

COMPANY-ADMINISTERED GRIEVANCE PROCESSES FOR EXTERNAL STAKEHOLDERS: A MEANS FOR EFFECTIVE REMEDY, COMMUNITY RELATIONS, OR PRIVATE POWER?

BEN GRAMA *

ABSTRACT

Company-administered grievance processes for handling complaints by external stakeholders (CGPs) have been endorsed by international standards as a means to provide remedy and to improve companies' risk management. Despite their apparent proliferation in practice, and a growing body of academic literature which references them, they remain a nebulous and undertheorized phenomenon. A CGP can be anything from a suggestion box to a private court determining what awards a victim of human rights abuses will receive.

Legal scholarship has often described CGPs as mechanisms to provide victims of human rights abuses with an effective remedy. However, in the academic literature more broadly, CGPs are often described as a tool to foster better company-community relations or as pursuing corporate objectives and countering community mobilization against company projects. These trends accompany unique narratives as to the role of governments, companies, and communities in relation to one another.

This Article systematically reviews 117 academic publications on CGPs across various domains including law, human rights, environmental policy, development, natural resources, corporate social responsibility,

* Ben Grama LLB(Hons) LLM, Tilburg Law School, Tilburg University, Tilburg, Netherlands. Author email: b.j.grama@tilburguniversity.edu. I would like to thank Nicola Jägers and Phillip Paiement, as well as Ileana Grama, Nadia Bernaz, Daniela Heerdt, Daniel Augenstein, Davinia Gómez Sánchez, the jurisprudence and legal philosophy group at Tilburg Law School, the members of the business and human rights working group of the Netherlands Network for Human Rights Research, and the attendees at the Business and Human Rights Young Researchers Summit (including Florian Wettstein, Dorothee Baumann-Pauly, and Ivo Emanuilov), for their invaluable feedback. I would also like to thank the student editors of the WILJ (including Brendan Ashe, Peter Bazianos, Andrew Campbell, Mckenna Deutsch, Graham Gerhart, and Natalie Riopelle) for their considerable input in preparing this Article for publication. This research was carried out as part of a PhD research project on operational level grievance mechanisms funded by the Tilburg Institute for Legal Research.

and business ethics. It creates an integrative framework to organize this literature against three broader trends: effective remedy, community relations, and private power. It highlights different research trends, explains underlying disagreements, identifies methodological shortcomings, and identifies opportunities for interdisciplinary engagement in developing theory on this relatively new phenomenon.

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INTRODUCTION

Numerous international standards, most notably the UN Guiding Principles on Business and Human Rights (UNGPs)¹ and the IFC Performance Standards,² state that companies should have company-administered grievance processes (CGPs) to resolve complaints lodged by external stakeholders, including those communities and individuals affected by their activities.³ Despite this, there is significant divergence in both practice and theory regarding what CGPs should look like, what they should do, and why companies should have them.

On one end of the spectrum there is the “suggestion box” CGP. This can be a telephone hotline, a designated email address, or a simple suggestion box where external stakeholders can alert a company to an employee’s violation of its code of ethics or provide suggestions for a company to improve their performance.⁴ On the other end of the spectrum lie “private courtroom” CGPs, which investigate claims of serious, criminal wrongdoing by employees and then provide reparations, including compensation awards, to victims of serious human rights abuses

¹ John Ruggie (Representative of the Special Representative of the Sec’y Gen. on the issue of Hum. Rts. and Transnat’l Corps. and other Bus. Enters.), *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) [hereinafter *UN Guiding Principles*].

² Int’l Fin. Corp. [IFC], World Bank Grp. [WBG], *Performance Standards on Environmental and Social Sustainability*, 1–2, 7, 9 (2012), https://www.ifc.org/wps/wcm/connect/24e6bfc3-5de3-444d-be9b-226188c95454/PS_English_2012_Full-Documents.pdf?MOD=AJPERES&CVID=jkV-X6h [<https://perma.cc/GGS7-SGCM>] [hereinafter *IFC Performance Standards*].

³ This can be distinguished from mechanisms for employees and workers, which have been recognized for many years (dating back to at least the 1970s) in the field of labor relations, particularly in U.S. labor relations. See WILLIAM K. ROCHE, PAUL TEAGUE & ALEXANDER J. S. COLVIN, *THE OXFORD HANDBOOK OF CONFLICT MANAGEMENT IN ORGANIZATIONS* 131 (2014).

⁴ INT’L FIN. CORP. [IFC], WORLD BANK GRP. [WBG], *STAKEHOLDER ENGAGEMENT: A GOOD PRACTICE HANDBOOK FOR COMPANIES DOING BUSINESS IN EMERGING MARKETS* 71–72 (2007), https://www.ifc.org/wps/wcm/connect/affbc005-2569-4e58-9962-280c483baa12/IFC_StakeholderEngagement.pdf?MOD=AJPERES&CVID=jkD13-p [<https://perma.cc/CQ96-28XJ>] [hereinafter *STAKEHOLDER ENGAGEMENT*].

and crimes.⁵ One such CGP was administered by a former Chief Magistrate retired judge, and resultant awards were justified in relation to national law, international human rights standards, human rights expertise, and the jurisprudence of international human rights courts.⁶ Given the nebulous nature of the CGP as anything a company has set up that deals with grievances, how have they been theorized in academic literature?

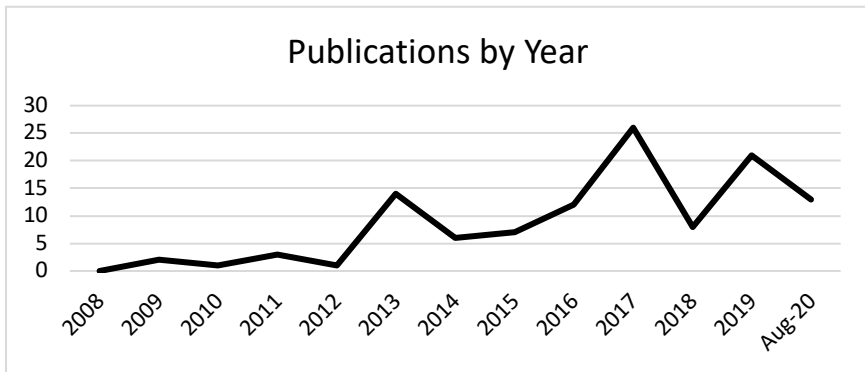
CGPs were once relatively neglected phenomena in academic literature (the oldest academic publication found on CGPs is from 2009).⁷ Since then, there appears to be a growing interest in CGPs, and there have tremendous advancements in the research of CGPs in the last decade. The research that has been carried out so far has been advanced across multiple disciplines, often adopting very different premises regarding what CGPs' functions are and reaching very different conclusions as to their broader role in social responsibility. Understanding how CGPs have been theorized can help us understand how business enterprises have processes in place to ensure they respect the human rights of external stakeholders affected by their activities. It also has important connotations for furthering our understanding of how corporations manage environmental and social risk.

This is the first article, to the knowledge of the author, to systematically review key academic literature on company-administered grievance processes for use by external stakeholders. It analyzes 117 publications across various domains, including human rights, law, environmental studies, corporate social responsibility and business ethics, and development. The Article identifies and describes different research approaches, pinpoints the underlying disagreements and commonalities between them, and maps a future research agenda to address existing gaps and methodological shortcomings in the literature.

⁵ See Yousuf Aftab, ENODO RIGHTS, PILLAR III ON THE GROUND: AN INDEPENDENT ASSESSMENT OF THE PORGERA REMEDY FRAMEWORK 15 (2016).

⁶ *Id.*

⁷ Paul Lawrence, *Equator Principles: Or How I Learned to Stop Worrying and Love Sustainability*, 27 IMPACT ASSESS. PROJ. APPRAIS. 1, 3–6 (2009).

*Figure 1. Publications by Year.*⁸

This Article proposes an integrative framework to organize the literature into three categories based on the role attributed to CGPs: effective remedy, community relations, and private power. The categories should be understood as an organizing tool and not a definitive classification of the research. The Article utilizes “pattern coding,” which uses explanatory or inferential codes to identify “an emergent theme, configuration, or explanation.”⁹ It moves beyond naming and classification towards identifying “if-then” through coding “repeatable regularities.” In this way, the author’s “hunches” regarding the relationship between different approaches could be corroborated against the full data corpus. This framework highlights three broader perspectives within the literature.

The first perspective is one that approaches CGPs as vehicles by which victims of corporate-related human rights abuse resulting from wrongful corporate conduct can access effective remedy for those harms. It is the most common approach in legal and human rights scholarship. There is greater emphasis from this perspective on questions of a normative nature—what CGPs should be doing—rather than the empirical question of what they are doing.

The second perspective is one that approaches CGPs as a means of fostering greater company-community relations, often as a means to

⁸ An overview of all the publications, including their classification for the purposes of this integrative framework, is available online at https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2021/12/Grama-Appendix_Final.pdf [perma.cc/Z2ZL-L32S].

⁹ MATTHEW MILES & MICHAEL HUBERMAN, *QUALITATIVE DATA ANALYSIS: AN EXPANDED SOURCEBOOK* 69 (1994).

improve business performance and to prevent and manage community conflict. It is most common in journals specializing in natural resource extraction and environmental studies. It views CGPs as part of a wider stakeholder engagement approach that includes relationship-building, impact assessment and management, and benefit-sharing. Empirical studies lie at the forefront of this perspective, and there tends to be a stronger orientation towards practice. It tends to focus on “having a grievance process” or questions of what constitutes an effective process without discussing potential outcomes that CGPs can have.

The third perspective is one that focuses on the exercise of power, where private norms and private governance regimes such as CGPs ensure corporations can pursue their own interests and can stifle community agency and community access to justice. It arises in similar disciplines to the community relations perspective but tends to be informed by very different approaches. It can draw on neo-Gramscian theory,¹⁰ socio-legal approaches,¹¹ intersectionality,¹² critical approaches to development,¹³ and critiques of industrialization.¹⁴ It tends to focus on a perceived clash between the private, public, or community-owned character of norms and processes rather than comparing what these processes and norms entail.¹⁵

This Article is structured as follows. First, it introduces the key drivers behind the growing trend for multinational companies to utilize CGPs in their operations and practices, including the growing reference to CGPs as tools for risk management, stakeholder engagement, respecting the environment, respecting human rights, and ensuring better governance, both in private governance and public policy (Part I). Second, it provides an overview of the perspectives in academic literature, described here as “effective remedy,” “community relations,” and “private power” (Part II). Third, it introduces particular narratives each approach has in relation to

¹⁰ Jonathan Kishen Gamu & Peter Dauvergne, *The Slow Violence of Corporate Social Responsibility: The Case of Mining in Peru*, 39 THIRD WORLD Q. 959, 959–75 (2018).

¹¹ David Szablowski, “Legal Enclosure” and Resource Extraction: Territorial Transformation Through the Enclosure of Local and Indigenous Law, 6 EXTRACTIVE INDUS. SOC’Y 722, 726–27 (2019).

¹² Susan M. Manning, *Intersectionality in Resource Extraction: A Case Study of Sexual Violence at the Porgera Mine in Papua New Guinea*, 18 INT’L FEMINIST J. POL. 574, 580–81 (2016).

¹³ LORI LEONARD, LIFE IN THE TIME OF OIL: A PIPELINE AND POVERTY IN CHAD 19 (2016).

¹⁴ JOHN R. OWEN & DEANNA KEMP, EXTRACTIVE RELATIONS: COUNTERVAILING POWER AND THE GLOBAL MINING INDUSTRY 11 (2017).

¹⁵ An overview of the selected publications, including their classification for the purposes of this integrative framework, is available online at https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2021/12/Grama-Appendix_Final.pdf [perma.cc/Z2ZL-L32S].

how government acts, how companies act, and how communities act (Part III). Finally, it suggests avenues for a future research agenda (Part IV).

I. COMPANY-ADMINISTERED GRIEVANCE PROCESSES

CGPs for external stakeholders, often described as communities, are a relatively new phenomenon. While there is no clear, identifiable starting date for when CGPs were first used as a means for addressing concerns from external stakeholders affected by company operations, in the last ten years, reference to CGPs, and reporting on CGPs, appears to have proliferated significantly.¹⁶ In the 2020 Corporate Human Rights Benchmark, 70% of selected extractives companies, half of selected agricultural companies, and 42% of selected apparel companies had a CGP in place.¹⁷

Many of the first “grievance mechanisms” mentioned in the practitioner literature on CGPs are in the extractives sector, often related to projects financed by the International Finance Corporation. Most early corporate initiatives of this nature are in mining and oil & gas, which appears to still be the key industry that utilizes CGPs.¹⁸ There were dialogue roundtables, such as those set up at the Tintaya Copper Mine and the Yanacocha Gold Mine in 2000 and 2001, respectively.¹⁹ These were

¹⁶ The Corporate Human Rights Benchmark is an independent benchmark which tracks companies’ disclosures, including on CGPs, and scores them (scoring CGP and labor-related mechanisms together). In 2017, about 38 percent of tracked companies in agriculture, apparel, and extractive sectors reported having CGPs. CORP. HUM. RTS. BENCHMARK, 2017 KEY FINDINGS, at 28 (2017), <https://assets.worldbenchmarkingalliance.org/app/uploads/2021/03/CHRB2017KeyFindingReport.pdf> [<https://perma.cc/RCN5-D5SR>]. In 2020, about 55 percent of companies in agriculture, apparel and extractives sectors reported having CGPs with an average score of 3.4/15. CORP. HUM. RTS. BENCHMARK, 2020 KEY FINDINGS, at 9 (2020), <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/WBA-2020-CHRB-Key-Findings-Report.pdf> [<https://perma.cc/65SB-X66V>].

¹⁷ 2020 KEY FINDINGS, *supra* note 16, at 24, 28, 32.

¹⁸ Eighty of 117 publications reviewed focus on the extractives sector. For a complete list of all publications reviewed, see Appendix, available online at https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2021/12/Grama-Appendix_Final.pdf [perma.cc/Z2ZL-L32S].

¹⁹ STAKEHOLDER ENGAGEMENT, *supra* note 4, at 74, https://www.ifc.org/wps/wcm/connect/affbc005-2569-4e58-9962-280c483baa12/IFC_StakeholderEngagement.pdf?MOD=AJPERES&CVID=jkD13-p [<https://perma.cc/FZH2-HXAL>]; EMMA WILSON & EMMA BLACKMORE, *Conclusions and Recommendations*, in DISPUTE OR DIALOGUE? COMMUNITY PERSPECTIVES ON COMPANY-LED GRIEVANCE MECHANISMS 165 (EMMA WILSON & EMMA BLACKMORE EDS., 2013); Isabelle Anguelovski, *Understanding the Dynamics of Community Engagement of Corporations in*

deliberative, dialogue-based processes that sought to respond to company-community conflicts.²⁰

There were processes that focused on grievances related to land acquisition, including the Chad-Cameroon Pipeline Project in 2000²¹ and the Baku–Tbilisi–Ceyhan (BTC) pipeline in 2003.²² Both focused primarily on land acquisition and compensation processes.²³ These processes could be occupied with handling complex land tenure systems which were not based on principles of private ownership and which therefore led to situations where multiple individuals had claims to the same land.²⁴

There were also toll-free telephone hotlines that allowed the public to report concerns or complaints relating to a company's operations, including environmental, health and safety, and community issues.²⁵ All these types of processes served to inform two parallel processes in the 2000s—the development of the IFC Performance Standards and the UN Guiding Principles on Business and Human Rights—which preceded the growing proliferation of initiatives requiring companies to have CGPs.²⁶

A. THE INTERNATIONAL FINANCE CORPORATION

The first driver for the use of CGPs was the International Finance Corporation (IFC), which included grievance mechanisms in its initial

Communities: The Iterative Relationship Between Dialogue Processes and Local Protest at the Tintaya Copper Mine in Peru, 24 SOC'Y NAT. RES. 384, 385 (2011).

²⁰ MANUEL RODRÍGUEZ, WALTER ARENSBERG, ROSEMBERT ARIZA & JULIA ROIG, REPORT OF THE INDEPENDENT EVALUATION OF THE MESA DE DIALOGO Y CONSENSO CAO-CAJAMARCA 1 (2005), http://www.cao-ombudsman.org/cases/document-links/documents/MESA_Evaluation_Report_Final_English.pdf [https://perma.cc/YYB7-7RFR]. The Dialogue Table at Yanacocha was described as “an open, transparent and participatory forum for discussing issues affecting the community and the mine. At the same time, it has steered clear of direct and active involvement in conflict resolution . . .” *Id.*

²¹ STAKEHOLDER ENGAGEMENT, *supra* note 4, at 77; *see also* LEONARD, *supra* note 13, at 19.

²² Emma Wilson, Christoph Schwarte & Ingilab Ahmadov, *BP and the Azerbaijan Pipelines Complaints Management Procedure*, in DISPUTE OR DIALOGUE, *supra* note 19, at 48–65.

²³ *Id.* at 49; STAKEHOLDER ENGAGEMENT, *supra* note 4, at 77.

²⁴ Wilson, Schwarte & Ahmadov, *supra* note 22, at 58; STAKEHOLDER ENGAGEMENT, *supra* note 4, at 77; *see also* Çingiz Səfiquliyev, Abbasov Namiq, Saleh Rzazadə & Hüseyn Əsədov, THE ENCYCLOPAEDIA OF THE SUCCESSFUL LAND ACQUISITION PROCESS OF THE BAKU-TBILISI-CEYHAN AND SOUTH CAUCASUS PIPELINES PROJECTS IN AZERBAIJAN 168 (2010).

²⁵ STAKEHOLDER ENGAGEMENT, *supra* note 4, at 71.

²⁶ *See infra* Part I.C.

2006 Performance Standards for its clients.²⁷ The IFC sought to disseminate learning outcomes from its own grievance mechanism: the Compliance Advisor/Ombudsman (CAO), set up in 2000.²⁸ Some of the first guidance for CGPs was directly informed by the experiences of the CAO in handling grievances surrounding the IFC's clients.²⁹ This led to two publications that situated CGPs within a broader risk management and stakeholder engagement approach. The first, published in 2007, describes the need for a CGP as follows:

For projects with environmental and social impacts, grievances are a fact of life. How a company responds (or is perceived to be responding) when such grievances surface is important and can have significant *implications for business performance* . . . In fact, having a good overall community engagement process in place and providing access to information on a regular basis can substantially help to prevent grievances from arising in the first place, or from escalating to a level that can potentially undermine business performance.³⁰

In 2008, the CAO published a further advisory note on CGPs recommending that their clients use them. This advisory note states that CGPs “provide a way to reduce risk for projects, offer communities an effective avenue for expressing concerns and achieving remedies, and promote a mutually constructive relationship.”³¹

In 2012, the IFC updated its Performance Standards.³² CGPs are discussed in the IFC Performance Standards as part of a company's overall stakeholder engagement, which is seen as the basis for building strong,

²⁷ Int'l Fin. Corp. [IFC], *Performance Standards on Social and Environmental Sustainability*, 5, 9 (2006), <https://www.ifc.org/wps/wcm/connect/3f3419f4-6043-4984-a42a-36f3cfaf38fd/IFC%2BPerformance%2BStandards.pdf?MOD=AJPERES&CVID=jkC.Eka&id=1322803957411> [https://perma.cc/J5S4-R3WS]. There are earlier standards which reference creating “communications” channels for interested external stakeholders. See, e.g., INT'L STANDARDS ORG., ISO 14001 ENVIRONMENTAL MANAGEMENT SYSTEMS – REQUIREMENTS WITH GUIDANCE FOR USE 14 (2004).

²⁸ World Bank Group [WBG], *Social Analysis Sourcebook: Incorporating Social Dimensions into Bank-Supported Projects*, 28, 39 (Dec. 2003), <http://documents1.worldbank.org/curated/en/724311468780340174/pdf/304420PAPER0SolurcebookFINAL2003Dec.pdf> [https://perma.cc/ZZZ2-HDC6]. The IFC's advocacy for CGPs started in earnest in 2006, although the very earliest mentions of CGPs predate this. *Id.*

²⁹ STAKEHOLDER ENGAGEMENT, *supra* note 4, at 2, 74.

³⁰ STAKEHOLDER ENGAGEMENT, *supra* note 4, at 69.

³¹ Susan Wildau, Christopher Moore, David Atkins & Elizabeth O'Neill, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*, 1 (2008), <http://documents1.worldbank.org/curated/en/598641478092542645/pdf/108864-WP-CAO-ENGLISH-Implementing-Grievance-mechanisms-PUBLIC.pdf> [https://perma.cc/GKG9-NV2Q].

³² See *IFC Performance Standards*, *supra* note 2.

constructive, and responsive relationships between companies and communities.³³ CGPs are required to receive and facilitate the resolution of concerns and grievances from affected communities regarding their environmental and social performance, using an understandable and transparent consultative process.³⁴

CGPs enhance the operational efficiency of projects by generating public awareness about the project, engaging external stakeholders, and giving stakeholders the opportunity to provide project staff with practical suggestions and feedback that ensures projects can be more accountable, transparent, and responsive to beneficiaries.³⁵ They can therefore serve as an early warning system before issues become more serious and/or widespread, thereby preserving the project's funds and its reputation.³⁶ The IFC Performance Standards formulate this approach based on, in part, a mantra common in business management: "plan, do, check, and act."³⁷

B. THE U.N. GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The second catalyst for the use of CGPs was John Ruggie's mandate as UN Special Representative on Business and Human Rights from 2005-2011.³⁸ This resulted in the UN Human Rights Council's endorsement of what is generally considered the principal international standard on business and human rights: the UNGPs.³⁹ The Harvard Kennedy School, which conducted research for John Ruggie during his mandate, carried out a multistakeholder consultation for the project *Corporations and Human Rights: Accountability Mechanisms for Resolving Complaints and Disputes*.⁴⁰ CGPs were then included in the

³³ *Id.* Performance Standard 1, ¶ 25.

³⁴ *Id.* ¶ 35.

³⁵ STAKEHOLDER ENGAGEMENT, *supra* note 4, at 34, 40.

³⁶ Wildau et al., *supra* note 31, at 11.

³⁷ See IFC Performance Standards, *supra* note 2, Performance Standard 1, ¶ 1.

³⁸ See Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises: About the Mandate, <https://www.ohchr.org/EN/Issues/Business/Pages/SRSGTransCorpIndex.aspx> [<https://perma.cc/FE43-2M56>].

³⁹ Human Rights Council Res. 17/4, U.N. Doc. A/HRC/RES/17/4, ¶ 1 (July 6, 2011).

⁴⁰ See CAROLINE REES, JOHN F. KENNEDY SCH. GOV'T, HARV. UNIV., CORPORATIONS AND HUMAN RIGHTS: ACCOUNTABILITY MECHANISMS FOR RESOLVING COMPLAINTS AND DISPUTES, Rep. No. 15, (2007), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/report_15_acc

2008 UN Respect, Protect, Remedy Framework as a means to improve rights-holders “access to remedy” for victims of human rights abuses to seek redress.⁴¹

Following further mapping of grievance mechanisms,⁴² and a pilot project which tested CGPs in the extractives sector,⁴³ CGPs—or “operational-level grievance mechanisms” as they are referred to—were included in the final text of the UN Guiding Principles on Business and Human Rights.⁴⁴ Here they are described as a means to improve “access to remedy” for adverse human rights impacts.⁴⁵

From a UNGPs’ perspective, CGPs serve two functions: (1) providing a channel of communication to support the identification of adverse human rights impacts so that companies can adapt their practices accordingly, and (2) making it possible for grievances to be addressed and for adverse impacts to be remediated early, thereby preventing grievances from escalating and harms from compounding.⁴⁶ They should meet the effective criteria in the UNGPs: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue.⁴⁷

CGPs have remained at the center of the UN human rights bodies’ approaches to issues of corporate-related harm since.⁴⁸ In May 2020, the

untabilitymechanisms.pdf [https://perma.cc/635C-GVMT]; see also CAROLINE REES, JOHN F. KENNEDY SCH. GOV’T, HARV. UNIV., RIGHTS-COMPATIBLE GRIEVANCE MECHANISMS: A GUIDANCE TOOL FOR COMPANIES AND THEIR STAKEHOLDERS, Working Paper No. 41 (2008), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crri/files/Workingpaper_41_Rights-Compatible%2BGrievance%2BMechanisms_May2008FNL.pdf [https://perma.cc/E3SS-6HGB].

⁴¹ John Ruggie (Rep. of the Special Representative of the Sec’y-Gen. on the Issue of Hum. Rts. & Transnat’l Corps. & Other Bus. Enters.), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, 8th Sess., ¶ 93–95, U.N. Doc. A/HRC/8/5, (Apr. 7, 2008).

⁴² CAROLINE REES & DAVID VERMIJS, JOHN F. KENNEDY SCH. GOV’T, HARV. UNIV., MAPPING GRIEVANCE MECHANISMS IN THE BUSINESS AND HUMAN RIGHTS ARENA, Rep. No. 28 (2008), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crri/files/Report_28_Map ping.pdf [https://perma.cc/UQA5-J7WU].

⁴³ See CAROLINE REES, JOHN F. KENNEDY SCH. GOV’T, HARV. UNIV., PILOTING PRINCIPLES FOR EFFECTIVE COMPANY-STAKEHOLDER GRIEVANCE MECHANISMS: A REPORT OF LESSONS LEARNED (2011), <https://shiftproject.org/wp-content/uploads/2011/05/grievance-mechanism-pilots-report-harvard-csri-jun-2011.pdf> [https://perma.cc/MJ34-7F8X].

⁴⁴ *UN Guiding Principles*, *supra* note 1, Guiding Principle 29.

⁴⁵ *Id.* Guiding Principles 22, 29, 31.

⁴⁶ *Id.* Guiding Principle 29.

⁴⁷ *Id.* Guiding Principle 31.

⁴⁸ See Human Rights Council Res. 38/13, U.N. Doc. A/HRC/RES/38/13, ¶ 9 (July 6, 2018); Working Grp. on the Issue of Hum. Rts. & Transnat’l Corps. & Other Bus. Enters., *Access to Effective*

United Nations Office for the High Commissioner on Human Rights (OHCHR) Accountability and Remedy Project published its final report on non-state-based, non-judicial grievance mechanisms, including company-administered mechanisms.⁴⁹ CGPs are expected to provide both financial remedies, in the form of compensation, and non-financial remedies, acknowledgments of wrongdoing, and guarantees of non-repetition of harm.⁵⁰ This extends to the full wealth of remedies detailed in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁵¹

C. THE GROWING PROLIFERATION OF INITIATIVES REQUIRING CGPs

In addition to the IFC, various international finance organizations require that their clients set up CGPs.⁵² One hundred and sixteen financial institutions which are members of the Equator Principles (EPs) require their clients to set up CGPs in certain situations.⁵³ Various

Remedies Under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework, U.N. Doc. A/72/162, at 24 (July 18, 2017).

⁴⁹ Rep. of the U.N. High Comm'r for Hum. Rts., *Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse Through Non-State-Based Grievance Mechanisms*, U.N. Doc. A/HRC/44/32 (May 19, 2020), https://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII_MainReport_AdvanceEditedVersion.pdf [<https://perma.cc/2DR4-2A3K>].

⁵⁰ *Id.* at 16.

⁵¹ G.A. Res. 60/147, ¶¶ 18–23 (Mar. 21, 2006).

⁵² ASIAN DEV. BANK, SAFEGUARD POLICY STATEMENT, ¶ 59 (2009), <https://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf> [<https://perma.cc/FN6S-AW8S>]; AFR. DEV. BANK GRP., AFRICAN DEVELOPMENT BANK GROUP'S INTEGRATED SAFEGUARDS SYSTEM 3, 17 (2013), https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB%E2%80%99S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf [<https://perma.cc/R42K-7HTZ>]; EUR. BANK FOR RECONSTRUCTION & DEV., ENVIRONMENTAL AND SOCIAL POLICY 5 (2019), <https://www.ebrd.com/documents/comms-and-bis/environmental-and-social-policy.pdf> [<https://perma.cc/A8JY-9DR2>].

⁵³ EQUATOR PRINCIPLES, THE EQUATOR PRINCIPLES: A FINANCIAL INDUSTRY BENCHMARK FOR DETERMINING, ASSESSING AND MANAGING ENVIRONMENTAL AND SOCIAL RISK IN PROJECTS 6 (2020), <https://equator-principles.com/wp-content/uploads/2020/05/The-Equator-Principles-July-2020-v2.pdf> [<https://perma.cc/QG9M-NQPU>].

multistakeholder initiatives that certify companies for responsible conduct require member companies to set up CGPs, including in mining,⁵⁴ hydropower,⁵⁵ sugarcane production,⁵⁶ soy production,⁵⁷ palm oil production,⁵⁸ forestry,⁵⁹ farming,⁶⁰ security provision,⁶¹ flower production,⁶² and information and communications technology (ICT).⁶³

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- ⁵⁴ INITIATIVE FOR RESPONSIBLE MINING ASSURANCE, IRMA STANDARD FOR RESPONSIBLE MINING 31–34 (2018), https://responsiblemining.net/wp-content/uploads/2018/07/IRMA_STANDARD_v.1.0_FINAL_2018-1.pdf [<https://perma.cc/TK63-BRDM>]; FAIRTRADE INT'L, FAIRTRADE STANDARD FOR GOLD AND ASSOCIATED PRECIOUS METALS FOR ARTISANAL AND SMALL-SCALE MINING 9, 11 (2013), https://files.fairtrade.net/standards/2015-04-15_EN_Gold-and-Precious_Metals.pdf [<https://perma.cc/H49P-MJ8R>]; ALL. FOR RESPONSIBLE MINING FOUND., FAIRMINED STANDARD FOR GOLD FROM ARTISANAL AND SMALL-SCALE MINING, INCLUDING ASSOCIATED PRECIOUS METALS 63 (2014), https://www.responsiblemines.org/wp-content/uploads/2017/05/Fairmined-Stnd-2-0_2014_.pdf [<https://perma.cc/975H-9PJV>].
- ⁵⁵ HELEN LOCHER & JOÃO COSTA, INT'L HYDROPOWER ASS'N, HYDROPOWER SUSTAINABILITY GUIDELINES ON GOOD INTERNATIONAL INDUSTRY PRACTICE (2020), https://static1.squarespace.com/static/5c1978d3ee1759dc44fbd8ba/t/5eb2c7bcf29b075ac3da4f24/1588774873692/Hydropower+Sustainability_Guidelines+-05-05-20v2.pdf [<https://perma.cc/5H9D-K5PY>].
- ⁵⁶ BONSUCRO, GUIDANCE FOR THE PRODUCTION STANDARD: INCLUDING GUIDANCE FOR THE BONSUCRO EU PRODUCTION STANDARD 74–75 (2016), <http://www.bonsucro.com/wp-content/uploads/2017/04/Bonsucro-PS-GDC-English-v4.2.pdf> [<https://perma.cc/X5LX-FZVJ>].
- ⁵⁷ ROUNDTABLE ON RESPONSIBLE SOY ASS'N, RTRS STANDARD FOR RESPONSIBLE SOY PRODUCTION 23 (2017), <https://responsiblesoy.org/wp-content/uploads/2019/08/RTRS%20Standard%20Responsible%20Soy%20production%20V3.1%20ING-LOW.pdf> [<https://perma.cc/5AX9-4GC2>].
- ⁵⁸ ROUNDTABLE ON SUSTAIN. PALM OIL, RSPO PRINCIPLES AND CRITERIA FOR SUSTAINABLE PALM OIL PRODUCTION: INCLUDING INDICATORS AND GUIDANCE 30 (2007), <https://rspo.org/resources/archive/135> [<https://perma.cc/B42A-P533>].
- ⁵⁹ FOREST STEWARDSHIP COUNCIL, FSC INTERNATIONAL STANDARD: FSC PRINCIPLES AND CRITERIA FOR FOREST STEWARDSHIP 13 (2015), <https://ic.fsc.org/file-download.fsc-principles-and-criteria-for-forest-stewardship-fsc-std-01-001-v5-2-en.a-2097.pdf> [<https://perma.cc/5CCV-5KEE>].
- ⁶⁰ RAINFOREST ALL., RAINFOREST ALLIANCE SUSTAINABLE AGRICULTURE STANDARD 27 (2021), https://www.rainforest-alliance.org/business/wp-content/uploads/2020/06/2020-Sustainable-Agriculture-Standard_Farm-Requirements_Rainforest-Alliance.pdf [<https://perma.cc/2KVF-2ZLV>]; *see also* UTZ, CORE CODE OF CONDUCT: FOR GROUP AND MULTI-GROUP CERTIFICATION 22 (2015), https://utz.org/wp-content/uploads/2015/12/EN_UTZ_Core-Code-Group_v1.1_2015.pdf [<https://perma.cc/4BAP-NZP9>].
- ⁶¹ INT'L CODE OF CONDUCT ASS'N., INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY SERVICE PROVIDERS, ¶¶ 66–68 (2010), https://icoca.ch/wp-content/uploads/2020/07/icoc_english3.pdf [<https://perma.cc/5TSC-6BRF>] [hereinafter ICOC].
- ⁶² FLORVERDE SUSTAINABLE FLOWERS, FLORVERDE STANDARDS FOR THE SUSTAINABLE PRODUCTION OF FLOWERS AND ORNAMENTALS 6 (2020), <https://florverde.org/wp-content/uploads/2020/07/Estandar-Florverde-2020-INGLES.pdf> [<https://perma.cc/WY7Y-DP44>].
- ⁶³ GLOB. NETWORK INITIATIVE, IMPLEMENTATION GUIDELINES FOR THE PRINCIPLES ON FREEDOM OF EXPRESSION AND PRIVACY 7 (2017), <https://globalnetworkinitiative.org/wp->

Numerous benchmarks exist which require companies to meet certain standards on their reporting of CGPs, including the Global Reporting Initiative G4 Sustainability Reporting Guidelines,⁶⁴ the FTSE Russel ESG (Environmental, Social and Governance) Data Model,⁶⁵ the Corporate Human Rights Benchmark,⁶⁶ the UN Guiding Principles Reporting Framework,⁶⁷ the Responsible Mining Index,⁶⁸ and the BankTrack Human Rights Benchmark.⁶⁹

Companies often also disclose information on their CGPs in response to regulatory reporting requirements. For instance, companies disclose information on their grievance mechanisms (including labor mechanisms) under the UK Modern Slavery Act, with 75 percent of companies reporting they have a grievance mechanism.⁷⁰ Mandatory due

content/uploads/2018/08/Implementation-Guidelines-for-the-GNI-Principles.pdf
[<https://perma.cc/23CT-VKZV>].

⁶⁴ GLOB. REPORTING INITIATIVE, GRI 103: MANAGEMENT APPROACH 2016, at 8–9 (2016), <https://www.globalreporting.org/standards/media/1038/gri-103-management-approach-2016.pdf> [<https://perma.cc/K2AF-RJLK>].

⁶⁵ FTSE RUSSEL, ESG RATINGS METHODOLOGY DOCUMENT 2019, at 80 (2019), <https://qsd.ftserussell.com/Docs/ESG/FTSE%20Russell%20ESG%20Data%20Model%20Methodology%20-%20April-2019-March-2020-Rev2.pdf> [<https://perma.cc/9T8B-YU83>].

⁶⁶ CORP. HUM. RTS. BENCHMARK, CORPORATE HUMAN RIGHTS BENCHMARK APRIL 2019, CHRB CORE UNGP INDICATOR ASSESSMENT 17–18 (2019), <https://assets.worldbenchmarkingalliance.org/app/uploads/2021/04/CHRB2019CoreUNGPIndicators.pdf> [<https://perma.cc/K4AV-V3HM>].

⁶⁷ SHIFT & MAZARS, UN GUIDING PRINCIPLES: REPORTING FRAMEWORK WITH IMPLEMENTATION GUIDANCE 86–99 (2015), https://www.ungpreporting.org/wp-content/uploads/UNGPRreportingFramework_withguidance2017.pdf [<https://perma.cc/26VX-ZZCG>].

⁶⁸ RESPONSIBLE MINING INDEX, RMI REPORT 2020: SCORING FRAMEWORK 65–66 (2020), https://2020.responsibleminingindex.org/resources/RMI_Report_2020-Scoring_Framework_EN.pdf [<https://perma.cc/H2AZ-CY2W>].

⁶⁹ *See, e.g.*, BANKTRACK, THE BANKTRACK HUMAN RIGHTS BENCHMARK 23 (3d ed. 2019), https://www.banktrack.org/download/the_banktrack_human_rights_benchmark_2019/191125humanrightsbenchmark_1.pdf [<https://perma.cc/2DLV-A4D9>].

⁷⁰ PATRICIA CARRIER, BUS. & HUM. RTS. RES. CTR. & MOD. SLAVERY REGISTRY, MODERN SLAVERY ACT: FIVE YEARS OF REPORTING 7 (2021), https://media.business-humanrights.org/media/documents/Modern_Slavery_Act_2021.pdf [<https://perma.cc/Y979-JG4D>]. This includes CGPs for labor-related issues. Seventeen percent of modern slavery company statements collected over five years mentioned the word “remedy” but no company reported dealing with a modern slavery related complaint via their mechanism. *See id.*

diligence⁷¹ proposals have been gaining traction, particularly in Europe.⁷² In March 2021, the European Parliament adopted a legislative initiative that calls on the European Commission to prepare a directive proposal on mandatory due diligence.⁷³ This contains recommendations that any EU Directive include a requirement for companies to have CGPs to hear grievances related to adverse impact on human rights, the environment, or good governance, with the expectation that remedies will be provided.⁷⁴

Despite the growing push towards greater and greater use of CGPs coming from various directions—international standards, requirements placed on clients by financial institutions, certification initiatives, voluntary and mandatory reporting requirements, and the growing prospect of regulation—there is very little clarity or consistency on what they are meant to achieve. Answers are pluralistic, ranging from after-the-fact remedies for harm done, preventing the re-occurrence of impacts in the future, ensuring compliance with laws and codes of conduct, providing a venue for stakeholder engagement, risk management, or just the need to “have a grievance mechanism,” with a limited explanation as to their broader potential purposes. Given the amorphous nature of a CGP and the various agendas evident in their justification, it is important to ask how academic literature has approached this phenomenon.

⁷¹ Mandatory due diligence refers to legislative action taken that requires that companies take action to respect human rights, and other issues such as the environment, in their activities, including their operations abroad and in their value chains. They are frequently inspired by the UNGPs. See *Mandatory Due Diligence: The Growing Worldwide Movement to Legally Require Companies to Undertake Human Rights Due Diligence*, BUS. HUM. RTS. RES. CTR., <https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/> [<https://perma.cc/9N62-4726>].

⁷² For an overview, see *National and Regional Movements for Mandatory Human Rights and Environmental Due Diligence in Europe*, BUS. HUM. RTS. RES. CTR. (May 22, 2019), <https://www.business-humanrights.org/en/latest-news/national-regional-movements-for-mandatory-human-rights-environmental-due-diligence-in-europe/> [<https://perma.cc/WKX7-NWUC>].

⁷³ Resolution of 10 March 2021 with Recommendations to the Commission on Corporate Due Diligence and Corporate Accountability, EUR. PARL. DOC. P9_TA (2021), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html#title1 [<https://perma.cc/ZD5Z-6M54>].

⁷⁴ *Id.* App., arts. 9–10.

II. OVERVIEW OF THE ACADEMIC LITERATURE – EFFECTIVE REMEDY, COMMUNITY RELATIONS OR PRIVATE POWER

A plethora of terms can be used to describe processes companies utilize to handle grievances of external stakeholders, including “grievance mechanisms,”⁷⁵ “grievance redress mechanisms,”⁷⁶ site-level/project-level mechanisms,⁷⁷ “community grievance mechanisms,”⁷⁸ “grievance management systems,”⁷⁹ “grievance control mechanisms,”⁸⁰ “grievance handling processes,”⁸¹ “dispute processing mechanisms,”⁸² “grievance procedures,”⁸³ and “dialogue mechanisms.”⁸⁴ In human rights scholarship, CGPs are often discussed as “operational-level grievance mechanisms”: the term used in the UNGPs.

In business and human rights discourse, there is a strong dividing line between CGPs and courts (and other state-based institutions), with a nation’s judicial institutions rarely, if ever, being described as part of a CGP. In other discourses, it is not uncommon to hear court systems included as part of a company’s grievance redress mechanism or for state-

⁷⁵ See, e.g., Cristina Cedillo, *Better Access to Remedy in Company-Community Conflicts in the Field of CSR*, DOVENSCHMIDT Q., Dec. 2013, at 198.

⁷⁶ See, e.g., Moses Adjei & Ragnhild Overå, *Opposing Discourses on the Offshore Coexistence of the Petroleum Industry and Small-Scale Fisheries in Ghana*, 6 EXTR. INDUS. SOC’Y 190, 195 (2019).

⁷⁷ See, e.g., Ilya Gulakov & Frank Vanclay, *Social Impact Assessment and Stakeholder Engagement in the Russian Federation: Representativeness, Deliberativeness and Influence*, 75 ENV’T IMPACT ASSESS. REV. 37, 43 (2019).

⁷⁸ See, e.g., Katharina Häusler, Karin Lukas & Julia Planitzer, *Non-Judicial Remedies: Company-Based Grievance Mechanisms and International Arbitration*, in HUMAN RIGHTS IN BUSINESS: REMOVAL OF BARRIERS TO ACCESS TO JUSTICE IN THE EUROPEAN UNION 78, 100 (Juan José Álvarez Rubio & Katerina Yiannibas eds., 2017).

⁷⁹ See, e.g., Gamu & Dauvergne, *supra* note 10, at 964.

⁸⁰ See, e.g., Michael O. Erdiaw-Kwasie, Khorshed Alam & Md. Shahiduzzaman, *Towards Understanding Stakeholder Salience Transition and Relational Approach to ‘Better’ Corporate Social Responsibility: A Case for a Proposed Model in Practice*, 144 J. BUS. ETHICS 85, 86 (2017).

⁸¹ See, e.g., Daniel M. Franks, Rachel Davis, Anthony J. Bebbington, Saleem H. Ali, Deanna Kemp, & Martin Scurrah, *Conflict Translates Environmental and Social Risk into Business Costs*, 111 PROC. NAT’L. ACAD. SCIS. 7576, 7580 (2014).

⁸² See, e.g., Szablowski, *supra* note 11, at 727.

⁸³ See, e.g., Seth Opoku Mensah & Seth Asare Okyere, *Mining, Environment and Community Conflicts: A Study of Company-Community Conflicts over Gold Mining in the Obuasi Municipality of Ghana*, 5 J. SUSTAIN. DEV. STUD. 64, 74 (2014).

⁸⁴ See, e.g., Anguelovski, *supra* note 19, at 395.

based mechanisms such as ombudsmen⁸⁵ and inspectorates⁸⁶ to be described as grievance redress mechanisms. While in theory a differentiation could be made between labor mechanisms, engagement mechanisms, land mechanisms, compliance mechanisms, whistleblower mechanisms, indigenous peoples mechanisms, and processes for out-of-court settlements, these tend to all be discussed under the term ‘grievance mechanism.’⁸⁷

One hundred seventeen academic publications on CGPs were identified through a systematic search of Google Scholar. The dataset included English-language publications in academic journals and books published between 2009, when the earliest publications were found, and the end of August 2020 that contained the search terms “grievance mechanism[s],” “grievance redress mechanism[s],” “grievance redressal,” “grievance handling,” and “grievance management.” The literature collected is limited to mechanisms which (a) are administered by the company and (b) deal with non-labor-related issues raised by external stakeholders.

The final selection includes eighty-three journal articles, twenty-five book sections in edited compilations, and nine books totaling one hundred seventeen publications. Below is an overview of the journals the articles were published in and their disciplinary focus.

⁸⁵ DAVID SANDERSON & LAURA BRUCE, URBANIZATION AT RISK IN THE PACIFIC AND ASIA: DISASTERS, CLIMATE CHANGE AND RESILIENCE IN THE BUILT ENVIRONMENT X (2020).

⁸⁶ Mike Dermot, *Across Asia, If One is on the Cheap*, in ROUTLEDGE HANDBOOK OF CONTEMPORARY ISSUES IN EXPROPRIATION, 69 (Frances Plimmer & William McCluskey eds., 2018).

⁸⁷ See, e.g., Gulakov & Vanclay, *supra* note 77, at 43.

Table 1. Overview of Journals.⁸⁸

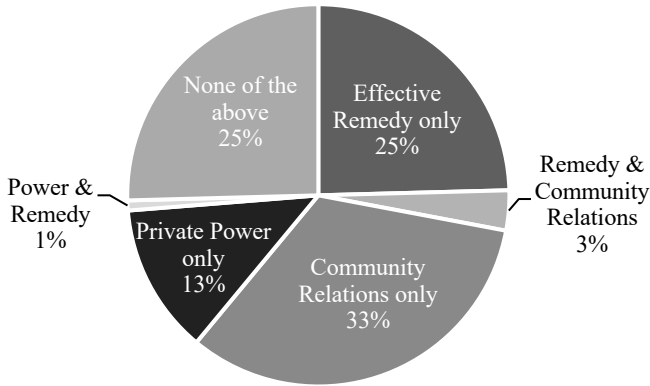
Disciplinary Focus	Included Journals	No. Articles (Total)
Business Ethics & CSR	Asian Journal of Business Ethics Dovens Schmidt Quarterly Business Ethics Quarterly Journal of Business Ethics Social Responsibility Journal	1 3 1 2 1 (8)
Development	Canadian Journal of Development Studies Community Development Journal Conflict, Security & Development Development and Change International Journal of Development and Management Review Sustainable Development Sustainable Development Law & Policy	2 2 1 1 1 1 1 (9)
Environmental Studies	Current Opinion in Environmental Sustainability Environmental Impact Assessment Review Environmental Policy and Governance Environmental Science & Policy Impact Assessment and Project Appraisal Journal of Cleaner Production Land Sustainability	1 5 1 1 6 2 2 1 (19)
Human Rights	Business and Human Rights Journal International Journal of Human Rights Journal of Human Rights and the Environment	4 3 1 (8)
Law	Boston University International Law Journal Brazilian Journal of International Law	1 2

⁸⁸ An overview of the journals included in this integrative literature review according to their disciplinary focus. An overview of the selected publications is available online at https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2021/12/Grama-Appendix_Final.pdf [perma.cc/Z2ZL-L32S].

	Denver Journal of International Law and Policy	1
	Emory Law Journal	1
	German Law Journal	1
	Indiana Journal of Law and Social Equality	1
	Journal of World Energy Law & Business	1
	New York University Journal of International Law and Politics	1
	Nordic Journal of International Law	2
	Transnational Law and Contemporary Problems	1
	Transnational Legal Theory	1
	Windsor Yearbook on Access to Justice	1 (14)
Natural Resources & Extractives	Extractive Industries and Society	9
	Forest and Society	1
	Forests	1
	Resources	2
	Resources Policy	3 (16)
Other	Accounting, Auditing & Accountability Journal	1
	Communicatio	1
	Critical Perspectives on Accounting	1
	Energy Research & Social Science	1
	Geoforum	1
	International Feminist Journal of Politics	1
	Philosophy of Management	1
	Proceedings of the National Academy of Sciences	1
	Third World Quarterly	1 (9)
Total		83

As demonstrated in Table 1, the most popular areas of focus were “Environmental Studies,” “Natural Resources and Extractives,” “Law,” “Development,” “Human Rights,” and “Business Ethics and CSR.” Books were more difficult to classify. Around half could be described as “business and human rights” books, just under a third were focused on the extractives sector, and the rest were on corporate accountability/responsibility, impact assessments, and other topics.

Figure 2. Percentage of publications from each perspective.⁸⁹



Three perspectives emerged from reading the literature. The first is that CGPs should and can provide effective remedy to victims of human rights abuses by companies. The second is that CGPs are a means to foster better company-community relations, often between the companies that use land and the communities that host those companies for the duration of the project. The third is that CGPs are a means by which companies exercise private power, generally as a replacement for more legitimate public regulations, often stifling community resistance and/or community agency. These will be detailed in turn.

A. CGPS AS MECHANISMS THAT PROVIDE EFFECTIVE REMEDY

Publications that illustrate a trend towards viewing CGPs as remedy vehicles start after the endorsement of the UNGPs. Just over a quarter of publications describe CGPs as a means to provide remedy to individuals (33/117). This approach is dominant in legal and human rights approaches to CGPs, with 7/7 of articles published in human rights journals and 8/14 of articles published in law journals describing CGPs as

⁸⁹ A breakdown of every publication, including their classification for the purposes of this integrative framework, is available online at https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2021/12/Grama-Appendix_Final.pdf [perma.cc/Z2ZL-L32S].

mechanisms that (a) provide remedy and (b) are appropriate forums for providing remedy. Of the remaining five articles, three are in business ethics & CSR. Of the thirteen book and book section contributions to this perspective, eleven are expressly on “business and human rights.”

All effective remedy publications understand corporate activities from a human rights perspective: corporations can harm human rights, variously referred to as human rights violations, abuses, and impacts. They generally define the role of CGPs in relation to the text of the UNGPs: CGPs are one means to provide remediation and access to remedy.⁹⁰ They have two main purposes: (potential) harm identification and remedy for human rights impacts.⁹¹ They always view grievances as concerning company conduct, never the conduct of other actors. They almost always state grievances concern human rights abuses, although they may not be limited to just human rights abuses. In a majority of these publications, users of the CGP are described at some point as “victims.” Two-thirds of publications expect the forms of claims lodged before a CGP could also be lodged before legal systems, thus suggesting that human rights grievances often result from potentially unlawful company conduct.

Half of the publications on effective remedy focus on the third pillar of the UNGPs: “access to remedy.” The “access to remedy” pillar describes various mechanisms, both judicial and non-judicial, that ensure that rightsholders have greater access to remedy. CGPs are a type of non-judicial grievance mechanism, which exist alongside other non-judicial grievance mechanisms as well as courts. CGPs can be seen as related to these other forms of grievance mechanisms as part of a wider system of remedy to which similar requirements apply. “Access to remedy” is discussed interchangeably with providing remedy.

Other publications focus on the second pillar of the UNGPs: the corporate responsibility to respect. The corporate responsibility to respect pillar requires that companies adopt a human rights policy, carry out human rights due diligence to identify, prevent, and mitigate adverse human rights impacts (and account for how they do so), and enable remediation of adverse human rights impacts, where appropriate. Normally, CGPs are the only means publications discuss by which

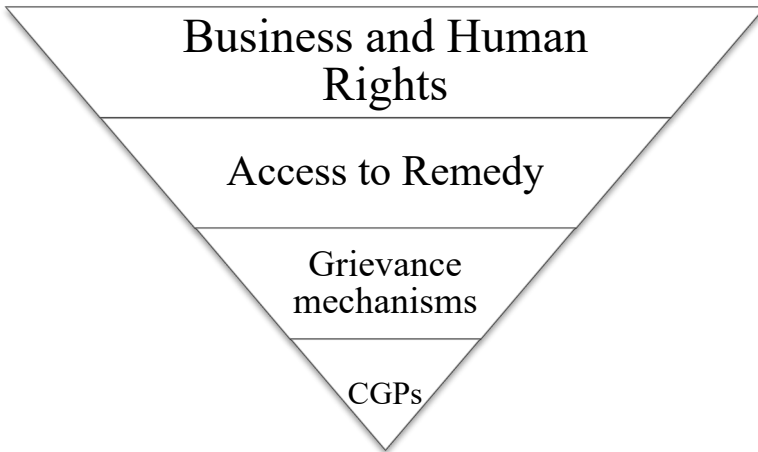
⁹⁰ All but two of the publications which describe CGPs as providing remedy discuss the UNGPs, with one discussing the 2008 UN Protect, Respect, Remedy Framework and the other the ICoC.

⁹¹ *UN Guiding Principles*, *supra* note 1, Guiding Principle 29.

companies can ‘enable remediation,’ which is treated as synonymous with providing remedy.⁹²

Some contributions discuss all three pillars of the UNGPs. They normally discuss CGPs under the access to remedy pillar but sometimes discuss them under both respect and remedy pillars.⁹³ A few contributions discuss “business and human rights” beyond just the UNGPs, including CSR, the UN Global Compact, the OECD Guidelines,⁹⁴ the ICoC,⁹⁵ contractual requirements, and national law requirements. Thus, overall, the “effective remedy” universe looks something like what is depicted in Figure 3.⁹⁶

Figure 3. Locating CGPs in the “effective remedy universe.”⁹⁷



⁹² One exception being Lambooy et al. who also discuss out-of-court settlements and engagement. See generally Tineke Lambooy, Aikaterini Argyrou & Mary Varner, *An Analysis and Practical Application of the Guiding Principles on Providing Remedies with Special Reference to Case Studies Related to Oil Companies*, in HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE RESPONSIBILITY TO RESPECT? (Surya Deva & David Bilchitz eds., 2013).

⁹³ E.g., Benny Santoso, “Just Business” - Is the Current Regulatory Framework an Adequate Solution to Human Rights Abuses by Transnational Corporations?, 18 GER. L.J. 533 (2017).

⁹⁴ OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (OECD 2011), <http://mneguidelines.oecd.org/guidelines/> [<https://perma.cc/2UFA-3BZY>].

⁹⁵ ICoC, *supra* note 61.

⁹⁶ One exception is Joyce et al. who discuss CGPs as providing remedy as part of social impact assessments without express reference to the UNGPs. Susan Joyce, Rauno Sairinen & Frank Vanclay, *Using Social Impact Assessment to Achieve Better Outcomes for Communities and Mining Companies*, in MINING AND SUSTAINABLE DEVELOPMENT: CURRENT ISSUES (Sumit K. Lodhia ed., 2018).

⁹⁷ Figure 3 illustrates how CGPs are considered a type of grievance mechanism, which are in turn part of access to remedy, which is a part of business and human rights.

The remedy appears, in most cases, to be solely after-the-fact: making a victim whole following the harm.⁹⁸ Three-quarters of publications reference terms that strongly imply after-the-fact, quasi-legal remedies. This includes reference to “reparations,” the “right to remedy” under international human rights law, remedies found in legal systems, and the categories of remedy in Guiding Principle 25.⁹⁹

Many publications devise a framework or criteria by which CGPs should be considered effective or not. These frameworks and criteria can be CGP-specific¹⁰⁰ or can discuss CGPs amongst other grievance mechanisms and the broader arena of company and state practices with respect to human rights.¹⁰¹

Some publications illuminate real-life practices with respect to CGPs and companies providing remedy. They may take the form of case studies of CGPs, including mining companies in Brazil,¹⁰² Guatemala,¹⁰³ Papua New Guinea,¹⁰⁴ and Zimbabwe,¹⁰⁵ multiple sites for the same oil and gas company,¹⁰⁶ and a geothermal powerplant in Kenya.¹⁰⁷ Other publications devise a normative framework specific to CGPs articulating

⁹⁸ *Contra*, Martijn Scheltema, *Assessing the Effectiveness of Remedy Outcomes of Non-Judicial Grievance Mechanisms*, 2013 DOVENSCHMIDT Q. 190, 194–95.

⁹⁹ *UN Guiding Principles*, *supra* note 1, Guiding Principle 25 (“Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”).

¹⁰⁰ *E.g.*, Benjamin Thompson, *Determining Criteria to Evaluate Outcomes of Businesses’ Provision of Remedy: Applying a Human Rights-Based Approach*, 2 BUS. & HUM. RTS. J. 55 (2017).

¹⁰¹ *E.g.*, Scheltema, *supra* note 98.

¹⁰² *See, e.g.*, Mariana Aparecida Vilmondes Türke, *Business and Human Rights in Brazil: Exploring Human Rights Due Diligence and Operational-Level Grievance Mechanism in the Case of Kinross Paracatu Gold Mine*, 15 BRAZ. J. INT’L L. 222 (2018).

¹⁰³ *See, e.g.*, KARIN LUKAS, ASTRID KUTRZEBA, BARBARA LINDER & CLAUDIA SPRENGER, *CORPORATE ACCOUNTABILITY: THE ROLE AND IMPACT OF NON-JUDICIAL GRIEVANCE MECHANISMS* (2016), 301–22.

¹⁰⁴ *See, e.g.*, Sarah Knuckey & Eleanor Jenkin, *Company-Created Remedy Mechanisms for Serious Human Rights Abuses: A Promising New Frontier for the Right to Remedy?*, 19 INT’L J. HUM. RTS. 801 (2015).

¹⁰⁵ *See, e.g.*, Bellinda Chinowawa, *Taming the Dragon: Unpacking Options for Access to Remedy for Violations by Chinese Multinational Corporations Operating in Chiadzwa, Zimbabwe*, in *WHEN BUSINESS HARMS HUMAN RIGHTS: AFFECTED COMMUNITIES THAT ARE DYING TO BE HEARD* (Karen Erica Bravo, Jena Martin & Tara Van Ho eds., 2020).

¹⁰⁶ *See, e.g.*, Häusler et al., *supra* note 78.

¹⁰⁷ *See, e.g.*, Jeanette Schade, *EU Accountability for the Due Diligence Failures of the European Investment Bank: Climate Finance and Involuntary Resettlement in Olkaria, Kenya*, 8 J. HUM. RTS. & ENV’T 72 (2017).

different paradigms of remedy, including transformative remedy,¹⁰⁸ restorative remedy,¹⁰⁹ deterrence,¹¹⁰ and alternative dispute resolution.¹¹¹

They can look at the UNGPs' application to a particular sector—mining,¹¹² oil and gas,¹¹³ or online service providers¹¹⁴—or across sectors.¹¹⁵ They can focus on a particular issue—children,¹¹⁶ conflict-prone areas,¹¹⁷ legal waivers,¹¹⁸ and arbitration.¹¹⁹ Some look at the application of certain standards: European Investment Bank standards,¹²⁰ IFC Performance Standard 5,¹²¹ and the ICoC.¹²² Finally, several

¹⁰⁸ See, e.g., Thompson, *supra* note 100.

¹⁰⁹ See, e.g., Maximilian J. L. Schormair & Lara M. Gerlach, *Corporate Remediation of Human Rights Violations: A Restorative Justice Framework*, 167 J. BUS. ETHICS 475 (2020).

¹¹⁰ See, e.g., Aaron Marr Page, *Just Compensation: Whether Business & Human Rights Compensation Awards Should Embrace Deterrence Considerations*, 50 N.Y.U. J. INT'L L. POL. 353 (2017).

¹¹¹ See, e.g., Cedillo, *supra* note 75.

¹¹² See, e.g., Christina Hill & Serena Lillywhite, *The United Nations 'Protect, Respect and Remedy' Framework: Six Years On and What Impact Has It Had?*, 2 EXTRACTIVE INDUS. & SOC'Y 4 (2015).

¹¹³ E.g., Rae Lindsay, Robert McCorquodale, Lara Blecher, Jonathan Bonnitcha, Antony Crockett & Audley Sheppard, *Human Rights Responsibilities in the Oil and Gas Sector: Applying the UN Guiding Principles*, 6 J. WORLD ENERGY L. BUS. 2 (2013).

¹¹⁴ E.g., Emily B. Laidlaw, *Myth or Promise? The Corporate Social Responsibilities of Online Service Providers for Human Rights*, in THE RESPONSIBILITIES OF ONLINE SERVICE PROVIDERS 135, 139–42 (Mariasoria Taddeo & Luciano Floridi eds., 2017).

¹¹⁵ E.g., Kendyl Salcito, Chris Wielga & Burton H. Singer, *Corporate Human Rights Commitments and the Psychology of Business Acceptance of Human Rights Duties: A Multi-Industry Analysis*, 19 INT'L J. HUM. RTS. 673 (2015).

¹¹⁶ E.g., Mona Paré & Tate Chong, *Human Rights Violations and Canadian Mining Companies: Exploring Access to Justice in Relation to Children's Rights*, 21 INT'L J. HUM. RTS. 908 (2017).

¹¹⁷ E.g., Andreas Graf & Andrea Iff, *Respecting Human Rights in Conflict Regions: How to Avoid the 'Conflict Spiral'*, 2 BUS. & HUM. RTS. J. 109 (2017).

¹¹⁸ E.g., Justin Jos, *Access to Remedies and the Emerging Ethical Dilemmas: Changing Contours Within the Business-Human Rights Debate*, 15 BRAZ. J. INT'L L. 116 (2018).

¹¹⁹ E.g., Youseph Farah & Malakee Makhoul, *Access to an Effective Remedy in Business-Related Human Rights Violations in the Context of Oil and Gas Disputes*, in RESEARCH HANDBOOK ON EU ENERGY LAW AND POLICY (Rafael Leal-Arcas & Jan Wouters eds., 2017).

¹²⁰ E.g., Schade, *supra* note 107.

¹²¹ E.g., Lidewij van der Ploeg & Frank Vanclay, *A Human Rights Based Approach to Project Induced Displacement and Resettlement*, 35 IMPACT ASSESSMENT & PROJECT APPRAISAL 34 (2017).

¹²² See, e.g., Cristina Narváez González & Katharine Valencia, *Improving Human Rights in the Private Security Industry: Envisioning the Role of ICoCA in Latin America*, 4 BUS. & HUM. RTS. J. 79 (2019); Stuart Wallace, *Private Security Companies and Human Rights: Are Non-Judicial Remedies Effective?*, 35 B.U. INT'L L.J. 69, 87–98 (2017); Laura A. Dickinson, *Regulating the Privatized Security Industry: The Promise of Public/Private Governance*, 63 EMORY L.J. 417 (2013).

publications discuss CGPs in the context of a broader analysis of the UNGPs.¹²³

B. CGPS AS PART OF COMMUNITY RELATIONS

Publications from a community relations perspective start in 2009, following the incorporation of CGPs into the IFC Performance Standards, EPs, and ICMM guidance.¹²⁴ Just over a third (43/117) of publications collected view CGPs as a means to foster more constructive company-community relations. They describe CGPs as an engagement tool, a means of conflict management, part of company-community agreement-making, and/or a means to foster a social license to operate (SLO). “Engagement” refers to offering a channel by which communities can voice their concerns and perspectives to companies. “Conflict” normally refers to company-community conflict but can also refer to intra-community conflict if such conflict affects the company. The use of CGPs in agreements is generally concerned with grievances around company commitments to communities found in benefit-sharing agreements, memoranda of understanding, and/or community development agreements. The SLO is a popular industry term used to denote the fostering of community approval of company activities.

Most community relations articles are published in journals on either environmental studies (12/37) or journals specialized in natural resources and extractives (10/37). The remaining articles are in business ethics (4/37), development (4/37), law (3/37), and other journals (4/37).

¹²³ E.g., ALEX NEWTON, *THE BUSINESS OF HUMAN RIGHTS: BEST PRACTICE AND THE UN GUIDING PRINCIPLES* (2019); E.g., Sara L. Seck, *Corporate Law Tools and the Guiding Principles on Business and Human Rights*, in *BUSINESS AND HUMAN RIGHTS* (Manoj Kumar Sinha ed., 2013); Santoso, *supra* note 93; JULIA RUTH-MARIA WETZEL, *HUMAN RIGHTS IN TRANSNATIONAL BUSINESS: TRANSLATING HUMAN RIGHTS OBLIGATIONS INTO COMPLIANCE PROCEDURES* (2016); Kristen Genovese, *Access to Remedy: Non-Judicial Grievance Mechanisms*, in *BUSINESS AND HUMAN RIGHTS: FROM PRINCIPLES TO PRACTICE* 266 (Dorothee Baumann-Pauly & Justine Nolan eds., 2016); Mariëtte van Huijstee & Joseph Wilde-Ramsing, *Remedy is the Reason: Non-Judicial Grievance Mechanisms and Access to Remedy*, in *RESEARCH HANDBOOK ON HUMAN RIGHTS AND BUSINESS* (Surya Deva & David Birchall eds., 2020); Youseph Farah, *Toward a Multi-Directional Approach to Corporate Accountability*, in *CORPORATE ACCOUNTABILITY IN THE CONTEXT OF TRANSITIONAL JUSTICE* (Sabine Michalowski ed., 2014); Sara L. Seck, *Transnational Judicial and Non-Judicial Remedies for Corporate Human Rights Harms: Challenges of and for Law Special Section: Transnationalism and Law*, 31 WINDSOR Y.B. ACCESS JUST. 177 (2013).

¹²⁴ INT’L COUNCIL ON MINING & METALS, *HUMAN RIGHTS IN THE MINING AND METALS INDUSTRY: HANDLING AND RESOLVING LOCAL LEVEL CONCERNS AND GRIEVANCES* (2009), https://www.icmm.com/website/publications/pdfs/social-performance/2009/guidance_local-level-concerns-grievances.pdf [<https://perma.cc/VQT5-UYBH>].

Three-quarters of book sections and both of the books that utilize community relations language in describing CGPs focus on the extractives sector. There are four publications that describe CGPs as fostering better community relations which also describe them as providing remedy and are therefore included in both perspectives.

Only two articles from a community relations perspective have CGPs as their principal focus.¹²⁵ Most discuss stakeholder engagement,¹²⁶ company-community conflict,¹²⁷ development,¹²⁸ the SLO¹²⁹ or CSR more broadly.¹³⁰ Some discuss compliance with international standards,

¹²⁵ Deanna Kemp & John R. Owen, *Grievance Handling at a Foreign-Owned Mine in Southeast Asia*, 4 EXTRACTIVE & INDUS. SOC'Y 131 (2017); Deanna Kemp, John R. Owen, Nora Gotzmann & Carol J. Bond, *Just Relations and Company-Community Conflict in Mining*, 101 J. BUS. ETHICS 93 (2011).

¹²⁶ See, e.g., Gulakov & Vanclay, *supra* note 77; Patrick J. Keenan, *Evidence-Based Stakeholder Engagement: The Promise of Randomized Control Trials for Business and Human Rights*, 3 IND. J.L. SOC. EQUAL. 29 (2015).

¹²⁷ See, e.g., Franks et al., *supra* note 81; Philippe Hanna, Frank Vanclay, Esther Langdon & Jos Arts, *Conceptualizing Social Protest and the Significance of Protest Actions to Large Projects*, 3 EXTR. INDUS. SOC'Y 217 (2016); Kristian Hoelscher & Siri Aas Rustad, *CSR and Social Conflict in the Brazilian Extractive Sector*, 19 CONFLICT SEC. DEV. 99 (2019); Paul Kapelus, Emily Richards & Hope Sherwin, *Conflict-Sensitive Impact Assessment*, in NEW DIRECTIONS IN SOCIAL IMPACT ASSESSMENT: CONCEPTUAL AND METHODOLOGICAL ADVANCES 286 (Frank Vanclay & Ana Maria Esteves eds., 2011); Frank Vanclay & Philippe Hanna, *Conceptualizing Company Response to Community Protest: Principles to Achieve a Social License to Operate*, 8 LAND 101 (2019).

¹²⁸ See, e.g., LEEORA BLACK, *THE SOCIAL LICENCE TO OPERATE: YOUR MANAGEMENT FRAMEWORK FOR COMPLEX TIMES* (2017); John Burton & Joyce Onguglo, *Disconnected Development Worlds: Responsibility Towards Local Communities in Papua New Guinea*, in LARGE-SCALE MINES AND LOCAL-LEVEL POLITICS: BETWEEN NEW CALEDONIA AND PAPUA NEW GUINEA 261 (Colin Filer & Pierre-Yves Le Meur eds., 2017).

¹²⁹ See, e.g., David Jijelava & Frank Vanclay, *Legitimacy, Credibility and Trust as the Key Components of a Social Licence to Operate: An Analysis of BP's Projects in Georgia*, 140 J. CLEANER PROD. 1077 (2017); John R. Owen, *Social License and the Fear of Mineras Interruptus*, 77 GEOFORUM 102 (2016); Frank Vanclay, *Principles to Gain a Social Licence to Operate for Green Initiatives and Biodiversity Projects*, 29 CURRENT OP. ENV'T. SUSTAIN. 48 (2017).

¹³⁰ See, e.g., Douglas Adeola & Ogechi Adeola, *The Extractive Sector and Corporate Social Responsibility: A Case of Chevron Nigeria*, 45 COMMUNICATION 40 (2019); Robert Goodland, *Responsible Mining: The Key to Profitable Resource Development*, 4 SUSTAINABILITY 2099 (2012); Francis Mbilima, *Extractive Industries and Local Sustainable Development in Zambia: The Case of Corporate Social Responsibility of Selected Metal Mines*, RES. POL'Y 101441 (2019); Hillary Strasser, *Corporate Spheres of Responsibility: Architects, Cowboys, and Eco-Warriors in Myanmar's Oil & Gas Industry*, 1 FOREST SOC'Y 27 (2017); Prasanna Shrivastava & Rachana Vidhi, *Pathway to Sustainability in the Mining Industry: A Case Study of Alcoa and Rio Tinto*, 9 RES. 70 (2020); Benjamin K. Sovacool, *Energy Policy and Cooperation in Southeast Asia: The History, Challenges, and Implications of the Trans-ASEAN Gas Pipeline (TAGP) Network*, 37 ENERGY POL'Y 2356 (2009).

including environmental standards¹³¹ and corporate standards.¹³² Some articles focus on other community relations tools: community relations departments,¹³³ memoranda of understanding (MoUs),¹³⁴ impact assessments,¹³⁵ benefit-sharing agreements,¹³⁶ community development agreements,¹³⁷ and resettlement plans.¹³⁸ Finally, there is research on the politics of resource extraction,¹³⁹ on discourses around resource

¹³¹ See, e.g., Farah & Makhoul, *supra* note 119.

¹³² See, e.g., Mirja Schoderer, Jampel Dell'Angelo & Dave Huitema, *Water Policy and Mining: Mainstreaming in International Guidelines and Certification Schemes*, 111 ENV'T SCI. POL'Y 42 (2020); Tapan K. Sarker, *Voluntary Codes of Conduct and Their Implementation in the Australian Mining and Petroleum Industries: Is There a Business Case for CSR?*, 2 ASIAN J. BUS. ETHICS 205 (2013).

¹³³ See, e.g., Kristi Disney Bruckner, *Community Development Agreements in Mining Projects*, 44 DENVER J. INT'L L. POL'Y 413 (2015); Deanna Kemp & John R. Owen, *Community Relations and Mining: Core to Business but not "Core Business"*, 38 RES. POL'Y 523 (2013); LUC ZANDVLIET & MARY ANDERSON, *GETTING IT RIGHT: MAKING CORPORATE-COMMUNITY RELATIONS WORK* (2009).

¹³⁴ See, e.g., Uwafiokun Idemudia & Nedo Osayande, *Assessing the Effect of Corporate Social Responsibility on Community Development in the Niger Delta: A Corporate Perspective*, 53 CMTY. DEV. J. 155 (2018); Bieh L. Raimi, N. Nwoke & S. E. Boroh, *How Democratic is Community Driven Development? A Focus on SPDC Global Memorandum of Understanding (GMoU) in the Niger Delta Region, Nigeria*, 11 INT'L J. DEV. MGMT. REV. 67 (2016); Joseph I. Uduji & Elda N. Okolo-Obasi, *Corporate Social Responsibility Initiatives in Nigeria and Rural Women Livestock Keepers in Oil Host Communities*, 15 SOC. RESP. J. 1008 (2019).

¹³⁵ See, e.g., Ilya Gulakov, Frank Vanclay, Aleksander Ignatev & Jos Arts, *Challenges in Meeting International Standards in Undertaking Social Impact Assessment in Russia*, 83 ENV'T IMPACT ASSESSMENT REV. 106410 (2020); Paula V. Prenzel & Frank Vanclay, *How Social Impact Assessment Can Contribute to Conflict Management*, 45 ENV'T IMPACT ASSESSMENT REV. 30 (2014).

¹³⁶ See, e.g., Maria Tysiachniouk, Laura Henry, Machiel Lamers & Jan van Tatenhove, *Oil and Indigenous People in Sub-Arctic Russia: Rethinking Equity and Governance in Benefit Sharing Agreements*, 37 ENERGY RSCH. SOC. SCI. 140 (2018); Emma Wilson, *What is Benefit Sharing? Respecting Indigenous Rights and Addressing Inequities in Arctic Resource Projects*, 8 RES. 74 (2019).

¹³⁷ See, e.g., Ben Bradshaw & Caitlin McElroy, *Company-Community Agreements in the Mining Sector*, in 7 SOCIALLY RESPONSIBLE INVESTMENT IN THE 21ST CENTURY: DOES IT MAKE A DIFFERENCE FOR SOCIETY? 173 (Céline Louche & Tessa Hebb eds., 2014); Bruckner, *supra* note 133.

¹³⁸ See, e.g., van der Ploeg & Vanclay, *supra* note 121.

¹³⁹ See, e.g., Japhace Poncian, *Extractive Resource Ownership and the Subnational Resource Curse: Insights from Tanzania*, 6 EXTRACTIVE INDUS. SOC. 332 (2019); Fiorella Triscritti, *Mining, Development and Corporate-Community Conflicts in Peru*, 48 CMTY. DEV. J. 437 (2013).

extraction,¹⁴⁰ and on the experiences of community members regarding plantations.¹⁴¹

Community relations publications mostly focus on the extractives sector and always describe industries that involve the use of land. These companies have the potential to offer benefits to local communities but may also cause unwelcome disruptions or impacts to communities. Communities may decide that “the benefits are not worth the costs.”¹⁴² Community dissatisfaction, or grievance, can lead to conflict. Sometimes conflict can result simply as the result of the very presence of a company and the “side effects” of its activities.¹⁴³ Conflict should be avoided and/or managed in part because it can have material repercussions for the company. Mounting criticism from external stakeholders and raising expectations on the extractives sector have prompted companies toward more responsible ways of carrying out business.

Community relations publications do not focus on standards but tend to describe increasingly progressive attitudes to community relations arising over time. For instance, they will state that, *in the past*, companies have tended to only account for their financial performance, focus on short-term performance, adopt a “compliance” mindset and engage in (top-down) philanthropy or development, and react defensively to community demands. They will then describe that, *recently*, companies are realizing they should treat communities not as objects but as partners, ensure effective two-way communication, build mutually beneficial relationships, create value for both themselves and communities. This can be described as part of the SLO: a means of garnering community approval to prevent conflict. This includes giving community members a voice, building a sense of ownership, and reaching company-community agreements.

Publications from a community relations perspective are far more disparate in subject matter than the other publications. Only two publications have CGPs as their principal focus.¹⁴⁴ Most mention CGPs as

¹⁴⁰ See, e.g., Adjei & Overå, *supra* note 76.

¹⁴¹ See, e.g., Mohammed B. Degnet, Edwin van der Werf, Verina Ingram & Justus Wessler, *Do Locals Have a Say? Community Experiences of Participation in Governing Forest Plantations in Tanzania*, 11 *FORESTS* 782 (2020).

¹⁴² BLACK, *supra* note 128, at 15.

¹⁴³ ZANDVLIET & ANDERSON, *supra* note 133.

¹⁴⁴ See Kemp & Owen, *supra* note 125; Kemp et al., *supra* note 125.

playing a role in stakeholder engagement,¹⁴⁵ company-community conflict,¹⁴⁶ development,¹⁴⁷ the SLO,¹⁴⁸ and/or CSR more broadly.¹⁴⁹ Some discuss compliance with international standards—the EPs,¹⁵⁰ the IFC Performance Standards,¹⁵¹ the UNGPs,¹⁵² and environmental standards,¹⁵³ and multistakeholder initiative standards.¹⁵⁴ Some focus on other community relations tools: community relations departments,¹⁵⁵ memoranda of understanding (MoUs),¹⁵⁶ impact assessments,¹⁵⁷ benefit-sharing agreements,¹⁵⁸ community development agreements,¹⁵⁹ and resettlement plans.

Community relations publications tend to bundle company actions together, providing lists of actions companies can take without disaggregating between their individual functions.¹⁶⁰ They do not always elaborate on the role of CGPs beyond being a means to address or resolve community concerns or handle grievances in the context of engagement,¹⁶¹ conflict management,¹⁶² fostering community approval,¹⁶³ or

¹⁴⁵ See, e.g., Keenan, *supra* note 126, at 38; Goodland, *supra* note 130, at 2102.

¹⁴⁶ See, e.g., Hanna et al., *supra* note 127, at 238; Adjei & Overå, *supra* note 76, at 195; Sarker, *supra* note 132, at 215.

¹⁴⁷ See, e.g., Bruckner, *supra* note 133, at 426; Wilson, *supra* note 136, at 6–7.

¹⁴⁸ See, e.g., BLACK, *supra* note 128; Vanclay, *supra* note 129, at 53–54; Vanclay & Hanna, *supra* note 127, at 9.

¹⁴⁹ See, e.g., Idemudia & Osayande, *supra* note 134, at 163; Uduji & Okolo-Obasi, *supra* note 134, at 1024; Adeola & Adeola, *supra* note 130, at 57.

¹⁵⁰ See, e.g., Lawrence, *supra* note 7, at 5.

¹⁵¹ See, e.g., van der Ploeg & Vanclay, *supra* note 121, at 36.

¹⁵² See, e.g., Lidewij van der Ploeg & Frank Vanclay, *A Tool for Improving the Management of Social and Human Rights Risks at Project Sites: The Human Rights Sphere*, 142 J. CLEANER PROD. 4072, 4075 (2017).

¹⁵³ See, e.g., Schoderer et al., *supra* note 132, at 48.

¹⁵⁴ See, e.g., Degnet et al., *supra* note 141, at 10; Laidlaw, *supra* note 114, at 148.

¹⁵⁵ See, e.g., Kemp & Owen, *supra* note 133, at 525–27; Mbilima, *supra* note 130, at 15; Triscritti, *supra* note 139, at 444.

¹⁵⁶ See, e.g., Raimi et al., *supra* note 134, at 75; Triscritti, *supra* note 139, at 444; Idemudia & Osayande, *supra* note 134, at 163.

¹⁵⁷ See, e.g., Kapelus et al., *supra* note 127, at 301; Gulakov & Vanclay, *supra* note 77, at 43.

¹⁵⁸ See, e.g., Wilson, *supra* note 136, at 6; Tysiachniouk et al., *supra* note 136, at 145.

¹⁵⁹ See, e.g., Bruckner, *supra* note 133, at 413–14; Bradshaw & McElroy, *supra* note 137, at 184.

¹⁶⁰ See, e.g., BLACK, *supra* note 128, at 85–90.

¹⁶¹ See, e.g., Lawrence, *supra* note 7, at 4–5.

¹⁶² See, e.g., Raimi et al., *supra* note 134, at 75.

¹⁶³ See, e.g., Larry A. Fisher, Yeon-Su Kim, Sitti Latifah & Madani Makarom, *Managing Forest Conflicts: Perspectives of Indonesia's Forest Management Unit Directors*, 1 FOR. SOC'Y 8, 30 (2017).

implementing company-community agreements.¹⁶⁴ Below is a three-way distinction between various types of action mentioned in community relations publications: relationship-building, impact assessment/mitigation, and benefit-sharing.

*Table 2. The universe of relevant company action in community relations publications.*¹⁶⁵

Relationship-building	Impact assessment & mitigation	Benefit-sharing & development
Building community resilience	Action/Management plans	Benefit-sharing agreements
Communications	Adherence to international standards/principles	Community development agreements
Community capacity-building	Baseline assessments	Community development programs/funds
Community empowerment	Cleaner technology	Donations
Community leadership	Compensation processes	Employment
Community participation	Contractual clauses	Gender and youth development
Community relations departments	Corrective actions	Impact and Benefit Agreements
Complaints and grievances departments	Environmental Impact Assessments (EIAs)	Infrastructure development
Diversity & inclusion	Environmental and Social Impact Assessments (ESIAs)	Livelihood projects/restoration measures
FPIC processes	Gender-sensitive approach	Local business development plans
Grievance officers/committees	Human Rights Impact Assessments (HRIAs)	MoUs
Informing communities and managing their expectations	Human rights due diligence	Philanthropy
Issue mapping	Impact mitigation/reduction	

¹⁶⁴ See, e.g., Wilson, *supra* note 136, at 79–80.

¹⁶⁵ An overview of the types of company action described in community relations publications according to whether a key focus is relationship-building, impact assessment and mitigation, and benefit-sharing and development. Note that there is considerable overlap between these functions.

Multistakeholder partnerships Negotiated agreements (written or unwritten) Policies and standards Public relations Recognition of indigeneity and indigenous cultures and worldviews Social license to operate Strengthening governance institutions Stakeholder mapping and surveys Working with governments Working with NGOs	Issue/impact mapping Mitigation measures Monitoring Project evaluation Remediation works Replacement housing Responsible mining closure Risk management systems Security provisions Social Impact Assessments (SIAs) Water management	Revenue-sharing mechanisms (revenue transparency) Social investments Sponsorship Training Volunteering Wildlife conservation
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The categories in Table 2 help identify the broad universe of company action; they do not aim to suggest these actions exist independently. Benefit-sharing and impact management are normally discussed together, and both are often viewed as a form of relationship-building. Likewise, many of the measures under relationship-building will have consequences for the distribution of impacts and benefits on community members. All of these categories of interaction seek to reduce the risk of company-community conflict.

CGPs can have various functions that touch on many of the functions in Table 2 above. The objective most commonly ascribed to CGPs is handling conflict, both conflict internal to communities¹⁶⁶ and involving the company directly.¹⁶⁷ Providing a channel for managing conflict is seen as a way to bring issues into company management processes,¹⁶⁸ to regulate conflict in constructive ways,¹⁶⁹ and to prevent

¹⁶⁶ Adeola & Adeola, *supra* note 130, at 57.

¹⁶⁷ Sarker, *supra* note 132, at 217.

¹⁶⁸ Prenzel & Vanclay, *supra* note 135, at 34; Owen, *supra* note 129, at 103–04.

¹⁶⁹ Franks et al., *supra* note 81, at 7580.

community protests.¹⁷⁰ Apart from risk identification and mapping exercises, alternatives companies have to manage active conflicts apart from CGPs are rarely discussed. As Zandvliet and Anderson write, “A grievance procedure provides one of the most effective tools for dealing with local concerns in a *non-violent* manner.”¹⁷¹

The building of constructive relationships between companies and communities is key to this. CGPs can be viewed as a means to build relationships with communities,¹⁷² including by fostering collaboration between parties.¹⁷³ CGPs can empower communities, acting as a place to hear communities’ opinions and experiences.¹⁷⁴ CGPs can be part of a company’s communication strategy,¹⁷⁵ informing communities of risks and impacts and managing their expectations¹⁷⁶ or responding to community grievances about not being kept informed.¹⁷⁷ They can hear grievances regarding the implementation of mining agreements¹⁷⁸ and can act as a forum of negotiation between the company and the community.¹⁷⁹ In terms of impact assessment and mitigation, CGPs can serve as an early indication of potential issues.¹⁸⁰ They are a means of risk management,¹⁸¹ dealing with issues early before they escalate into more serious risks.¹⁸²

CGPs monitor community grievances,¹⁸³ serving as a feedback procedure for the adequacy of a company’s impact assessment. They can ensure adherence to international standards¹⁸⁴ and best practices.¹⁸⁵ They may prompt the company to take corrective action,¹⁸⁶ remediation

¹⁷⁰ Hanna et al., *supra* note 127.

¹⁷¹ ZANDVLIET & ANDERSON, *supra* note 133, at 46 (emphasis added).

¹⁷² Goodland, *supra* note 130, at 2102; *see also* Triscritti, *supra* note 139, at 444.

¹⁷³ BLACK, *supra* note 128, at 73.

¹⁷⁴ van der Ploeg & Vanclay, *supra* note 152, at 4075.

¹⁷⁵ Prenzel & Vanclay, *supra* note 135, at 34; Keenan, *supra* note 126, at 38.

¹⁷⁶ *See* Gulakov & Vanclay, *supra* note 77, at 43.

¹⁷⁷ Gulakov et al., *supra* note 135, at 6.

¹⁷⁸ Burton & Onguglo, *supra* note 128, at 275.

¹⁷⁹ Tysiachniouk et al., *supra* note 136, at 145.

¹⁸⁰ Bruckner, *supra* note 133, at 418.

¹⁸¹ Franks et al., *supra* note 81, at 7580.

¹⁸² Vanclay & Hanna, *supra* note 127, at 7–8.

¹⁸³ *See* Triscritti, *supra* note 139, at 444.

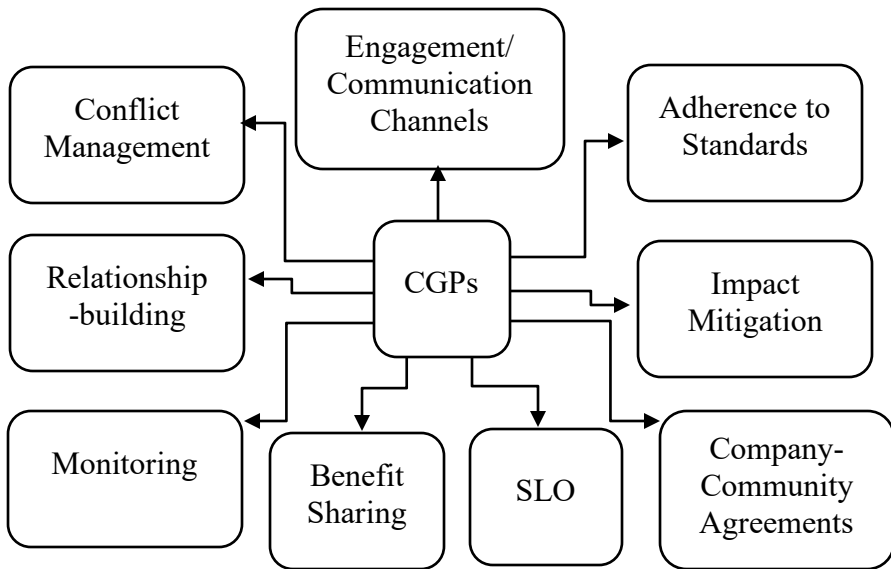
¹⁸⁴ Strasser, *supra* note 130, at 30.

¹⁸⁵ Schoderer et al., *supra* note 132, at 48.

¹⁸⁶ Vanclay, *supra* note 129, at 54.

works,¹⁸⁷ and redress community concerns.¹⁸⁸ Grievances often concern “benefits”: inadequate revenue-sharing, broken promises, local procurement, local business contracts, local jobs, livelihood issues, and issues with social development and investment, amongst others.¹⁸⁹ CGPs may also be used to monitor the effectiveness of company-community agreements.¹⁹⁰ Overall, the community relations perspective views CGPs as addressing a much broader array of concerns than the human rights focused effective remedy perspective.

Figure 4. The universe of CGPs from a community relations perspective.¹⁹¹



¹⁸⁷ BLACK, *supra* note 128, at 74.

¹⁸⁸ Vanclay & Hanna, *supra* note 127, at 5.

¹⁸⁹ Kemp & Owen, *supra* note 133, at 526.

¹⁹⁰ Wilson, *supra* note 136, at 6–7.

¹⁹¹ Figure 4 illustrates the multipurpose nature of CGPs as processes which can have a broad variety of objectives.

C. CGPS AS AN EXERCISE OF PRIVATE POWER

Publications that view CGPs as an exercise of private power start in 2015. Half of them (8/16) describe the Barrick Remediation Framework, a particularly well-documented CGP that ran from 2012 to 2014 dealing with instances of security guards raping women in Porgera, Papua New Guinea. While the existence of power asymmetries are recognized by much of the literature, there is a growing trend towards viewing CGPs as a conscious *use* of power to pursue corporate interests or as a counteraction to stifle community mobilization, resistance, and/or agency: “that companies will, and do, *abuse* power in these relationships is well established.”¹⁹²

In total, 16/117 publications were private power publications, with one publication in both the private power perspective and effective remedy perspective (see Figure 4 for a breakdown across the perspectives).¹⁹³ They arise in a similar spread of journals to community relations publications, particularly development journals (3/11) and journals that focus on natural resources and extractives (3/11). They are published in both books on extractives and human rights.

Publications that adopt a private power perspective mostly focus on the extractives sector, although one publication focuses on manufacturing¹⁹⁴ and another on palm oil.¹⁹⁵ They tend to adopt the following narrative: the introduction of (mining) companies has negative consequences for local communities. In some contexts, companies wrong communities with almost complete impunity. There is a conscious decision of (Global North) states to not regulate multinationals abroad and/or to undermine host state governments. States can engage in strategic regulation and deregulation. Host states can selectively absent themselves, being present for certain roles such as security and administration but not others such as social and environmental governance and public service delivery. This overall failure results from the pursuit of neoliberal policies, the movement to market-oriented economies, and/or the continuation of

¹⁹² OWEN & KEMP, *supra* note 14, at 228 (emphasis added).

¹⁹³ Knuckey & Jenkin, *supra* note 104.

¹⁹⁴ See SHAREEN HERTEL, *TETHERED FATES: COMPANIES, COMMUNITIES, AND RIGHTS AT STAKE* (2019).

¹⁹⁵ Rasmus Kløcker Larsen, Francisca R. Dimaano & Michael D. Pido, *Can the Wrongs be Righted? Prospects for Remedy in the Philippine Oil Palm Agro-industry*, 50 DEV. CHANGE 1373–97 (2019).

colonial policies. To replace the traditional state sphere, “new governance” or “private governance” regimes (including CGPs) have been created to ensure the smooth operation of industry by stifling community mobilization and cutting off access to more legitimate means of justice.

From this perspective, “governance gaps” are not an accident but are consciously designed by those same actors who argue for private governance as a means to fill them.¹⁹⁶ Global norm-setting processes which focus on “weak governance” in developing countries have led to policy directions and project outcomes that undermine the agency of local people.¹⁹⁷ Global norms act as an alternative to more desirable public regulation,¹⁹⁸ and corporations utilize global norms, including the UNGPs, when wielding their power.¹⁹⁹ Private governance, including CGPs, remakes local legal spaces to usurp community-based governance, custom, and indigenous law.²⁰⁰ It can be regarded as an exercise of political authority by corporations.²⁰¹

The wider constellation of company actions relevant to the private power perspective includes many actions also discussed from a community relations perspective. This includes community relations departments, stakeholder consultations, job opportunities, community support, social programs, resettlement plans, FPIC processes, mining tax transfers, impact assessments, conservation measures, water programming, building alliances with NGOs and international organizations, and company-community agreements. Private power publications also discuss company reliance on police to quell

¹⁹⁶ Catherine Coumans, *Minding the “Governance Gaps”: Re-thinking Conceptualizations of Host State “Weak Governance” and Re-focussing on Home State Governance to Prevent and Remedy Harm by Multinational Mining Companies and Their Subsidiaries*, 6 EXTR. IND. SOC. 675, 687 (2019).

¹⁹⁷ *Id.*

¹⁹⁸ Etienne Roy Grégoire & Luz Marina Monzón, *Institutionalising CSR in Colombia’s Extractive Sector: Disciplining Society, Destabilising Enforcement?*, 38 CAN. J. DEV. STUD. 253, 271 (2017); see also Pascale Hatcher, *Global Norm Domestication and Selective Compliance: The Case of Mongolia’s Oyu Tolgoi Mine*, 1 ENV’T POL’Y GOV. 11 (2020).

¹⁹⁹ Catherine Coumans, *The “Shooting Fields of Porgera Joint Venture”: An Exploration of Corporate Power, Reputational Dynamics and Indigenous Agency*, in MINING ENCOUNTERS: EXTRACTIVE INDUSTRIES IN AN OVERHEATED WORLD (Robert J Pijpers & Thomas Hylland Eriksen eds., 2019); see also Catherine Coumans, *Do No Harm? Mining Industry Responses to the Responsibility to Respect Human Rights*, 38 CAN. J. DEV. STUD. 272, 290 (2017).

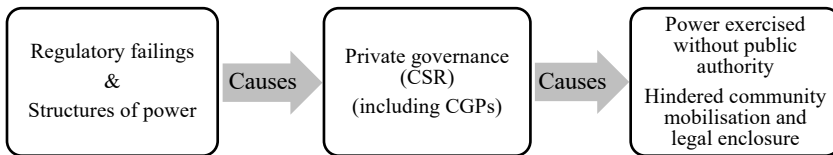
²⁰⁰ Szablowski, *supra* note 11.

²⁰¹ Tyler Giannini, *Political Legitimacy and Private Governance of Human Rights*, in HUMAN RIGHTS, DEMOCRACY, AND LEGITIMACY IN A WORLD OF DISORDER (Silja Voenekey & Gerald L. Neuman eds., 2018).

mobilizations, companies using community elites to prevent community members from accessing the company directly, and governments repressing individuals who oppose extractive projects.

From a private power perspective, CGPs are part of private governance set up by corporations. Private governance has two principal objectives: legal enclosure and countering community mobilization. Legal enclosure—also described as countering legal fields or ensuring legal immunity—ensures that disputes remain within the control of the corporation and do not end up in the national legal system. Countering community action—variously referred to as containing disputes, counter-movements, counter-mobilization, and counter-insurgency—stifles community resistance, protest, and/or agency.

Figure 5. Locating CGPs in private power.²⁰²



In the absence of public authority, CGPs can legitimize and further corporate interests and market prerogatives. CGPs seek to “delay and avoid necessary action in defense of human rights and to thwart community agency.”²⁰³ They are a means to counter community resistance;²⁰⁴ they attempt to confine community mobilizations away from issues that threaten mining and towards other types of grievances whose resolution would not adversely affect corporate interests.²⁰⁵ They focus on settling grievances that may give rise to legal liability and not wrongs that could not be pursued in courts;²⁰⁶ they are a means to counter

²⁰² Figure 5 depicts how private power publications understand CGPs (and private governance generally) as a consequence of structures of power and regulatory failings and this in turn results in power exercised without public authority and hindered community mobilization.

²⁰³ Coumans, *Do No Harm*, *supra* note 199, at 279.

²⁰⁴ Marta Conde & Philippe Le Billon, *Why Do Some Communities Resist Mining Projects While Others Do Not?*, 4 EXTR. IND. SOC. 681, 681–97 (2017).

²⁰⁵ See Gamu & Dauvergne, *supra* note 10, at 964.

²⁰⁶ See Coumans, *The “Shooting Fields of Porgera Joint Venture”*, *supra* note 199, at 684.

communities' mobilization of rights in the national legal system.²⁰⁷ CGPs can further entrench governance gaps.²⁰⁸

Private power publications do not suggest that the solution to these issues lies in effective company systems. These publications never recommend the use of company-administered grievance processes without some form of power-sharing relationship between the company and community in place. Some publications make recommendations towards power-sharing relationships, which often require initiatives to have joint governance by companies and communities and allow for a broader array of agendas than remedy or community relations.²⁰⁹ Many publications do not make recommendations for better company practices at all.²¹⁰ See Table 3 below for an overview of how the three perspectives understand CGPs.

*Table 3. An overview of the three perspectives.*²¹¹

CGPs	Effective Remedy	Community Relations	Private Power
Objective	Providing remedy.	Fostering company-community relations.	Furthering corporate interests.
Functions	Providing remedy (and identifying human rights impacts).	Many functions, including engagement, conflict management, adherence to standards, relationship-building, impact mitigation, monitoring mitigation measures and agreements, benefit-	Part of private governance used to wield power and counter community mobilization.

²⁰⁷ Rajiv Maher, David Monciardini & Stephen Böhm, *Torn Between Legal Claiming and Privatized Remedy: Rights Mobilization Against Gold Mining in Chile*, 31 BUS. ETHICS Q. 37, 39 (2020).

²⁰⁸ Knuckey & Jenkin, *supra* note 104, at 813.

²⁰⁹ Giannini, *supra* note 201, at 230–32; Knuckey & Jenkin, *supra* note 104, at 817; HERTEL, *supra* note 194, at 153–57; OWEN & KEMP, *supra* note 14, at 218–40.

²¹⁰ See Szablowski, *supra* note 11; Hatcher, *supra* note 198; Roy Grégoire & Monzón, *supra* note 198; Conde & Le Billon, *supra* note 204.

²¹¹ Table 3 provides an overview of how the three perspectives understand CGPs according to how they understand their objective, their function, the types of grievances handled, and their outcomes, as well as how power imbalances play a role in CGPs and the types of solution proposed by the publications.

		sharing, and fostering community approval.	
Types of grievances handled	Community complaints of human rights harm by companies.	Any grievances, regardless of company involvement or validity.	Narrowly prescribed grievances whose settlement maintains corporate interests.
Outcomes	Remedy.	Rarely discussed.	Sometimes remedy.
Power imbalances	CGPs can have power imbalances. CGPs can cause harm in certain cases.	Rarely discussed.	CGPs can be a means to wield power and counter community mobilization.
Proposed solution	Effective CGPs.	Having a CGP <i>or</i> having an adequate/ effective CGP.	Power-sharing arrangements <i>or</i> no recommended solution.

D. OTHER APPROACHES

Eighty-seven publications describe CGPs in terms of remedy, community relations or power, and thirty publications fall under none of these perspectives. Eleven publications discuss CGPs solely in connection to impact assessments, viewing them as a means of identifying impacts, monitoring effectiveness of impact assessments, and/or hearing grievances from participants in those assessments, without describing them as tools of community relations or remedy.²¹² Twelve publications describe CGPs

²¹² Sibylle Baumgartner & Tulika Bansal, *Travel and Tourism: A Comparative Analysis of Different HRIA Approaches*, in HANDBOOK ON HUMAN RIGHTS IMPACT ASSESSMENT (Nora Götzmann ed., 2019); Richard Boele & Christine Crispin, *What Direction for Human Rights Impact Assessments?*, 31 IMPACT ASSESSMENT PROJECT APPRAISAL 128 (2013); Cathal Doyle, *Indigenous Peoples' Rights: Is HRIA an Enabler for Free, Prior and Informed Consent?*, in HANDBOOK ON HUMAN RIGHTS IMPACT ASSESSMENT; Ana Maria Esteves, Gabriela Factor, Frank Vanclay, Nora Götzmann & Sergio Moreira, *Adapting Social Impact Assessment to Address a Project's Human Rights Impacts and Risks*, 67 ENV'T IMPACT ASSESSMENT REV. 73 (2017); Nora Götzmann, *Human Rights Impact Assessment of Business Activities: Key Criteria for Establishing a Meaningful Practice*, 2 BUS. HUM. RTS. J. 87, 93–94 (2017); Philippe Hanna & Frank Vanclay, *Human Rights, Indigenous Peoples and the Concept of Free, Prior and Informed Consent*, 31 IMPACT ASSESSMENT PROJECT APPRAISAL 146, 149 (2013); Philippe Hanna, Frank Vanclay, Esther Jean Langdon & Jos Arts, *Improving the Effectiveness of Impact Assessment Pertaining to*

as necessary to comply with international standards, but they do mention that CGPs provide remedy or foster community relations.²¹³ The remaining seven contributions discuss the role of CGPs in challenging online content,²¹⁴ corporate strategies of denial,²¹⁵ alternative dispute

Indigenous Peoples in the Brazilian Environmental Licensing Procedure, 46 ENV'T IMPACT ASSESSMENT REV. 58, 65 (2014); Deanna Kemp & Frank Vanclay, *Human Rights and Impact Assessment: Clarifying the Connections in Practice*, 31 IMPACT ASSESSMENT PROJECT APPRAISAL 86 (2013); ELISA MORGERA, CORPORATE ACCOUNTABILITY IN INTERNATIONAL ENVIRONMENTAL LAW (2d ed. 2020), at 153–55; Frank Vanclay, *Reflections on Social Impact Assessment in the 21st Century*, 38 IMPACT ASSESSMENT PROJECT APPRAISAL 126, 127 (2020); Yann Wyss & Tulika Bansal, *Knowing and Showing: The Role of HRIA in the Food and Beverage Sector*, in HANDBOOK ON HUMAN RIGHTS IMPACT ASSESSMENT.

²¹³ Ken McPhail & Carol A. Adams, *Corporate Respect for Human Rights: Meaning, Scope, and the Shifting Order of Discourse*, 29 ACCT. AUDITING & ACCOUNTABILITY J. 650 (2016), at 667–69; David M. Ong, *From International to Transnational Environmental Law – A Legal Assessment of the Contribution of the Equator Principles to International Environmental Law*, 79 NORDIC J. INT'L L. 35, 65 (2010); David M. Ong, *Public Accountability for Private International Financing of Natural Resource Development Projects: The UN Rule of Law Initiative and the Equator Principles*, 85 NORDIC J. INT'L L. 201, 221–22, 227–28 (2016); Hans-Otto Sano, *Social Accountability in the World Bank: How Does it Overlap with Human Rights?*, in CLOSING THE RIGHTS GAP: FROM HUMAN RIGHTS TO SOCIAL TRANSFORMATION, 219, 222–24 (LaDawn Haglund & Robin Stryker eds., 2015); Penelope Simons, *Unsustainable International Law: Transnational Resource Extraction and Violence against Women*, 26 TRANSNAT'L L. CONTEMP. PROBS. 415, 420 (2017); Kate Nancy Taylor, *Appraising the Role of the IFC and Its Independent Accountability Mechanism: Community Experiences in Haiti's Mining Sector*, 17 SUSTAINABLE DEV. L. POL'Y 12, 20 (2016); Lidewij van der Ploeg & Frank Vanclay, *Challenges in Implementing the Corporate Responsibility to Respect Human Rights in the Context of Project-Induced Displacement and Resettlement*, 55 RES. POL'Y 210; Maartje Van Putten, *Independent Accountability Mechanisms: How Multilateral Financial Institutions Can Be the Front Runners for Commercial Financial Institutions*, in ACCOUNTABILITY, TRANSPARENCY AND DEMOCRACY IN THE FUNCTIONING OF BRETTON WOODS INSTITUTIONS (Elenaa Sciso ed., 2017); Emma Wilson, *What is the Social Licence to Operate? Local Perceptions of Oil and Gas Projects in Russia's Komi Republic and Sakhalin Island*, 3 EXTRACTIVE INDUS. SOC'Y 73, 77 (2016); Manuel Wörsdörfer, *The Equator Principles and Human Rights Due Diligence: Towards a Positive and Leverage-Based Concept of Corporate Social Responsibility*, 14 PHIL. MGMT. 193 (2015); Manuel Wörsdörfer, *"Free, Prior, and Informed Consent" and Inclusion: Nussbaum, Ostrom, Sen and the Equator Principles Framework*, 5(3) TRANSNAT'L LEGAL THEORY 464, 465–66; Manuel Wörsdörfer, *The Equator Principles and the 'Business and Human Rights Debate': Hype or Hope?*, in RESEARCH HANDBOOK ON TRANSNATIONAL CORPORATIONS (Roman Tomasic & Alice de Jonge eds., 2017).

²¹⁴ Molly K. Land, *Regulating Private Harms Online: Content Regulation Under Human Rights Law*, in HUMAN RIGHTS IN THE AGE OF PLATFORMS 163, *passim* (Rikke Jorgensen ed., 2019).

²¹⁵ Sarah Lauwo, Orthodoxia Kyriacou & Olatunde Julius Otusanya, *When Sorry Is Not an Option: CSR Reporting and 'Face Work' in a Stigmatised Industry – A Case Study of Barrick (Acacia) Gold Mine in Tanzania*, 71 CRITICAL PERSPS. ACCT. 1, 11–16 (2020).

resolution (ADR),²¹⁶ environmental harm,²¹⁷ institutional development,²¹⁸ and in simply resolving complaints.²¹⁹ See Table 4 and Figure 6 for an overview of the academic literature by disciplinary focus and timeline.

*Table 4. Breakdown of Journals by Disciplinary Focus and Perspective.*²²⁰

Disciplinary Focus	Effective Remedy	Community Relations	Private Power	Other	Total
Business Ethics and CSR	3	4	1	1	8*
Development	0	4	3	2	9
Environmental Studies	1	12	1	6	19*
Human Rights	7	0	1	1	8*
Law	8	3	0	4	14*
Natural Resources & Extractives	1	10	3	2	16
Other	0	4	2	3	9
Total	20	36	11	19	83*

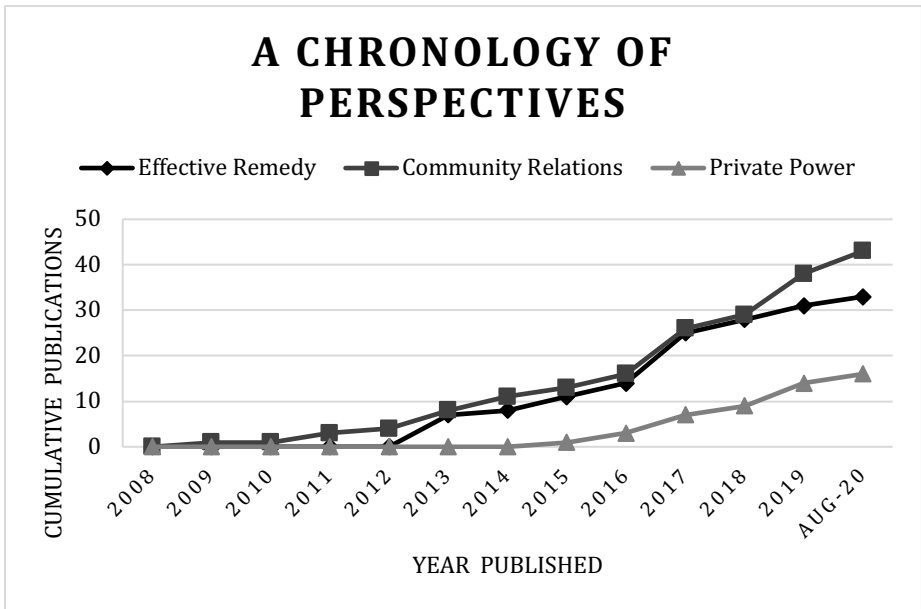
²¹⁶ Jan Eijssbouts, *Mediation as Management Tool in Corporate Governance*, in *ADR IN BUSINESS: PRACTICE AND ISSUES ACROSS COUNTRIES AND CULTURES*, 67, 70, 76, 78–79 (Jean-Claude Goldsmith, Arnold Ingen-Housz, & Gerald H. Pointon eds., 2011).

²¹⁷ Katinka D. Jesse & Erik V. Koppe, *Business Enterprises and the Environment*, 2013 DOVENSCHMIDT Q. 176, 185–87.

²¹⁸ Radu Mares, *Disruption and Institutional Development: Corporate Standards and Practices on Responsible Mining*, in 3 *HUMAN RIGHTS IN THE EXTRACTIVE INDUSTRIES: TRANSPARENCY, PARTICIPATION, RESISTANCE* (Isabel Feichtner, Markus Krajewski, & Ricarda Roesch eds., 2019).

²¹⁹ Marianne Bertrand & Ariadna Tovar, *Máxima Acuña: The Story of How a Business Impacted Human Rights Defender*, in *WHEN BUSINESS HARMS HUMAN RIGHTS: AFFECTED COMMUNITIES THAT ARE DYING TO BE HEARD* (Karen Erica Bravo, Jena Martin & Tara Van Ho, eds., 2020); Johan Nordensvard, Frauke Urban & Grace Mang, *Social Innovation and Chinese Overseas Hydropower Dams: The Nexus of National Social Policy and Corporate Social Responsibility*, 23 SUSTAIN. DEV. 245, 251 (2015).

²²⁰ Table 4 provides an overview of the articles in each perspective according to the disciplinary focus of the journal. Asterisks mark where the total includes publications included in multiple perspectives.

Figure 6. Publications on CGPs over time, by perspective.²²¹

III. NARRATIVES AROUND GOVERNMENTS, COMPANIES AND COMMUNITIES

There are trends across the perspectives which are broader than the purpose assigned to CGPs. It is not simply that some publications are looking at CGPs which provide remedy, others which are built on community relations architecture, and others that utilize power. The same CGP can be viewed from all three perspectives, utilizing completely different concepts and reaching different conclusions.²²² The differences in these trends extends to the role of governments, corporations, and communities in relation to the various issues discussed, including CGPs.

²²¹ Figure 6 provides an overview of the cumulative publications published per year in each perspective. Five publications that are each included in two separate perspectives are counted twice.

²²² Compare Szablowski, *supra* note 11, at 227–31, with Page, *supra* note 110, at 427–30, and Burton & Onguglo, *supra* note 128, at 271–73, 275–77.

A. GOVERNMENTS AND THE PUBLIC/PRIVATE DIVIDE

Government is referenced across all perspectives. It is mainly understood from the effective remedy perspective as state-based government: home states regulating their companies abroad and host states regulating companies on their territory.²²³ From a community relations perspective, both national and local levels of government within the host state are relevant. National governments often drive the agenda for foreign direct investment, and local governments are often involved in handling local environmental and social issues and the provision of public services.²²⁴ In some cases, these national and local levels of government act independently of each other,²²⁵ and local government is often described as a unique stakeholder in addition to national government.²²⁶ Whether local government is state-based or not is not always clear in the publication, but a quarter of community relations publications specifically refer to customary or community governance.²²⁷ Private power publications can describe all three scales of government: home states acting transnationally, host state national governments, and both local and community governance.²²⁸

From all perspectives, governments are rarely deemed to play a role in CGPs themselves. Common roles attributed to government across the perspectives is that they are regulators and that they can sometimes carry out harmful or repressive acts. Publications from effective remedy and private power perspectives both often reference states' roles as duty bearers of international human rights obligations. Publications from a private power perspective, and to a lesser extent a community relations perspective, may reference governments' failing role in the provision of public services. Community relations publications additionally view governments (especially local) as stakeholders and as participants in company-initiated projects such as company-community agreements.

An important difference between the perspectives is how the relationship between governments and companies is understood—the public-private divide. Some form of relationship between governments

²²³ See, e.g., Farah & Makhoul, *supra* note 119.

²²⁴ See, e.g., Hoelscher & Rustad, *supra* note 127, at 105.

²²⁵ See, e.g., Burton & Onguglo, *supra* note 128, at 264–66.

²²⁶ See, e.g., Triscritti, *supra* note 139, at 447.

²²⁷ See, e.g., BLACK, *supra* note 128, at 41.

²²⁸ See, e.g., Coumans, *supra* note 196, at 680.

and companies is raised in just under half of publications, with effective remedy publications most likely to present companies and governments independently and private power publications most likely to discuss them acting together. State-business relationships can be conceptualized in four different ways: *partnership and shared interests*, *complicity*, *cession of public authority*, and the *state-business nexus*.

Partnership and shared interests refers to both companies and (often national-level) governments who co-ordinate to pursue common interests, often economic in nature. It is the most commonly cited form of state-business relationship, discussed by both community relations and private power publications but rarely in effective remedy publications. This type of relationship can be described in neutral terms as a reality to account for (particularly in community relations publications) or criticized as undesirable (particularly in private power publications).

Complicity is referred to from all perspectives, most commonly in effective remedy publications. It is uniformly considered undesirable. It is where corporations in some way facilitate wrongs committed by the state or attempt to act as a “neutral actor” where governments are involved in wrongful acts in relation to their activities. While there is potentially a relationship between the two actors, complicity focuses on the company’s actions rather than both actors’ actions.

Cession of public authority refers to CGPs and CSR in terms of governments ceding their public authority, or elements of their authority, to companies and the private sphere. It is not viewed solely as a government failure but as part of a broader (undesirable) trend towards neoliberal or market-oriented policies. Only publications from a private power perspective conceptualize the relationship between governments and corporations in this manner.

The *state-business nexus*, as described in Guiding Principles 4-6, is only raised in effective remedy publications.²²⁹ This refers to formal, often legally defined, relationships between companies and governments, including public procurement, privatization, and state-ownership of companies.²³⁰ Similar to complicity, while there is a relationship between the two actors, their roles and responsibilities remain bifurcated: the onus is placed on the government to prevent human rights abuses by

²²⁹ UN Guiding Principles, *supra* note 1, Guiding Principles 4–6.

²³⁰ *Id.*

corporations it has such relationships with, utilizing leverage within government-company relationships to do so.

Thus, effective remedy publications rarely describe state-business interaction as corporations and governments acting in concert or as sharing or delegating authority. When governments privilege economic interests or absent themselves from their public authority, this is not viewed as a state-business interaction or synergy but as a government failing. This can be understood as a government’s failure to regulate, a failure to meet its duty to protect under international human rights law, or a “governance gap.”

“Governance gaps” are vehemently criticized by several publications from the private power perspective. They view the governance gaps narrative as legitimizing a regulatory strategy which perpetuates and reifies private interests through promoting voluntary action by private actors as the way forward instead of alternatives such as action taken by governments.

Table 5. *Three perspectives on the role of government.*²³¹

State-business relationship	Effective Remedy	Community Relations	Private Power
Partnership and Shared Interests	Governments and corporations rarely described as partners. Governments privileging economic interests is a <i>government failure</i> to regulate.	Governments and corporations can co-ordinate themselves in pursuit of shared (economic) interests.	Governments and corporations can co-ordinate themselves in pursuing shared (economic) interests.
	Undesirable.	Varies in desirability.	Undesirable.
	Company-driven action can compensate for	Governments & companies should	Company-driven action <i>cannot</i>

²³¹ Table 5 describes how the three perspectives vary in their approach to understanding the relationship between government and corporations in terms of how they view the pursuit of shared interests, complicity, cession of public authority, and the state-business nexus.

	government failings.	collaborate constructively.	resolve this issue.
Complicity (similar across perspectives)	Companies can act, or fail to act, in a way which facilitates government abuses of communities.		
	Undesirable.		
	Companies cannot claim neutrality in such situations.		
Cession of Public Authority	Governments never described as ceding public authority to companies. Government absence is a failure to regulate (governance gaps).	Governments rarely described as ceding public authority to companies.	Governments can consciously derogate some of their authority to private actors and can be selectively absent.
	Undesirable.	N/A	Mostly undesirable.
	Company-driven action can help counter government failings.	N/A	The reliance on company-driven action is a characteristic of this cession.
State-business nexus	States should use formal relationships to leverage companies into responsible behavior.	Formal relationships in the manner understood in the UNGPs are rarely mentioned.	Formal relationships in the manner understood in the UNGPs are rarely mentioned.
Overall	Companies should avoid complicity and governments should exercise leverage in their relationships.	Companies should avoid complicity and engage and collaborate with governments constructively.	Current policies are bringing companies into arenas which are traditionally the preserve of governments.

Publications from an effective remedy perspective therefore tend to see company-based action as adding to, or a substitution for, government-based action. This likely stems from a bifurcated approach to

responsibilities in the UNGPs—the government duty to protect and the corporate responsibility to respect are normative prescriptions that exist independently of each other.

Publications from community relations, on the other hand, rarely view corporations as operating, or able to operate, without interacting with government. Governments, including both national and local governments, are amongst the most important stakeholders for a company and are often actively involved in company engagement with communities. From a community relations perspective, where government-business partnerships are described, these are normally deemed essential to resolving issues. Collaboration with different levels of government is most frequently described as desirable and/or necessary. Companies cannot replace government, and they should work together with governments and communities to build a ‘structured system’²³² or co-regulate corporate activities.²³³

Publications from a private power perspective, view the shifting roles between governments, companies, and communities as a cession of public authority to companies, with private governance initiatives by the company seen as a symptom of this cession rather than counteracting it. While effective remedy publications may view governance gaps as a reality, part-and-parcel of globalization, private power publications are more likely to highlight the contingency of current approaches, including CSR, in creating and entrenching governance gaps.

B. COMPANIES

How company action relates to communities broadly fits into three narratives which this Article will term *rights & responsibilities*, *participation & empowerment*, and *agency & ownership*. *Rights & responsibilities* views communities as rights-holders and companies as responsible parties. The agenda of CGPs, and company actions more broadly, is defined in reference to these rights and responsibilities. From this perspective, the only agent who should take action is the company. Company actions are evaluated by the extent to which they comply with a normative, rights-based framework; companies should provide remedy if a right and/or a responsibility has been violated. There is an emphasis on

²³² Adeola & Adeola, *supra* note 130, at 59–60.

²³³ Sarker, *supra* note 132, at 206.

resolving issues in reference to a normative framework independent of the actors, as opposed to approaches which recognize more interest-driven approaches.

Participation & empowerment sees companies as responsible for taking the initiative to set up participatory processes where communities are empowered and given a voice in decision-making processes which affect them. The agenda is to ensure collaboration to reach situations of mutual benefit to companies and communities and is not defined in reference to an independent normative standard. Company conduct is assessed from various standpoints including the extent to which communities are accepting of company activities.

Agency & ownership refers to communities as having agency outside company spaces, setting their own agendas, and owning their own projects. Company-designed initiatives can create rival and foreign governance spaces. Where desirable company conduct is envisaged, it is viewed as conditional on communities mobilizing countervailing power or having power-sharing governance structures jointly owned by companies and communities. Often desirable company conduct is not envisaged at all.

Effective remedy publications generally follow a *rights & responsibilities* approach. Corporations have a responsibility to communities to respect their human rights. Where responsibilities are not met and rights are not respected, remedy needs to be provided in accordance with these responsibilities and rights. Over a third of effective remedy publications also make reference to *participation & empowerment*. These approaches—combining rights frameworks and participatory processes—can be described as existing in friction with one another.²³⁴

Community relations publications generally follow a *participation & empowerment* narrative. All but three of these publications reference companies as ensuring participation of communities, building relationship with communities, and/or empowering communities.²³⁵ Thus, projects that do not include community participation are generally viewed as undesirable.

²³⁴ Thompson, *supra* note 100, at 61–66.

²³⁵ Sarker discusses similar dynamics under the term “dialogic” processes. Sarker, *supra* note 132, at 217.

Agency & ownership is the principal narrative of private power publications when discussing company-community interactions. Agency is not something facilitated or given by other parties, such as empowerment, but as something communities already have. Most publications reference community-led projects, including community governments or governance.²³⁶ From a private power perspective, publications are critical of the capacity for company projects—participatory or not—to help communities pursue their agendas. It can also result from a preference for communities to pursue their own agendas within their own projects.

For instance, as Szablowski writes, the introduction of private property regimes by the company into communities who have a traditional common property resource management does not only risk disenfranchising individuals of their property: “It also represents a dispossession of an intangible collective asset: a governance space, an institution through which community members participate in the regulation of their social, economic and cultural lives.”²³⁷ From this standpoint, company governance systems replace community means of governance; community members are deprived of their own governance systems and the means to pursue their own agendas within their own projects.

²³⁶ The two publications from the private power perspective which do not discuss community governance or community agency focus solely on the cession of public authority from the government to the company are Hatcher, *supra* note 198 and Roy Grégoire & Monzón, *supra* note 198.

²³⁷ Szablowski, *supra* note 11, at 725.

*Table 6. Three perspectives on company action with respect to companies.*²³⁸

	Effective Remedy	Community relations	Private Power
Rights and responsibilities	Companies have a responsibility to provide remedy to communities for rights abuses.	Critical of company-driven approaches without participation of communities.	Company-owned projects and corporate agenda-setting are generally undesirable.
Participation and empowerment	CGPs are sometimes described as participatory and/or empowering processes.	Companies are meant to empower communities through community participation.	Company-owned projects and corporate agenda-setting are generally undesirable.
Agency and community ownership	Community agency is never discussed and community projects are rarely discussed.	Community agency is never discussed, and community mobilization is something to be managed within company projects.	Communities best exercise agency outside company-managed spaces and in their own projects.

All three perspectives therefore have rival understandings of company action, which results in differing understandings of how companies can engage in “responsible” action. Three key dividing lines can be identified over relating to company action: how company interests

²³⁸ Table 6 describes how the three perspectives vary in their approach to understanding the relationship between companies and communities: rights and responsibilities, participation and empowerment, and agency and community ownership.

manifest in company actions, the importance of whether or not a company act is wrongful, and the relationship between company activities that cause adverse impacts and provide positive benefits.

1. Company Interests and their Manifestation in Company Actions

Most publications across the three perspectives make some form of reference to business prerogatives in relation to the forms of action they undertake. The desirability of avoiding risks and protecting a corporation's reputation is mentioned across the perspectives, particularly in community relations and private power articles.

When the business case is discussed from an effective remedy perspective it is always made with respect to the responsibility to respect human rights. One publication states that failing to comply with the UNGPs "now constitutes a business risk."²³⁹ However, corporate interests are not always deemed relevant from an effective remedy perspective. Newton argues that the UNGPs "have rendered the articulation of a business case for respecting human rights a largely redundant exercise."²⁴⁰ Some authors state that the application of a human rights normative framework can mean corporations set aside,²⁴¹ or act counter to,²⁴² their own interests.

Articles which adopt a community relations approach generally see markets as rewarding more sustainable behavior. There is a strong focus on the potential for conflict as the motivating factor for companies to foster community approval: the SLO. The business case requires companies to garner and maintain ongoing community acceptance, approval, and trust. There is generally greater attention devoted to legitimate the premise that there is a business case amongst community relations publications than in effective remedy publications, often citing case studies, anecdotes, or empirical research. Effective actions to reduce conflict and actions taken to garner community acceptance are viewed as complementary, if not synonymous. A minority of publications are critical of the SLO as an approach, arguing that it is short-sighted²⁴³ and that

²³⁹ van der Ploeg & Vanclay, *supra* note 121, at 34.

²⁴⁰ NEWTON, *supra* note 123, at 39.

²⁴¹ See Schormair & Gerlach, *supra* note 109, at 479.

²⁴² Page, *supra* note 110, at 415–16.

²⁴³ ZANDVLIET & ANDERSON, *supra* note 133, at 189.

absence of conflict does not equate to either an absence of community grievances or the presence of community acceptance.²⁴⁴

Private power publications also discuss how companies aim to avoid conflict, however they do not view this as giving rise to desirable conduct. The SLO is vehemently criticized by most private power publications which discuss it.²⁴⁵ It is described as a means of reducing community capacity to mobilize against the industry, a “divide and conquer” strategy, and a dishonest public relations strategy.²⁴⁶ Coumans argues that it is difficult to find examples of companies deciding to voluntarily withdraw from a project due to lack of community approval.²⁴⁷

2. *The Relevance of Responsible Conduct and Wrongfulness*

Three-quarters of publications that describe CGPs as providing remedy expressly describe harms as resulting from wrongful conduct, illegal conduct, and/or conduct which is not compliant with international standards, and there are no instances of these publications suggesting CGPs should deal with matters where there was no fault on the part of the company. Effective remedy publications almost always expect CGPs to handle grievances related to human rights impacts.

This is very different from community relations literature, where company actions are unlikely to be described as wrongful. Sometimes publications will mention unlawfulness of actions or actions giving rise to legal risks or potential litigation. On the other hand, sometimes they will expressly describe certain adverse effects of companies as being inevitable: the very presence of extractive companies will have adverse impacts on society.

Community relations publications therefore expect a much greater variety of grievances before a CGP, not limited solely to instances of wrongful conduct or adverse impact. There is no exhaustive list of types of grievances that a CGP should handle because any grievance a community member has that might affect community relations is relevant.

²⁴⁴ John R. Owen, *Social License and the Fear of Mineras Interruptus*, 77 GEOFORUM 102, 103 (2016); Kemp & Owen, *supra* note 125, at 138.

²⁴⁵ One article discusses the SLO affirmatively, although recognizing it can be used for ethically unjustified practices. Giannini, *supra* note 201.

²⁴⁶ See, e.g., Owen, *supra* note 244.

²⁴⁷ Coumans, *supra* note 196, at 681.

Grievances can be around the distribution of benefits,²⁴⁸ intra-community conflicts,²⁴⁹ development and social programs,²⁵⁰ favoritism of certain groups,²⁵¹ legacy grievances against companies operating there previously,²⁵² proxy grievances against the state,²⁵³ grievances against other community members,²⁵⁴ local hiring practices,²⁵⁵ traffic,²⁵⁶ access rights to land,²⁵⁷ and community opposition to the project.²⁵⁸ Incorrect allegations of harm are also relevant to CGPs, as misunderstandings can also lead to distrust and conflict.

Given the often-critical approach of private power publications to “business and human rights”²⁵⁹ and CSR,²⁶⁰ there is not always recognition of the possibility that companies could genuinely act responsibly. As such, impacts are not described normally as instances of aberrant conduct but as a consequence of broader structures and the pursuit of certain policies. Owen and Kemp are very conscious of the possibility that focusing on corporate power can lead to fatalistic conceptions of companies as always being disingenuous in their commitment to international standards:

It was necessary to accept the possibility that mining companies genuinely seek to align with international policy frameworks . . . disallowing the possibility reduces the scope for analysis, and is inherently fatalistic. We accept that . . . corporate response to poor practice is often disheartening, and that such responses undermine any claim one might have for a genuine aspiration to do good. Our preferred reading is that while companies may claim to hold international standards in high regard, their actions suggest otherwise.²⁶¹

However, after providing an overview of various corporate management frameworks, including a CGP, they later conclude “there is something

²⁴⁸ Hoelscher & Rustad, *supra* note 127, at 99.

²⁴⁹ Adeola & Adeola, *supra* note 130, at 57.

²⁵⁰ See Tysiachniouk et al., *supra* note 136, at 145.

²⁵¹ Kapelus et al., *supra* note 127, at 293.

²⁵² *Id.* at 298.

²⁵³ Kemp & Owen, *supra* note 125, at 132.

²⁵⁴ Adeola & Adeola, *supra* note 130, at 51.

²⁵⁵ Hoelscher & Rustad, *supra* note 127, at 107.

²⁵⁶ Gulakov & Vanclay, *supra* note 77, at 43.

²⁵⁷ Poncian, *supra* note 139, at 337.

²⁵⁸ Gulakov et al., *supra* note 135, at 4.

²⁵⁹ Maher et al., *supra* note 207.

²⁶⁰ Coumans, *Do No Harm*, *supra* note 199, at 284.

²⁶¹ OWEN & KEMP, *supra* note 14, at 61.

wrong with the status quo that management systems cannot fix.”²⁶² Where private power publications do suggest positive actions that can be taken by the company, it always involves power-sharing relationships with communities.²⁶³

3. *Distribution of Impacts and Benefits*

Where community relations publications do discuss impacts or harms they may discuss them as part of a broader distribution of impacts and benefits. Around half of these publications discuss positive and negative effects of company activities, often described as impacts and benefits, in tandem. A quarter expressly state that benefits can offset negative impacts: the objective is a “net benefit” for communities. For many community relations publications, harm/benefit calculations are not the principal focus at all. Instead there is a focus on the relational aspects of company-community dynamics.

This is very different in publications from an effective remedy perspective. Negative and positive impacts are considered wholly separately. Three contributions discuss the possibility of offsetting negative impacts through positive deeds, dismissing this as uncompliant with the UNGPs²⁶⁴:

Human rights are entitlements, not interests to be weighed and balanced; thus a failure to respect human rights in certain areas cannot be offset by positive benefits provided in other contexts. These considerations may require a significant shift in the way in which many business enterprises understand and respond to human rights issues.²⁶⁵

What is the difference between providing a fair distribution of benefits and impacts and providing remedy for impacts? Mares discusses this clash between the distribution of benefits approach and the “do no harm” approach in the UNGPs in a context where negative impacts, or “disruption” as Mares refers to it, are inevitable.

²⁶² *Id.* at 220.

²⁶³ OWEN & KEMP, *supra* note 14. Knuckey & Jenkin, *supra* note 104. Giannini, *supra* note 201.

²⁶⁴ JULIA RUTH-MARIA WETZEL, HUMAN RIGHTS IN TRANSNATIONAL BUSINESS: TRANSLATING HUMAN RIGHTS OBLIGATIONS INTO COMPLIANCE PROCEDURES 153 (2016); Lindsay et al., *supra* note 113, at 20; NEWTON, *supra* note 123.

²⁶⁵ Lindsay et al., *supra* note 113, at 16.

Once disruption and multiple sources of risk in a volatile context are factored into the corporate responsibility to respect human rights, the clear-cut distinction between respect for human rights and development contributions begins to break down. . . . Therefore, in higher risk mining settings, social investment measures are firmly situated within the corporate responsibility to respect human rights and constitute imperative rather than discretionary expenses.²⁶⁶

Thus, for Mares, the distinction between a more CSR approach and a UNGPs approach to putting right a harm is that the former considers that development contributions are driven by an approach to “buy a social license to operate” and are discretionary whereas the latter would consider using development contributions as necessary to address human rights issues and therefore as imperative.²⁶⁷

Private power publications mention the role of corporations in providing benefits or development programs to communities, although they do not advocate for it. A third of the articles suggest that benefits are a means to offset the harm that extractives cause. Some are critical of this practice;²⁶⁸ others argue that locals’ demands for benefits are often indistinguishable in practice from expressing concerns over environmental and social impacts.²⁶⁹ Knuckey and Jenkin endorse corporate provision of remedy for wrongs, provided any remedy vehicles are jointly owned by companies and communities.²⁷⁰

Remedy as a paradigm is critiqued by some private power publications. The focus on remedying individual harm can conflict with customary approaches, such as customary compensation paid to clans to manage inter-group tensions and promote harmony.²⁷¹ The focus on individual disputes can preclude dealing with broader structural harms.²⁷² The after-the-fact, backward-looking focus of the remedy paradigm precludes forward-looking analysis and prevents proactive claim-making, which can be essential for the realization of economic rights.²⁷³ A narrow focus on remedy and procedural and substantive safeguards can obfuscate

²⁶⁶ Mares, *supra* note 218 at 381. The publication by Mares is not included under any of the three perspectives; he describes CGPs as a means to ensure greater “institutional development.” *Id.*

²⁶⁷ *Id.* at 381.

²⁶⁸ Maher et al., *supra* note 207.

²⁶⁹ Gamu & Dauvergne, *supra* note 10, at 970.

²⁷⁰ Knuckey & Jenkin, *supra* note 104.

²⁷¹ Szablowski, *supra* note 11, at 730.

²⁷² HERTEL, *supra* note 194, at 13.

²⁷³ *Id.* at 13.

the underlying political dimensions of company-community interactions.²⁷⁴ Or that there are deep historical, social, and economic factors at work meaning “some projects are simply not amenable to being ‘remediated.’”²⁷⁵ Thus, there are broad normative contestations within the literature as to whether negative impacts on communities are the result of aberrant behavior requiring *post hoc* remedies, are part-and-parcel of company operations to be mitigated and compensated by ongoing benefit-sharing arrangements, or are symptoms of broader power structures and/or market-oriented policies.

C. COMMUNITIES

The most oft-cited term for the users or intended beneficiaries of CGPs is the term “community.” Communities are often described by what they are recipients of, whether that be harm, remedy, benefits, engagement etc. Different terms can be used that conjure up different images of the role of communities. Community relations publications are almost unique in often describing communities as “host communities” or as “hosting” companies in some way. They rarely describe community members as “victims” which is common in both effective remedy and private power publications. Only private power publications ever refer to community members as exercising agency outside corporate spaces. There are broadly three types of action that communities are described as engaging in: *adversarial*, *agreement-seeking*, and *alternative*.

Adversarial action is where communities take action against companies. This refers to making allegations and lodging claims, opposing company projects, mobilizing against or resisting company projects, and conflict. *Agreement-seeking* action is action communities take to reach some form of consensus with the company. This can be communities negotiating agreements or settlements; accepting, consenting, or hosting company projects; or becoming participants in company-administered processes to reach consensus. *Alternative* action refers to action communities take outside of company spaces altogether and can refer to communities exercising their own agency or governing their own affairs.

From an effective remedy perspective, community actions are generally viewed through the lens of communities receiving redress for

²⁷⁴ Giannini, *supra* note 201.

²⁷⁵ Larsen et al., *supra* note 195, at 1393.

harm. A third of publications describe community members as actively desiring or seeking redress for injustices or protection of their human rights. Communities are most likely to be described as engaging in adversarial action, particularly making allegations or lodging claims against the company, and engaging in conflict. Community action can also be described as means which as more agreement-seeking—aimed at reaching consensus—such as negotiating agreements or settlements and participating in company-administered projects. Effective remedy publications rarely reference community owned projects and never reference community agency.

Community relations publications frequently describe community action as adversarial and also frequently describe community action as agreement-seeking. Adversarial action is most frequently described as “conflict” or “opposition” as undesirable. Conflict refers to a broader array of actions than just violent and illegal action. It can refer to social conflict and can be considered synonymous with all forms of social protest. Hanna et al provide a list of many forms of social protest that communities engage in including advocacy, boycotts, blogging, campaigning, civil disobedience, disruption, legal action, and protests.²⁷⁶ Thus the word “conflict” can refer both to communities carrying out acts of illegal violence and also communities seeking justice through courts and mobilizing their interests in campaigns, social protests, etc.

In community relations, “conflict” is something to be managed, within company spaces. Where conflict occurs, this is often taken to mean that communities manifested their grievances with the company externally because the processes companies have put in place to deal with issues internally are either inappropriate or not trusted by the community. Agreement-seeking action is most often negotiating agreements, participation in company-administered projects and accepting, consenting to, or hosting company activities. Occasionally community relations publications might refer to community governance arrangements, often from the perspective of company engagement with community governance structures. They never reference community agency as something exercised outside company spaces.

From a private power perspective, community action can be adversarial, agreement-seeking, and alternative. Adversarial action is most often seen as mobilization or resistance and as in opposition to companies,

²⁷⁶ Hanna et al., *supra* note 127.

which, unlike in community relations publications, is often deemed desirable. It is often seen as a countermovement to company power and can be a means by which communities seek to oppose company projects, seek benefits for themselves, seek redress for corporate wrongdoing, and protect their rights. Community mobilization and the exercise of resistance affect the functioning of CGPs may be seen as most likely to fail in situations where communities are unable to exercise countervailing power against the company.²⁷⁷ Some argue, for human rights to have effect, they must be mobilized by communities.²⁷⁸ From a private power perspective, communities are also frequently engaged in agreement-seeking actions, negotiation, and participating in company projects. Communities often engage in alternative action, including exercising agency, governing their own affairs, and engaging in other community-owned projects.

*Table 7. Three perspectives on community action with respect to companies.*²⁷⁹

	Effective Remedy	Community Relations	Private Power
Adversarial	Communities are normally described as engaging in adversarial action, normally making allegations and claims of wrongdoing or entering into conflict.	Communities are normally described as engaging in adversarial action, normally entering into conflict or opposing company projects.	Communities are always described as engaging in adversarial action, normally mobilizing their interests or opposing company projects.
Agreement-seeking	Communities are often described as seeking agreement, including participating in	Communities are normally described in seeking agreement, including	Communities are normally described in seeking agreement,

²⁷⁷ OWEN & KEMP, *supra* note 14, at 182.

²⁷⁸ Maher et al., *supra* note 207.

²⁷⁹ Table 7 describes how the different perspectives understand community action, whether adversarial, agreement-seeking, or alternative.

	company projects and negotiating agreements/settlements.	negotiating agreements/settlements and participating in company projects.	including negotiating agreements/settlements and participating in company projects.
Alternative	Communities are rarely described as undertaking actions which are not in relation to the company, never as exercising agency.	Communities are sometimes described as engaged in government or community-owned projects, never as exercising agency.	Communities are normally described as exercising their agency and being engaged in community government/projects.

IV. A NEW RESEARCH AGENDA FOR CGPs

As outlined in the previous sections, the focus on CGPs has increased in practice and in scholarship, with different approaches taken to them. Here three gaps in the current research on CGPs are identified. The first is an issue particular to the effective remedy perspective and its focus on how CGPs *should* be providing remedy, which is referred to here as “should-be-meowing” syndrome. The second is a fixation on one high-profile mechanism which did provide remedy-like outcomes—the Barrick Remediation Framework—which is atypical of CGPs more generally. The third is a lack of information on the outcomes of CGPs, which is relevant across almost all the literature on CGPs.

A. SHOULD-BE-MEOWING SYNDROME

Philip Alston once famously remarked that international law suffered from “not-a-cat syndrome.”²⁸⁰ Just as his eighteen-month-old daughter had referred to rabbits, mice, and kangaroos as “not-a-cat,” international law’s dominant tradition was to discuss NGOs, terrorist

²⁸⁰ PHILIP G. ALSTON, NON-STATE ACTORS AND HUMAN RIGHTS (2005).

organizations, and multinational corporations together as “non-state actors.”²⁸¹ These actors were described by what they *were not* rather than what they *were*. It is argued here that something analogous is happening in some business and human rights scholarship on CGPs, which this Article describes as *should-be-meowing syndrome*. Under should-be-meowing syndrome, CGPs are often described by what they should do—provide remedy—regardless of what they actually do.

Just as under should-be-meowing syndrome, a “moo,” a “squeak,” or a “quack” are all liable to be cast as ‘should be a meow,’ CGPs set up to monitor compliance, carry out stakeholder engagement, manage land resettlement, and reduce legal liabilities are all viewed as “should be remedies.” Authors evaluate CGPs potential for remedy without engaging in discussing the potential cross-purposes between the roles assigned to the CGP by the actors and the role assigned to the CGP by the author’s chosen normative framework. As a result, business and human rights scholarship has succeeded in describing what CGPs *should do*. However, publications which focus on effective remedy have been less successful in providing positive descriptions of what CGPs *are doing*.

A perhaps more problematic trend from a methodological standpoint is that CGPs which are deemed to have met the effectiveness criteria in the UNGPs are often consequently deemed to have provided effective remedy, even where there is no evidence provided for the latter conclusion. The idea that effective CGPs necessarily provide effective remedy has been refuted by UN Working Group on transnational corporations and human rights.²⁸² It is possible to have a remedy vehicle which is legitimate, accessible, predictable, equitable, transparent, and rights-compatible, but you can also have a community relations platform which is legitimate, accessible, predictable, equitable, transparent, and rights-compatible.

Initiatives completely independent of CGPs can also meet these effectiveness criteria. It is possible to have a neighborhood policing initiative which is legitimate, accessible, predictable, equitable, transparent, and rights-compatible; it is even possible to have a university curriculum which is legitimate, accessible, predictable, equitable,

²⁸¹ *Id.* at 3–4.

²⁸² U.N. Working Grp. on Hum. Rts. & Transnat’l Corp. & Other Bus. Enter., *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, ¶ 3, U.N. Doc. A/72/162 (July 18, 2017).

transparent, and rights-compatible. Investigations of procedures—whether they are trusted, accessible, predictable, transparent, and fair—cannot act as substitute for analysis of a CGP’s objectives and outcomes.

Below five approaches to CGPs are described, all from publications which describe CGPs as remedy vehicles. They vary significantly in terms of the type of CGP researched: a whistleblower channel, a community response mechanism, a site-level engagement mechanism, a site-level land resettlement mechanism, and a broader land resettlement approach. Each contribution discussed is multifaceted and offers a unique contribution to the debate, and the full breadth of insights provided cannot be detailed here. This section focuses on the limitations of the should-be-meowing syndrome that arises across these publications. Six trends are true of all the below approaches to CGPs.

First, they all understand remedy as including after-the-fact responses to wrongful conduct and as relevant to human rights claims. Second, they all justify that CGPs are and/or should be remedy vehicles through reference to the UNGPs and *not* on their research of the CGPs themselves. Third, in each case the CGP’s own documentation, to the extent it is available, does not describe the CGP as providing remedy. Fourth, they do not state that the CGP provided a remedy. Fifth, they still reach conclusions over the CGP’s effectiveness in reference to the UNGPs’ effectiveness criteria, without reference to outcomes. Finally, they argue that their assessment of the CGP pertains to rightsholders receiving remedy.

I. Kinross’s Community Relations Approach and Whistleblower Communications Channel

Vilmondes Türke discusses a whistleblower communications channel and the community relations approach of a mining company in Brazil: Kinross. She describes it as an operational-level grievance mechanism providing remedy as described in the UNGPs: “apologies, restitution, rehabilitation, financial or nonfinancial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”²⁸³

²⁸³ Vilmondes Türke, *supra* note 102, at 232.

The whistleblower policy itself deals with concerns relating to “accounting, internal accounting controls or auditing matters” and breaches of applicable laws and the company’s policies.²⁸⁴ The response to violations is that appropriate remedial action will be taken to bring the company back into compliance.²⁸⁵ The community relations policy does not denote a complaints process at all but describes stakeholder engagement to “monitor impacts.”²⁸⁶ There is no mention in the documentation, or elsewhere in the case study, of the CGP providing remedy including the categories mentioned by the author: restitution, rehabilitation, compensation, etc.

Vilmondes Türke finds the community relations policy of engaging with dialogue with stakeholders in conformity with the UNGPs. She finds coherence between the whistleblower policy and the UNGPs: investigating claims of wrongdoing, allowing multiple access points for users, allowing anonymity, ensuring transparency, and offering a means of learning.²⁸⁷ She finds that the “operational-level grievance mechanisms in general compliance [with the UNGPs].”²⁸⁸ However, given the scale of human rights impacts caused by the company, “operational-level grievance mechanisms still fail in fulfilling their designed task.”²⁸⁹ She argues the CGPs need to be better embedded in Kinross’s operations.

2. Goldcorp’s Community Response Mechanism

Lukas et al. discuss grievance mechanisms as remedy vehicles in their introduction in reference to the UNGPs.²⁹⁰ They describe remedies as in response to corporate misconduct, as an alternative to litigation, and as including outcomes for human rights victims.²⁹¹ Remedy is described with after-the-fact terms such as “reparation” or “relief” and in reference

²⁸⁴ Kinross Gold Corp., *Whistleblower Policy* (Dec. 14, 2006), https://s2.q4cdn.com/496390694/files/doc_downloads/corp-responsibility/policies/KGC-WhistleblowerPolicy-14-Dec-2016.pdf [<https://perma.cc/URB3-VZKG>].

²⁸⁵ *Id.* at 8.

²⁸⁶ Vilmondes Türke, *supra* note 102, at 236.

²⁸⁷ *Id.* at 236–37.

²⁸⁸ *Id.* at 238.

²⁸⁹ *Id.* at 238.

²⁹⁰ LUKAS ET AL., *supra* note 103.

²⁹¹ *Id.* at 5–7.

to legal systems; remedy includes compensation, restitution, and rehabilitation.²⁹²

They analyze Goldcorp's Community Response Mechanism whose purpose was to "provide an easily accessible site-level process for community stakeholders to provide feedback to Goldcorp,"²⁹³ and is "part of their overall community engagement and risk management strategy."²⁹⁴ The cited company reports relate the CGP to the UNGPs: "Goldcorp also acknowledges that sound grievance procedures, particularly related to human rights, contribute to the 'access to remedy' pillar included in the guiding principles."²⁹⁵ Goldcorp itself does not appear to reference the provision of remedies but simply states that the UNGPs require CGPs. This loose reference is diluted in the later reports Lukas et al. cite, which no longer mention "access to remedy" at all.²⁹⁶ Lukas et al. discuss the fact that the responses to grievances are not individually published, instead marked "resolved" or "closed" without explaining "what this actually implies" and not detailing any corrective action taken.²⁹⁷

Lukas et al. then evaluate the CGP's effectiveness concluding that the CGP meets most of the UNGPs' effectiveness criteria on paper, while noting some issues with legitimacy and transparency.²⁹⁸ In their conclusion, they then discuss grievance mechanisms, including CGPs, in terms of "remedy processes and outcomes" and providing "adequate, effective and prompt reparation for harm,"²⁹⁹ despite there being no discussion of either remedy or reparations in relation to the actual Goldcorp CGP.

3. Statoil's Ethics Helpline and Site-Level Community Grievance Mechanisms

Häusler et al. again describe CGPs as providing remedy which is after-the-fact, in response to illegal acts, and including outcomes for

²⁹² *Id.* at 9–10.

²⁹³ *Id.* at 304.

²⁹⁴ *Id.* at 308.

²⁹⁵ GOLDCORP, 2012 SUSTAINABILITY REPORT, https://s3-us-west-2.amazonaws.com/ungc-production/attachments/50311/original/2012_Sustainability_Report.pdf?1385495683 [<https://perma.cc/B4DK-GZU6>].

²⁹⁶ See generally LUKAS ET AL., *supra* note 103.

²⁹⁷ *Id.* at 311.

²⁹⁸ *Id.* at 322.

²⁹⁹ *Id.* at 342–43.

human rights victims, justifying this in reference to the UNGPs.³⁰⁰ They look at site-level mechanisms that Statoil (an oil & gas company) set up which, across all sites in 2014 and 2015, reportedly received one grievance, related to fishing gear.³⁰¹ There is no mention of remedy or of CGPs addressing human rights related issues in either the Statoil documentation cited or Häusler et al.'s description of the CGP. As they note, "accessible information about the procedures and outcomes is limited."³⁰²

The CGP is described as evidence that "Statoil is taking a determined step forward in applying community grievance mechanisms for human rights abuses."³⁰³ They evaluate the CGP against some of the UNGPs effectiveness criteria—legitimacy, accessibility, predictability, and transparency.³⁰⁴ At the same time, the authors recognize the sizeable discrepancy between the design of Statoil's CGP and their UNGPs-inspired understanding: "The mechanisms are rooted in rather more general corporate social responsibility or compliance standards, emphasizing, for example, anti-corruption policies within companies or community relations."³⁰⁵ They understand this discrepancy as arising from the relatively "young" nature of CGPs and that the mechanisms are too limited with respect to human rights violations.³⁰⁶ They do not explain how this focus on compliance and community relations differs from or compares to the provision of remedy.

4. KenGen's Grievance and Complaint Handling Mechanism for Resettlement Issues

Schade defines remedy in reference to the UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the UNGPs, including

³⁰⁰ Häusler et al., *supra* note 78, at 99.

³⁰¹ *Id.* at 101 (citing STATOIL, 2015 SUSTAINABILITY REPORT 34, <https://www.equinor.com/content/dam/statoil/documents/sustainability-reports/statoil-sustainability-report-2015.pdf> [<https://perma.cc/C8RL-MJFC>]).

³⁰² *Id.* at 103.

³⁰³ *Id.* at 104.

³⁰⁴ *Id.* at 102–03.

³⁰⁵ *Id.* at 113.

³⁰⁶ *Id.* at 103–04, 115.

adequate, effective, and prompt reparation for harm suffered.³⁰⁷ She looks at KenGen's CGP was set up in line with World Bank Group guidelines on involuntary resettlement and was specifically designed to deal with resettlement issues.

Grievance procedures specifically set up for land, which are generally separate CGPs from more community engagement based CGPs, are described under the World Bank's Operational Policy 4.12 as "affordable and accessible procedures for third-party settlement of disputes arising from resettlement."³⁰⁸ These could relate to the value of land/housing, eligibility criteria for compensation, the design of mitigation measures, and the implementation of the resettlement plan. Again, neither the documentation cited, nor the case study, describe the CGP as providing remedy or reparations. "Compensation" is mentioned not in "remedy terms" of compensation for harm but in terms of purchasing: compensation is the "full replacement cost [for land taken] in local markets."³⁰⁹

Schade then assesses the company and CGP against the various safeguard standards and the legitimacy criterion in the UNGPs, arguing it lacked the trust of communities due to its lack of independence.³¹⁰ She concludes that communities need greater access to remedies, although she focuses on the role of development banks in providing these remedies.³¹¹

5. *Anjin Investments Private's Resettlement Plan in Zimbabwe*

Chinowawa looks at a few Chinese-Zimbabwean joint ventures in Zimbabwe, particularly Anjin Investments Private, and their role in relocating communities in connection to a diamond mine. What constitutes a remedy is not defined, but it is described as "provided for victims of

³⁰⁷ Schade, *supra* note 107, at 84 (referencing G.A. Res. 60/147, § 1(2)(c) (Mar. 21, 2006)).

³⁰⁸ World Bank, *Operation Manual: OP 4.12, Annex A – Involuntary Resettlement Instruments*, ¶ 17 (Dec. 2001), <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=1573&ver=current> [<https://perma.cc/BK9K-YCHN>] (last revised Feb. 2011).

³⁰⁹ World Bank, *OP 4.12 – Involuntary Resettlement* (Dec. 2001), ¶ 12 <https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=1572&ver=current> [<https://perma.cc/ECE7-TYHY>] (last revised Feb. 2011).

³¹⁰ Schade, *supra* note 107, at 84–85, 89.

³¹¹ *Id.* at 96.

rights violations.”³¹² The resettlement is conceptualized as a (wrongful) rights violation and the relocation as a remedy for that rights violation.

Although no company documentation is cited (Chinowawa relies on interviews with an affected family), the “remedy” Chinowawa identifies—resettlement and compensation for land—is not a process that many scholars or practitioners would understand as a remedy process.³¹³ Land resettlement plans are deemed to be best planned out in advance with ongoing stakeholder engagement, and compensation for land is a transaction, not a reparation for a wrong.³¹⁴

Chinowawa describes the relocation process against the UNGPs’ effectiveness criteria concluding the CGP was not effective because the CGP had not carried out “engagement and dialogue” under the GP 31(h)³¹⁵: “It is clear that an attempt was made to provide remedy, but because there was no consultation with victims, the remedy has proven inadequate and inappropriate.”³¹⁶

6. *Overcoming Should-be-Meowing Syndrome*

One possible approach to overcoming should-be-meowing syndrome would be to stop viewing “effective remedy” solely as a normative benchmark and start viewing remedy as an agenda. This likely requires moving away from the distinction between what makes an effective remedy compared to an ineffective remedy and towards asking what makes something a remedy compared to not-a-remedy.

What differentiates “remedy” from other possible grievance handling purposes? Is it in response to human rights abuses? Can remedy be provided *prior* to impacts occurring? Does it always require a *wrong* to have occurred? Should “remedy” include questions that do not concern harm—such as conflict, benefit-sharing, agreement-making, information-providing, mistaken perceptions, legacy grievances, and intra-community conflict? Should/could these purposes exist in parallel, and, if so, what consequences would this have for the design and implementation of

³¹² Chinowawa, *supra* note 105, at 82.

³¹³ van der Ploeg & Vanclay, *supra* note 121 (arguing that resettlement plans are a form of prevention and mitigation); *but see* ZANDVLIET & ANDERSON, *supra* note 133, at 125 (describing it as an ongoing process).

³¹⁴ ZANDVLIET & ANDERSON, *supra* note 133, at 109–26.

³¹⁵ Chinowawa, *supra* note 105, at 80–81.

³¹⁶ *Id.* at 82.

CGPs? To what extent should CGPs seek to include (elements of) the “right to remedy”? Is “access to remedy,” as defined in the UNGPs, something separable from remedy as described in academic literature, and, if yes, how does it differ? Does remedy have relational aspects, including empowerment, trust-building, and/or relationship-building?

In addition to clarifying what remedy is, what is it meant to achieve? Is it putting right a wrong? If so, what distinguishes remedy from the provision of benefits and other potential forms of offsetting harm? How does the remedy perspective view inevitable disruptions to peoples’ lives that occur not through malfeasance but as an inevitable result of the introduction of certain industries, such as extractives? If remedy is for the benefit of rights-holders, how does a remedy lens affect communities’ capacity to make claims and mobilize their rights? To what extent can/should a remedy lens complement community mobilization, community empowerment, community agency, or community agenda-setting? Should remedy perspectives be concerned about the legitimization of privatized remedy, the wielding of corporate power, and the stifling of alternative forms of community mobilization, and how could/should this be conceptualized within a UNGPs-based approach?

Future research on CGPs should look not only at the design of mechanisms, for example “are they accessible?” or “are they trusted?”, but also the agendas they are intending to serve. Does the company, its policies, and/or the team involved in the CGP aim to provide remedy? If the intended purposes do not include remedy, how is the agenda actually pursued by the actors complementary or contradictory to a remedy agenda? What changes might be necessary to pursue a remedy agenda?

At the same time, business and human rights scholars might turn this question on its head and consider not only whether “remedy” is always appropriate for CGPs but also whether “grievance mechanisms” are a suitable means to understand and advance remedy for human rights abuses. As the ten-year anniversary of the UNGPs passes by, and in the absence of much evidence of CGPs providing remedy for wrongs, either effective or ineffective, this question is likely to become ever more salient.

Finally, a focus on remedy should not exclude consideration of the broader political contestations around CGPs and private governance. CGPs are not simply an innocuous management method to be evaluated against technical benchmarks; their use is fiercely contested. When researching a CGP, it is important to ask why the government is not handling these grievances and what has the government’s role been in relation to the company. How have company interests manifested

themselves and to what effect? What impacts have CGPs had on community agency, community mobilization, and community claim-making? Are CGPs solving governance gaps or exacerbating them?

B. THE BARRICK SPOTLIGHT

It is a well-established principle in social sciences that the most convenient sites to find phenomena are often the worst sites for researching them.³¹⁷ If you want to know how male university students understand gender relations, the most convenient place to find that information may be at a university discussion group on gender relations, however, the men in attendance are likely atypically engaged in gender issues.³¹⁸ This is also demonstrated by the well-known story of the drunkard's search.³¹⁹ A police officer sees a drunkard searching for his keys under a streetlight. After a few minutes of searching, the police officer asks if the drunkard is sure they lost their keys there. The drunkard replies, "No, I lost them on the other side of the street." The policeman asks, "Why are you searching here then?" The drunk replies, "This is where the light is!"

It is submitted that a similar issue of "looking where the light is" exists with respect to the current research regarding the Barrick Remediation Framework.³²⁰ If a researcher looks for a CGP which provides remedy, all roads lead to the mechanism that explicitly does so: the Barrick Remediation Framework in Porgera. The Barrick Remediation Framework is discussed in nineteen of the publications reviewed. It is particularly prominent amongst those publications which discuss remedy and power. It is a mechanism which provided reparations to survivors of rape committed by a mine's security forces: a far cry away from the "truck run over my goat" mechanism. However, it is submitted here that, for the same reasons it is such an apt case study for discussing remedy, it is completely atypical of most other CGPs described in scholarship and practice.

The Barrick Remediation Framework is arguably the only CGP cited in the academic literature captured by this review which can be

³¹⁷ JOHN LEVI MARTIN, THINKING THROUGH METHODS: A SOCIAL SCIENCE PRIMER 42 (2017).

³¹⁸ *Id.*

³¹⁹ ABRAHAM KLAPLAN, THE CONDUCT OF INQUIRY: METHODOLOGY FOR BEHAVIOURAL SCIENCES 11 (1964).

³²⁰ See Knuckey & Jenkin, *supra* note 104, for a detailed discussion of this CGP.

regarded unequivocally as a remedy vehicle. It had, *as its express intention*, the objective to provide reparations to rape survivors for actions carried out by the company's security personnel.³²¹ It provided *after-the-fact* remedy packages, including financial compensation for harm, justified *in reference to legal systems*.³²² It was designed in response to actions that the company expressly deemed to be *wrongful*.³²³ It dealt with *human-rights-related claims* which could also give rise to legal claims.³²⁴ It was justified by Barrick as part of its corporate *responsibility to respect* human rights rather than an out-of-court settlement procedure for *liabilities*.³²⁵ While initially outcomes were more similar to what are often termed "benefits"—such as business grants and capacity-building programs—it moved to providing financial awards.³²⁶

For the same reason that the Barrick Remediation Framework is so amenable to analysis from an effective remedy approach, it is a completely atypical CGP. As Knuckey and Jenkin explain, while other CGPs focus on resolving a wide range of grievances on an ongoing basis, the Barrick Remediation Framework focused on narrower subject matter—a class of human rights violations—with "distinct remedy purposes and retrospective focus."³²⁷ These differences were sufficient enough for Knuckey and Jenkin to declare the Framework a "significant shift in the nature, purpose, and scope of OGMs [operational-level grievance mechanisms] as otherwise generally conceived" and to coin a new term for it: a "company-created human rights abuse remedy mechanism."³²⁸

Most effective remedy publications assume that empirical realities are amenable to the normative frameworks they employ. The grievances that communities lodge before grievance mechanisms are assumed to be, or include, claims of human rights abuses. CGPs are expected to provide "remedies" in response to these human rights abuses, often quasi-legal in nature. With the exception of the Barrick Remediation Framework, no

³²¹ *Id.* at 802.

³²² Knuckey & Jenkin, *supra* note 104, at 810.

³²³ Aftab, *supra* note 5, at 33.

³²⁴ Knuckey & Jenkin, *supra* note 104, at 811.

³²⁵ *Id.* at 810 (noting that the Barrick Remediation Framework required a legal waiver in receipt of remedy).

³²⁶ *Id.*

³²⁷ *Id.* at 807.

³²⁸ *Id.* at 802.

real-life CGPs discussed from this perspective appear to converge fully with this perspective. This is not just an issue of CGPs failing to live up to the objective of providing *effective* remedy but of CGPs being implemented to pursue divergent, and potentially rival, agendas. The focus on Barrick could have the inadvertent effect of bolstering perceptions that many CGPs share similar features to an apparently unique remediation framework. This is particularly problematic given the fact that many publications seek to universalize the frameworks or lessons learned from their research into the Barrick Remediation Framework to all CGPs.

Research into the different remedy frameworks should attempt to include a greater variety of CGPs. At the same time, there is no typical or representative CGP. CGPs vary from hotlines, suggestion boxes, off-the-shelf or take-it-or-leave-it liability settlement, community engagement vehicles, or CGPs set up for specific purposes including impact assessment, ensuring compliance with standards, handling land resettlement procedures, handling security issues, and meeting requirements in relation to indigenous peoples. Their use covers various functions: external communications and engagement, conflict management, compliance with law, negotiations, and out-of-court settlements. Future research could have greater awareness and reflection on the variety of purposes between CGPs.

Comparative efforts could be useful: how do grievance redress mechanisms set up under IFC Performance Standard 5 on land relocation differ in purpose and design from a community relations oriented CGP or a liability focused CGP? It may be necessary to build a linguistic repertoire to escape diagnosing all grievance mechanisms as having similar purposes and objectives.

C. OUTCOME BLINDNESS

The final issue in the literature is simply put, but it is also extremely important: there is very limited attention to what outcomes, or resolutions, CGPs provide for their users. Whereas publications focusing on remedy can describe what outcomes ought to be without researching what the outcomes were,³²⁹ community relations publications rarely describe outcomes at all. While they can describe how complaints are lodged, the various stages of grievance escalation or the actors involved in

³²⁹ See generally *id.* (excluding publications which focus on the Barrick Remediation Framework).

handling complaints, only seven community relations publications reference outcomes of CGPs. Three mention remedies should be provided and are also included here as effective remedy publications.³³⁰ One mentions “remediation works” can be provided.³³¹ One mentions the possibility of “apologies” and “compensation,” while making clear the focus should be on process not outcome.³³² Another states outcomes should be “rights-compatible.”³³³ One states that procedural elements of justice should be privileged over outcomes but that outcomes should be considered fair and just.³³⁴ CGPs are never described as replicating the kinds of remedies found in legal systems, in whole or in part.

This lack of attention to outcomes may in part be explained by the lack of reporting on outcomes by companies “[g]iven the sensitivity associated with this type of information, the option of legal privilege, and the level of expertise required, organizational aspects of grievance handling are, by and large, a privatized body of knowledge.”³³⁵ Outcomes-based empirical research is vital, and future empirical research should seek to include outcomes in their case studies. If outcomes of CGPs are off-limits for researchers, then there needs to be research on the implications of this. What does this mean for how we theorize CGPs, and what does this mean for how we understand corporate accountability more generally?

V. CONCLUSION

There is a growing interest in CGPs, both in scholarship and in practice. Understanding how CGPs have been theorized helps us understand how business enterprises have processes in place to ensure more responsible conduct and what the ramifications of these processes are. Analyzing one hundred seventeen publications on company-administered grievance processes for use by external stakeholders, this Article has provided three key contributions. First, it has created an integrative framework—the effective remedy, community relations, private power framework—to organize and describe the diverse and

³³⁰ Cedillo, *supra* note 75, at 198; Vilmondes Türke, *supra* note 102, at 227; van der Ploeg & Vanclay, *supra* note 121, at 35.

³³¹ BLACK, *supra* note 128, at 74.

³³² ZANDVLIET & ANDERSON, *supra* note 133, at 132.

³³³ Kemp & Owen, *supra* note 125, at 138.

³³⁴ Kemp et al., *supra* note 125, at 99.

³³⁵ OWEN & KEMP, *supra* note 14, at 187.

interdisciplinary literature on CGPs. Second, it has identified how the underlying disagreements extend to the roles of, and relationships between, governments, companies, and communities. Third, it maps out three methodological shortcomings that should be addressed by a future research agenda.

Since the endorsement of CGPs in 2011, CGPs have often been described as a means to provide effective remedy. This is a particularly prevalent stance in human rights and law. From an effective remedy perspective, corporations can cause human rights impacts/abuses, and CGPs can provide remedy to victims of these impacts/abuses. Remedy appears in most cases to be solely after-the-fact: making a victim whole following the harm, with reference often made to remedies found in legal systems and expected under international human rights law.

Viewing CGPs as relevant for community relations is the older approach. It is prevalent in both environmental studies and natural resources and extractives. CGPs are viewed as a tool to forge more constructive company-community relations. They can be an engagement tool, a means of conflict management, part of company-community agreement-making, and/or a means to foster a social license to operate (SLO). Constructive relations are necessary to avoid conflict and material repercussions on the company.

Publications which view CGPs as an exercise of private power are most prominent in development and natural resources and extractives. Power is utilized against communities to pursue corporate interests and/or to counter a community's capacity to mobilize and to exercise their agency. Private governance, including CGPs, is replacing the traditional state sphere. There is generally a critique of global and corporate norm-making processes which are seen as a means to further legitimize the use of corporate power as an alternative to more desirable means of public regulation.

These perspectives do not just differ on the purposes assigned to CGPs, but their differences in approach extend to how they conceptualize the realities underlying the relationships between governments, companies, and communities. Effective remedy publications describe the relationship of governments and companies as bifurcated and the relationship between companies and communities as one based on responsibilities and rights, with some space sometimes made for community participation and empowerment. There is limited to no discussion of community governance or agency from this perspective.

Community relations publications describe both national and local levels of governments and often view the broader relationship of companies, governments, and communities as one that should be collaborative, constructive, and empowering for communities. Adversarial relationships are described as conflictual and undesirable. Responsible conduct is generally deemed to be in the (enlightened) interest of the company.

Private power publications view governments and companies as acting in concert, governments as ceding political authority to companies, and/or companies acting in the absence of governmental authority. Power and corporate interests are a driving force shaping company-community interactions in which corporate action often aims to manage community dissent. Corporate harm is not simply a result of individual acts of malfeasance, but it stems from the enactment of particular policies and broader structural factors. Solutions require fundamentally altering the relationships between companies, governments, and communities, either through power-sharing relationships or the re-entry of the public sphere.

This Article suggests the need to build a new research agenda based on three identified methodological shortcomings: should-be-meowing syndrome, the Barrick Spotlight, and outcome blindness. Under should-be-meowing syndrome, effective remedy publications can view CGPs as providing should-be-remedies regardless of the actual objectives assigned to the CGP by the actors involved. In empirical research, there needs to be actual investigation into whether remedies are actually the intention of the CGP and whether remedies have actually been provided. There is also a need for normative research which more clearly articulates what differentiates remedy from other potentially rival forms of grievance handling.

Future research would generally benefit from greater awareness in both publications focusing on power and remedy about the atypical nature of the often-discussed Barrick Remediation Framework, and there could be efforts to design and apply both normative frameworks and theoretical models against a broader array of CGPs. Future research could benefit from a linguistic repertoire which further breaks down CGPs according to their various functions.

Perhaps most importantly, any future empirical research, regardless of any perspective adopted, must attempt to incorporate a discussion of outcomes of any grievance resolution provided by CGPs. Where information on outcomes is inaccessible, as appears to be the case for many CGPs, there is a need to include the lack of transparency of

outcomes in any subsequent theorizing. This means both reflecting on the limitations this poses for theory-building and the consequences of opaque CGPs for practice. There is likely no simple solution or definitive answer to most of the issues raised in this Article. By building bridges between the various disciplinary approaches, this Article can hopefully serve as a compass in navigating a more fruitful way forward in academic theorizing on CGPs.