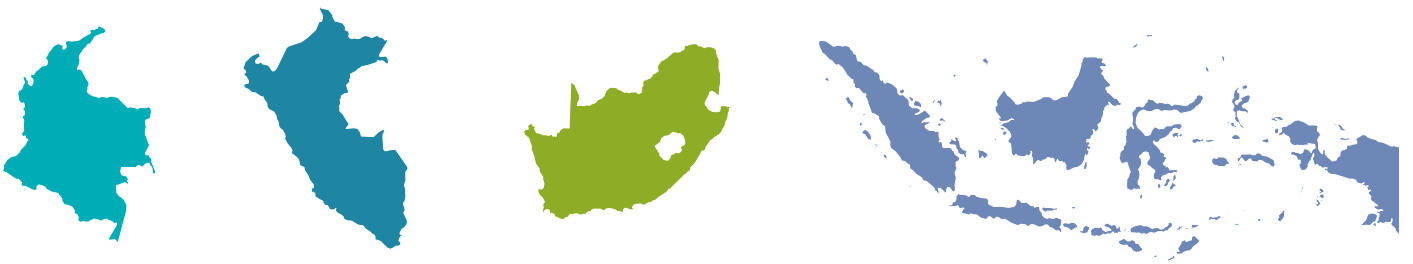


Exploring the Remedy Gap in the Large-Scale Mining Sector – The Role of Grievance Mechanisms to promote Human Rights in Mineral Supply Chains

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 (UNGPs) 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 inter-linked 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 OLGMs.
- **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 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 development cooperation 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, development cooperation 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.
- OLGs 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.

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