



Analysis and comparison of
**access to operational-level
mining grievance
mechanisms** in the
Andean Region



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IMPRESSUM

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Source: Antapaccay Mining Company.

EXECUTIVE SUMMARY

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Operational-level mechanisms for dealing with grievances are an important social management tool in the mining sector to prevent, address and remedy potential impacts and alleged violations on human rights caused by the sector. Most mining companies in the Andean countries, involved both in exploration and production, have established these mechanisms with different degrees of complexity and integration into their business strategies. In the current scenario of increased global demand for critical minerals for the transition to a more sustainable economy and the growing expectations on environmental, social, and governance issues by investors and consumers, it becomes necessary to improve these mechanisms' efficiency, through greater dialogue and effective remediation, to minimize this industry's social impact and risks, associated with conflicts, and enhance its key contribution to the economy.

This document analyzes and compares mine-site operational-level grievance mechanisms in Bolivia, Chile, Colombia, Ecuador, and Peru, seeking to identify the challenges and critical nodes that persist in accessing them and their effectiveness aiming to improve them through a set of recommendations for companies, States, and civil society. The conceptual framework of the study revolves around the effectiveness criteria enshrined in Principle 31 of the **United Nations Guiding Principles on Business and Human Rights (UNGPs)**, which advocate that operational-level grievance mechanisms should be based on **legitimacy, accessibility, predictability, equity, transparency, be compatible with human rights, be a source of continuous learning** and **be based on participation and dialogue**. Additionally, the conceptual framework includes a criterion for evaluating the **internal management** of these mechanisms.

ACCESSIBILITY LEGITIMACY PREDICTABILITY EQUITY TRANSPARENCY
INTERNAL MANAGEMENT BE COMPATIBLE WITH HUMAN RIGHTS
SOURCE OF CONTINUOUS LEARNING PARTICIPATION AND DIALOGUE



PREVENT
MITIGATE
REMEDiate

UNGPs define the responsibilities and interconnections of State and business actions to prevent, mitigate and remedy real or perceived human rights impacts infringed by business activities. These Guiding Principles identify three types of grievance mechanisms, State-based, judicial, and non-judicial, and non-State-based mechanisms, which must work in a coordinated and complementary manner to ensure effectiveness. Operational-level grievance mechanisms in the Andean countries, which this study analyses and compares, fall into the latter category.

This study includes a **Catalog** of 18 leading mining companies' grievance mechanisms in the Andean countries. These leading practices are more complete than the average of their peers in one or more than one of the effectiveness and internal management criteria defined in the conceptual framework. It is important to mention that, of the revised mechanisms, none comprehensively meets all criteria. The Catalog shows experiences in the field of a diverse group of mining companies in the region, which may serve as a reference for companies inside and outside the sector in the design or revision of their mechanisms.

The Catalog classifies various companies according to the **internal management** of their operational-level grievance mechanism and the eight criteria in Criterion 31 of the UNGPs relating to effectiveness, **legitimacy**, **accessibility**, **predictability**, **equity**, **transparency**, **compatibility with human rights**, be a **source of continuous learning**, and **be based on participation and dialogue**.

ACCESIBILITY LEGITIMACY PREDICTABILITY EQUITY TRANSPARENCY
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Regarding the **internal management** criterion, Minera San Cristóbal stands out in Bolivia by integrating the handling of grievances from interest groups into the company's business management which contributes to identifying opportunities for improvement in all areas. Cerrejón in Colombia stands out for having an interdisciplinary Complaints Committee, where an understanding has been achieved by the operational and environmental areas and has increased the mechanism's visibility.



Based on the **legitimacy** criterion, Lundin Gold stands out in Ecuador by designing its operational-level grievance mechanism by socializing the proposal with its stakeholders, collecting their perceptions and contributions, and including them in the mechanism.



As regards to **accessibility**, the Catalog highlights Anglo American Quellaveco in Peru, for integrating during the COVID-19 pandemic a new virtual tool to sustain accessibility regarding queries, grievances, and social incidents and ensure continuous communication with stakeholders. In this criterion, Las Bambas also stands out in Peru, where its operational-level grievance mechanism offers multiple access routes, in an extensive geography, including a virtual platform for disseminating the mechanism and receiving complaints in Quechua.



Regarding the mechanisms' **predictability** Minera San Cristóbal in Bolivia includes an instruction with a clear and detailed process of responsibilities, deadlines, and escalation criteria in its mechanism. In Chile, the state company, CODELCO, its operational-level grievance mechanism allows to manage anonymous grievances and facilitates the claimant to monitor and evaluate the process.

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In relation to the **equity** criterion, Antapaccay Mining Company in Peru stands out for having an operational-level grievance mechanism that reports to the Compliance and Risk Management Department, providing independence to the areas responsible for claims.



In relation to the **transparency** criterion, Lundin Gold includes an Action Plan in its operational-level grievance mechanism that identifies actions to be implemented and allows a transparent response to the claimant.



Regarding the grievance mechanisms' **compatibility with human rights**, Cerrejon's mechanism is a critical control of all the corporate risk of human rights violations related with due diligence. In Peru, Anglo American Quellaveco has integrated its grievance mechanism with its due diligence, involving experts and incorporating its recommendations and Antapaccay Mining Company has integrated its mechanism into its Annual Operational Plan and its Human Rights Policy.



In relation to the criterion that advocates for the operational-level grievance mechanism to be a **source of continuous learning**, BHP in Chile has articulated its mechanism with the company's mandatory policies and has modified its due diligence process, developed in 2019, and Kinross stands out for having a tool that measures stakeholders' trust, establishing new parameters in the relationship to minimize grievances. In Peru, Antamina stands out in this criterion for voluntarily including its grievance mechanism in its environmental impact assessment and is therefore subject to the supervision of the authorities; and Buenaventura, stands out for providing its senior executives with indicators and trends of community grievances and information on social incidents, turning it into a conflict early warning system for its seven operating units.



In relation to the last criterion, and how the grievance mechanism should be based on **participation and dialogue**, Cerrejon stands out for carrying out an ongoing dialogue with the claimant during the investigation process, which provides information and evidence to understand potential impacts. In turn, Rio Tinto Exploraciones, in Chile and Peru, stands out for its Comprehensive Project Management Plan, which includes, before starting the activities on the field, the identification of risks including those related to communities and incorporates openness to dialogue and active listening to communities' concerns.





CONCLUSIONS

1. In the Andean countries, the presence of mining companies with international capitals, adhered to global environmental, social and governance standards, have positively influenced the development of operational-level grievance mechanisms in the region, laying the foundations for the rest of the companies in the region to follow. As mining companies are not obliged to establish grievance mechanisms, several companies have taken their corporate policies as a guide for their implementation. Despite the absence of a norm, some companies in Colombia, Ecuador and Peru voluntarily include their operational-level grievance mechanism within the citizen participation requirements of their environmental impact assessments, which creates a legal obligation that allows the competent authorities to oversee its implementation.
2. During the past decade of action of the UNGPs, most mining companies operating in the Andes have developed and implemented their community and worker-oriented operational-level grievance mechanisms. Of the 185¹ companies analyzed, 94 have such a mechanism and 91 do not have one or public information in this regard. However, there are different levels of progress and depth regarding these grievance mechanisms as measured by the UNGPs efficiency criteria and their internal management. This heterogeneity in the progress responds to the normative and social context and the state of development of mining in the region.
3. There is a gradual progress in integrating human rights due diligence in the operational-level grievance mechanisms in the Andean countries, as shown by the maturity assessment carried out. The results of this analysis, based on 37 sustainability reports, indicate that 41% of the companies are classified as leaders, which implies that their mechanisms are integrated into their due diligence process, where the majority of these companies are members of the International Council on Mining and Metals (ICMM). Nevertheless, according to the primary data collected, progress in integrating a human rights-based approach is limited, on several occasions, to classifying grievances according to this criterion and considering them to be of high risk².

¹ Production, construction and exploration companies have been included in all countries, except in Chile where only production companies were evaluated.

² Maturity Analysis of operational-level grievance mechanism of mining companies in the Andean region based on public information from their sustainability reports carried out following the methodology in SHIFT (2019).



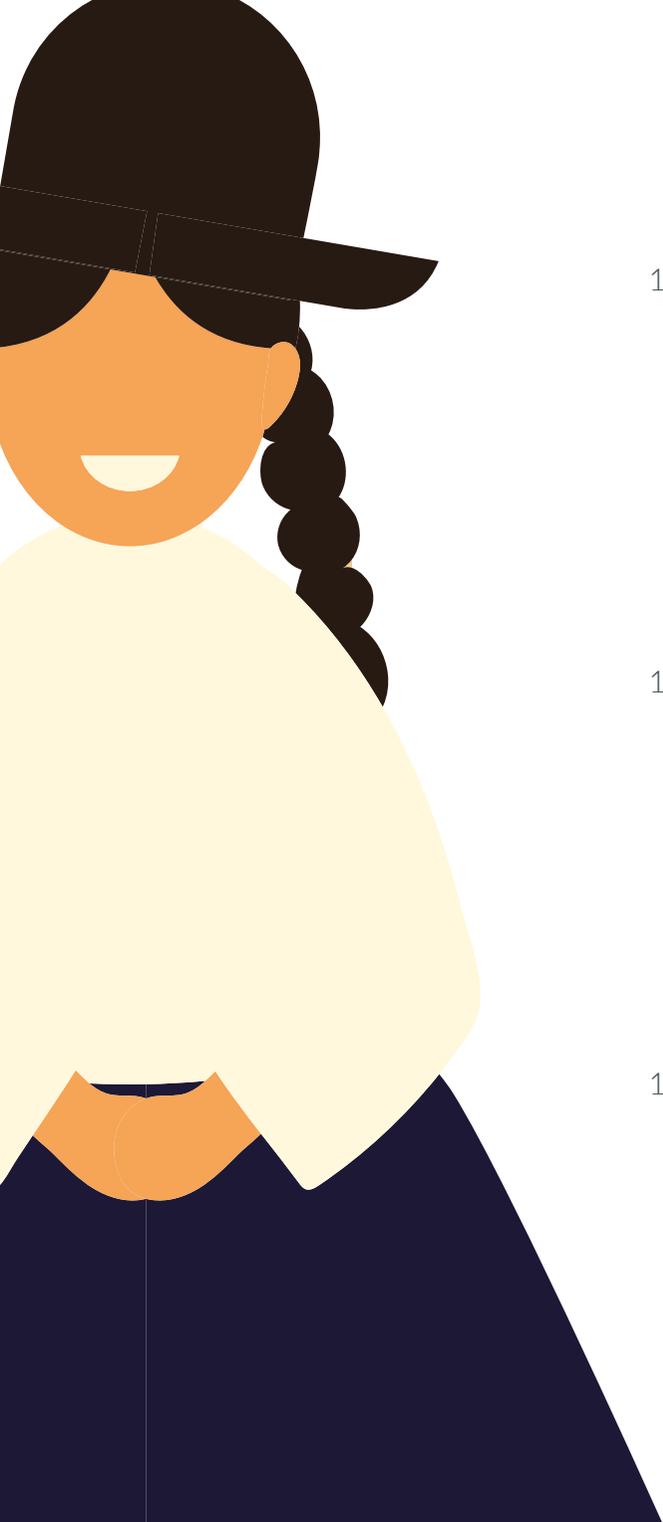


4. Of the operational-level grievance mechanism analyzed, none meet, according to the research, all the UNGPs effectiveness criteria. Even so, 18 leading practices of mining companies in the Andes have been identified and included in the Catalog in this study. These leading practices have been selected because they are complete and more exhaustive than the average of their peers.
5. Most of the operational-level grievance mechanisms analyzed are the responsibility of the company's Management or Social Performance Area, where risk management is a cross-cutting issue. Some companies have a specialized team in charge of handling grievances in their Social Management Area and other companies have relocated their mechanism to the Compliance Area. These last two organizational structures attempt to minimize the risk of complainants perceiving the Community Relations team as judge and party, especially when grievances address or involve them.
6. The most successful and solid operational-level grievance mechanisms analyzed are those in which there is a high-level leader, such as the company's chief executive officer, committed and convinced of the value of social management in the sustainability and profitability of the business. This commitment improves information flows, generates robust analytics, more engaged and diligent teams, greater and better allocation of financial and human resources, and evaluations redound to better operational-level mechanism procedures and policies.
7. Another prerequisite for fulfilling the UNGP's efficiency criteria is that operational-level grievance mechanisms must be part of the corporate culture and must be integrated into the social management carried out with interest groups and is not isolated where responsibility falls only on the company's Community Relations Area. Likewise, those involved in the management of grievances value the development of participatory dialogues with the community, creating a culture of effective remediation in a similar way to how the mining industry has adopted its industrial safety culture.



8. Companies with an operational-level grievance mechanism strive to turn them into sources of continuous learning. For example, during the COVID-19 pandemic, several companies established new digital access channels, which have been integrated into their mechanisms' permanent management. There is also significant progress in the variety of options that can be used in local languages, even if the incorporation of a gender-based approach is still generally missing in these mechanisms.
9. Progress in information transparency and commitment to dialogue at different stages of the mechanism process is limited. It is not common for companies to publish this information. In general, operational-level grievance mechanisms are little known outside the sector, are not coordinated with State-based grievance mechanisms, and dialogue with complainants has not often been used as a tool for their design. Mainly, the company makes decisions (related to its design or research process, among others) internally about its mechanism and, at best, sometimes they share them for opinion with communities. All this limits trust-building in the process of remediating potential impacts caused by mining operations.
10. Companies find it challenging to ensure predictability in their mechanisms because, even though in most cases they have detailed procedural manuals and fixed deadlines, these are not always socialized internally by officers in operational areas other than with the Social Management Area. This is in addition to the fact that Community Relations staff in the field have rotation systems and their absences decrease information flows during the process.





11. In a region with high levels of mining-related conflicts, operational-level grievance mechanisms have limitations in addressing them. These mechanisms must be seen as an opportunity to build trust, a process that must be accompanied by the States, as guarantors of the protection of human rights and access to remediation. States should ensure that information from State-based grievance and operational-level mechanisms is available to communities in mining areas, so that through them their concerns are initially channeled, becoming an early-warning system to prevent conflicts. Dialogue platforms established to design and update National Action Plans on Business and Human Rights involving government, businesses, trade unions, communities and civil society provide an important opportunity to strengthen coordination and dissemination of information on these mechanisms between governments and businesses.
12. In **Bolivia**, the various actors (State, private companies, and cooperatives) involved in mining have different strategies on addressing social management and, therefore, in managing grievances of their interest groups. In the case of public companies and cooperatives, no experience has been found in the implementation of an operational-level grievance mechanism. Private companies that have developed one, have done so on their own initiative, and in all cases have foreign companies as shareholders with corporate policies and standards on handling grievances and human rights. Thus, the mining sector demands active State participation and involvement, from the local and departmental authorities created to address the concerns of the population. This is an opportunity for other mining stakeholders to learn about their experiences through the development of spaces for exchange, promoted by the State, and incorporate and adapt their best practices according to their needs and reality.
13. In **Chile**, the implementation of the effectiveness criteria in operational-level grievance mechanisms is a result of corporate policies or their participation in international mining associations. Although most large-scale mining companies have developed grievance mechanisms, and value their existence and implementation, it is not possible to claim that these mechanisms channel and respond to real community concerns and deliver effective remediation. The absence of a government framework that regulates the implementation and public reportability of these mechanisms, in addition to socio-environmental conflicts surrounding the mining industry, hampers trust-building with communities as potential users of these mechanisms.





14. Most mining companies in **Colombia** recognize the importance of managing grievances and its contribution, to a large extent, to improving the relationship with communities and workers, and agree these must be articulated with their social management strategy. Despite progress, both the Government and small and medium-scale mining companies are still in the process of learning and integrating their grievance mechanisms with their human right's due diligence process. It is therefore important to promote a forum for the exchange of experiences where large-scale companies with a robust mechanism can share lessons learned with their peers.
15. In **Ecuador**, existing operational-level grievance mechanism reflect the sector's social standards heterogeneity, where some social management processes are developed adopting high international standards and others, under development, under general guidelines. Despite this challenge, initiatives currently being developed in a participatory manner, such as the National Action Plan on Business and Human Rights and the Extractive Industries Transparency Initiative, contribute to generating guidelines in line with the national context, which can be a reference for mining companies.
16. In **Peru**, the approval of its National Action Plan on Business and Human Rights is a great opportunity to advance in a comprehensive approach to human rights due diligence at the business level. At present, there is no complementarity of operational-level grievance mechanisms with other state and non-state based grievance mechanisms, such as the OECD National Contact Points (NCP) and the Ombudsman's Office. Nor has the government's formal conflict prevention system led by the Secretariat for Social Management and Dialogue and the Office of Social Management of the Ministry of Energy and Mines integrated a human rights due diligence perspective. The articulation and integration of this perspective is necessary as social conflicts persist and the difficulties of companies and the government to build trust with communities is an important source of risk for mining investments in the country.





RECOMENDATIONS FOR MINING COMPANIES IN THE ANDEAN COUNTRIES

1. It is recommended to foster a culture of remediation with a human rights and due diligence approach that is integrated into the companies' Social Management Plans. It is recommended to create or assign the position of compliance or human rights officer that transforms the UNGPs into the day-to-day of the operation, becoming the way to connect with the state bodies responsible for human rights. Likewise, a post in charge of the cross-cutting inclusion of a gender approach is required, which ideally should be the same officer. Likewise, it is recommended to include human rights risks into the company's matrix and comprehensive risk system, seeking to grant operational-level grievance mechanisms the same priority and visibility that industrial safety issues management have.
2. It is recommended to promote a business culture that integrates social management with business objectives using high-level coordination instances, to promote operational-level grievance mechanisms as early warning tools that aid to minimize social risks and the operation's impacts and ensure the project's sustainability. This requires organizing training on UNGPs, carrying out human rights due diligence and remediation and reparation processes, among others, that motivate officers and contractors to include these concepts in their practices.
3. It is recommended to deepen and strengthen existing dialogue mechanisms (or create new ones if they do not exist) with the complainants at all stages of the process and collect the perceptions of the community, even if they are not formal grievances. Higher priority should be given to evaluating trends and results by incorporating qualitative analyses, which allow understanding the underlying reasons for grievances and convert them into early warning mechanisms.





4. It is recommended to improve the dissemination of operational-level grievance mechanisms to promote their access, enhance their use and build trust with communities and civil society organizations. For this, it is necessary to expand this information in the spaces for community engagement, proposing processes where communities can verify and monitor the grievances process to build trust. Additionally, it is recommended to include in the companies' sustainability reports detailed and disaggregated grievances information and the measures adopted to strengthen and promote access to and effective remediation, to modify the perception that some stakeholders have that remediation offered by these mechanisms does not cover the impacts caused.
5. It is recommended to create a coordination body among mining companies in each country together with mining associations, with the support of the international cooperation, encouraging the participation of companies, outside mining associations, to build human rights capacities and exchange lessons learned and challenges in the implementation of operational-level grievance mechanisms.
6. For companies whose main grievances are related to local suppliers, it is suggested to make detailed diagnoses of the sources of the most relevant grievances and establish action plans that include clauses in contracts that minimize these risks and that urge large-scale supplier companies to design and implement their own grievance mechanisms. For companies in which most grievances are related to local employment, they should focus their programs not only on direct employment in their companies, but also on the employability of the local population to be part of other economic activities present in the region.





FOR THE GOVERNMENTS OF THE ANDEAN COUNTRIES

1. It is recommended to evaluate the relevance of introducing a human rights-based approach in mining policies that promote the implementation and reportability of operational-level grievance mechanisms, according to potential human rights impacts involved in the various phases of mining projects. In line with global normative developments on business and human rights, it is recommended that the relevance of a due diligence standard be evaluated, including bindingly requiring the existence of an operational-level grievance mechanism for public and private companies in the Andean countries.
2. It is recommended that the governments of Chile, Colombia, Ecuador and Peru, through their National Action Plans on Business and Human Rights, include clear and measurable actions to improve the effectiveness of their grievance mechanisms, which can be evaluated partially and periodically, throughout the implementation of the Plan. In addition, it is recommended that these Plans include small-scale mining companies and informal mining present in these countries.
3. Promote inter-agency and multi-stakeholder coordination among State and non-State based grievance mechanisms at the various national, subregional, and local levels, including operational-level mechanisms, promoting their dissemination, and strengthening their access, so that the State can effectively guarantee that the demands of the most vulnerable populations are met and that it fulfils its duty in protecting human rights. It is recommended to give prominence to the coordination of operational-level grievance mechanisms with existing non-judicial State-based mechanisms, that is, with Ombudsman's Offices, Municipal Offices (in the Colombian context) and OECD's NCP, among others.





FOR CIVIL SOCIETY OF THE ANDEAN COUNTRIES

1. It is recommended to strengthen research on operational-level grievance mechanisms to contribute to the development of effective tools for monitoring and responding to potential impacts that companies may generate by their operations and promote a just remediation for citizens who have seen their fundamental rights impacted.
2. It is recommended that, in high-level forums, such as the Regional Forums on Business and Human Rights for Latin America and the Caribbean, a multi-stakeholder discussion be held that allows companies to share their experiences with the institutions in charge of remediation both State and of other instances such as OECD's NCP.
3. It is recommended to create mediation centers specialized in community, socio-environmental and human rights issues located in mining territories and/or where socio-environmental conflicts are relevant. These centers, as a third-party institution, could play a role in supporting the most complex grievances.





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