



Corporate Responses to Community Grievance: Voluntarism and Pathologies of Practice

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Abstract

Grievance landscapes form in rapidly industrialising contexts where social and environmental impacts are inevitable. This paper focuses on the complex operational and organisational settings in which grievances arise and the industrial pathologies that form around resource development projects. The arguments draw on classic and contemporary literature on “grievance”, “right” and “entitlement”, and the authors’ own sustained engagement with global mining companies and local communities. Our contention is that the grievance landscape is far more critical to understanding environmental, human rights, and mining interactions than the managerial systems that companies construct to signal compliance with voluntary international norms. These managerial systems, or operational-level grievance mechanisms, map the procedural contours of how a local grievance would travel once it is made visible to the company. In practice, however, it is fiction, illegibility and invisibility that dominate. Across the pathologies, the common denominator is the corporate propensity to avoid recognising the legitimacy of a local grievance and the source of its cause.

Keywords Mining · Remedy · Justice

Introduction

This paper is concerned with corporate responses to grievances held by local communities in resource extractive settings. We argue that corporations in these settings display distinct pathologies in their handling of local concerns and that these pathologies are enabled by industrial conditions that themselves should be subject to greater ethical scrutiny. The study of community grievance handling in the resources sector is important for at least two reasons. First, that resource extraction projects are frequently located in remote, socially, and ecologically sensitive environments where regulator presence and oversight are ostensibly weak. Corporate

actors with significant economic means are empowered by the state to self-manage interactions with local communities that are already peripheral to the benefits and protections of state and market systems.

The second reason is because these interactions readily induce social and environmental impact and harm. Decades of mining research have documented and analysed the mining-induced impacts of: social disruption, conflict, and loss of cultural connection to people and place (Gaventa, 1980; Hilson & Yakovleva, 2007; Langton & Mazel, 2008; Petrova & Marinova, 2013; Whiteman & Mamen, 2002); the mining complex and its inherent dangers, including the hazards associated with waste generation and storage, and emissions, pollutants, and other discharges into inhabited environments (Bridge, 2004; Dudka & Adriano, 1997; Ochieng et al., 2010; Owen et al., 2020; Walton & Barnett, 2007); human displacement and resettlement (Downing, 2002; Owen & Kemp, 2015; Szablowski, 2002); and other forms of encroachment associated with population influx (Sincovich et al., 2018) and the expanding of industrial footprints beyond officially sanctioned mining lease areas (Banks, 2013). Based on the sheer complexity and combination of intersecting and accumulating impacts and issues in

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extractive landscapes (Lèbre et al., 2020) community grievances are largely inevitable.

It has been ten years since the unanimous endorsement of the UN Guiding Principles on Business and Human Rights (UNGP) by the UN Human Rights Council in 2011. The outcome of a six-year political and intellectual project, this instrument clarifies the state duty to protect human rights, the business responsibility to respect human rights, and the shared responsibility to ensure access to remedy for victims of human rights abuse. The UNGPs envisage an “ecosystem” (Scheltema, 2021) of judicial and non-judicial remedy pathways, including operational-level grievance mechanisms to handle issues and grievances that arise at the frontline of business activities. This frontline emphasis recognises that local-level grievances are a routine feature in locations of large-scale resource extraction.

Although a wide system of remedy is canvassed by the UNGPs, our specific concern in this paper is the complex operational and organisational landscapes in which grievances arise and the industrial pathologies that can form in remote mining localities. This theme aligns with the emerging literature on the defensive practices used by extractive companies to avoid responding to claims of business misconduct (Karidio & Talbot, 2020; Kemp et al., 2018; Maher et al., 2022). Moreover, the topic represents a response to earlier calls to better understand operational-level grievance mechanisms in mining industry practice (Kemp et al., 2011). We proceed by engaging both contemporary policy and classic literature on grievance and resource extraction in articulating our conceptual framework. We then outline our method and approach to analysis. Next, we provide an account of five (5) pathologies that we have encountered in our engagement with operational-level grievance mechanisms of 25 global mining companies over 10 years. Finally, we discuss the implications of these pathologies for the functionality of voluntary safeguards and researchers who are engaging in these industrialised landscapes.

Orientating Concepts from Research and Policy

In this section we situate our work in contemporary policy and intellectual debates, including several classic works of social and political science that have continued to inform our research on extractive industries. In doing so, we offer a conceptual framework for engaging organisational responses in what we call the “grievance landscape”.

Direct Dealing at the Mine-Community Interface

Our analytical focus on grievances at the mine-community interface complements existing work about competing

perceptions of justice in extractive landscapes (Murphy & Vives, 2013). A point of difference is our explicit attention on the organisational factors that drive outcomes at the mine-community interface. Following the advent of the UNGPs, the body of knowledge about mines and community grievances proliferated. The emphasis of this work is the grievance itself—the claim, the claimants, dynamics of corporate (ir)responsibility, and pathways to remedy. In this arena, affected people are the primary source of data where oral histories, testimonials, and material evidence of social and environmental harms are documented and analysed (Cato et al., 2022). Company–community conflict is a prominent theme, with numerous studies examining the expression of grievance through protest and resistance movements (Avci & Fernandez-Salvador, 2016; Banerjee et al., 2021; Conde, 2017; Filer, 1997) and strategies of rights mobilisation (Avci, 2017; Maher et al., 2021).

In this same period, the public profiling of these community grievances has grown. Cases are reported in international media, corporate sustainability reports, and public repositories such as the Business and Human Rights Resources Centre (BHRRC), and the Centre for International Law and Policy, a student-led initiative that maintains a database from desktop research of operational-level grievance mechanisms, including those for 29 mining companies. Such repositories provide a readily available dataset for researchers to examine mining-related claims and controversies. Researchers have categorised these claims and examined corporate responses. Maher et al. (2022), for instance, documented how extractive companies (including oil and gas) refuse to engage community claims and grievances lodged with the BHRRC through techniques of “neutralisation”, “evasion”, and “self-promotion”. These are secondary-source studies about local-level grievances and their presentations in public discourse. The emphasis is placed on corporate communications, not the mechanics or values drivers that underpin grievance handling processes in operational (i.e. mine site) settings.

Taken together, these two streams provide a strong signal of a deep dysfunctionality in the remedy systems currently available at the operational level to address local struggles at the source of mineral extraction. This is despite the emphasis placed on remedy in the UNGPs, and the widespread take up of this logic by the world’s major mining companies, member organisations, and industrial standards and schemes (Vivoda & Kemp, 2019). The research challenge is that the internal workings of grievance handling processes in “direct dealing” systems (i.e. where the company and the community interface in the absence of the state) play out in remote locations that are far less accessible to outside researchers than the public discourse would suggest. The issues have become prominent in public discourse, but the modes and means used by mining companies at the operational level

remain private and relatively hidden from view. Our work is an explicit attempt at characterising the industry's approach to operational-level grievance handling with a commitment to tracking issues from the mine site as the source of extraction.

Inner Workings as a Focus for Social Scientific Research

While we remain cognisant of the drivers for non-judicial, operational-level grievance mechanisms through voluntary safeguards such as the UNGPs, we are interested in actual workings and less in ideal systems and abstract norms (Kemp & Owen, 2022). Almost two decades ago, Ballard and Banks (2003) challenged convention by suggesting that the inside workings of companies represented an “ethnographic gap” in the anthropology of mining. This gap continues to the present day, with anthropologists such as Kirsch (2014) actively dissuading insider research, lest researchers are seduced by corporate influence. Bainton and Owen (2018) contest Kirsch's claim, arguing that the social and economic entanglements that congeal around mining warrant far more than simple avoidance.

Other researchers also contend that there is merit in understanding the inner workings of multinational firms, although research in this vein is largely characterised by single-company, deep case studies. Rajak (2011) offers a clinical dissection of Anglo American's corporate anatomy and, in doing so, displays its various organisational functions and internal organs, while Welker's (2014) transcontinental study of the Newmont Mining corporation provides insight into how different parts of the organisation enact corporate social responsibility (CSR). Both authors reveal insider struggles and “shifting coalitions” (Farrell et al., 2012) vying for control over how relations with the environment, communities, workers, activists, and the state should proceed (Kemp & Owen, 2020). Still, the operational realities of mining are not subjected to scrutiny by outsiders often enough, aside from through the privatised audit technologies that companies and their agents curate and control (Ramasastry, 2021).

Local Notions of Entitlement and Right

Local notions of entitlement and right have been well documented by historians (Thompson, 1971), political scientists (Scott, 1976), and economists (Sen, 1983). The link between these classic works and the contemporary policy landscape can be found in the UNGPs themselves. The UNGPs work on the basis that if harm occurs (or has the potential to occur) affected people may harbour a grievance, defined as:

a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness. (UN, 2011, p. 28).

The work on entitlement bundles during periods of famine by Nobel Prize-winning economist Sen (1983) offers critical insight into the institutional arrangements that grant and recognise the idea of a “right” and different sets of basic rights. In essence, Sen's work shows the relational nature of rights and how individuals, through their social ties, can maintain access to certain bundles of goods or entitlements—such as access to food, water, land, security, protections, and so forth. For economists researching the cause and consequences of famine, Sen's relational construct provides an alternative to the food availability deficit thesis and shifts the attention onto institutional mechanisms that would have otherwise guaranteed a base level of entitlement (in this instance, food). This institutional approach to understanding local rights and entitlements is equally powerful in explaining expressions of grievance in resource extractive frontiers, and how local actors might seek to remediate concerns.

James C. Scott's work on the underlying conditions of grievance and contestation is also well established and applicable in extractive contexts. These underlying conditions, as Scott reads them, ferment along basic rights of access to natural resources that have been used for household-level provisioning. In his ground-breaking 1976 book *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia*, Scott focuses on patron-client relations in colonial Burma and Vietnam. Enclosures of productive landscapes gave rise to changes in the fundamentals of the subsistence economy and re-shaped the primary land relations that have provided long-term stability against food shortage and other forms of crisis. For our purposes, his work is instructive from the vantage point of understanding the dynamics that unfold when a foreign actor, such as a mining company, induces change in a place with an existing social order. Scott shows how disruptions to land tenure and shifts from land ownership to tenancy or waged labour can rupture social relations and plunge already vulnerable people below a given subsistence threshold. These changes stand in contradistinction to the stability of the old feudal order, where established patron-client relations provided a base level of insurance in years of hardship.

In the context of human rights and contemporary notions of justice, these established relations can easily be read as exploitative, even though they fulfil the right to subsist and adhere to peasant norms of reciprocity and decent relations. This same logic is directly relevant to thinking about mine-community relations in mining. Scott's work suggests that the pre-existing social order will influence the relationship

that rights holders will seek with a company if a mining project proceeds in a particular location and disrupts established relations. Scott's work helps us to prioritise local notions of entitlement and right as we approach the question of operational-level grievance handling in extractive landscapes against a backdrop of voluntary international norms.

Beyond Surface Readings and Single Cases

While Scott's *Moral Economy* centres on peasant interactions with an emergent colonial order, Waddington et al.'s (1991) *Split at the Seams* is based on the fracturing of mining communities in the aftermath of Britain's 1984–1985 miner's strike. It documents hardship and protest, and division between families who joined picket lines to save jobs, and those who did not. While the work of these two scholars differs in time and place, both Scott and Waddington are deeply concerned with dependencies on the margins of large economic systems. They both track how outside forces can trigger crises in otherwise stable, albeit marginal, systems. By examining the chronic drivers of acute crises, both Scott and Waddington provide insights into local conceptions of what is "fair" and "decent", and what can be done to remedy harm and exploitation. In other words, these scholars focus our attention on the localised effects of big systems, especially when those effects see people face scarcity and, as a result, step beyond their everyday experience to rebel resist, and express grievance—often at great risk to themselves and their families.

Waddington is most well-known for his contribution to the "flashpoint model", an analytical framework for investigating instances of public disorder. The model (Waddington et al., 1989) directs readers inside the event, to its triggers and underlying conditions. This structured approach to investigation is to avoid forming (or relying upon) surface assumptions about people who are left to express grievance in ways that sit outside the boundaries of their normal social interactions—as is often the case in extractive frontiers. The model takes the "flashpoint"—or the point at which an issue is dramatically brought to the fore—as but one part of a much larger set of events and circumstances. The flashpoint is positioned at the centre, supported by a series of concentric circles indicating different levels of social analysis required to understand the development of the incident itself. These layers include interactional, situational, contextual, cultural, political/ideological, and structural considerations. The aim is to populate each layer as a means for developing a deeper understanding of the factors surrounding the flashpoint—and the expression of grievance.

This commitment to looking beyond surface readings and identifying patterns across time and space is shared by political ecologists. In their analysis, Bebbington and Bury (2013), prioritise questions of how social mobilisation and

resistance, dynamics of power and governance, and mechanisms of control and authority are "pushed up" through the pressures exerted by resource extraction. Like many political ecologists, Bebbington and Bury orientate their analysis towards state-level institutions and social movements, largely ignoring discussion of sub-surface dynamics *within* mining corporations as major actors within the political economy of mineral extraction. Too often, it seems, researchers bury organisational factors and actors in these struggles. Waddington later remedied this gap (Moran & Waddington, 2015) by including an additional "organisations and institutions" layer in the flashpoints model. This addition enabled a stronger recognition that companies and other organisations are pivotal players in shaping grievance landscapes. They subsequently applied the model across numerous cases to identify patterned responses to flashpoints and riotous events.

Research Orientation

To summarise, our work is an explicit attempt at characterising the (dis)functionality of operational-level grievance handling process at the source of mineral resource extraction. We draw on the scholarly work of Sen and Scott who insisted on the prioritisation of local notions of entitlement and right. Alongside Waddington, these works discipline us to push beyond surface readings and specific claims to identify broader patterns of grievance handling and corporate response. This helps in addressing a gap in knowledge about voluntary, non-judicial grievance mechanisms at the operational level. Before presenting our findings, we explain how our multi-sited set of engagements in the global mining industry over a 10-year period has enabled critical insights into the operational patterns and practices across the sector.

Research Approach and Methods

Community grievances in the mining industry are highly contingent events stemming from activities that span local–global scales with flows between organisational and societal structures that accumulate and change over time. As such, when looking to identify local grievance patterns at a more macro industry scale, no single methodological exercise is sufficiently comprehensive to capture the perspectives and actions of multiple actors across different mining contexts. The findings presented in the next section are retrospective, cumulative, and drawn from our own individual and collaborative industry-facing research at multiple scales and across organisational boundaries in the decade 2011 to 2021. Application of the conceptual framework described in the previous section has informed our approach to study design, data collection, interpretation, and analysis over

this period, within and across a wide variety of research engagements.

Our approach to identifying multi-sited, multi-scalar patterns in grievance handling using a wide variety of sources and methods may be approximated to a progressive, qualitative, meta-analysis (Timulak, 2014). In formulating our analysis, we drew on prior engagements with 20 large and mid-tier publicly listed mining companies at more than 50 extractive locations across the Americas, Asia Pacific, Australia, Central Asia, South-East Asia, Sub-Saharan Africa, and West Africa. These locations hosted large-scale, mostly open-cut mining operations extracting copper, gold, bauxite, iron ore, nickel and silver and co-occurring commodities such as cobalt, lead, and zinc. Issues ranged from company–community conflict, displacement, resettlement, and in-migration, to processes of community engagement, consultation, negotiation, and compensation. Our engagements have also included multi-dimensional social risk and impact assessment.

Our work in this period includes assignments commissioned by mining companies, such as independent audits, assurance, or other types of third-party investigative or assessments. These assignments limit the extent to which cases and claims are identified in our published work, although many of our findings appear in aggregated or de-identified form—either to protect the identity of claimants and other research participants, or because the conditions of engagement prohibited the public disclosure of confidential information. Primarily though, we draw on work conducted under the auspices of long-term, university-based research grants and partnerships. Time in the field ranged from a few days to several weeks and included single entry and multiple return studies. While our source data are not weighted, our confidence levels are greater where our work is sustained over longer periods of time.

Across our research we have engaged with claimants (individuals and groups); local community members; community-based organisations; and community representative groups and bodies. We have also engaged with company representatives and their agents from mine sites to executive and board levels; government agencies at national and sub-national levels; industry peak bodies; and international organisations and institutions that become involved in processes of handling community grievances. Our methods included household, and village-based meetings, focus groups, participant observation, qualitative semi-structured interviews, and quantitative surveys. Document analysis and literature review are constant features of our analytical work.

Our multi-sited, multi-scalar, multi-method, longitudinal, qualitative meta-analysis overcomes the problem of restricted researcher access to the inner workings of mining corporations and the remoteness of extractive landscapes themselves. We are, in effect, drawing on our sustained

research in mining with multiple actor groups, over space and time, in both the societal, organisational, and professional contexts in which perspectives around “grievance”, “entitlement” and “right” are formed and actioned. This work complements the more common location-specific study of cases and claims by making connections across different locales and scales of action (Noblit & Hare, 1998).

There are of course limitations to our approach. While the approach provides observational and explanatory value at a macro level, it does not offer the isolated, thick description and depth that coverage of individual claims and issues provide, which is (as described in the Introduction) a more prominent representation of the industry’s grievance landscape. Our objective is to strengthen the conceptual basis from which to analyse cases and claims using broader patterns of grievance handling. Identifying these patterns at scale necessarily raises questions. For instance, how widespread are these (or other) patterns and pathologies? What factors shape the likelihood that these pathologies will occur in any one locality, or jurisdiction? And what are the intensity and durability of these patterns in any given context? Prosecuting these questions could indeed support strategies to better regulate the behaviour of mining companies and other powerful market actors.

Findings: Industrial Pathologies

This section introduces the five (5) pathologies that we have observed at the company–community interface in large-scale resource development projects. This is one way to begin to unravel the grounded complexity of operational-level grievance mechanisms. These pathologies can be viewed as situational outcomes that have formed out of the grievance landscape or as the precursor or product of one or multiple other pathologies. In this section we introduce the pathologies using what we consider to be the dominant sequence of accumulation, with the caveat that other sequences may be viable. Illustrative examples and cases from existing literature animate each of the pathologies we have identified.

Procedural Fiction

The first pathology is termed “procedural fiction”. It could just as easily be expressed as “one way on paper, another in practice”. This pathology is prominent and, in our estimation, most likely found at almost every extractive site. The challenge with respect to this pathology would be to find a site where the grievance mechanism described in the standard operating procedure was a match with how the mechanism performed in practice. To demonstrate how the procedural fiction manifests, we draw on a case that describes an operational-level grievance mechanism at a foreign-owned

mine in Southeast Asia (Kemp & Owen, 2017). The anonymised case is located in a single-party state, where the political and legal avenues for redress are considered to be high-risk for complainants. In that grievance landscape, complainants carefully mobilise concerns through their personal networks to avoid being exposed to any backlash from the state system. This political context has meant that the mining project receives relatively few grievances, despite generating a wide range of social impacts, and disturbing large tracts of agricultural and foraging land over several decades.

On paper, the company's grievance procedure appears stable and reflects the broad intent articulated in the UNGPs in so far that the description of the mechanism provides clear guidance on roles and responsibilities of company personnel, that lodgement points do not disadvantage the complainant, and that the timeframes and check-points for response and close-out are all reasonable and explicitly stated. Moreover, the procedure appears to impose no limits on complainants in accessing the country's judicial system. The fiction promulgated by the procedure begins with the company's failure to acknowledge the socio-political context in which the project and the grievance mechanism are operating. The study reveals a series of deep procedural gaps between the organisation's grievance procedure and the operational practice.

In addition to the convoluted entry and exit points, the mechanism does not recognise all of the parties that participate in the process or the conditions under which that participation occurs. The parties involved are those with a direct stake; that is, the company, government, and the complainant. Kemp and Owen (2017, p. 134) quote a local villager who had an outstanding grievance in the system: "The local government will not back us. The direction from the central government is to develop and enable mining". This account was confirmed by local authorities in stating that the mining project is viewed as central to the national government's strategy of nation-building, and that raising grievances against the project is seen as acting against the national interest and the regime.

The operation's standard operating procedure outlines a neat hierarchy of possible escalation points, but in practice the company defers to the government to resolve what they consider to be intractable grievances. People who refuse to accept company offers of compensation and insist on a more fulsome remedy, expose themselves to the real possibility of "discussion cycles" with various joint committees and government agencies. This process of escalation takes place almost entirely outside the company procedure, with no lines of accountability or redress. The "resolution" of a grievance comes by way of one of three outcomes: (i) cycling the issue back to the same committee that was unable to resolve the issue in the first place; (ii) application of administrative pressure by the state; (iii) acquiescence by the complainant. If

complainants do not succumb early to pressure by the state, that pressure intensifies, and the risk of detention by the state increases. In this setting, the location and period of detention are not made known to the detainee, or their family.

This study reveals that, in practice, there is no one person, department or committee with a clear sense of how the grievance mechanism works. The menagerie of company, village, government, and joint committees that constitute the formal mechanism gives the impression of an intentional and well-ordered administrative structure. The cumulative effect of these formal and informal managerial processes reveals how, other than for clear-cut cases with relatively straightforward solutions, the mechanism defers to the existing socio-political system of state repression, and falls despicably short of offering the human rights assurances contained in the UNGPs. This case is emblematic of the prominent pathology observed where operational-level grievance procedures do not reflect workings-in-practice.

Deferral by Default

The second patterned pathology is "deferral by default". This managerialist approach will typically result in aspects of a grievance being registered in the company's formal system and then left unactioned in a virtual "parking lot". Grievances are lodged and subsequently become stuck in a system that cannot handle them. The underlying issues that make up the grievance will rarely self-resolve, and so problems fester and grow over time. These cases develop out of commonplace conditions in and around mining operations, some of which are internal to the company, and some that relate to the host context, such as endemic corruption, or a dysfunctional judiciary. Findings from a company-commissioned inquiry into origins of the Chaupe case, which we discuss below, show the complications that can follow from such a matter being allowed to escalate.

Internally with the organisation, the ability to resolve matters is limited by delegation of authority where individuals cannot approve decisions above a given threshold. Given the industrial setting of large-scale resource development projects, the majority of local grievances are likely to require a substantively higher level of delegated authority than site management. Matters relating to the large-scale acquisition of land, for example, will ordinarily fall outside of what can be financially approved locally at the site. Within the community, a different kind of complication arises with respect to the delegation of authority over land and common resources (e.g. forests land for foraging, conflicted land ownership, or neutral territory), and the ability of complainants to accept an offer of remedy.

As Downing (2002) has pointed out, mining projects are primarily located in remote regions with low levels of regulatory oversight and a higher likelihood of land tenure

being held under customary or traditional systems of ownership. In these systems, decisions about land are not generally handled by an individual, but rather require group deliberation and a form of consent. Land acquisition has knock-on effects in terms of the challenges this creates for communities where land is central not only for day-to-day household provisioning, but also for the broader purposes of social reproduction (Bainton et al., 2021). The consequence is that even on those rare occasions where transacting over grievances is considered straightforward for the operation, there are complicating factors on the complainant's side that may delay or prevent the parties from arriving at an agreeable remedy. This is not to suggest that the grievance landscape enters a period of suspense; because regardless of whether the parties tacitly or explicitly defer the resolution of the issue—or park it indefinitely in the “too hard basket”—grievances will continue to evolve.

Pressure Release

Our third pathology is the “pressure release”. These are crude interventions in the grievance landscape driven almost exclusively by cash injections by the operation to “keep the (mining) show on the road”. As grievances accumulate, whether through the processes of deferral described above or by other means, corporate actors face the risk of unresolved grievances impeding their organisational and operational goals. The source of most local-level grievances is not merely some arbitrary emotive dislike for mining companies, but rather a result of impacts and impositions that disrupt the material conditions that support communities and their provisioning activities. When pressures accumulate, this can be a signal that the community's capacity to absorb impacts and continue to provision under those circumstances has severely diminished. This amounts to a high-stakes environment where neither party can extinguish the base conditions of grievance and impact, but where a willingness born of need emerges.

The pilot resettlement project proposed at the Porgera Gold Mine in Papua New Guinea (PNG) is an unambiguous example of poverty, dispossession, and mining impacts driving a preparedness on the part of villagers to entertain high-risk solutions by the company. Following three decades of incremental expansion on to village lands, and poor land and waste management practices, the vast majority of near mine settlements are overwhelmingly surrounded by toxic mine waste with little gardening land remaining for subsistence agriculture and scarce access to potable water (Filer, 2012; Kemp & Owen, 2015). The resettlement proposal instigated by the mine was to shift identified households away from these conditions on the mining lease, into an off-lease environment with potentially much greater access to land and water, but with low security of land tenure, and an

extreme level of risk in terms of exposure to tribal warfare. Despite a lack of willingness and ability on the part of the company to underwrite or safeguard against severe forms of risk, households were actively weighing these choices, in the full knowledge that their existing living arrangements were fast deteriorating.¹

As illustrated over the life of the Porgera mine, and many others like it, this kind of mutual desperation drives the parties to transact their way out of a crisis, so that mining is able to continue as “normal”. Company representatives can often be heard saying that they are burdened by communities being overly dependent on the mine for infrastructure, services, and provisioning. However, it is precisely this condition of dependency that provides companies with the leverage to manoeuvre around deeply entrenched grievances while maintaining access to mineral resources.

Disconnected Remedy

The fourth pathology is “disconnected remedy”. This term signals a broken link between the remedy and the issue underpinning the grievance. In some cases, the remedy is thematically connected to the issue, but grossly inadequate on the most basic of measures. Take for instance the provision of household water tanks to remedy loss of access to water following a catastrophic release of mine waste into a river system on which local communities depend. People living in such circumstances understand the value of water, even if they do not live in a water-managed environment. When they need water for drinking, cooking, washing, cleaning, irrigation, or sanitation, they access it through established customary modes and means of access. They know the source to be safe, and readily available, without a need for them to directly maintain the primary source. A tank system, on the other hand, relies on catchment, storage, and new forms of frugality. Without ongoing support and maintenance, “catch and store” systems introduced as a remedy for harm tend to degenerate over time, while the original source of grievance—e.g. a silted or polluted river—remains unresolved. In these cases, it is common that the failing remedy becomes another source of unresolved grievance.

Other times, remedy appears in the form of a gift—where a good is transferred from company to community in an attempt to build goodwill when the company has been unprepared to resolve the issues underlying a grievance in any precise terms. In these instances, a “good deed” is done in exchange for a harm perpetrated elsewhere with no basis

¹ We note that Porgera is commonly associated with the Porgera Remediation Framework (PRF). Under this framework, Barrick rape victims waived their rights to sue in court, precluding their access to wider systems of justice (see Jungk et al. 2018).

in the grievance itself. These “remedy gifts” can come in the form of a donation, a community development programme, or may represent a form of pressure release as discussed above. In May 2020, Russian mining giant Nor Nickel, the world’s largest producer of palladium, and one of the largest producers of nickel, copper, and platinum, spilled 21,000 tons of diesel fuel in the Taimyr Peninsula, contaminating the traditional hunting and fishing activities of Indigenous Peoples in the Arctic Circle. The incident was classified as a national emergency and considered Russia’s worst oil spill in decades, with environmental assessors likening the incident to the 1989 Exxon Valdez disaster. In response, the company announced compensation packages for affected families, and a cooperation agreement that includes housing, health, education, and cultural projects to support socio-economic development throughout the region. In Nor Nickel’s public announcements, no direct link is made between the incident, its impacts on Indigenous Peoples, levels of compensation, and the company’s sudden philanthropic suite of programmes.

Company actors typically assume that these remedy gifts absolve them of the obligation to investigate the substantive or underlying issues or compensate for specific forms of loss. What is most prominent here is the dissonance this creates between the substance of the gift and the substance of the grievance. In other words, what a company is gifting or paying for is not what people are aggrieved about. The architect of the UNGPs made it clear that such acts do not constitute remedy in that “companies cannot compensate for human rights harm by doing good deeds elsewhere” (Ruggie, 2008, p. 17). Corporate philanthropy, however, generous it may appear at a point in time, does not relieve a company of its responsibility to provide access to remedy.

Finally, we also observe remedies, or attempts at remedy, that do not address or repair the issue brought by aggrieved parties, but rather, represent broad-scale responses that obscure specific claims. These efforts can be read as attempts to pre-empt or react to a larger groundswell of discontent amongst a population that may be experiencing issues similar to complainants. This is not to discount that this can represent a strategy on the part of mining-affected peoples, where a smaller group make the claim on behalf of a larger collective. But blanket solutions can represent a deliberate disconnect in the company’s grievance handling system. Farrell et al.’s (2012) forensic examination of involuntary resettlement at Anglo American’s Mogalakwena platinum mine in the South African province of Limpopo provides a case in point. In the midst of public objections, grievances, protests, road blockages, violent conflict, and legal challenges to the company’s attempts to move people out of the way, the company pursued an out-of-court attempt to resolve the dispute. This attempt failed, with Farrell et al. explaining that affected groups read this attempt as enabling

displacement, rather than investigating the issues at hand. Unless a company understands the material basis of discontent, and addresses issues at source, blanket attempts at remedy run the risk of protecting the organisation’s interests, not the rights of affected peoples.

In this category we have described a range of disconnected remedy types, including substantive disconnection, remedy gifts, and blanket remediation. The common thread across these types is that disconnected remedy is often pursued as a strategy for keeping a mining operation in production, rather than a genuine remedy that addresses the source concern. Future harm avoidance at source is not part of these “fixes” such that fact-finding, digging into the substance of issues, and surfacing latent forms of grievance are not prioritised. We surmise that this is because these activities would be too disruptive to corporate self-interest, and potentially compromise operational continuity. Owen (2016, p. 103) attributes this avoidance behaviour to a “fear of *mineras interruptus*” whereby companies fear that if disapproval becomes too intense, there is a chance that the community will interrupt mining activities, and so they do what they can to avoid this possibility. Disconnected remedy, therefore, becomes a method of papering over issues and yet constructing a space within which aggrieved parties may limit the basis of their claims.

Irremediability

The final pathology describes grievances that become impossible to remedy through direct dealing. We identify two basic types of irremediable grievances. The first occurs when subsequent events supersede an original grievance. Consider a mining company that acquires land downstream of an operation to reduce the potential consequences of a large-scale tailings facility failure. The transaction stipulates that the land can be farmed but must not be inhabited. Here, in this example, the company compensates landowners for the full market value of their property and tenant farmers for their dwellings and economic crops. A small group of farmers believe they were not adequately compensated because their fields were fallow in the year of the transaction and request a supplementary payment that recognises the full economic value forgone in that land. After years of dispute on this issue, the tailings facility fails catastrophically. Hundreds of farms in the valley downstream are covered in waste. It is, at this moment, that the original claim is superseded by calls for long-term disaster recovery and literally submerged under the weight of other seemingly more substantive claims. The passing on of claimants is another way that a grievance may become irremediable, whereby the issue outlives the claimant.

The second type occurs when the extent and complexity of supplementary grievances render an original grievance

so intermeshed with other impacts and issues that the question of cause and contribution becomes impossible to disentangle. It is here that retrospective analysis becomes too difficult in the context of a broader conflict, violence, or when access to the field for data gathering, issues mapping, and investigation is blocked by one or the other party. In other instances, there may be a “pile in” effect where latent or unresolved grievances are attached to a live grievance in the hope that it will find a workable resolution pathway. It is in the face of these types of entangled and intractable situations that mining companies are most willing to offer a “pressure release” or pursue “blanket solution” as a strategy for neutralising the force of mounting claims against the operation. This strategy does not guarantee, of course, that an original grievance is remedied. Instead, they are likely to be swallowed up by larger events—and lost to history (Humby, 2016).

In looking across sectors and cases, Birchall (2019) concludes that in situations when there are multiple contributors, disparate victims, and no clear line of causation for establishing liability, and when activities stem from a legally sanctioned or permitted activity (such as mining) remedy is unlikely to be found through direct dealing at the operational level. Where we identify pathological irremediability, Birchall sees a distinct “remedy gap”. As with the procedural fiction pathology outlined above, not only does direct dealing create a gap, but a wider form of institutional circularity can also be observed when complainants who pursue other forms of remedy find themselves back in a direct dealing model.

Take for instance Rio Tinto’s recent agreement to fund an independent assessment of the human rights impacts of its former Panguna copper and gold mine in PNG’s autonomous region of Bougainville. Rio Tinto abandoned the mine in 1989 during a civil conflict and no longer owns a stake after divesting its shareholding to the PNG and Bougainville governments in 2016. This transaction absolves the company of formal responsibility for environmental damage caused by decades of dumping tailings material into the Jaba-Kawerong river delta system, causing the hazardous build-up of acidic mine waste and sediment. This agreement was negotiated after locals lodged a complaint with the Australian Government’s OECD National Contact Point (AusNCP), which provides a forum for complainants to negotiate with the company to resolve their grievances. The claim states: “The mine pollution continues to infringe nearly all the economic, social and cultural rights of these indigenous communities, including their rights to food, water, health, housing and an adequate standard of living”. For Rio Tinto, entering back into a direct dealing model is voluntary, with no legal compulsion to fund future remedy. Any future remedy will depend on how direct negotiations play out, with the added dimension of oversight by the AusNCP.

Discussion

Messy Landscapes and Illegibility

It is one thing to identify pathologies, as we have done, and quite another to diagnose them in practice. With ethnographies weighted towards community experiences and local acts of resistance, we continue to know too little about how organisations strategies and respond under the direct dealing model. The long view may show that in some circumstances local resistance inadvertently reinforces corporate power and the ability to counter opposition from below. In the short run, however, it certainly appears that local resistance can disrupt the status quo, reduce oppression, or at least loosen its hold. Bainton’s anthropological work on the use of the *gorgor* (a ginger plant) by local landowners to demarcate grievances with the operators of the Lihir Gold Mine illustrates the point. This traditional taboo marker has found new meaning and significance in Lihir, one that has notionally given natural advantage to the landowner population. In this work, Bainton (2021, p. 403) quotes from the speech of a landowner:

Now Newcrest knows the power of the *gorgor*. The power of the landowners can stop this project without any fighting. When we use the *gorgor* the whole plant site and all other work activities will stop. This is true power, and now they realize. This is great power, and now they have received the message. Since Newcrest took over the project it has taken them until now to realize that the landowners can exercise their power without resorting to violence and they can stop this project at any time. Now they realize you have power, so they will no longer be able to play with you. This kind of mindset will help us in the agreements review.

While landowners in extractive frontiers may enjoy a temporary advantage through the use of these powerful local instruments, it is in these moments that corporate counter-resistance is deployed. With mining corporations most invested in protecting the commercial viability of their assets, future research could identify which characteristics of companies and communities are more likely to result in an accrual of corporate power, and which are less likely to do so. Other questions that could be usefully pursued include why it is that some communities appear to have significant capacity to disrupt the status quo, while others lack this capacity.

Marc Edelman (2013) describes the on-the-ground “messiness” of traditional forms of land tenure, and the challenges of assimilating these traditional forms into private systems of property ownership. He explains how

traditional usage and exchange are historically nested, highly variable, and difficult for outsiders to comprehend. When mining companies become active in a particular context and acquire land, they typically fail to comprehend these systems, and the risks associated with disrupting them (Owen & Kemp, 2019). Incentives for companies to give more thoughtful consideration to these systems are determinably low, as is the quantum of research exploring whether market incentives can be altered to increase the likelihood of doing so. The dominant corporate view is that when a state sanctions their activities, a new form of land tenure is ushered in, negating the need for the operation to apprehend in any great detail the pre-existing context or the rights bestowed on the landowners and land users they may have to encounter. In contrast to our conceptual framework (Section “[Orientating concepts from research and policy](#)”), simplified surface readings of the social, political, and ecological landscape seem to suffice for state project approval processes (Spiegel, 2017). Yet, over time, such readings constrict a company’s ability to reckon with the conflict and messiness that Edelman so aptly describes.

Edelman (2013) also draws on Scott (1998, 2009) to explore why powerful groups ignore the complex conditions that belie grievance landscapes. Scott presents his legibility thesis in the book *Seeing Like a State* (1998), where he explains how states seek to simplify social complexity to support the exercise of formal administration, the accumulation of power, and state formation. In *The Art of Not Being Governed*, Scott (2009) articulates why marginalised groups actively avoid the state “seeing” them so as to avoid the threat of conscription, enslavement, incorporation, or other forms of injustice. Communities under threat by state-sanctioned resource extraction may prefer the illegibility offered in non-judicial operational-level grievance mechanisms as a perverse type of imperfect safeguard.

In accepting Scott’s thesis, we allow for the possibility that companies may be fostering a parallel form of reciprocal illegibility. While Scott’s *Seeing Like a State* is set within the context of public policy and statecraft, we observe companies seeking to simplify the company–community interface in order to impose administrative control over grievances and local forms of resistance. We surmise that while companies are immersed in a complex and difficult-to-comprehend grievance landscape, they nonetheless represent their engagements within this landscape in simplified, aggregated form (e.g. in standard operating procedures, and corporate sustainability reports). These simplifications act as a control against detractors, disruptors and distant calls for improved resource governance (IRP, 2020).

As the normative terrain pushes the UNGPs’ “know and show” principle, there is ongoing resistance by mining companies to know and show anything much at all. In a study of

Rio Tinto’s Ranger uranium mine in Australia’s Northern Territory, Lawrence & O’Faircheallaigh (2022) describe how, over a period of almost four decades, the company avoided formalising organisational knowledge of social and environmental impacts. This “production of ignorance” has served to prevent the Mirarr traditional owners from progressing their claims against the company. What becomes apparent is that contrary to corporate descriptions of formalised and functional direct dealing, the grievance landscape in mining is an *illegible mess* or what Bainton (2021) has called “mutual incomprehension”. Simplified explanations of the grievance landscape might serve a purpose in corporate engagements with lenders, investors, shareholders, and an absent–present state (Bainton & Skrzypek, 2020; Idemudia et al., 2020). Whether these and other stakeholders remain satisfied with simple explanations is evolving, as corporate claims of conformance with international standards are tested. Kroepsch and Clifford (2021) consider how and why these “inscrutable spaces” are maintained and call for critical scholarship on the phenomenon of “not knowing”. Future research could usefully explore the extent to which companies choose to avoid building their organisational capability to engage the messy intricacies of the grievance landscape becomes a key question.

Erasure, Intractability, and Norms Compatibility

The implications stemming from pathologies described in the previous section are manifold. Illegibility can be rendered in numerous ways—a range that offers the promise of resolution on the one hand, and perennial sufferance on the other. Each end of this spectrum is a mess that falls irrevocably outside the international norms that mining companies have endorsed as a means of claiming human rights legitimacy (Maher et al., 2021). The concept of “erasure” denotes a process whereby the material or visual integrity of physical landscapes is altered or lost, and along with them an attempt at severing old claims of attachment and entitlement. While some form of erasure over prior rights may well be the desired outcome for companies as they establish their own hold over mining territory, this process is fraught with contestation. Bebbington and Humphreys Bebbington (2018) cite numerous examples of “refusal” where community members actively challenge company efforts at erasing a community’s claim over land. These authors refer to the case of Maxima Acuña de Chaupe’s refusal to abandon her farm in the high Andes of Peru for Newmont Mining’s Minas Conga project. When Maxima would not move out and make way the company attempted to enforce defence of possession and compel the Chaupe family to move. The company’s attempts have been met with continued refusal. The case became a national and international cause, with legal proceedings, advocacy campaigns and special inquiries,

and Maxima's award of the prestigious Goldman Environmental Prize (Martin et al., 2016). Kemp and Owen (2018) argue that these types of high-profile stand-offs are equally the consequence of companies exercising a refusal of their own kind; that is, by committing so exclusively to their own self-interest, mining companies routinely construct strategies and scenarios in which community refusal becomes almost inevitable.

Acts of erasure and refusal abound on all sides; each adds to the messiness of the landscape and to the intractability of grievances. Mining activities, and their propensity to disrupt and erase, are well established in the impact literature, but the combined force of erasure and refusal in the grievance landscape is both poorly documented and profoundly important. An act of erasure, say in re-shaping of landforms, imposing new infrastructure, or changing the ultimate utility of a given parcel of land, could reasonably be described as falling within the bounds of an agreed development activity. However, when land disputes arise, or are submerged by these activities, and sequestered in opaque organisational systems of grievance handling, the company's own refusal to engage increases the likelihood that the grievance will persist and evolve. Individually, mining companies will claim that these are simply examples of innocuous administrative oversights rejecting the idea that they form part of a patterned strategy of corporate refusal shrouded in internationally agreed business and human rights norms.

Our work highlights that these actions cumulate across mining project locations, as much as they can accumulate within them. Grievance landscapes are a product of their past, some distant, some recent. They contribute, in a deterministic sense, to the parameters that resource projects work within, the types of issues that will emerge, and the form they will take. Despite the industrial scale re-making of landscapes, and the accompanying disruption to land and social relations and all that entails, the process of erasure is almost never complete. A mutual commitment to refusal: one part to accept responsibility for mitigations, harm, and loss, while another part, an obstinance in service to long-standing customary rights and entitlements. These conditions guarantee a measure of intractability in grievance landscapes. This is the ebb and flow, and the crash of interactions and outcomes of grievance handling in resource extractive environments. Pathologies of denying, deferring, and burying grievances through company systems and mechanisms are met with resilience in the history and the entitlements of the people who reside in these landscapes.

Given the types of pathological patterns we have observed across mining locations, it is difficult to envisage exactly what standards, principles, or objectives grievance handling systems are aligning with. Within the voluntarist schema of the UNGPs, for instance, our analysis suggests that the industry itself will prioritise direct dealing to the exclusion

of other safeguards. The UN Working Group (2021) on Business and Human Rights has, for instance, recommended that companies enable joint oversight of grievance mechanisms, or defer to multi-stakeholder initiatives to manage conflicts of interest. These suggestions, however, do not disrupt the model of direct dealing. Without the safeguards or caveats of procedural justice or the active management of inherent power imbalances, resource companies can unilaterally decide which parts of the grievance landscape they engage, and in which manner. In effect, companies retain a certain "optionality" of the UNGPs, soaking up the association as part of their claim to being socially responsible, when the evidence on the ground suggests that companies rely on regimes of corporate social irresponsibility.

Conclusion

We have argued that the grievance landscape is far more critical to understanding environmental, human rights and mining interactions than the managerial systems that these organisations construct to signal their compliance with voluntary norms. The managerial systems, or grievance mechanisms, become impressions of how a company considers a grievance system should appear to an outside audience. These are appearances, or what we call proceduralised fictions, that describe the pathway that a complaint would travel once their grievance is made visible to the company. Using this logic, the historical and ongoing forces that shape what people value and need have no place in fictional compliance regimes of "placeless universality" (Frederiksen, 2013).

Scholars like Scott (1976) and Waddington et al. (1989) have articulated the importance of reading these grievance landscapes carefully, noting the inherent dangers of using visible signs of grievance as the primary source of understanding. Without visible "flashpoints" (viz Waddington et al.) organisations and institutions are not only blind to the existence of grievance, but also the patterns of disturbance, dispossession and disadvantage that drive them at source (Gaventa, 1980). Mining companies readily utilise this mode of grievance recognition, too often taking the absence of local-level complaints as *prima facie* evidence that operations have the support of communities. The incentives for companies to investigate and demonstrate a case to the contrary are for the most part absent.

In these contexts, invisibilities become convenient for mining corporations. We have identified five industrial pathologies that contribute to the illegibility, intensity, and intractability of grievance landscapes in resource extractive locations. These pathologies embody the interface dynamics of mining projects and oscillate between acts of erasure and refusal. Our argument is that these types of pathologies can

exacerbate underlying conditions of local context vulnerability and create the terrain for novel forms of vulnerability to arise. Across each of the pathologies we have described, the common denominator is the corporate propensity to avoid recognising the legitimacy of a grievance and the source of its cause. This is made possible in these project localities given the absence of the state and the protections that are assumed to exist when nation states become signatories to UN declarations. These absences currently undermine the prospect of robust improvements.

The international system of voluntary norms provides companies with a legitimate space through which to “pick and choose” how to handle grievances among project-affected people in the places of Bebbington and Bury’s “subterranean struggles”. Companies are signing up to UN-sanctioned human rights standards and schemes where the pathways for managing grievances are based on the choices that companies make in their own self-interest. International schemes, each advancing one kind of safeguard or another, begin with the premise that alignment will incentivise companies to comply. For companies, the emphasis is clearly weighted towards gaining access as organisational supporters of these schemes, rather than complying with the principles that they espouse. We argue that the system of environmental and human rights safeguards is far too important to be left to the self-interest of private corporations who are key protagonists in the activities that push these concerns to the surface.

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Declarations

Conflict of interest The authors declare that they have no conflict of interest.

Ethical Approval The research is a secondary meta-analysis of qualitative data across numerous published works and did not involve primary data collection from Human Participants and/or Animals.

Informed Consent Informed consent is not applicable for this work.

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