

A NomoGaia report on a case-based
analysis of a currently operational
human rights grievance mechanism
within a broader external
communication system for communities

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Operational-Level Grievance Mechanisms

Analysis of Structure & Process



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Business Enterprises and Operational-Level Grievance Mechanisms

Pillar Three of the United Nations Guiding Principles on Business and Human Rights (the “UNGPs”) provides that rightsholders should have access to remedies for human rights infringements arising from business activities (UNGP 25-31). Companies are required to establish or participate in “effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted” (UNGP 29). While there has been some published research on shared human rights grievance mechanisms (GMs)¹, there are extremely few examples of research on operational level grievance mechanisms.²

This paper presents a detailed analysis of four years of cases brought to an active GM that explicitly accepts human rights complaints. Cases were filed between February 2020 and June 2024. Analysis was undertaken in an 18-month period between January 2023 and June 2024. The aim is to document the opportunities and challenges of using a pre-existing project-level complaint and request system for receiving human rights grievances. This paper focuses on the mechanism itself and the processes by which it functions. A separate report evaluates outcomes of complaints and grievances.

Transparency

NomoGaia traditionally publishes identifying details of the business enterprises we assess, in keeping with our commitment to transparency. Uncharacteristically, in this report we obscure the identity of the company whose GM we reviewed. This is a decision undertaken by NomoGaia for three primary reasons. First, the lessons from this mechanism are broadly applicable, across geographies and companies. We do not think other entities need to know the location of the operation or name of the company to derive value from the findings. Second, complainants and other rightsholders require confidentiality protections from multiple duty-bearers, and we cannot guarantee their safety if the location of these complaints is made public. Finally, we are actively involved in refining and reshaping the mechanism to improve outcomes for rightsholders and do not currently believe that external pressure is required to continue driving change. In balancing human rights principles of privacy, security and transparency, in reviewing this GM, we believe, and as noted above, this is rare for us to say, the value of transparency is outweighed.

Nevertheless, NomoGaia reserves the right to reverse our decision and publish the identity of the company and project if we suspect the company is leveraging this privacy to shield itself from

¹ NomoGaia Reports endeavor to keep footnotes to an absolute minimum. We refer interested readers to our webpage on Access to Remedy, to the papers linked to it and to the citations in those papers.

² See: Grama, Ben. 2022. “Company-Administered Grievance Processes for External Stakeholders: A Means for Effective Remedy, Community Relations, or Private Power?” *Wisconsin International Law Journal* 39 (1): 71–143; Grama, Ben and Charles Gitonga Githy. “Kakuzi’s Human Rights Grievance Mechanism in Kenya : An Exercise in Scoping, Translating and Reframing.” *Research Day Law and Criminology* 2024, 2024, doi:10.5281/zenodo.14060546; Grama, Ben. “Lost in Translation : Company Grievance Mechanisms and Human Rights.” *JOURNAL OF HUMAN RIGHTS PRACTICE*, vol. 17, no. 3, 2025, doi:10.1093/jhuman/huaf009;

accountability. As always, we conducted research wholly independently from the company and have the right to publish its identity at any time. As in all our work, we received no payment whatsoever from the company. We do thank the company and its employees for the extraordinary access they provided us as described below.

Methodology

We were given complete access to the project's GM, its data management system, data, and all personnel involved in its operation. We monitored the GM over the course of 18 months. The full data set totaled 2,591 claims, complaints and requests, brought to the company between February 2020 and June 2024. The vast majority of cases brought to the GM were requests (over 2,400). Requests were excluded from in-depth analysis, because, under the Company's definitions, they would not qualify as actual or potential human rights grievances. The GM received 173 claims and complaints (together, referred to as 'cases') during the four-year period of review, which directly pertained to a harm and/or entitlement for remedy. These included actual and potential human rights cases, although none were formally characterized as such in the GM.

Analysis of the 173 cases was undertaken iteratively, beginning with desk-based review of case reports, refined through interviews and meetings, and validated through expert triangulation.

Desk review involved reading all case materials. This included correspondences between the complainant/filer (case filer, or 'filer'), company and other third parties, such as government offices and contractors. It also included documentation and minutes of meetings pertaining to the case, summaries of interactions, evidence of the actions taken and, where available, sign-offs on agreed outcomes of the case. Rightsholder and stakeholder engagement included meetings, discussions, and interviews with GM staff and filers.

The Project and the Company

The Project is a large footprint mining project in rural Latin America. It is not yet in the mining phase, meaning the great majority of the land clearing and construction has yet to take place. There are four towns in the Project's vicinity, all of which are economically dependent on agriculture and artisanal mining. Several communities within these towns are to be displaced by the mine, requiring resettlement.

Even in the pre-mining, project development phase, the Project has impacted the local community. Exploration drilling has affected homes, resettlement processes have commenced, traffic has increased, and a new workforce has been recruited from outside the local area. Perhaps most impactfully, some informal (artisanal) mines located within the project's mining title are being formalized and others are being removed by police. Social benefit projects are also deployed.

The Project is operated by a local corporate entity (the "Company") which is a wholly owned subsidiary of a transnational corporation based in North America. The Company has an operational level GM that accepts human rights claims.

The Grievance Mechanism (GM)

History

The Company has been refining its grievance process since exploration began in 2008. Initially, the Company received requests and complaints through letters and formal communications. In 2015, it established an Environmental Management Plan that included community engagement commitments. One of these commitments was to develop a dialog system to “provide clear, timely and transparent information to the social, community and public actors in the area of influence” about company impacts. In 2021, the system was refined, and a stand-alone grievance procedure was put in place, with stated objectives including “diligen[ce] in respecting Human Rights.”

Changes to the GM during Assessment

The current GM is formally named the “Requests and Complaints System.” Requests range from information-seeking about company activities to donations for youth football events. Claims are “disagreements or expressions of discontent” of any kind that concern the Project or its impacts. Complaints are “accusations of damage or loss that involve compensation.” This is a broad communications and engagement system, and many filers do not bring human rights grievances. This report only addresses claims and complaints (together referred to as ‘cases’ in this report), with an eye to understanding their intersection with human rights grievances.

Over the course of our research, the Company sought our advice on how to improve the GM. As a result we influenced the mechanism in real time as we were observing it. NomoGaia’s commitment to do no harm necessitated these real-time interventions; inaction on some concerns would amount to contribution to a risk or impact. Although this complicated our ability to draw firm conclusions about the mechanism at a single point in time, it enabled us to track improving outcomes for rightsholders bringing comparable cases during the later portion of the study. While the mechanism continues to undergo regular adjustments and modifications, NomoGaia recommended a suite of major changes in September 2023. These included:

- Expanded documentation and description of each case timeline, events, and key details. This enables GM respondents (within the company) to follow cases that were initially documented by other respondents and Responsible People (including, for example, contractor company respondents). Previously, the information registered in the system was limited to the case itself, how it was received, a short description, the Company department or sub-department that should solve it, and a letter of response (sometimes only photos or attendance lists without context or description of the actions implemented).
- Reevaluation of the time constraints mandated by law. Previously, the GM operated on the assumption that grievances must be addressed in 15 working days, rushing to close cases within the timeframe, regardless of whether remedies were implemented. Now the mechanism assures that petitions and requests are acknowledged within 15 working days, in compliance with the Environmental Management Plan, but complaints and claims are now addressed through longer timelines to accommodate investigations and remedial

actions. The Company reports that timelines for case closure are now longer, although no formal change has been documented within the grievance policy. “We went from being controlled by the timing deadline to effectively monitoring action implementation.”

- Involvement of the GM team in the intake, review, investigation and closure of all complaints and claims. The Grievance Mechanism team now signs off on events in the processing and closure of a complaint along with the Responsible Person. There is now joint verification that actions have been implemented and a response has been delivered to the filer (in a meeting, letter or report) before the case is closed.
- Process for when there is no filer acknowledgement. If the filer refuses to sign the receipt of the response, a Company representative or a third party now must sign as a witness to the refusal, noting the date, time, place, and the reason for the refusal. Previously, closure was undertaken unilaterally by the department tasked to review the case, as soon as he/she sent a letter of response to the filer.
- Issue Log. The GM team now maintains a log of issues with the mechanism, used to implement changes over time.
- GM Team empowerment. The GM team has received human rights training and is now more empowered to drive change inside the mechanism and the Company. They are now more confident to push back, engage on issues, and effectively implement remedies.
- Confidentiality strengthened. GM managers have begun protecting confidential cases and filers in their data management system, so anyone requiring access to the case needs to go through the GM team. We saw some of these cases in the more recent (2024) claims.

Mechanism Structure and Operation

Scope

The GM covers Company interactions with all external stakeholders. It receives all requests, claims and complaints related to or resulting from actions taken by the Company, its employees, its contractors, or its subcontractors. Contractors and subcontractors are considered external stakeholders and can use the GM, too. Employees are required to use separate internal company complaint systems covering issues such as ethics, labor and safety. These “internal” mechanisms were out of scope for this research.

Accessibility

This mechanism receives an average of 49 queries per month from across 17 communities in the Company’s area of influence. On average, approximately six percent of these are considered claims or complaints (cases). A case can be filed by several means. Most are filed in person (64 in a local office, 21 at a mobile office, and others in community meetings). The remainder are filed by email, phone, or text (WhatsApp). There is also a link on the Company website, although no cases were registered on the company website in the course of this review.

Table 1: Method of Filing Cases

Method	Percent
In person total	70%
At Community Office	54%
At Community Relations Meetings	16%
By email	21%
By Phone	7%
By Text	2%
Total	100%

The area is uniformly Spanish speaking with no Indigenous communities, and if a filer is not sufficiently literate she or he is assisted in filing the case.

Confidentiality

Anonymous filers are supported by the local government’s Ombudsman’s office, which is notified and copied on the Company’s response, tasked to liaise with the filer (should she/he choose to make herself known to the office), and responsible to hold the Company accountable for the outcome of the case. Ten out of the 173 claims and complaints were filed by anonymous filers. However, the GM procedure does not mention other considerations regarding the protection of retaliation against filers, beyond confidentiality.

Process

Intake

An intake form is filled out and registered with the GM staff, either by the filer or on his behalf. The GM staffer creates a registry in the GM data management system when a case is submitted. She sends a receipt to the filer with a filing number, description of the process, estimated response time, and a list of consultation channels. Using an established “Matrix of Responsibilities,” she allocates the case to a designated Responsible Person within the department that is accountable for the issue. These include professionals from different functional departments and sub-departments within the company, such as geology, environmental, resettlement, informal mine engagement, legal, and others. GM personnel are expected to escalate cases where they perceive a possible human rights harm; health or safety risk (including risk to life); road blockade threat; or recurrence of a situation (or filer) that requires heightened care. When GM personnel decide to raise such an alert, they involve other relevant Company areas and document the case more rigorously. Depending on the complaint, local authorities may be brought in.

Investigation

The designated Responsible Person (identified at Intake) investigates the case. That means that the area accountable for the complaint investigates and responds to it. This was originally undertaken unilaterally; it is now supported by the GM team. The investigation path will depend on the request, claim or complaint received. The GM does not have an investigation guideline or minimum standard for evidence, and the investigation does not evaluate whether the case is within the scope of the GM's remit – on the contrary, there are no explicit limits on the mechanism's remit. Evidence is documented in the data management system. However, the burden of proof lies on the complainant, except on limited occasions when the grievance manager proactively seeks out clarification. These exceptions are not written into procedure; they are the result of personal effort by individual complaint officers. If necessary, there is a meeting with the filer to gather or request additional information. Some cases are closed if the filer doesn't provide evidence or support within a short timeframe. When there are issues that require additional research and the involvement of different Company areas, a "Research Committee" can be convened. This includes personnel from the responsible department/sub-department, other related departments, the community relations team and the filer.

Adjudication

Adjudication is unilaterally decided by the Company. Originally, the designated Responsible Person determined a case's adjudicated outcomes unilaterally. This evaluation is now seconded to and reviewed by the GM Manager. The involvement of GM personnel reduces the inherent conflict of interest where a Responsible Person was tasked to judge complaints against his own department. Input from the GM Manager also provides a human rights perspective in the adjudication, assuring that evaluation is people-centered. Because the investigation state does not include evaluation of the case's legitimacy, there are adjudicated outcomes for complaints that the GM documents as pertinent to company operations as well as for complaints the GM informally describes as outside the mechanism's presumed remit.

Decision

Originally, the designated Responsible Person prepared a formal response unilaterally. The decision and response to the filer, stating the evidence and identifying corrective actions, if necessary, is now reviewed by the GM Manager before being sent to the filer. Since September 2023, the GM Manager verifies that actions are implemented and a response has been delivered to the filer (in a meeting, letter or report) before closing the case. The Company closes the case even if the filer does not agree with the decision or signs the receipt of the response. In 33% of the studied cases, the filer did not sign the receipt of the response given by the Company. If the filer refuses or is unable to sign the receipt of the response, a Company representative or a third party must sign as witness, noting the date, time, place, and the reason for the non-signature.

Remedy

Remedies for identified adverse impacts are referred to as “management measures and actions.” As of September 2023, when NomoGaia’s recommendations were implemented, these are now monitored to confirm that “measures and actions,” including payment of compensation, have been performed before the case is closed.

Appeal

The procedure does not establish an appeal process for cases where a filer disagrees with the Company’s response. When closing the case, the Company official tells the filer to file a new case if they dislike the issued response. The GM’s public procedure states that the complainant “[...] may restart the filing process through the mechanism or continue through legal means.” It is also clear on the fact that the filer is “free to pursue their complaints through other means, and the [Company] will not penalize filers for choosing this option.”

Logistics

Outreach

The Company has embedded references to the GM in its continuous and ongoing community engagement, which includes informational meetings at least every six months, as required by the Environmental Management Plan. The Company consistently presents information about the GM in engagements and informative meetings with community groups and members, and maintains bulletin boards, websites, and social media that regularly mention the mechanism. Additionally, the Company publicizes the GM at each of its “Community Attention Points,” community liaison offices in the three largest neighboring towns and in a staffed Company trailer transported to small towns and hamlets (dubbed the “Mobile Community Attention Point”).

Company Contractor personnel are also trained on using the GM. New contractor orientation includes instruction on how to use the GM and what to expect. The Company refreshes this information through periodic training sessions, which occur every two months and cover an array of topics. Contractors that have ongoing contact with communities (e.g. security contractors and transport contractors), receive additional instruction, as well as flyers with contact details to hand out to rightsholders.

Staffing

The GM is managed by the Senior Coordinator of Sustainability and Human Rights. This role is under the Sustainability Department. Four people are directly involved in the GM: two in the community liaison offices, the GM Administrator and the GM Manager. GM roles are one of multiple roles performed by these personnel, who carry other duties in sustainability and community engagement functions.

Timing

Response time was the driver of the mechanism at its inception. There is a commitment in the GM Procedure to resolve all requests, claims and complaints within 15 working days. The system includes alerts to make sure that the response is sent out in time. The Company can take a one-time, 15-day extension in cases where further information or documentation is needed. The case is closed at a meeting with the filer (at which minutes will be written and filed in the data management system) or by means of a formal letter. In practice, actual remediation of some impacts requires additional time. This is not formally acknowledged anywhere in the process. A separate NomoGaia report on *outcomes* of cases filed with the GM will delve deeper on this topic.

Data

NomoGaia reviewed all 2,591 claims, requests, and complaints submitted to the Company between February 2020 and June 2024, registered in their information management system by June 11, 2024. These are summarized in the table below.

Table 2: Summary of all claims, complaints, and requests

Type	#	Company's Description
Claims	164	Claims are disagreements or expressions of discontent about Company's behavior, activities or impacts. These include claims that Company or contractor vehicles caused accidents and incidents; contractor behavior; perceived pollution (including light and noise pollution); water contamination; unfairness in hiring processes; impacts to personal or communal infrastructure; and even resettlement and informal mine 'formalization' "requests".
Complaints	9	Complaints are allegations of harm, loss or tangible and/or intangible damage, seeking compensation for the impact caused. These include compensation for police damage, informal miners' possessions being destroyed, unpaid wages, or drilling damage.
Requests:		Petitions not related to impacts.
Support	606	Requests for charitable contributions, internships, technical advice or guidance and sponsorships.
Land Lease	130	Because the Company's concession is large and its planned mine is comparatively small and mining has not started, the Company leases out land for agricultural and residential use to local residents. Land lease requests are contractual proposals.
Formalization (of Informal Mining Activities)	730	Formalization is a state-facilitated process of converting informal mining operations into government-sanctioned artisanal mines. Mines located within the Company's mining title are eligible for Formalization under certain conditions, and the Company has proactively supported Formalization efforts for miners inside the concession. This category includes requests for Formalization, reports of people's mining heritage (a piece of evidence necessary for seeking Formalization), and all

Type	#	Company's Description
		other reports, communications or petitions relevant to this process for artisanal miners.
Resettlement	411	There are roughly 200 households identified as eligible for physical or economic resettlement. This category includes requests to be included in the resettlement process, that the resettlement survey be updated to account for changing household members (through births, deaths, marriages, divorces, and other household changes), building upgrades, and other modifications to the affected property.
Meetings	138	Requests for meetings, site tours, and interviews with the Company.
Access	75	Requests for permission to cross lands or affect the mine title property.
Information	234	Requests for information about licenses; Company activities and projects; for university work; as a concerned citizen. In practice, some resettlement and meeting requests were included in this category. We did not attempt to recategorize erroneously filed requests.
Other	94	Proposals and portfolios from other companies; invitations to events; notifications from public authorities.

The characterizations above were made by the Company. As is apparent from the table, complaints and claims were not characterized by the type of concern. In identifying cases that might potentially fall under the purview of UNGP Pillar 3, NomoGaia considered only claims and complaints (173), since these are the ones that the Company links to potential impacts. As a practical matter, there is not a clear distinction between a claim and a complaint within the existing system. The GM drafters initially thought that complaints would merit financial compensation and claims would trigger operational and procedural changes, but this distinction has not always been made in practice.

Of 173 cases, 162 were evaluated in full. Analysis excluded six cases that were still ‘in progress’ at the time of our review. Analysis also excluded five cases that were closed without registering evidence of response, agreements, or implemented actions. We refer to these as “Closed without follow-up.”

A ‘right to information’ is enshrined in international human rights instruments, and the situations triggering information requests could be rights-based if the requests sought understanding of actual or perceived impacts. However, an information request, though it may be a precursor to a grievance, is not in itself a grievance. These requests may escalate to grievances in the future, particularly with regard to resettlement and informal mining ‘formalization’ processes. That is a topic for future research, if the Company moves this project into construction and operation.

Analysis

The intention of this review was limited to evaluating whether and to what extent the mechanism was procedurally capable of addressing cases that might be categorized as human rights grievances. It did not benchmark the mechanism against the “Effectiveness Criteria” listed in the United Nations Guiding Principles or comprehensively evaluate each case for whether it was a human rights grievance. It also did not evaluate whether the outcomes of the process remediated harm (see related NomoGaia report). As such, analysis considered two primary conditions of the GM’s functionality:

1. How and by whom was each case reviewed: Was she/he competent (and empowered) to evaluate the human rights links to a complaint that was, on its surface, pertinent to day-to-day business? Were similar cases reviewed in a consistent manner?
2. How were cases found to be valid and in-scope for the mechanism: were there cases deemed out-of-scope potentially matters of ‘linkage’ to human rights harm? Was there consistency across departments and Responsible People responding to complaints?

Who reviewed cases: Responsible Person

The GM manager assigns cases to Responsible Persons in existing Company Departments and sub-departments thought to be accountable for the issue raised. Twelve sub-departments have been assigned cases, suggesting that there is broad accountability for complaints and claims.

Once cases are assigned, they are investigated to determine whether they were valid and in-scope for the mechanism. However, the data demonstrates that five cases (3%) included no tracking information at all. We define these as “Closed without follow-up” in Table 3, meaning that the mechanism does not indicate that any investigation or follow-up occurred.

The Company has Departments and sub-departments for an array of functions that do not always easily translate into English. These are resettlement, labor (community complaints against workers), socio-environmental affairs, procurement, land acquisition and management, legal, operations, security, social investment, and community relations. Some of these are unique, for example, few companies have separate resettlement, social investment, and community relations areas. All three are part of the Sustainability Department but investigate their complaints independently. Likewise, the location of the project necessitates that it has a designated sub-department for managing relationships with formalized and formalizing small-scale mines within its lease. These mines have different legal and regulatory conditions than other land filers, so a separate Land Management sub-department is also involved in the complaints process.

Table 3 lays out how many total cases were assigned to each Department, organized from highest to lowest number. It indicates how many (if any) cases were closed without follow-up by each department. Cases closed without follow-up are depicted in both numerical and percentage value, because the numbers are small, but the percentages lend perspective to the ways different Departments may be engaging with the mechanism. All cases investigated (i.e. all cases that were not lost to follow up) were investigated to determine whether they were in-scope for the

mechanism’s mandate or out of scope. Without exception, all cases found to be in scope included an order for some sort of remedial action.

Table 3: Responsible Persons assigned to cases

Department of the Company	Department or Sub-department of Responsible Person	Total Cases Assigned & Closed	Closed Without Follow-Up		Total Cases Reviewed
			#	%	
Sustainability	Resettlement	50	2	4.0	48
	Socioenvironmental Affairs	20	0		20
	Artisanal Mine Formalization	17	2	11.8	15
	Social Investment	2	0		2
	Community Relations	1	0		1
Labor	Labor	21	0		21
Procurement	Procurement	18	0		18
	Contractor Behavior	3	0		3
Legal	Land Management	16	0		16
	Legal	10	1	10.0	9
Operations	Operational Support	7	0		7
Security	Security	2	0		2
TOTAL		167	5	3.0	162

There is wide variability in the number of cases transmitted to each department. For example, the Sustainability Department received 90 of the 167 cases (54%), while Security received only two claims. Within the Sustainability Department, the Resettlement sub-department received 50 complaints (nearly a third of all complaints), while Community Relations received only one.

With only five cases closed without follow-up, it is not possible to make firm and quantifiable observations about how or why some cases disappear from the GM. Nevertheless, data suggests that the Departments are engaging with the mechanism inconsistently. The Resettlement sub-department has received the highest number of complaints and has followed up on all but two (4%). In contrast, the Artisanal Mine Formalization sub-department has received only seventeen but two were closed without follow-up (11,8%). This may be a result of the sensitivity of cases pertinent to formalization matters, but there is no process for shifting cases out of the mechanism into other processes, or for assuring that the non-sensitive dimensions of such cases receive follow-up. It represents a procedural gap from a human rights perspective, because cases pertinent to artisanal miners may have human rights dimensions, which require involvement of human rights personnel such as the GM manager, even if full transparency is not possible.

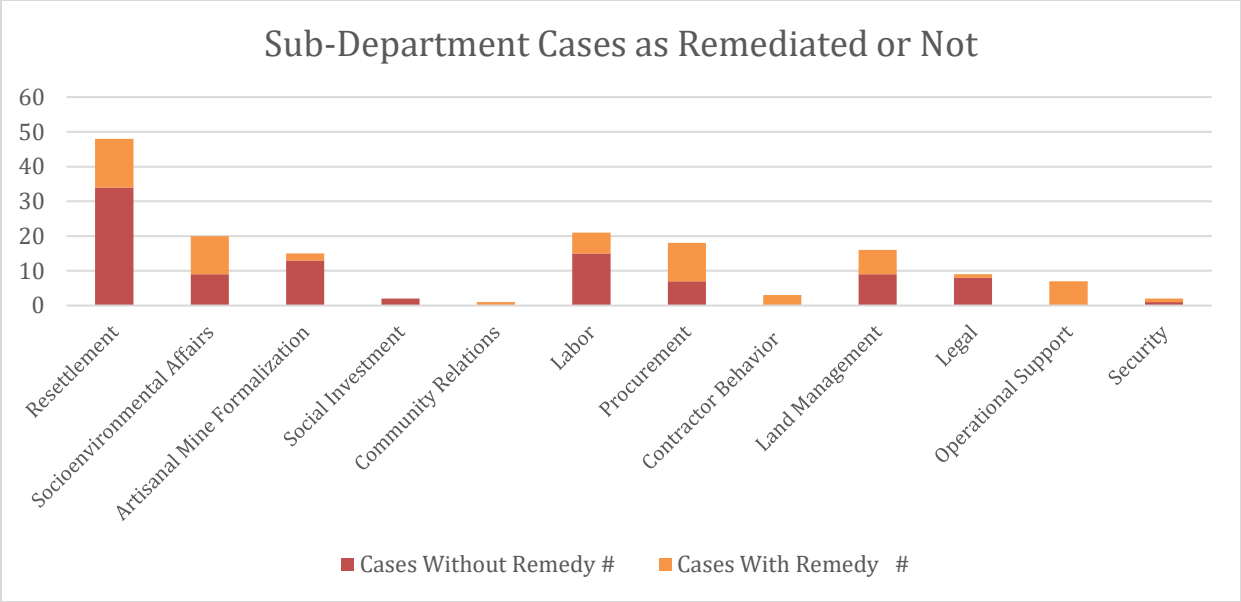
How were cases reviewed

Each department was originally empowered to determine unilaterally how to respond to cases. By the end of our review period, the GM manager was participating in decision-making. This influenced the way cases were reviewed and validated. At no point has there been a designated process for evaluating whether a case is in-scope or out-of-scope for the mechanism. In our analysis, below, cases were deemed to have been accepted as in-scope and valid if remedy was ordered. It is clear from case files that there are cases that were in-scope for the mechanism but not eligible for remedy. For example, cases brought to the Resettlement sub-department were in-scope for the mechanism but invalid based on investigation. This was because they were requests to change in the members of households to be resettled (in-scope), but they were made outside of the evaluation timeframe (not valid). We found wide variability in how frequently different departments accepted cases and ordered remedy.

Table 4: Cases accepted as in-scope and found valid, with remedy ordered

Department of the Company	Department or Sub-department of Responsible Person	Cases Without Remedy		Cases With Remedy		Total Cases Reviewed
		#	%	#	%	
Sustainability	Resettlement	34	71%	14	29%	48
	Socioenvironmental Affairs	9	45%	11	55%	20
	Artisanal Mine Formalization	13	87%	2	13%	15
	Social Investment	2	100%	0	0%	2
	Community Relations	0	0%	1	100%	1
Labor	Labor	15	71%	6	29%	21
Procurement	Procurement	7	39%	11	61%	18
	Contractor Behavior	0	0%	3	100%	3
Legal	Land Management	9	56%	7	44%	16
	Legal	8	89%	1	11%	9
Operations	Operational Support	0	0%	7	100%	7
Security	Security	1	50%	1	50%	2
TOTAL		98	60%	64	40%	162

There are no clear patterns correlating the number of cases transmitted to a department and the number deemed eligible for remedy under the scope of the GM. For example, among Resettlement Department cases, 34 of the 48 (71%) were deemed out-of-scope or ineligible for remedy. But of those 34 deemed out-of-scope, 8 were closed with the company committing to study them, but the filer never received a final response. Nearly all complaints to the Artisanal Mine Formalization Department (13 of 15) were deemed out-of-scope or ineligible for remedy. In contrast, all cases received in the Operational and Contractor Behavior Departments were found eligible for remedy.



Data within the grievance mechanism indicates that not all sub-departments are equally transparent or consistent about how cases were found to be out of scope or ineligible for remedy. For example, the Resettlement cases include clear reasons for ineligibility for remedy (see above, regarding temporality), even if there is no designated process for documenting these findings. In other sub-departments, the decision to find a case out-of-scope is not consistently explained. In the two logged Security cases, for example, one was addressed while the other was rejected as outside the jurisdiction of the company, although in both cases the incident was in the project area. Security concerns often have human rights implications, and the lack of consistency in the GM raises questions about accountability.

One reason for the high number of out-of-scope claims to the Artisanal Mine Formalization Department is that several of the claims were repeated by the same filer, thus driving repeated conclusions that they are out-of-scope. 39 out of 162 complaints and claims came from repeat users. At least 11 filed two, and four others filed more than two, of whom three presented five cases each, representing their communities in different independent cases. More than half of these filers (53%) were assigned to four sub-departments: Resettlement, Artisanal Mine Formalization, Socioenvironmental Affairs, and Operational Support. Most of the repeated cases about Resettlement and Formalization stem from disagreements over cases being found out of scope. Among Socioenvironmental and Operational cases, all but one were filed by different individuals. At the core, the issue is that their informal/artisanal mines are closed by the police because they are within the Company's land title. The Company is legally obligated to report the mines within its title to the authorities. Based on that, the police can go and close them at any moment. So, the company found these complaints out of scope concluding that this is the police responsibility, despite the fact that police actions have human rights implications (right to livelihood; security of person), which are caused by the Company's presence.

The mechanism tracked whether a case was in or out of scope, and it documented when a remedy was ordered. There was, at the time of study, no Company log of whether the ordered remedy was implemented. Without tracking implementation, there is no way of knowing whether a filer's concern is actually addressed. This, too, is a procedural gap.

Discussion

First and foremost, this GM is a serious investment by the company, within a valid system that investigates and decides cases with expertise, resources, and the backing of management. The GM finds a significant number of cases to be valid and awards those filers with a remedy. The effectiveness of those remedies will be addressed in a separate NomoGaia Report. This is a functional, operating human rights complaint mechanism of a business operation.

The data presented and analyzed above reveals important patterns pertinent to the design of the mechanism, the nature of submitted claims, and the implications of trends that may not be currently analyzed in the GM.

It is important to note that the system used to field human rights responses is primarily an external communication system, covering charitable requests, informational queries, and other matters of concern to communities. Only a small dimension of the mechanism is devoted to claims that could be potential human rights grievances. This was an evolutionary change in the mechanism, mandated by governance structures. GM Managers require skill and competence to effectively differentiate between human rights grievances and requests for support or information. The mechanism or its procedure does not itself provide this differentiation. We see evidence that having a single mechanism to field all external queries offers opportunities for a company, including the possibility of receiving and following up an information request that can evolve into a human rights grievance over time if not handled in a timely and effective manner.

Second, the changes undertaken in the GM during the review period may have resulted in changes to intake and admissibility of cases. These should be systematically analyzed in a time-benchmarked manner in the future.

Third, there are open questions of whether complaints were deemed out-of-scope or ineligible for remedy in error, since there was no process for evaluating whether a claim was in scope and thus triggering investigation. The absence of such a process has resulted in confusion for both GM staff and filers. The existence of eight Resettlement claims that were deemed out-of-scope and/or ineligible for remedy that were closed with language stating that the company would investigate them suggests that closure was premature. Investigation should occur as soon as a claim is deemed in-scope. An out-of-scope claim should not merit investigation or remedy.

Fourth, the Company invests real efforts to deliver the response to the filer. However, there is no consistent process for informing them of updates on their claims during the intake, review and analysis, unless the complainant asks directly at the office. Also, there is no public information

949about outcomes for potential users to decide whether to use the system. This is part of a broader theme of variable transparency. While we were given full access to the GM, the same is not true for users or potential users of the mechanism. Processes for safeguarding transparency are procedurally important, but not clearly documented or consistently implemented.

Fifth, there are many repeat-filers bringing mining formalization claims. This may indicate that durable resolutions are challenging. One contributor to this challenge is that police close mines, so the Company cannot control the processes and outcomes of closure. Another driver of complaints around mining formalization is that miners do not necessarily know or anticipate that their mines will be closed. The Company has not combed the territory to identify every single artisanal mine within its mining title. Mines are identified *ad hoc* and thus are reported to the government authorities *ad hoc*. Some artisanal miners seek to continue operating as long as possible; others are seeking to formalize their mining operation through government processes. In other words, the mechanism shows that a source of many complaints is the absence of a systematic approach to managing the coexistence of the Company with artisanal/informal miners. Also, to respond to the impacts the Company is causing to their right to livelihood and adequate standard of living. To date, the mechanism has not been used to draw systematic conclusions.

Finally, there are thematic conclusions to be drawn from the case data, pertinent to the type of complaint. Mining formalization and resettlement claims comprise nearly half of all complaints. It is unsurprising that these are the most pressing concerns, as they represent substantial disruption of livelihoods and ways of living. The high numbers of cases pertinent to land, resettlement and artisanal mining suggest that these are major areas of concern for the community, even if the cases do not, currently, represent complaints or qualify for remediation. That these are the top categories of concern even before earthworks begin suggests that the construction phase will bring heightened scrutiny to these same concerns.

Future research on this mechanism should focus specifically on the outcomes from the 64 cases deemed in scope, where some type of remedy was ordered.

Conclusion

This research shows that existing operational GMs can be retrofitted to also accept human rights concerns. They require modifications, however. These modifications include the incorporation of human rights expertise on staff and buy-in across all relevant departments. With these basic modifications, human rights complaints can be fielded by mechanisms. Whether existing operational GMs can provide effective remedy to human rights filers is the topic of future research.