



**Analysis, systemization,
and comparison of access
to remedy mechanisms in
the Andean Region**



IMPRESSUM

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EXECUTIVE SUMMARY

This document presents, analyzes, systematizes, and compares mechanisms for access to remedy regarding human rights violations linked to the medium and large-scale mining industry in the countries of the Andean Region. Under Pillar III of the United Nations Guiding Principles on Business and Human Rights (UNGPs), developing international commitments regarding access to justice and reparations in business activities, States have a duty to guarantee that people affected by human rights abuses have access to effective reparation mechanisms (principle 25). The objective of this study is to investigate the diverse State-based and non-State-based grievance mechanisms that exist in Bolivia, Chile, Colombia, Ecuador, and Peru, with an emphasis on impacts caused by mining activities, with a view to fostering a regional discussion regarding the number of existing mechanisms, their functions, their level of accessibility, best practices in the field, and pending challenges for ensuring and strengthening access. In conformity with the categories proposed in the UNGPs, the study addresses State-based judicial and non-judicial, and non-State-based (operational channels) mechanisms available in each country.

A summary is presented below describing the main results of the study, taking into consideration: (i) the range of grievance mechanisms available in each of the countries included in the study, (ii) the use that have been made of these grievance mechanisms, (iii) limitations identified with regard to grievance mechanisms, and (iv) key recommendations for strengthening grievance mechanisms in terms of accessibility, effectiveness, impartiality, and other attributes established under the UNGPs.



Catalog of existing grievance mechanisms in the selected countries

State-based judicial mechanisms: injunctions, ordinary judicial proceedings (under criminal, civil, or labor law), administrative hearings.

State-based non-judicial mechanisms: The Right of Petition, National Points of Contact, Labor Inspectors, Ombudsman Offices, Integrated Online Environmental Procedure Systems, Oversight and Enforcement Bodies, Alternative Conflict Resolution Mechanisms.

Non-State-based mechanisms: eleven experiences of companies that operate grievance mechanisms.

State-based judicial mechanisms: constitutional actions, ordinary judicial actions against the State, ordinary judicial actions against private parties.

State-based non-judicial mechanisms: Ombudsman Offices, oversight mechanisms (general, environmental, and mining-sector), investigations by the General Comptroller's Office.

Non-State-based mechanisms: union initiatives and two experiences of companies that operate grievance mechanisms.

State-based judicial mechanisms: constitutional protection mechanisms, ordinary judicial proceedings (under criminal, civil, or labor law), administrative hearings.

State-based non-judicial mechanisms: authorities in the National Environmental Evaluation System, Dialog Forums, Ombudsman Offices, National Point of Contact.

Non-State-based mechanisms: sectorial council initiatives for the adoption of grievance and complaint mechanisms, a business experience of a complaint mechanism.

State-based judicial mechanisms: labor claims, class and representative actions, constitutional hearings, and actions before agricultural and environmental courts.

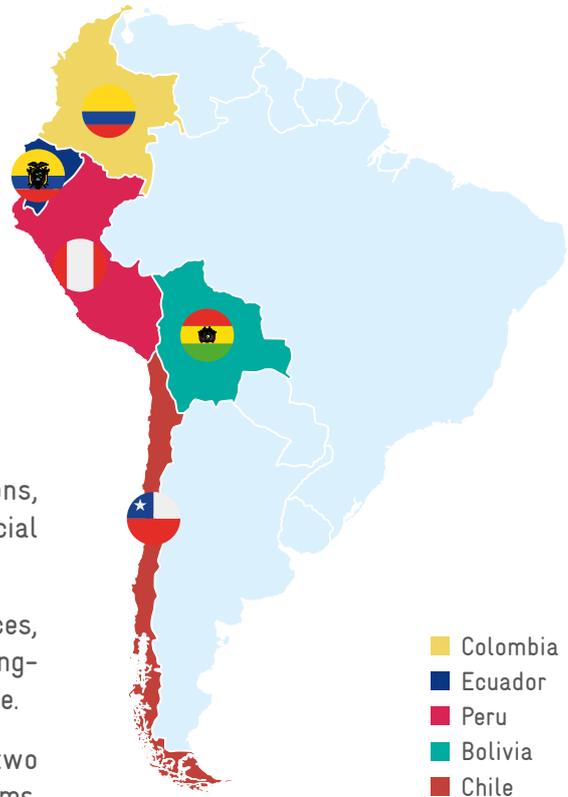
State-based non-judicial mechanisms: Ombudsman Offices, Ministry of the Environment and Water, and Environmental Departments.

Non-State-based mechanisms: three experiences identified. One company stated that it operates "community liaison" offices; another implemented a complaint system; the third operates a general system for claims and complaints.

State-based judicial mechanisms: labor cases, constitutional actions, actions before Environmental Courts, civil cases for indemnification.

State-based non-judicial mechanisms: Health and environment oversight and enforcement bodies, Labor Department, National Institute of Human Rights, National Contact Point.

Non-State-based mechanisms: the Mining Council operates a platform for complaints and suggestions; a multinational company has an ethics point; another company has a "complaints mechanism".



- Colombia
- Ecuador
- Peru
- Bolivia
- Chile



Usage of grievance mechanisms

Information from the Corporations and Human Rights Database (CHRD) led to the following conclusions:

- Colombia and Chile are characterized by the use of judicial mechanisms, while non-judicial mechanisms predominate in Bolivia. Judicial and non-judicial mechanisms are used with effectively equal frequency in Peru and Ecuador.
- Constitutional actions are mainly used in Colombia, Chile, and Peru (in order of frequency), while the database shows no constitutional allegations in Bolivia and Ecuador. Colombia, Chile, and Peru also report more dynamic usage of the wide range of judicial mechanisms. Indeed, in addition to making use of constitutional actions, in Chile, Colombia, and Peru, civil cases are often brought forward, while criminal proceedings are often used in Peru.
- The database shows that allegations linked to environmental and labor rights related impacts are handled using non-judicial remedy mechanisms, while issues linked to development, health, and physical integrity tend to be handled using judicial mechanisms.
- Victims – including both individuals and collective stakeholders such as communities – tend to launch both judicial and non-judicial actions, sometimes using these two mechanisms simultaneously. Diversification in the use of actions is observed most frequently in Chile, followed by Ecuador and Colombia.
- Most judicial actions in the Andean Region take place in the high courts.
- Results or judgments are most frequent in constitutional actions, which explains why victims in the region tend to make use of this mechanism. The same is not true for civil and criminal cases, which tend to stall before reaching trial, and often fail to reach judgments for indemnification.
- Processes launched through non-judicial mechanisms tend to reach results that correspond directly with the remedies requested by the victims (effective reparation).

Limitations of access to remedy mechanisms in the region

Based on the wide range of sources consulted, the following conclusions were drawn:

	Limitaciones
Judicial mechanisms	<ul style="list-style-type: none"> ▪ Weakness and low credibility of judicial institutions. ▪ Concentration of institutional offer and power inequality between companies and victims. ▪ Remit of constitutional justice regarding reparations. ▪ Lack of specialized knowledge regarding Business and Human Rights and environmental law amongst officials.
Mecanismos no judiciales	<ul style="list-style-type: none"> ▪ Lack of awareness of the National Contact Point and the Business and Human Rights framework. ▪ Unpredictability of non-judicial initiatives. ▪ Wide-ranging interpretations of the general duty of protection held by Human Rights Institutions (NHRI) and the Public Ministry regarding private-sector companies.
Non-judicial mechanisms	<ul style="list-style-type: none"> ▪ Context of distrust toward mining companies. ▪ Perception that operational mechanisms lack legitimacy. ▪ Absence of continuous learning and improvement. ▪ Weakness relating the differential and gender approach.



Recommendations for access to remedy mechanisms in the region

- Build awareness about State and corporate mechanisms. The accessibility of State-based and non-State-based mechanisms depends largely on awareness of available mechanisms amongst affected parties. It is therefore important for both the State and companies to disseminate the existing mechanisms, using appropriate channels.
- Delve into the effectiveness of administrative sanctions within the Business and Human Rights framework. Generally, administrative remedies consist of fines payable to the State treasury and not for the victims' benefit. It is necessary to define whether this sanction mechanism meets the UNGP standards.
- Promote the incorporation of a gender perspective and the differential approach. Both State-based and non-State-based grievance mechanisms in the Andean countries are barely beginning to incorporate a differential approach, and thus efforts must continue in the field of disseminating and building on the standards of Business and Human Rights to ensure access and remedy for differentiated communities.
- Articulate available institutional and business mechanisms. Operational mechanisms must become part of the ecosystem of ways to resolve conflicts following human rights impacts, within the limits and possibilities of such mechanisms.
- Manage expectations and communicate the benefits of non-judicial mechanisms. In highly litigious countries such as Chile and Colombia, non-judicial mechanisms should be promoted.
- Strengthen and adapt the use of digitalization and new technologies to promote access to grievance mechanisms. Throughout the Andean Region, experiences were identified in the use of technologies to submit grievances remotely. However, this opportunity could be leveraged by building awareness of such mechanisms.
- Explore the effectiveness and suitability of international grievance mechanisms, particularly for cases involving several jurisdictions. International mechanisms, such as those offered by financial international and regional courts, are rarely mentioned. Opportunities and limitations inherent in these scenarios should be explored, particularly in cases that involve several jurisdictions.
- Enhance the existing relationship between international commitments and policies of central offices and the functioning of companies' operational mechanisms. Companies tend to adopt operations mechanisms in response to their international commitments. It is therefore desirable to explore the practical effect of these commitments on the functioning and handling of grievance mechanisms.
- Understand the practical impact of the mechanisms identified. It is suggested that an empirical and multi-method evaluation and assessment (quantitative and qualitative) should be conducted regarding the level of awareness, usage, and impact of existing mechanisms in each of the Andean countries, in practice; that is, beyond the scope of legal impositions (State-based mechanisms) or formal adoption by companies (non-State-based mechanisms).
- Position National Action Plans on Business and Human Rights. All countries in the region refer to the existence and creation of a National Action Plan. However, no countries underscore the relevance of such an action plan for achieving institutional coordination in the field of Business and Human Rights.
- Strengthen the leadership of National Human Rights Institutions regarding BHR. National Human Rights Institutions possess unarguable leadership roles in the region's countries, so States are responsible for strengthening this leadership in political and budgetary terms, such as to position initiatives for access to remedy in an articulated way between institutions.

