example points to the fact that OLGMs of state-owned companies face specific issues due to the challenges presented by the governance structures of these companies. State-owned mining companies tend to be less transparent, although this relates mainly to financial aspects.[86] There is no information available if state-owned mining companies perform better or worse with regard to corruption, respect of human rights and effectiveness of the OLGM compared to privately owned mining companies.

Meanwhile, PT Vale Indonesia, a nickel mining company, provides a grievance channel which includes social and human rights issues. Complaints are handled by the External Relations Department.

83 SSEK Law firm Indonesian Legal Review: Arbitration and Mediation, *https://ssek.com/blog/indonesian-legal-review-arbitration-and-mediation/*

84 AGO uncovers massive corruption in Indonesia`s tin sector, The Jakarta Post, 30.4.2024 *https://www.thejakartapost.com/indonesia/2024/03/30/ago-uncovers-massive-corruption-in-indonesias-tin-sector.html* also: *https://www.kompas.id/baca/english/2024/03/31/en-korupsi-timah-sisakan-kerusakan-lingkungan-dan-anak-putus-sekolah* *https://indonesiabusinesspost.com/insider/ago-pt-timah-corruption-costs-state-us13-6-billion-in-losses/*

85 Ibid. The overall costs or financial damage is estimated to be more than US $ 17 Billion

86 See Natural Resource Governance Institut, *https://resourcegovernance.org/topics/state-owned-enterprises*

In 2022, 697 communications were filed at one mining site, with 120 categorised as complaints concerning various issues, and three complaints were filed at another site. Vale is the only company in Indonesia that publishes the type of grievances received and follow-up procedures.[87]

PT Freeport Indonesia, which operates the world's largest open-pit gold and copper mine, receives grievances through its Community Grievance Management System. In 2019, it received 60 complaints, of which 59 were resolved according to established procedures.[88] The grievances received were related to claims for compensation of the violation of customary rights, environmental damages and service compensations. 15 of the grievances were related to customary land rights.

The CSO Publish What You Pay (PWYP) Indonesia views complaints mechanisms as a vital avenue for citizen participation. However, a scoping of available GMs revealed that citizens were not utilising these mechanisms, largely due to their preference for personal contacts and dissatisfaction with the response. Furthermore, communities were often unaware of these mechanisms, and many people who did file complaints cited a lack of attention as a source of dissatisfaction.

STATE-BASED NON-JUDICIAL GM

The government runs a central GM called SP4N-LAPOR! (Sistem Pengelolaan Pengaduan Pelayanan Publik Nasional). The ESDM, as a government institution, is connected to SP4N – LAPOR! In the period from January to December 2021, SP4N LAPOR! received 140 complaints or requests for information; 126 complaints were resolved, 11 requests were archived, and 3 requests were processed. The most frequent complaints related to the mining sector, specifically to permits for mineral and coal mining and illegal mining. However, local communities in a workshop held by PWYP Indonesia and other CSOs expressed that they had no knowledge of the mechanism and those who had experience considered it slow and ineffective.[89] One interviewee reported that communities in remote areas have difficulties filing a complaint online and many still fear the consequences of making a complaint.[90]

National Human Rights Institute

The Ombudsman of the Republic of Indonesia is responsible for addressing citizens' grievances regarding public service delivery and administrative issues. A significant restriction on his powers is that the Ombudsman cannot take any action until the relevant government bodies have failed to respond to these complaints. Although provincial Ombudsman`s offices have shown interest in collaborating with PWYP to assist communities with their grievances, their hands are tied until there is a failure to elicit a response from the government.[91] Additionally, the institution faces challenges in fulfilling its mandate due to inadequate funding and lack of financial independence, as highlighted in the 2022 Universal Periodic Review (UPR) by the Office of the United Nations High Commissioner for Human Rights (OHCHR). [92]

87 PT Vale (2023) Transforming our values, shaping our future 2022 sustainability report, *https://vale.com/documents/d/guest/vale_e-sr-2022-layout-design-eng-fulldraft2607*

88 PT Freeport, Indonesia Social Investment Report 2019, p. 20 (the 2019 report is the latest published on its website)

89 Interview GM_15

90 Ibid.

91 The Tap Room (2022)

92 Interview GM_15, and The Tap Room (2022)

NGO-LED INITIATIVES

In Indonesia, NGOs have assumed the role of receiving grievances without necessarily possessing the means to address them effectively. Their primary objective is to serve as conduits for grievances, whether directed towards national state or non-state entities or using international platforms such as the OECD NCP in the home countries of multinational companies. Additionally, they offer training sessions on how to file a grievance and provide advice to communities navigating such processes.

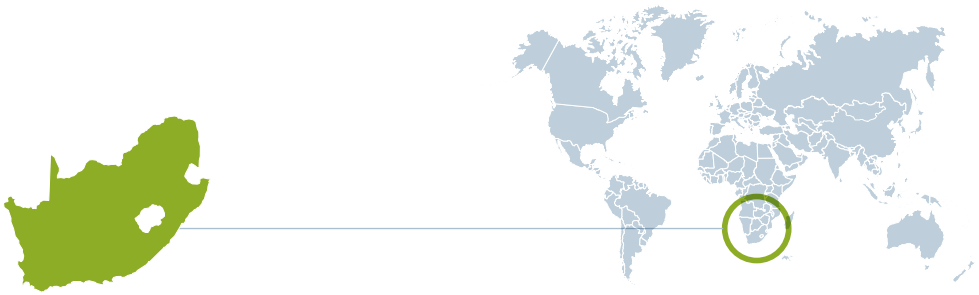
One example is the transparency and social accountability initiative (2020 – 2022) led by PWYP Indonesia and financially supported by the Global Partnership for Social Accountability (GPSA) established by the World Bank. This initiative aimed to bolster collaborative mechanisms and accountability in licensing and revenue management processes in Indonesia's mineral and coal extractive sector. Focused primarily on Aceh, East Kalimantan, and Southeast Sulawesi provinces, the programme engaged multiple CSO at both the local and national levels. It featured a robust grievance and feedback system designed to handle issues stemming from policies, programmes and actions by external stakeholders. PWYP, in collaboration with its CSO partners, not only received complaints but also provided extensive training to empower communities in addressing grievances with both state and private sector entities. One drawback was the short duration of the project, which prevented the approach from developing into a sustainable GM.

Electronics Watch, an international NGO, focuses its efforts on addressing mining issues in both ASM and LSM. When complaints are brought to its attention, it takes proactive steps to direct them to the relevant companies using their OLGM or addressing the CEOs, aiming to influence the entire value chain. Rather than solely advocating through campaigns, Electronics Watch engages directly with original equipment manufacturers (OEMs), exerting pressure on production sites, including those backed by Chinese investors. Its work in Indonesia is particularly extensive, with a focus on the nickel industry, which supplies materials exported to Japanese OEMs.

6. NSBNJ GMs IN MINERAL SUPPLY CHAINS IN SOUTH AFRICA

6.1. COUNTRY CONTEXT

South Africa boasts some of the world's most valuable mineral reserves. The nation ranks fifth globally in terms of the mining sector's contribution to GDP. The sector is therefore a crucial contributor to foreign exchange earnings, with gold alone accounting for over a third of exports. South Africa has significant outputs of coal, manganese, platinum, and chrome. However, the environmental toll of mining activities is stark. The mining industry's assault on South Africa's limited arable land has resulted in devastating consequences. Leaks of acids, heavy salts, and metals into the water system have transformed once-fertile agricultural land into barren wastelands. Acidification of soil, as well as air, and land contamination have led to extensive deforestation, with far-reaching implications for human health and livelihoods, particularly for communities in the vicinity of mining regions.



6.2. CONFLICTS RELATED TO MINING

Mining-affected communities typically are located on the outskirts of urban areas. Over the past two decades, such areas have witnessed significant shifts in spatial, social, economic and political dynamics. Evictions of workers and tenants from farms owned by white landowners, coupled with an influx of Zimbabwean citizens fleeing political unrest, have led to mass displacement towards mining towns. Consequently, these areas have grappled with severe social, economic, cultural, environmental, and political upheavals. Overcrowded housing, high-density living, increased gender-based violence, competition for services, rising crime rates, xenophobia, and community conflicts have become prevalent.

Today, post-apartheid development and transformation pose intricate challenges beyond rectifying historical injustices. While striving to address apartheid's legacy through democratic means, the state contends with the ongoing struggle of addressing the daily hardships faced by marginalised communities. Poverty and inequality in South Africa are deeply rooted in race, class, and gender disparities. Despite the political transition, significant strides towards inclusivity and equity remain elusive for those on the fringes of society, exacerbating intergenerational poverty and exclusion amid current political and economic trends.

The Marikana massacre stands as a stark reminder of the harsh realities facing mining communities in post-apartheid South Africa. The events of 16 August 2012, when the South African Police Service opened fire on striking mineworkers, claiming 34 lives and injuring 78, prompted a seismic shift in the discourse surrounding the government's role in supporting the mining sector.[93] For communities affected by mining, it was the starting signal to organise themselves in associations like Mining Affected Communities United in Action (MACUA), founded in 2012 and Women Affected by Mining United in Action (WAMUA).

Under the slogan 'Nothing about us, without us', they raise the voices of communities at the national, regional and local level.

According to a Chatham House expert comment, it is hard to gauge community support, particularly in areas where large mining operations lie near multiple communities. Engaging stakeholders amid evolving national and local power structures requires relationships to be maintained across various sectors, including government ministries, civil society, unions, and traditional authorities.[94]

6.3. REGULATORY AND INSTITUTIONAL FRAMEWORK

In South Africa, the mining industry is governed by various laws and regulations aimed at ensuring sustainable development, protecting the environment and safeguarding the rights of affected communities, also by ensuring GMs. The primary legislation governing mining in South Africa is the Mineral and Petroleum Resources Development Act (MPRDA) of 2002, which has undergone several amendments since its enactment. The MPRDA is considered a crucial piece of legislation for its contribution to redressing the inequalities and injustices of the past. The 2018 Mining Charter drives transformation in the mining sector, emphasising the participation of historically disadvantaged people, including rural communities, in the industry.

However, the regulation of the mining industry in South Africa has historically, and is currently, fraught with contestation, conflict and controversy. Since 1995, a series of processes, policies, regulations and charters governing the mining industry have been implemented. Unions, communities and state institutions as well as the congress were the main drivers in attempts to transform the industry. Despite commitments by both government and industry to fast-track empowerment of historically disadvantaged South Africans, the decisions often were in favour of mining companies' interests.

To address historical injustices related to forced land dispossession as a result of colonialism and apartheid, the Land Rights Act 22 (1994) allows individuals and communities to claim restitution or compensation. The Communal Land Rights Act 11 (2004) recognises the land rights of Indigenous and rural communities living on communal land and aims to provide secure land tenure.

With regard to GMs, the MPRDA and its associated regulations outline provisions for community engagement, consultation and dispute resolution processes in the context of mining activities. The Department of Mineral Resources and Energy (DMRE) has to oversee compliance with mining laws and regulations, including the implementation of GMs. The mechanisms established aim to address grievances and concerns raised by communities affected by mining operations.

93 'Marikana Massacre 16 August, 2012. South Africa History Online (SAHO)

94 C. Vandome and S. Khama, 'Violence adds to uncertainty for South African mining', Chatham House, 12 August 2021, *https://www.chathamhouse.org/2021/08/violence-adds-uncertainty-south-africas-mining*

Key aspects are:

- **Community consultation and participation:** The MPRDA mandates mining companies to engage with affected communities through consultation processes. This includes providing information about proposed mining activities, potential impacts, and opportunities for community input into decision-making processes.
- **Social and labour plans (SLPs):** Mining companies are required to develop SLPs as part of their mining rights applications.[95]
- **EIAs:** Mining projects need to assess environmental and social impacts in EIAs.
- **Dispute resolution mechanisms:** The MPRDA provides various mechanisms for resolving disputes related to mining activities. They include mediation, arbitration and adjudication through relevant government bodies or the courts.

Moreover, Article 8(2) of the Constitution (1996) imposes human rights obligations on businesses. Likewise, the 2008 Companies Act enjoins compliance with the Bill of Rights, as guaranteed under the Constitution. This creates a fundamental pathway for victims of human rights violations to seek justice against corporate actors.

In an effort to overcome the legacy of apartheid in the mining sector, South Africa's legal and institutional framework is strengthening community participation. Court rulings have underlined these rights of communities, but monitoring and enforcement is lacking. South Africa has been in the process of developing a NAP since 2015. However, it has not yet been finalised and officially adopted.[96]

6.4. LANDSCAPE OF GMs

NSBNJ GMs

As in the other country cases, many of the LSM companies operating in South Africa have a GM at the operational level. In its Human Rights Framework, which is still under discussion, the Minerals Council South Africa requires mining companies to establish a GM but does not pro-actively promote them.[97] According to a mediator for grievance processes, most of the complaints filed at OLGMs relate to procurement, employment, water security and environmental issues such as air pollution and blasting in open-pit mining.[98]

Gold Fields South Deep Gold Mine for instance, has its community relations and OLGM regularly assessed and improved its performance, including the translation of grievance procedures into four local languages.[99] According to its latest published annual report, in 2023 Gold Fields operations dealt with 71 grievances (92 in 2022) lodged by surrounding communities, including 34 related to jobs and procurement, 19 to environmental issues and 12 to social issues, and 92 % of them were resolved within the agreed timeframe.[100]

95 The Minerals Council South Africa provides a data base on SLPs *https://www.mineralscouncil.org.za/sa-mining/slps*
96 *https://globalnaps.org/country/*
97 *https://www.mineralscouncil.org.za/special-features/858-human-rights-framework*
98 Interview GM_20
99 *https://www.goldfields-southdeep.co.za/downloads/send/46-downloads/284-case-study-quality-of-relationships*
100 *https://www.goldfields.com/pdf/investors/integrated-annual-reports/2023/gold-fields-report-to-stakeholders-2023.pdf*

Its internal GMs for employees and contractors are operated by the Gold Fields human resources department in consultation with their legal teams and provide a framework through which workers can voice human rights concerns. The Respectful Workplace review, however, highlighted that these mechanisms are deficient and that employee trust in them is low. The company has said that it will implement recommendations on disclosing and reporting incidents of harmful behaviour in 2024.[101]

Social and Labour Plans are at the centre of complaints by South African communities affected by mining:

In South Africa, SLPs are a crucial component of the MPRDA of 2002. These plans are obligatory commitments made by mining companies in order to get the licence to operate. In essence, an SLP is an instrument that is intended to offset the negative impact of mining. SLPs should set out how the company intends to share some of the benefits that flow from mining. These might include initiatives for developing the skills of people in the community, upgrading local infrastructure or providing housing, water and sanitation in the area. Once a company is awarded a mining right, the SLP they submit becomes a binding legal document.[102]

There are various channels for communities to present their grievances:

- To the DMRE as the entity responsible to oversight mining activities. The DMRE can suspend or even cancel the mining right if the company does not comply with the SLP. Part of the problem is that the DMRE has not enough inspectors to monitor mining activities.
- Litigation, however, this is financially burdensome, especially given the communities' reliance on under-resourced public law firms. Consequently, this avenue is seldom pursued.
- Direct engagement with the company, particularly with high-level executives, is sought as an alternative. Despite efforts, this approach has yielded minimal tangible outcomes, as reported by MACUA.
- As frustration mounts, communities' resort to a combination of protests and continued engagement.[103]

To improve communities' rights to the implementation of the SLPs, MACUA and WAMUA are campaigning for more support at the political level (parliament) and an improved legal basis.

101 Ibid.
102 Watt, P., Marais, L. (2021)
103 Interview_GM_26

State-Based Non-Judicial GMs

South African Human Rights Commission (SAHRC)

The SAHRC plays an important role in advocating for human rights by monitoring and evaluating compliance, providing human rights training and addressing any violations while seeking meaningful resolutions. Individuals impacted by human rights violations are able to file complaints with the SAHRC, which initiates an investigation process that does not put a burden on the victims. Notably, the SAHRC's jurisdiction extends to a wide array of categories, including individuals, groups, organisations, and even corporations. Each complaint is assessed to ensure a fair and impartial decision. Given its quasi-judicial authority, the SAHRC has the power to issue binding remedial decisions, thereby ensuring compliance. This authority enables the SAHRC to enforce its recommendations effectively, fostering accountability and upholding human rights standards.[104] While the SAHRC is a strong, trusted institution that could play an even more important role in hearing grievances and providing access to remedy. However, SAHRC it is currently understaffed and lacks financial support.

Commission for Conciliation, Mediation and Arbitration (CCMA)

Complaints regarding violations of labour rights can be lodged with the CCMA, in accordance with established procedures. Upon receipt of a complaint, the CCMA appoints a commissioner to facilitate mediation between the parties involved, with the objective of achieving a mutually agreed resolution. If mediation proves unsuccessful, the commissioner proceeds to conduct arbitration to resolve the dispute effectively. During the mediation process, the worker presents evidence to substantiate claims of unfair treatment, and the employer has the opportunity to offer a defence. Beyond individual disputes, the CCMA also has the authority to mediate broader conflicts, including those between trade unions and employers, thereby serving as a platform for collective bargaining.

Strategic Litigation against Public Participation

While the UNGP expect mining companies to implement GMs and to engage with affected communities, some companies resort to obstructive tactics when faced with opposition to their operations. This tactic, known as Strategic Lawsuits Against Public Participation (SLAPP), has become alarmingly prevalent in response to human rights advocacy efforts. In 2021, a South African court dismissed a lawsuit filed by the mining company Mineral Commodities Limited, an Australian mining firm, and its South African subsidiary. The lawsuit targeted six environmental activists, including two attorneys affiliated with the Centre for Environmental Rights, who were supporting community advocacy against the operations of Mineral Commodities Limited. The High Court of South Africa sided with the human rights defenders, recognising the lawsuit as a SLAPP action, and deeming it an abuse of the court's process. This ruling underscored the importance of safeguarding freedom of expression and activism. Despite the court's decision, the South African firm intends to appeal the judgment, highlighting the ongoing challenges faced by human rights defenders in the pursuit of justice.[105]

104 A/HRC/47/39/Add.3, *https://documents.un.org/doc/undoc/gen/g21/161/50/pdf/g2116150.pdf?token=ysiyA78L3ooKgbao8n&fe=true*

105 UNDP (2022); Sheree Bega, 'High court gives Australian mining company a big SLAP(P)', Mail & Guardian, 10 February 2021

7. NSBNJ GMs AT THE INTERNATIONAL LEVEL

There are a series of NSBNJ GMs at the international level which are described briefly in this chapter as they are complementary to the NSBNJ GMs on the national levels.

The **World Bank Inspection Panel** is an independent complaints mechanism for people and communities affected by a World Bank-funded project. The World Bank Inspection Panel has not yet received any complaints from the Peruvian, Colombian, Indonesian and South African mining sector, so no conclusions can be drawn for this report.[106]

CAO is the independent complaints and accountability mechanism for people affected by IFC and MIGA projects. CAO received 15 complaints referring to the Peruvian mining sector relating to issues like quality of life, access to and quality of water, land acquisition and compensation, labour concerns, occupational health and safety, environmental impacts and others.[107] There is no information available as to whether complainants from Peru were satisfied with the grievance processes and the remedies granted to them through the GM.

CAO received one complaint from Colombia regarding IFC's investments in the Angostura gold mine project.[108] The complainants alleging that the project was in violation of IFC's social and environmental policies. CAO investigated the case and found that IFC performance standards had not been met and that IFC had failed to assess the impacts of the entire mining project. In December 2016, IFC announced that it had divested from the project.[109]

CAO received one complaint from Indonesia dated 2010. The complainants represented a coalition of NGOs and individuals affected by a nickel and cobalt mining project proposed by PT Weda Bay Nickel (WBN)[110]. Complainants raised concerns regarding the environmental ramifications of the project for forests, agricultural land and water bodies which were crucial for the livelihoods of local communities. Notably, the complainants requested confidentiality.[111] The complaint yielded no discernible improvements in human rights conditions for the affected communities. In this case, CAO's role in facilitating conflict resolution was hampered by the fact that community members feared for their safety. [112]

106 *https://www.inspectionpanel.org/panel-cases?search=colombia* and *https://www.inspectionpanel.org/panel-cases?search=peru*
https://www.inspectionpanel.org/panel-cases/eskom-investment-support-project
107 *https://www.cao-ombudsman.org/cases*
108 *https://www.cao-ombudsman.org/cases/colombia-eco-oro-01bucaramanga*
109 *https://www.ciel.org/project-update/eco-oro/*
110 The nickel project is an open-pit mining operation which started in October 2019, and the Weda Bay industrial park is an integrated complex for mineral processing, smelting and the production of batteries, *https://www.nsenergybusiness.com/projects/weda-bay-nickel-project/#*
111 *https://www.cao-ombudsman.org/cases/indonesia-pt-weda-bay-nickel-01weda-bay*
112 Balaton-Chrimes, et al. (2016)

OECD Complaint Mechanism

Although the NCPs are set up by governments, the OECD complaints mechanism is considered a NSBNJ GM because – according to the OECD Guidelines for Multinational Enterprises – the NCP has to operate independently to promote responsible business conduct. Rights holders can present grievances either to NCPs in their own country or to the NCP in the home country of the company that has caused the harm. The complaint mechanism allows individuals, communities or organizations to raise complaints against multinational companies regarding their adherence to the OECD Guidelines. With regard to the mining sector in the countries assessed in this report, the OECD complaint mechanism has not been used extensively: Only two OECD complaints have been filed against mining companies operating in Peru, three in Colombia and one each in Indonesia and South Africa. The complaints refer to issues such as failure to meet environmental and health standards, non-recognition of unions, displacement of communities without proper consent, and environmental pollution. In all cases, complainants used the OECD complaint as one element within a broader campaign to amplify international pressure. As for the result of the grievance processes, several cases have been concluded without resolution, while others are still ongoing. OECD Watch has assessed 51 NCPs on 40 performance indicators which represent civil society's priorities for well-functioning NCPs and are all based in the OECD Guidelines' Procedural Guidance for NCPs. The NCP evaluations project[113] shows that many governments are not meeting the requirements which demand to establish NCPs that are visible, accessible, transparent, accountable and equipped to handle complaints in a manner that is impartial, predictable, equitable, and compatible with the OECD Guidelines. Similar to the difficulties that OLGMs present, the legitimacy and neutrality of the NCPs is often questioned. The fact that one quarter of them are located in an economics or trade ministry underpins the perceived lack of independence. Most of the NCPs fail to involve other stakeholders like civil society or expert organizations. There is also a lack of transparency, e.g. with regard to how complaints are handled or the failure to publish the final assessments. In addition, just one third of NCPs consistently follows up on concluded complaints to verify if companies actually implement agreements and recommendations.[114]

A limitation that is common to all international NSBNJ GMs is that it is usually rather difficult for rights holders to access these mechanisms without expert advice.[115] As a member of the Business and Human Rights Resource Centre (BHRRC) stated in an interview, rights holders often do not know these mechanisms, and it may be difficult for them to understand how these mechanism work and how they could benefit from them. For instance, analysing which financial actors have been involved in the financing of a mining project is a highly complex task that many rights holders are unable to fulfil. In addition, rights holders often perceive banks' GMs or the OECD NCPs to be mechanisms "of the companies" which limits their trust towards the legitimacy of these GMs. However, NGO members indicate that the use of these instruments can help to create international pressure and to amplify rights holders demands.[116]

113 *https://www.oecdwatch.org/oecd-ncps/national-contact-points-ncps/ncp-evaluations-analysis/*
114 *https://www.oecdwatch.org/oecd-ncps/national-contact-points-ncps/ncp-evaluations-analysis/*
115 Interview GM_8
116 Interviews GM_3 and GM_8

8. GMS ALONG THE VALUE CHAIN

The UNGP require due diligence throughout the whole value chain, yet its implementation is challenging because mineral supply chains are complex, involving multiple stakeholders, intermediaries, and international borders. This makes it difficult – but not impossible – to trace the origin of minerals and verify their responsible sourcing. For example, copper is mined in various locations worldwide, often in remote or politically unstable regions. The extraction and processing of minerals involves multiple stages, including exploration, mining, crushing, milling, smelting, refining, and transportation. Each of these stages may involve different companies, subcontractors, and intermediaries, making it difficult to track the metals journey from mine to market, especially when it is mixed with metals from other sources during processing and manufacturing. In many cases, copper from multiple sources is blended together during processing and refining, making it nearly impossible to differentiate between metal from different mines or regions. This blending occurs to meet specific quality standards and customer specifications, further complicating traceability efforts. The dearth of transparency throughout the mineral supply chain restricts insights into the practices of upstream suppliers and intermediaries.

While identifying GMs across the entirety of the chain proves challenging, the country-specific cases predominantly reveal production-related mechanisms. To address this gap, MSIs which certify mining companies such as IRMA or ASI are promoting approaches to comprehensive complaints-mechanisms.[117] In the Netherlands, the government convened stakeholders to develop the International Responsible Business Conduct Agreement for the Metals Sector.[118] The signatory organisations include companies in the metals sector, industry associations, trade unions, NGOs and the Government of the Netherlands. These initiatives are calling on their member companies to integrate GMs as prerequisites for certification. At the same time, they maintain their own mechanisms to address complaints concerning the conduct of member companies' that contradicts their principles or disrupts the initiatives' operations. Our analysis of voluntary standard organisations MSIs centred on two key questions: (a) their capacity to span the entire supply chain and (b) their ability to grant rights holders access to remedy. Rather than scrutinising their expectations of certified member companies, we focused on assessing their own operational GMs.

Grievance Mechanisms of Certification Organisations

IRMA has established a comprehensive standard for responsible mining, requiring the implementation of an OLGM at all IRMA certified mine sites. This ensures that grievances are addressed effectively within the auditing process, underscoring IRMA's commitment to accountability. IRMA, has a dedicated GM in place to address three distinct types of complaints:

- Allegations of misconduct by companies breaching IRMA's standards.
- Instances where IRMA's standards have been compromised, such as when a company that has committed misconduct is allowed to retain certification.
- Complaints against audit firms, particularly in cases involving corruption or malpractice.

117 In the automotive industry, attempts are being made to establish a cross-company complaints mechanism between Germany and Mexico. The initiative is in a very early stage and it will be launched in May 2024.

118 *https://www.imvoconvenanten.nl/en/metals-sector/convenant/-/media/7E893A7138434A1DBF22466E53B1CCEF.ashx*

Similarly, ASI employs a comparable complaints mechanism. Trying to encompass the whole aluminium value chain from bauxite mining to original equipment manufacturers (OEMs), it has received three complaints to date, illustrating the mechanism's efficacy in addressing diverse concerns:

- A complaint from local people living in the vicinity of a smelter in Belgium, which is concurrently undergoing legal proceedings
- Concerns regarding working conditions in a company in the United Kingdom, resolved through constructive mediation, notably by improving working hours
- The Indigenous Saami people in Norway raised objections to a proposed energy park, highlighting potential hazards to their cultural heritage, now subject to legal scrutiny in Norway

Despite the transparency of both IRMA and ASI in their operations, the volume of complaints remains relatively low. One notable constraint of MSI GMs is their limited capacity to deliver remedies independently. Their effectiveness largely hinges on the willingness of the companies involved to address grievances. The principal remedy available in these scenarios is the withdrawal of certification, which can serve as a significant deterrent, but only if the threat of losing this validation compels the company to amend its practices. However, the effectiveness of this measure can vary, depending on how much value the company places on maintaining its certified status.

Recognising this gap in remedial action, IRMA is initiating a project aimed at enhancing avenues for redress. By exploring innovative strategies, IRMA seeks to bridge the remedy gap and fortify the integrity of responsible mining practices worldwide – inspired by the Remedy Framework of the Forest Stewardship Council[119] which defines permanent and effective measures required for remedy of social and environmental harm caused in the process of conversion forests.

A pilot experience on a cross-company GM of the German automotive industry MSI is currently under development implemented together with stakeholders in Mexico. The GM is unique in its scope, as it covers the entire supply chain of German automotive companies and is aimed at all those potentially affected by human rights violations. It is particularly important that Mexican civil society has been involved in the development of the mechanism, that rights holders will play a key role in its implementation and that the experience is accompanied by a scientific monitoring. The pilot project was launched in May 2024. However, it is too early to draw conclusions from the experience at this stage.

In summary, only few standards organizations manage to cover the entire value chain. Yet, the low number of grievances reported suggests that their GMs are difficult to access for rights holders and lack effective, remedial measures. Typically, sanctions are limited to certificate withdrawal or membership suspension, which rarely translates to actual redress for affected individuals and communities.

The efforts undertaken by IRMA, ASI, and the German automotive industry serve as prime examples of initiatives dedicated to enhancing their complaints mechanisms and establishing more comprehensive records of complaints throughout the value chain. Their objective is to enhance accessibility to remedies for affected individuals. Notably, the German DC already supports the GM of the MSI of the automotive industry. However, there exists further potential for the German DC to promote a platform for learning to amplify its impact.

119 *https://fsc.org/en/newscentre/general-news/fsc-remedy-framework-receives-board-approval*

9. OLGMs

As seen above, OLGMs are the most important NSBNJ GMs on the national level in the countries assessed. Therefore, this chapter focuses on OLGMs of companies in the mining sector and analyses how far they comply with the effectiveness criteria established in the UNGP and what type of grievances they cover. A difficulty in this endeavour is that it is hard to access information on the design and functioning of OLGMs and on the remedies provided to rights holders. Third-party evaluations are scarce and it is difficult to obtain relevant data. This chapter therefore considers the study "Analysis and comparison of access to operational-level GMs in the Andean Region" which analyses the compliance of mining companies' OLGMs with the UNGP.[120] There are no similar studies available for Indonesia and South Africa. However, the data is complemented with information from other sources, especially the interviews carried out in the framework of this report.

In Peru, experts analysed 81 companies in the mining sector and found that approximately half of them (48 %) have a formalised GM, 16 % have established channels to receive complaints, 36 % do not have a GM or do not publish information on it.[121] 84 % of the companies that have a complaints mechanism are members of the SNMPE.[122]

In Colombia, the team analysed 24 companies and found that 14 of them (58 %) have a formalised GM, while 10 (42 %) do not have a GM or do not publish information on it.[123]

Similar data is not available for South Africa and Indonesia. However, a non-representative review of mining companies' sustainability reporting revealed that most of them report having a GM, but do not publish details about the nature of complaints, improvement measures and access to remedy.

Several factors are mentioned as having contributed to the establishment of OLGMs, including the fact that companies see them as a means to generate trust among the local populations and to prevent risks, such as conflicts, road blocks or damage to the company's image. In Peru, the guidelines of the national mining association and the debates in the framework of the NAP seem to have motivated companies to establish an OLGM.[124] In addition, the growing number of binding regulations abroad obliges transnational companies to establish OLGMs.

9.1. THE SCOPE OF OLGMs

OLGMs seem to work well for certain types of grievances and are easier to use when the issue of concern can be solved bilaterally.[125] The interviews conducted and the documents analysed in this report indicate that OLGMs are mostly used for the following types of grievances: the majority of complaints are filed by workers, suppliers and sub-contractors. In addition, mining companies indicate to receive different kinds of requests through their OLGMs, e.g. requests for work and community issues. The OLGMs are not exclusively used for complaints but also as a communication channel with the companies. Affected individuals or communities use the OLGMs above all to claim compensations for tangible damages to their property,

120 GIZ (2022)
121 GIZ (2022)
122 Ibid.
123 Ibid.
124 Ibid.
125 Tole Consultores (2024)

animals etc. OLGMs are only used to a small extent for grievances with regard to human rights issues, land conflicts, security, health and environmental issues and the lack of transparency makes it difficult to gain deeper insights into these processes and their results.

A review of the sustainability reports of various important mining companies such as Yanacocha[126], Antamina[127], Las Bambas[128], Southern Copper Corporation[129] and Antapaccay[130] operating in Peru Green Fields and Glencore operating in South Africa, and PT Vale, PT Freeport and PT Timah operating in Indonesia, confirms the limited scope of issues that the OLGMs attend to. Several interviewees considered that communities and individual community members mostly use OLGMs when mining companies have caused physical damage and when they are seeking compensation.[131] In these situations, OLGMs can provide a quick, unbureaucratic solution. However, it is remarkable that mining companies that apparently have set up a functioning system to deal with grievances are facing serious human rights allegations in other grievance systems. Interview partners concluded that OLGMs can work well within a limited scope but are not appropriate to address human rights violations.[132] These need to be investigated in independent fora with more sophisticated rules for the grievance process. The following case studies shall serve to illustrate the complexity of situations in mining regions and the difficulty of rights holders to access complaint mechanisms.

126 Minera Yanacocha SRL: Informe de Sostenibilidad 2021
127 Antamina: Reporte de Sostenibilidad 2022
128 MMG Ltd: Sustainability Report 2022
129 Grupo México: Informe de Desarrollo Sustentable 2022
130 Glencore / Antapaccay: Reporte de Sostenibilidad 2021
131 Interviews GM_3, GM_8, GM_12
132 Interviews GM_3; GM_8; GM_12

CASE STUDY 1:
Las Bambas Mine in Peru

Las Bambas is a copper and molybdenum mine located in South Peru which was acquired in April 2014, by the Chinese Minerals and Metals Group. According to the GIZ study, the OLGM of Las Bambas stands out for its accessibility, thanks to a series of interesting measures introduced by the company to this end.[133] The OLGM was established in 2015 and has since handled more than 1,600 cases.[134] In 2022, the Las Bambas mine reported that it had received 172 complaints. Most concern local suppliers (129 cases), while 34 complaints refer to damage of private property, five to local employment, three to environmental issues and one to community health and safety. The company's Sustainability report does not mention any grievances related to human rights issues.[135] There are no further details available on the grievances or the outcomes of the grievance processes.

At the same time, the Peruvian Ombudsman's Office, in its report published in December 2023, listed nine active conflicts between different rural communities and the mining company. Most of the conflicts began in 2021 or 2022. In fact, the area where the Las Bambas mine operates is one of the most conflictive areas in Peru. Protests and roadblocks halted Las Bambas mining activities between 20 April and 10 June 2022.[136] This led to considerable economic losses both for the company and the Peruvian State.[137] The MMG Sustainability Report and information on the company's GM does not reflect this critical situation.[138]

The reports of the Ombudsman's Office show that the Las Bambas mine has conflicts with several communities in the surroundings of the mine. Multiple communities indicate that the mining company is not fulfilling its social commitments and its environmental obligations.[139] Some communities ask for roundtable dialogues[140] others request to be included in the area of influence of the mine in order to benefit from special conditions that are only available for communities in the area of influence.[141] Some conflicts turn around land acquisition, others around a lack of consultation and participation.[142] Not all the demands formulated above are solely the responsibility of the mining company. Very often, the complaints also refer to omissions of the Government. However, the big number and the severity of the allegations raise questions regarding the due diligence practices of the company and the GMs' ability to act as early warning systems to prevent conflicts from escalating.

133 GIZ – Executive Summary (2022)
134 Ibid.
135 Las Bambas: Reporte de Sostenibilidad 2022
136 IPE (2023)
137 Ibid.
138 Las Bambas: Reporte de Sostenibilidad 2022
139 Ombudsman's Office, Peru (2023)
140 Ombudsman's Office, Peru (2023)
141 Ombudsman's Office, Peru (2023)
142 Ombudsman's Office, Peru (2023)

CASE STUDY 2:
El Cerrejón Mine in Colombia

El Cerrejón, one of the largest open-pit coal mines in the world, is located in the Colombian department of La Guajira which is home to approximately 325 Indigenous Wayúu, Afro-descendant or peasant communities living in the companies' area of influence.[143] The region is characterised by high levels of poverty and a historic absence of essential government services such as health and education. The company started operations in 1976 and since 2022 it has been fully owned by Swiss transnational mining company Glencore. According to the GIZ study, the OLGM of El Cerrejón is noteworthy for the implementation of several criteria established in the UNGPs, such as rights compatibility,[144] the governance of its grievance system[145], and the fact that the OLGMs investigation process is based on an ongoing dialogue with complainants.[146] The OLGMs focus on dialogue was also underlined in an interview with the company. An independent assessment conducted by the International Commission of Jurists (ICJ) in 2017 highlights the strengths of the OLGM, including good accessibility of the OLGM, the incorporation of elements of the Indigenous Wayúu culture in the grievance process and proactive strategy for identifying negative impacts.[147] The OLGM has developed significantly over time and has gained more and more importance within the company. Today, the chief executive officer of the company heads the Corporate Committee on Human Rights which also involves high-ranking staff from different corporate areas.[148]

The company launched its GM already in 2010 and therefore has many years of experience in dealing with grievances. In 2022, Cerrejón won several awards, including for its social and environmental performance.[149] The company reports that "of the total complaints received since 2009, 82 % of the requests submitted have been satisfactorily resolved".[150] In 2023, the company has received 369 complaints, 338 out of these could be solved in the same year.[151] The biggest number of complaints referred to community issues (90 %) and here, the majority (88 %) to situations that affect the economic activities of the communities in the vicinity of the mining operations, e.g. animals being run over by the company's train or damage to fishing nets by vessels in the port. 8.4 % of the complaints referred to labour issues, 1 % to damage of property and 0.3 % to security issues.

Of the 369 complaints received in 2023, 2 % (7 complaints) were of high complexity, i.e. accidents or fatalities of third parties occurring on the railway line, national road and/or water reservoirs located near the communities and used by them to store water. 88 % (323 complaints) were medium-high complexity: most of them associated with running over animals. The complaints are classified in this category due to their recurrence and the affectation that this generates to livelihoods. Similarly, but to a lesser extent, there are cases involving environmental issues, land issues and labour rights. And 11 % (39 complaints) were of medium-low complexity.[152] Throughout 2023, satisfaction surveys

143 ICJ (2017)
144 GIZ (2022)
145 GIZ (2022)
146 GIZ (2022)
147 ICJ (2018)
148 Interview GM_13
149 *https://www.cerrejon.com/en/media/news/e-newsletter-june-2022*
150 *https://www.cerrejon.com/en/sustainability/standards-and-human-rights/complaints-office*
151 Information provided by the company via email dated 2.5.2024
152 Information provided by the company via email dated 2.5.2024

were applied to 85 % of the complaints received and closed during the year, resulting in a satisfaction level of 98 %.[153]

The statistics show that a considerable number of grievances refer to death of animals and negative impacts on the economic activities of community members. This is in line with the assessment carried out by ICJ that found that about 85 % of the grievances referred to death of animals while serious human rights problems such as the resettlement of communities, allegations of water and air pollution, access to land were lodged and resolved in a lesser proportion via the GM (about 200 cases in total).[154]

While the company sees the GM as an instrument to anticipate risks and work with other stakeholders to find solutions for negative impacts and sources of conflict, other stakeholders emphasize the limitations of the GMs when it comes to the serious human rights violations in the mine's area of influence.[155]

Rights holders have used other GMs to voice their grievances, e.g. OECD complaints[156], the Special Rapporteurs of the Inter-American Commission on Human Rights (IACHR)[157], the United Nations[158] as well as national courts.[159] The Constitutional Court of Colombia enumerates a long list of cases with regard to allegations of human rights violations in the area of influence of Cerrejon's coal mine. Claimants have won important cases, e.g. court ruling T-614/2019 regarding negative impacts on health and the environment[160], sentence SU-698/2017 regarding the right to water and food security[161], or sentence T-704/2016 with regard to guaranteeing the rights of indigenous communities to FPIC[162], and others. Some of the court rulings have led to significant results for the claimants, e.g. court ruling T-704 has resulted in the implementation of over 2.100 social initiatives[163] and a considerable increase in social investments.[164] Court ruling T-704 has led to the fact that the company is conducting FPIC processes in more than 420 communities and paying considerable amounts as compensations to the communities.[165]

On the other hand, Cerrejón's parent company Glencore is currently using the Investor State Dispute Settlement (ISDS) mechanism to sue the State of Colombia under the terms of the Bilateral Investment Treaty[166] due to claims arising from the Constitutional Court's ruling SU-698/17. The court ordered the suspension of the modification of the Bruno stream, according to the court ruling a vital source of water for the Wayúu communities.[167] Glencore argues that the Court's decision was discriminatory, unreasonable, and arbitrary and is suing the Colombian State for an undisclosed amount.[168]

In addition to the cases in Colombian courts, several OECD complaints have been filed against Cerrejón's parent and affiliated companies alleging serious human rights impacts for Indigenous and Afro-Colombian communities in La Guajíra. The last OECD complaint, filed in 2021, presented allegations that had previously been upheld by a ruling of the Constitutional Court

153 Information provided by the company via email dated 2.5.2024
154 Cerrejón Sustainability Report 2022
155 Interviews GM_3 and GM_8
156 *https://www.oecdwatch.org/?s=cerrejon*
157 *https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/265.asp*
158 *https://www.ohchr.org/en/press-releases/2020/09/un-expert-calls-halt-mining-controversial-colombia-site*
159 ICJ (2017) as well as Interview GM_3
160 *https://www.corteconstitucional.gov.co/relatoria/2019/T-614-19.htm*
161 *https://www.corteconstitucional.gov.co/relatoria/2017/SU698-17.htm*
162 *https://www.corteconstitucional.gov.co/relatoria/2016/t-704-16.htm*
163 *https://www.elcolombiano.com/negocios/empresas/cerrejon-contabiliza-mas-200-bloqueos-a-su-operacion-este-ano-CE23270002*
164 Interview GM_13
165 Interview GM_13
166 *https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1122/glencore-v-colombia-iii-Mora*
167 *https://juristeca.com/co/corte-constitucional-de-colombia/sentencias-y-autos/2017/11/sentencia-su698-17*
168 *https://londonminingnetwork.org/2023/11/glencore-petition/?highlight=cerrej%C3%B3n*

which confirmed the presence of high concentrations of harmful metals in the blood of people living close to the mine, increasing their risk of cancer and other diseases.[169] The complainants withdrew from the grievance process in August 2022 arguing that there were serious asymmetries in the grievance process leading e.g. to a lack of participation of the Indigenous Wayúu.[170] In October 2022, the Swiss NCP issued its final statement on the case recommending that Glencore should maintain a dialogue with stakeholders and ensuring that its due diligence policies and measures foster responsible business conduct in Cerrejón. Glencore accepted the recommendations. The complainants were very dissatisfied with the outcome of the grievance process[171] and lamented "*the inadequacy of non-judicial mechanisms to hold multinational corporations accountable*." [172]

Serious human rights impacts were also reported by a delegation of UN Special Rapporteurs and members of the UN Working Group on Business and Human Rights that visited the mining region in 2020. The delegation called on the Colombian Government to suspend some of the mine's operations because of the severe environmental and health impacts.[173] David Boyd, the UN Special Rapporteur on human rights and the environment said: "the situation that was brought to my attention recently regarding the Cerrejón mine and the Wayúu indigenous people is one of the most disturbing situations that I have learned about in my two and a half years as Special Rapporteur on human rights and the environment'."[174] Cerrejón expressed its strong disagreement with the statement.[175]

Every year, the company is faced with a high number of social protests and road/railway blockades which severely impact the company's operations. In 2023 alone, more than 200 blockades were staged by protesters.[176] The company argues that not all blockages express discontent with the company's operations but are also often used as a means to pressure the government into providing services such as health, education and water supply in the region.[177]

The BHRRC has examined the Cerrejón case and concluded that despite of the availability of a series of state-based and non-state-based grievance mechanisms, it is still very difficult for rights holders to get access to remedy especially in cases of serious human rights allegations. [178] The power asymmetries and the difficulty to provide evidence for complex issues such as for example the causal link between pollution and certain diseases are putting the company in a disproportionately strong position while rights holders are often mere supplicants.

169 *https://www.corteconstitucional.gov.co/relatoria/2019/T-614-19.htm*
170 *https://www.glanlaw.org/single-post/swiss-national-contact-point-calls-on-glencore-to-carry-out-due-diligence-at-its-cerrej%C3%B3n-coal-mine*
171 *https://www.colectivodeabogados.org/swiss-oecd-point-of-contact-calls-on-glencore-to-comply-with-due-diligence-on-coal-mine-in-colombia/*
172 *https://www.colectivodeabogados.org/swiss-oecd-point-of-contact-calls-on-glencore-to-comply-with-due-diligence-on-coal-mine-in-colombia/*
173 *https://www.ohchr.org/en/press-releases/2020/09/un-expert-calls-halt-mining-controversial-colombia-site*
174 *https://londonminingnetwork.org/2023/12/take-action-glencore-peru-colombia/?highlight=cerrej%C3%B3n*
175 *https://www.cerrejon.com/en/medios/noticias/Response%20to%20United%20Nations%20Special%20Rapporteur%20for%20the%20Environment*
176 *https://www.elcolombiano.com/negocios/empresas/cerrejon-contabiliza-mas-200-bloqueos-a-su-operacion-este-ano-CE23270002*
177 Interview GM_13
178 *https://www.business-humanrights.org/en/blog/cerrej%C3%B3n-coal-in-colombia-access-to-justice-and-reparation-become-a-chimera/*

9.2. LEARNINGS FROM THE CASE STUDIES

The case studies illustrate the complexity of situations in mining regions and the wide discrepancies between the perspectives of different stakeholders. This is a general tendency that emerges in research into the effectiveness of OLGMs of mining companies in different countries. The case studies also show that human rights violations in mining regions are often the result of a combination of a severe absence of state intervention and corporate misconduct.

The case studies show that OLGMs can deal with some issues better than with others: they are well-designed to provide compensations to rights holders for damages and tangible harms and address specific issues of low complexity. They can also deal with labour issues and suppliers' complaints. Rights holders tend to use OLGMs preferably for issues that can be solved on a bilateral basis with the mining company while they often do not regard them as adequate for addressing more complex issues such as serious human rights violations that affect communities on a large scale since these require a more independent mechanism and more sophisticated rules for the grievance process.

The remedies provided by mining companies often fail to meet the requirements for adequate and effective remedies as suggested by the UN Working Group on Business and Human Rights. Power asymmetries frequently enable influential stakeholders to enforce substandard remedies upon communities, who feel the need to accept them due to fears of receiving no remedy at all.

Since access to the judicial system is often a major hurdle in the countries assessed, rights holders often fail to get access to adequate remedy especially in those cases where their human rights are violated.

The case studies also reveal a missing element in the ecosystem of GMs on the transnational level: while companies can use the strong ISDS mechanism to sue governments for large amounts, the only extraterritorial GM available for rights holders to challenge a parent company are OECD complaints that generally result in mediation, but not in other forms of remedies. This is an imbalance that affects vulnerable groups disproportionately and puts companies in a very strong position.

9.3. ASSESSMENT OF THE EFFECTIVENESS OF OLGMs

OLGMs vary considerably in terms of the pace and depth of progress and their compliance with the effectiveness criteria of the UNGP.[179] Beyond the UNGP criteria but nonetheless of great relevance for the effectiveness of OLGMs are their cultural appropriateness and gender sensitivity. In addition, OLGMs should contribute to strengthening the organisational structure and culture of the owner of the GM.

Of the OLGMs assessed in Peru, Colombia, South Africa and Indonesia, some have made considerable progress in certain areas, but none of them meet all the above-mentioned criteria.[180] The following tendencies have been identified:[181]

1. LEGITIMATE

Although mining companies recognise that the legitimacy of the OLGM is key to its effectiveness, it is one of the criteria that is most difficult to achieve as it requires the rights holders to trust the OLGM as a channel to achieve a fair solution to their grievances.[182] However, given the conflictive relationship between mining companies and communities, rights holders are often sceptical about the legitimacy of OLGMs since they see the company as being the judge in its own cause.[183] This has been confirmed in the case of South Africa, where local communities view mining companies with mistrust.[184] A survey among mining companies in Colombia revealed that three eighths mining companies identified legitimacy and equity as the greatest weaknesses in their OLGMs.[185] Individuals and collectives affected by mining in Colombia often prefer to turn to the justice system since they consider the legal system to have greater legitimacy.[186] In Peru, people affected by mining are more likely to use the complaint mechanism of the Ombudsman's Office because they have greater trust in it than in OLGMs.[187] NGOs often find it more effective to use campaigning or advocacy strategies such as sending the complaints to the parent company, the shareholders and/or governments of the companies' home country.[188] In some countries such as Indonesia, NGOs reported that people are still fearful of submitting a complaint to a company.[189]

Companies should engage in dialogue with rights holders right from the beginning of the mining operations thus fostering trust and strengthening the legitimacy of the OLGM. Companies should view rights holders as active contributors, not just beneficiaries and involve them in designing and operating OLGMs thus incorporating diverse perspectives and assuring the appropriateness of the GM and the adequacy of remedies provided.

179 Ibid.
180 Ibid.
181 CREER (2021)
182 GIZ (2022)
183 Interview GM_3
184 Interview GM_26, GM_27
185 CREER (2021)
186 ICJ (2019)
187 Interview GM_12
188 Interviews GM_1, GM_2, GM_3, GM_ 8 and GM_10
189 Interview GM_14

2. ACCESSIBLE

Rights holders can access OLGMs through multiple channels such as telephone, social media, offices or company staff working on community issues.[190] Several companies emphasized the importance of face-to-face meetings and engagement.[191] People in Indonesia indicated that culturally they prefer face-to-face conversations and that access to the internet is scarce in remote villages.[192] Despite the progress made, CSOs reported that the accessibility of company OLGMs continues to be a challenge: Communities are often not aware that there is an OLGM or do not know how to use it and need more information with regard to the GM and greater transparency must be ensured with regard to the handling of complaints.[193]

Local contractors and suppliers of mining companies often do not have OLGMs of their own. Some, but not all, mining companies allow the workers of their subcontractors to file complaints through their OLGM. Sometimes, the OLGMs are hampered by operational and financial constraints that make it difficult to ensure effective remedies for the workers of local contractors. In addition, mining companies will have limited means to enforce the implementation of any remedial measures.[194]

Companies should take measures to ensure accessibility of the OLGM for all persons affected, including women and vulnerable groups.

3. CULTURALLY APPROPRIATE

Related to accessibility but not part of the UNGP is the cultural appropriateness of an OLGM which means that GMs should take into account specific cultural attributes and traditional mechanisms for raising and resolving issues, to ensure that the concerns of Indigenous Peoples and traditional communities are received and addressed.[195] The GIZ study reveals that some OLGMs use local languages or employ community relations staff that speak the local languages.[196] One company in Colombia reported having indigenous advisors and employees who support the complaints office to ensure that the GM is culturally appropriate and accessible and respects the customs and traditions of the community.[197] However, only few OLGMs integrate issues like indigenous worldviews or digital literacy.[198]

Companies should involve indigenous rights holders in the design and operation of the OLGM to make sure that it is culturally appropriate.

4. GENDER SENSITIVE

Mining causes a variety of risks that are particular to women, for example women employees are often given work that is less physically straining but in fact more hazardous, such as handling dangerous chemicals in processing plants and milling units. Also, mining projects may dislocate communities from their land. Since women's tenure rights are often more vulnerable, they may face even greater loss of land. Women are

190 GIZ (2022)
191 Ibid.
192 Tap Room (2022)
193 GIZ (2022)
194 Tole Consultores (2024)
195 Transparency International (2016)
196 Interview GM_20
197 Interview GM_13
198 GIZ (2022)

also most severely affected by environmental damage such as contamination of water supplies.[199] When it comes to access to remedy, women often lack cultural support for, and also personal experience in, organizing themselves to seek remedy for harms. This highlights the importance of a gender-sensitive approach to human rights due diligence and OLGMs. The criterium is not part of the UNGP effectiveness criteria but has been prominently discussed in the 7th UN Forum on Business and Human Rights in a roundtable meeting on Gender-Sensitive Human Rights Due Diligence.[200]

Despite the importance of a gender-sensitive approach, the GIZ study reveals that this is practically absent in company OLGMs in Colombia and Peru.[201] This was also confirmed in the interviews conducted on the situation in South Africa. Specifically, it was seen that grievance procedures are not designed to provide a safe space for women to report gender-related violence or sexual harassment in the workplace.[202]

Companies should involve women in the design and operation of the OLGM to make sure that it is gender sensitive.

5. PREDICTABLE

Most OLGMs are based on detailed procedural manuals and have fixed deadlines. Transnational companies like Glencore have their established company-wide procedures.[203] However, according to the GIZ study, not all companies have them shared internally by officers in operational areas. Frequent staff rotation and deficient flow of information among community relation staff negatively influences the predictability.[204]

Companies should provide HRDD trainings for their community staff and establish mechanisms to guarantee information flow and that grievances are handled in a timely and comprehensive way.

6. EQUITABLE

According to the findings of the GIZ study, the involvement of third parties is the exception rather than the rule. In Peru, there is one company that involves government entities in social-environmental grievances to carry out environmental studies and monitoring, with a view to producing objective data and helping to resolve controversies over the environmental impacts of the company's operations.[205] In Colombia, some companies involve a third party, for example an authority, an endorsed entity or a technical expert in complex cases.[206] Increased equitability would lead to greater legitimacy of the OLGMs.

A good practice for companies is to establish independent advisory committees or collaborate with external bodies like NGOs or MSIs to enhance legitimacy, equitability and transparency of the OLGM.

199 OECD Watch (2018)
200 *https://www.ohchr.org/Documents/Issues/Business/Gender/GenderRoundtableDueDiligence.pdf*
201 GIZ – Executive Summary (2022)
202 Interview GM_20
203 Inter GM_27
204 GIZ – Executive Summary (2022)
205 GIZ (2022)
206 Ibid.

7. TRANSPARENT

The lack of transparency in the OLGMs of mining companies is a serious problem.[207] Most mining companies (even ICMM members) publish little information on the details of the OLGM in their publicly available sustainability or management reports.[208] Very few companies publish more detailed information, and none of them publishes sufficient information for external parties to monitor the effectiveness of OLGMs. [209] If mining companies submit their GMs to some form of audit, assessment or scrutiny, this information is kept confidential. Detailed case studies that contrast the perspectives and opinions of the companies with the perspectives of rights holders and other stakeholders are practically inexistent.[210]

Companies should disclose detailed information on the types of grievances received and the remedies provided. They should regularly evaluate the effectiveness of their OLGM, involve third parties in these evaluations, and openly share results to refine processes continuously.

8. RIGHTS-COMPATIBLE

According to the GIZ study, 58 % of the mining companies affiliated to the SNMPE have human rights policies and standards but only 19 % have conducted a human rights impact assessment. Only few mining companies in Peru differentiate between general grievances and human rights complaints.[211] One company in Peru has a human rights officer in charge of implementing its human rights policy, dealing with human rights-related grievances and coordinating such cases with government authorities, where appropriate.[212] In Colombia, two mining companies were found to have implemented human rights impact assessments and one company clearly identified the role of the OLGM within its HRDD process.[213] This highlights the need to further strengthen efforts to systematically incorporate a human rights perspective into company management systems.

Companies should deepen the integration of a human rights framework within their management systems, prioritizing HRDD at senior management levels and across all operational areas.

9. USING GM AS A SOURCE FOR CONTINUOUS LEARNING

According to the analysis of the GIZ study, mining companies that have set up an OLGM are using the information gathered through the OLGM and draw conclusions for the future.[214] As an example, Gold Fields South Africa, according to its publicly available information, regularly evaluates its GM and uses the information to take corrective action. Other examples are mentioned for Peru[215] and Colombia.[216]

207 GIZ – Executive Summary (2022)
208 GIZ (2022)
209 Ibid.
210 Tole Consultores (2024)
211 GIZ (2022)
212 Interview GM_11
213 GIZ (2022)
214 GIZ – Executive Summary (2022)
215 GIZ (2022)
216 Ibid.

However, other surveys indicate that not all the companies do evaluate the complaints received and draw conclusions to prevent their repetition.[217]

Mining companies should draw conclusions from external evaluations of the OLGM, implement improvements and share the learnings with their parent company as well as with other mining companies in peer-to-peer learning sessions.

10. BASED ON ENGAGEMENT AND DIALOGUE

Only a few of the companies analysed engage in dialogue with rights holders and negotiate with the complainants in order to reach a fair result in the grievance process;[218] this is not yet a common practice. In general, grievance processes are often conducted internally by the company without the participation of the affected groups.[219]

Companies should establish ongoing dialogues with rights holders throughout the whole mining cycle and view them as interlocutors on eye-level, not mere beneficiaries.

11. STRENGTHENING THE ORGANISATIONAL STRUCTURE AND CULTURE

Organisational structure and culture are not explicitly included in the UNGP effectiveness criteria. However, the ICMM emphasizes that these are key factors for an effective grievance mechanism that mutually benefits companies and communities.[220] According to findings of the GIZ study for Peru and Colombia, most OLGMs are at the responsibility of the company's social relations or compliance area.[221] In many cases, the community relations team seems to be perceived as solely responsible for dealing with grievances.[222] Although there are exceptions to this rule, higher management levels of mining companies are often not directly involved in the functioning and administration of the OLGM, nor do they engage in communication or direct relationships with rights holders. This has been an aspect that communities have highlighted as one of the main deficiencies of the OLGMs, as the persons who usually have direct contact with rights-holders do not have decision-making power.[223]

Mining companies' staff interacting directly with rights-holders should have the authority to make binding decisions, ensuring that agreements are reliable and enforceable.

12. COMPLEMENTARITY OF OLGMs WITH OTHER STATE AND NON-STATE-BASED GMs

OLGMs of mining companies are embedded in economic, social, political, cultural and judicial contexts and should therefore not work in an isolated way but take these into consideration. The complementary of the different GMs, though not part of the UNGP effectiveness criteria, is key for achieving the

217 CREER (2021)
218 GIZ (2022)
219 Ibid.
220 ICMM (2019)
221 GIZ (2022)
222 Ibid.
223 Tole Consultores (2024)

"bouquet of remedies". For example, the central role of the Ombudsman's Offices in Peru and Colombia for dealing with grievances and human rights violations suggests that there should be an exchange between the NHRI and the OLGMs. However, according to the interviewees, most companies' do not coordinate their OLGM with other grievance systems.[224] Governments for their part do not monitor grievances that are presented to mining companies, nor do they oblige companies to disclose information in that regard. In Peru, neither the government's conflict prevention system, led by the Secretariat for Social Management and Dialogue, nor the Office of Social Management of the Ministry of Energy and Mines are interlinked with the grievance systems of the mining companies.[225] There is an urgent need for an overview of grievances that occur in the mining sector and a continuous monitoring and regular evaluation if the GMs available to rights holders are capable of providing effective and adequate remedy.

Governments should strive to have an oversight of grievances in the mining sector and establish an independent grievance coordination office to monitor grievances in the mining sector and assess whether remedies are adequate. Companies should proactively inform the grievance coordination office about grievances, especially when these refer to human rights allegations, and coordinate with other GMs.

13. THE BURDEN OF PROOF

The question of the burden of proof is not a criterion of the UNGP and the issue refers more – but not exclusively – to state-based GMs. Nevertheless, it is included in this list since it is a key issue: Rights holders are usually in the challenging situation of having to prove the harms caused by or linked to mining activities. This highly complex task requires in most cases expensive investigations as well as significant financial and technical support – a provision neither adequately met by states nor by NGOs which often lack the resources to provide support in the numerous cases. While companies can afford expensive technical expert opinions, rights holders are in a disadvantaged situation. The fact that the burden of proof is mostly on the shoulders of the weakest stakeholders is a factor that seriously exacerbates the remedy gap.

States should shift the burden of proof onto the companies rather than placing it on inadequately equipped rights holders.

The analysis shows that the OLGMs of mining companies vary considerably in their ambition and compliance with the UNGP and further effectiveness criteria. ICMM members tend to have more robust OLGMs and be more advanced in this area.[226] A considerable number of mining companies have started to incorporate a HRDD perspective into their operations, but there is still a long way to go until this becomes a general standard in the mining sector.[227] The deficits in compliance with the UNGP and other important criteria as well as the difficulty of providing the evidences for causal links between mining and certain harms suffered aggravate the gap between existing GMs and access to remedy.

224 GIZ – Executive Summary (2022)
225 Ibid.
226 GIZ (2022)
227 GIZ (2022)

10. CONCLUSIONS

The report illustrates the complexity of situations in mining regions and shows that human rights violations in those regions are often the result of a combination caused by severe absence of state intervention and corporate misconduct. With regard to the effectiveness and usefulness of NSBNJ GMs, it is remarkable that the views and perspectives of the different stakeholders interviewed in the framework of this report differ significantly.

Furthermore, the report reveals the difficulties for rights holders to get access to a "bouquet of remedies", as suggested by the UN Working Group on Business and Human Rights. Moreover, the ecosystem of NSBNJ GMs is constantly evolving and new GMs have been established at the national and international level since the adoption of the UNGP.

OLGMs

At the national level, mining companies' OLGMs play the most prominent role. The report demonstrates that while some companies have made considerable progress in incorporating human rights considerations into their corporate practices, others are dealing with the issue in a more technical, superficial way without making the respect of human rights a core priority of the company. Some companies' OLGMs comply with several of the effectiveness criteria defined by UNGP. However, none of the companies assessed complies with all of them. The main shortcomings relate to the accessibility of the OLGMs, lack of legitimacy, equitability and transparency. The involvement of third parties would help to mitigate these problems but is not a common practice. Companies tend to see rights holders as mere "beneficiaries" of their OLGMs, but not as interlocutors on eye-level and rarely involve them in the design and operation of the OLGM.

Indigenous and traditional communities particularly struggle with GMs due to language and cultural barriers. Gender disparities also prevent the effective use of GMs, as women's specific needs and perspectives are frequently overlooked.

In general, OLGMs are well-designed to provide compensations to rights holders for damages and tangible harms and address specific issues of lower complexity. They are appropriate to address labor issues and suppliers' complaints. However, rights holders tend to not regard OLGMs as adequate for addressing more complex issues such as human rights violations that affect communities on a large scale.

Thus, OLGMs have their specific role in the ecosystem of GMs but must be complemented with other GMs that have more independence and involve more stakeholders, for instance to incorporate judicial processes.

International GMs

Rights holders face difficulties in accessing international GMs due to the need for specific knowledge and skills which are often beyond the reach of local or indigenous communities. The low usage of these mechanisms indicates significant accessibility issues. The possibilities to hold parent companies accountable for rights violations by a subsidiary are almost inexistent.

Remedy gap

Despite the variety of state-based and NSBNJ GMs available at national and international level, substantial barriers persist for rights holders to get access to adequate remedy – particularly in cases of serious human rights allegations. The remedy gap persists due to the lack of compliance of GMs with the effectiveness criteria of the UNGP and further important criteria such as cultural and gender sensitivity as well as the limited scope of OLGMs. The complexity

of proving causal links between specific harms and mining operations, coupled with costly investigations, makes it often difficult for right holders to get access to remedy in the judicial sphere. Remedies provided by mining companies often fail to meet the requirements for adequate and effective remedies as defined by the UN Working Group on Business and Human Rights. They are mainly limited to financial or non-financial compensations while they should encompass, among other things, apologies, rehabilitation, and guarantees of non-repetition against future violations. Power asymmetries frequently enable influential stakeholders to enforce substandard remedies upon communities, who feel the need to accept them due to fears of receiving no remedy at all.

Social conflicts persist

As demonstrated in Peru and South Africa, when rights holders and communities face barriers to access adequate and effective remedies, they frequently resort to *de-facto* measures such as demonstrations, road blockades, and other direct actions. The high numbers of social conflicts in mining regions indicate that many communities still consider this type of action to be more effective than using formal complaint mechanisms.

Gaps identified by companies

Mining often takes place in remote areas where government services are poor. Companies are confronted not only with grievances referring to the company's operations but also with grievances referring to the omissions of the respective government. Moreover, companies also face challenges due to a lack of human rights expertise and difficulties managing community expectations that often exceed feasible solutions.

Governmental role

Governmental intervention is crucial in preventing human rights violations in mining regions and ensuring rights holders have access to effective remedies in case their rights have been violated. However, governments often fail to fulfil this duty and thus contribute considerably to the conflictive scenarios in mining regions. The report indicates that governments lack oversight of grievances filed in regard to the mining sector, nor do they intervene in an adequate way. In the countries assessed, governments fail to incorporate human rights due diligence and mandatory OLGMs into national business and human rights legislations. The missing obligation to disclose information on grievances hinders transparency and external monitoring. Finally, governments contribute considerably to the remedy gap by imposing the burden of proof onto poorly equipped rights holders instead of shifting it onto companies.

11. RECOMMENDATIONS

11.1. WITH REGARD TO COMPANIES

Companies should further strengthen the incorporation of a systematic human rights perspective in the management system and foster a culture of remediation with a HRDD approach. This includes that HRDD is considered a core issue at the responsibility of higher management levels and incorporated in all the areas of the company. Staff interacting directly with rights holders should have the authority to make binding decisions, ensuring that agreements are reliable and enforceable.

The report of the UN High Commissioner for Human Rights on "Improving accountability and access to remedy for victims of business-related human rights abuse through non-State-based GMs"[228] emphasises, inter alia, that companies should consider rights holders not only as beneficiaries of remedy, but also as active participants in the design and functioning of their OLGM. Grievance processes should be based on dialogue and engagement. This will enhance trust in the mechanism and strengthen its legitimacy.[229]

Companies should enhance the independence and credibility of OLGMs by establishing independent advisory committees or engaging with external expert bodies such as NGOs, MSIs or other collaborative initiatives. This involvement broadens the oversight and increases the transparency of the mechanisms, thereby strengthening their legitimacy and trust among rights holders.

Companies should seek ways how to make their OLGMs accessible for women and vulnerable groups such as Indigenous Peoples or traditional communities. If these groups are involved in the design and implementation of the complaint mechanism, they can bring forward their suggestions on how this objective can best be reached. Involvement in the design of the OLGM will also allow for the integration of indigenous worldviews and traditional ways of conflict resolution.

Companies should evaluate the effectiveness of their OLGMs at regular intervals and use the findings for the continuous improvement of the OLGM. Involving third-parties in the evaluation and disclosing information on the findings of the evaluations will strengthen the improvement of the OLGMs. Particular emphasis should be placed on the views and perspectives of rights holders and their opinions on the fairness of the grievance process and the achieved results. In case of financial renumeration measures to communities, companies should also agree on anti-corruption provisions with the community (if it is a community complaint).

11.2. WITH REGARD TO NATIONAL HUMAN RIGHTS INSTITUTES

Establishing an independent grievance coordination office

To close the remedy gap, it is central to involve a more autonomous authority that has the necessary thematic expertise, enjoys legitimacy and trust of rights holders, is well-known and easily accessible for rights holders and involves third parties. This autonomous authority should have the mandate of acting as an independent grievance coordination office on the national level. In countries with a strong National Human Rights Institute (NHRI), which includes Human Rights Commissions or Ombudspersons, this institution could assume the role of the independent grievance coordination office. In Peru and Colombia, for example, the Ombudsman's Office has a decentralized structure and

228 OHCHR (2020)
229 GIZ (2022)

is present in very remote places. The institution has professional staff with expertise in dealing with human rights issues and grievances in the mining sector. And – most importantly, the Ombudsman's Office enjoys great trust and credibility from the population. These comparative advantages should be used for setting up a grievance coordination office that is complementary to the OLGMs. However, not all the mining countries have strong NHRIs. It is therefore necessary to do a country-based mapping to identify which institution can best assume this role. If the NHRI does not fulfil the requirements or is not adequately equipped, an MSI, an academic institute or an NGO can also be chosen to assume this role.

11.3. WITH REGARD TO CIVIL SOCIETY

NGOs are instrumental in helping rights holders to engage with existing OLGMs and other NSBNJ GMs. They facilitate participation in grievance processes, which not only aids in refining these mechanisms but also promotes the integration of dialogue-based formats, enhancing the effectiveness of dispute resolution. Additionally, NGOs are well-placed to evaluate the efficacy of NSBNJ GMs by conducting tests and collecting metadata that can be used for advocacy, ensuring that these mechanisms meet the needs of the communities they serve. They also play a crucial role in empowering rights holders to assert their rights, ensuring that they have the knowledge and resources necessary to navigate these systems effectively.

11.4. WITH REGARD TO DEVELOPMENT COOPERATION

Establish a level playing field among stakeholders

One of the fundamental challenges with NSBNJ GMs is the power asymmetry among the different stakeholders. DC can play a crucial role in mitigating this imbalance and helping to establish a level playing field by supporting equitable dialogue among stakeholders, including Indigenous organizations. For instance, German DC has facilitated more equitable dialogues by empowering indigenous organizations in Latin America[230] thus enabling them to articulate their demands effectively in discussions with oil companies and energy ministries. Additionally, in the context of EITI, German DC has enhanced the capabilities of governmental institutions and NGOs through targeted training on relevant issues.

Participatory design of a GM

Building on these successes, German DC, in collaboration with the private sector, state institutions, and civil society, could promote a joint human rights analysis of operations. This collaborative approach could lead to the participatory design of a GM that not only addresses current grievances but also serves as a dynamic learning environment for continuous improvement and stakeholder empowerment.

Supporting human rights advocates

German DC can support human rights advocates to assist rights holders in using and combining different grievance mechanisms on a national and international level. This includes training as well as technical and financial resources.

Improve learning environment

DC can enhance the learning environment by creating a collaborative platform that brings together the three main stakeholders-companies, rights holders, and external experts. This platform should focus on drawing valuable lessons from the design and implementation of GMs.

230 This refers to the tri-partite dialog process „Energy – Environment – Population" 1999-2004

Specifically, it should prioritize examining and improving access to remedy, ensuring that insights gained lead to more effective and responsive grievance resolution processes.

Embedding GMs into the Just Transition Process

As new regions begin to produce critical minerals needed for building carbon-neutral economies, it is crucial to embed grievance mechanisms into the foundation of the just transition process. This integration will help safeguard the rights of affected communities and ensure that their grievances are addressed promptly and effectively.

Support further analysis to analyze remedy gaps

There is a pressing need to conduct more comprehensive analysis on existing remedy gaps within mineral supply chains, with a specific focus on the perspectives of rights holders. It is important to explore how rights holders manage to navigate both state-based and non-state-based grievance systems to present their allegations, the challenges they encounter, and the steps required to eliminate these barriers. As said above this would contribute to practical insights and lessons learned from real-world implementation for improving the effectiveness of GMs.

11.5. WITH REGARD TO A COMPREHENSIVE GRIEVANCE SYSTEM

To close the remedy gap, the national grievance system should have **several layers**:

1. A robust, independent judicial system is the basis for providing access to remedy in cases of human rights violations. The judicial system must be accessible and affordable for rights holders and guarantee a just process in due time with a fair result for those who turn to the judicial system. Rights holders should be exempt from the burden of proof and have legal and financial support for accessing the judicial system.
2. OLGMs should handle specific grievances that result in compensatory measures. OLGMs also act as early warning systems for companies and help them identify negative impacts at an early stage. Grievances that are filed with companies'OLGMs must be reported to the NHRI's grievances coordination office.
3. The independent grievance coordination office has an oversight of all grievances occurring in the mining sector. Right holders can choose whether they want to present their grievances to the grievance coordination office or to the companies'-OLGMs. The independent grievance coordination office acts as the central institution where all grievances referring to the mining sector are collected, viewed and monitored. The grievance coordination office intervenes in cases when rights holders do not get access to adequate remedy. In addition, the grievance coordination office has the role of an evaluator and provides the government with advice on how to improve the national grievance system and close the existing remedy gaps.
4. International complaint mechanisms such as cross-industry complaint mechanisms and MSI's GMs can act complementary to the three levels above.

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