

# Just Relations and Company–Community Conflict in Mining

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**ABSTRACT.** This research engages with the problem of company–community conflict in mining. The inequitable distributions of risks, impacts, and benefits are key drivers of resource conflicts and are likely to remain at the forefront of mining-related research and advocacy. Procedural and interactional forms of justice therefore lie at the very heart of some of the real and ongoing challenges in mining, including: intractable local-level conflict; emerging global norms and performance standards; and ever-increasing expectations for the industry to translate high-level corporate social responsibility policy into on-the-ground practice. This research focuses on the “process” aspects of resource conflicts through an examination of existing grievance-handling procedures at six mining operations where company–community conflict was present. In their current form, and on their own, the six mechanisms were found to be insufficient in their capacity to advance justice. The authors argue that if the overall objective of global norms is that companies construct and perform grievance handling in ways that strongly preference just practices, then “mechanisms-in-practice” must be better understood and constructively critiqued along all justice dimensions.

**KEY WORDS:** mining, minerals, community, conflict, grievance, justice, stakeholder, organization, CSR

## **A battleground for justice**

Mining companies are under increasing pressure from a range of parties, including local communities, civil society groups, non-government organizations (NGOs), global institutions, financiers, socially responsible investment funds, shareholders, government agencies, and other stakeholders, to address

company–community conflict; defined here as interactions that range from minor disagreements, to escalated or violent conflict.<sup>1</sup> Global mining companies, in particular, are frequently accused of either knowingly or inadvertently causing conflict or exacerbating existing or latent grievances within communities (Humphreys et al., 2007; Wheeler et al., 2002; Zandvliet and Anderson, 2009). Such conflicts are usually motivated by community concerns that relate to economic or livelihood security; land or water access, ownership, use or degradation; environmental effects; gendered impacts; impacts on social cohesion and cultural beliefs; treatment and claims of human rights violations and other injustices; disparities between the distribution of benefits and risks; and the very meaning of “development” (Bebbington et al., 2008; Bridge, 2004; Cragg and Greenbaum, 2002; Franks, 2009; Hilson, 2002; Reed, 2002). In fact, company–community relations have been described as the “battleground” upon which the activities of multinational companies are contested (Calvano, 2008, p. 2), with several seminal works on mines and communities overtly adopting a combative discourse (cf. “Resource Wars” by Ballard and Banks, 2003).

As mining companies search for new resources in environmentally and socially sensitive areas – locations which are often inhabited by indigenous peoples or ethnic minorities – companies frequently operate in contexts where political and legal institutions are weak, corrupt, or not trusted and where there are marked imbalances in political, economic, and cultural power (Escobar 2006; Reed, 2002; Szablowski, 2002). Operating in these contexts is challenging in many different ways, including the vexed issue of how to ensure that local women and

men can raise concerns when they believe their rights or interests have been violated or injustices have occurred, without having to resort to extreme or violent means of gaining attention from companies and other powerful actors. Disruptions of this type come at a great cost to mining companies, including project delays, damaged infrastructure, diminished reputation, shut-down time, legal and other organizational costs (Franks, 2009; Reed 2002; Ruggie, 2010). Beyond asserting the “business case” for a more enlightened view of company–community conflict management, interactional and value-based dimensions of the company–community relationship must also be considered in rethinking this complex ethical terrain. How companies interpret and respond to the complexities of these relationships will have definite and lasting implications for whether just practices prevail, or remain in the realm of rhetoric.

During the last decade, there has been a proliferation of voluntary regulation and codes of conduct on corporate social responsibility (CSR), sustainable development, stakeholder relations, and community consultation (Bebbington et al., 2008; Reed, 2002; Whiteman, 2009). Several global institutions and international NGOs have developed self-regulatory frameworks on the issue of company–community conflict management, including several that are specific to mining and other extractive industries (cf. CAO, 2008; CommDev, 2007; Hill, 2010; ICMM, 2006; IFC, 2009; International Alert, 2005; Rees, 2008).<sup>2</sup> While a wide range of judicial and non-judicial approaches are canvassed in these frameworks, they each advocate for the establishment of dedicated channels for dealing with community complaints and grievances against companies that are aligned with key principles, such as transparency, legitimacy, accessibility, and equitability. Principle-based grievance mechanisms have been championed by the United Nations (UN) Secretary-General’s Special Representative on Business and Human Rights, Professor John Ruggie (2008) in his *Protect, Respect, Remedy* framework. This framework was unanimously accepted by the UN Human Rights Council and subsequently endorsed by a range of civil society and business actors, including the mining industry’s peak industry body, the International Council on Mining and Metals (ICMM). In effect, these frameworks compel com-

panies to capture and embed transcendental justice ideals in localized processes and organizational procedures to prevent or minimize the negative effects of conflict. Our interest in this article is in examining whether “mechanisms-in-practice,” as opposed to the articulation of global norms, represent a shift toward a more fair and more justice-orientated dynamic in company–community engagement.

There is now broad agreement that in the context of mining, grievance mechanisms are one important means for local communities to advance their claims for justice and to realize their human rights.<sup>3,4</sup> Dedicated channels for handling grievances are said to serve as “early warning systems” for both companies and communities; prevent the risk of conflict escalation; and help identify systemic issues rather than dealing with community grievances on an *ad hoc* basis (Rees, 2008). The introduction of such regulating forces may also be seen in the context of local communities around the world demanding the right to determine their own cultures, ecologies and economies, rather than have these determined by powerful corporate entities (Escobar, 2006).

Largely in response to emerging global norms, many major mining companies have introduced or augmented their commitments to community-level conflict management as part of CSR or sustainable development policies, including a specific requirement for mine sites to establish local-level grievance mechanisms or dispute resolution systems. Some scholars observe that industry discourses around self regulation, CSR, and risk management remain “fragile” and that escalating protests around mining mean “many actors remain un-persuaded” by corporate commitments to social responsibility (Bebbington et al. 2008, p. 900). There is a growing literature questioning the usefulness and long-term effects of CSR (Blowfield, 2004), including in extractive industries (Idemudia and Ite, 2006; Manteaw, 2007). Nevertheless, there is also acknowledgement that conflict is not *always* destructive and can potentially be a positive force that leads to better outcomes at the local level (Bebbington and Bury, 2009; Zandvliet, 2005; Zandvliet and Anderson, 2009).

It is against the backdrop of continued conflict over minerals resources and the gradual, but increasingly widespread, introduction of local-level grievance mechanisms as an organizational strategy,

that the authors consider the extent to which grievance mechanisms are able to advance the objectives of interactional and procedural forms of justice. The notion of “advancement” of justice – rather than achievement of an ideal form of justice – is aligned with the work of scholars such as Amartya Sen (2009), who, in his treatise on justice, challenges ideal notions of “justice” and encourages everyday moves toward justice in specific instances. It is suggested here that if justice can be advanced – even incrementally – in the context of mineral resource extraction, positive change is possible.

The practice and ethics of establishing grievance mechanisms at the mine site level has yet to be thoroughly examined in scholarly literature. Even more broadly, it is rare to gain first-hand insights into organizational conflict pathways, processes, procedures, capacities, and internal relations for managing company–community conflict to understand how this may influence attempts to resolve or transform conflict scenarios (Bebbington et al., 2008). Company–community relations in mining has important organizational dimensions, which have, by and large, been overlooked in scholarly research (Ballard and Banks 2003; Kemp, 2010). This gap reflects a paucity of scholarly literature about business–community conflict more generally (Calvano, 2008).

### **Justice and conflict in the “mines and communities” literature**

The scholarly literature provides a sense of the diversity and complexity of conflictual encounters between mines and communities across a range of economic, geographic, and cultural contexts (cf. Barton, 2005; Bebbington et al., 2008; Garvin et al., 2009; Jenkins, 2004; Muradian et al., 2003; Whiteman and Mamen, 2002). A significant portion of this literature focuses on high-profile or egregious cases in retrospect; that is, scholars examine conflict scenarios that have already spiraled or become violent to identify “what went wrong.” While blame is readily attributed to companies, the extent to which management might have sought to respond to concerns – or indeed failed to grapple with the local dynamics of a concern – is rarely examined in full. In the past, this might have been explained by an absence of strategy at the mine site level, but as

outlined above, CSR discourse in mining increasingly espouses commitments to a “new” approach through the introduction of local-level grievance mechanisms. This trend warrants focused research, including how such mechanisms shape conflict trajectories and company–community interactions within inherently conflictual spaces.

Research data on mines and community conflict are typically collected from a community standpoint, often to illuminate sub-altern understandings of resource development and the causes and contributing factors of local-level conflict. There are clearly many contextual factors at play (Bebbington et al., 2008), but scholars consistently observe that neglect and lack of coordination on the part of mine management and inappropriate organizational responses serve to induce or exacerbate company–community conflict. Negative effects are further amplified when mining occurs on indigenous lands where differential values between company and community are most extreme (Hilson, 2002; O’Fairchealleagh, 1998; Whiteman and Mamen, 2002). Only a small number of studies document management perspectives on local-level conflict. Garvin et al. (2009), for example, analyze both company and community perspectives on mine–community conflicts in Ghana, highlighting the blame-shifting orientation of mine management. Bebbington and Bury’s (2009) research on mining conflicts in Peru also incorporates company perspectives. These authors conclude that the involvement of third parties would enhance sustainability; and that external brokers could serve to offset asymmetries of power, suggesting that corporate self-regulation alone is inadequate for achieving justice in the face of resource-related conflict. In sum, the scholarly literature casts doubt on the industry’s ability to self-regulate and support the global push to align processes for handling community grievances with agreed principles and norms.

Indeed there is a deep underlying tension within the existing body of literature over the practical limitations of global meta-principles in being able to deliver meaningful and just outcomes for local mining communities. Whatever the focus, scholars have highlighted the inherent difficulties of engaging in successful conflict resolution in the context of mineral resource extraction (Jenkins, 2004; Zandvliet and Anderson, 2009). Hilson (2002), for

example, suggests that in the face of land-use conflicts, it is unlikely that strategies can *ever* be devised, which are satisfactory to both mines and communities. This implied futility, though prevalent and perhaps well founded, stands in contrast to a more pragmatic shift to construct and implement local-level grievance mechanisms, which ostensibly represents a concerted effort by industry to recognize and include local and indigenous voices in their negotiations with mining companies. Though one might be tempted to negate these efforts on the basis of their instrumentality, the emergence and gradual acceptance of grievance mechanisms within and across the sector provides an opportunity to seriously challenge the presumption of futility. While the authors recognize the inherently disparate nature of corporate–community relations, this should not be understood as suggesting that the power differential is absolute and therefore without the potential for change. To the contrary, the introduction of formal grievance mechanisms creates new territory for transformation and scholarly examination; these new practices are more exposed, espoused and more easily observed than ever before.

The lack of an agreed or ethical corporate response to these issues has not gone completely unnoticed in the literature. Hamann and Kapelus (2004) draw attention to the general absence of “justice” in CSR narratives in the mining industry. As an initial step toward a stronger justice orientation, they apply Rawls’ (1999) concept of justice to mining developments in South Africa and Zambia to assess community impact of mining. In this sense, mining developments are considered to be “just” or “fair” where the direct, indirect, and cumulative impact of mining benefits the most vulnerable and worst off. Hamann and Kapelus find significant gaps between mining companies’ CSR activities on the one hand and accountability and fairness on the other and advise that company CSR-related claims need to be treated with caution. Another study which has served to motivate our research is that of Whiteman and Mamen (2002). These authors engage three sub-dimensions of justice: distributive, procedural, and interactional, and use them to structure a detailed analysis entirely of conflict between a mining company and indigenous groups in Panama. Findings highlight that conflict relates to

the allocation of land; relations of power and inequity; and, the company’s lack of respect for indigenous understandings and worldviews. The authors explain that no formal channel existed through which indigenous peoples could voice their concerns. Clearly, there was no grievance procedure in place, and this raises questions about the ways in which the situation might have been different if a local-level grievance mechanism had been devised and implemented. In subsequent work, Whiteman (2009) clarifies the theoretical origins of the three-dimensional justice framework and demonstrates its utility in dealing with a critical perspective of company–community conflict in the extractive industries. Key aspects of Whiteman’s (2009) framework are applied in the analysis that follows.

### Research focus

Our focus on organizational procedures for handling company–community grievance mechanisms and associated internal processes, as described above, represents a shift away from the external and community-oriented approach that characterizes the scholarly literature on mines and community conflict. A more organizational focus enables a level of reflexivity about the degree to which notions of institutional and extra-institutional fairness have been internalized within the company domain. It also reflects a growing interest in corporate attempts to manage conflict in its early stages, rather than undertaking retrospective analysis of escalated conflicts in specific cases.

Grievance mechanisms in place at six mines around the world were analyzed. Operations were located in Ghana, Papua New Guinea, Lao People’s Democratic Republic (PDR), Australia, New Zealand, and Peru. Access was obtained to internal company policies, procedures and personnel responsible for handling company–community conflict. Since mining companies are often reluctant to provide access to researchers on contentious and sensitive topics, the mine sites and the personnel participating in this research remain anonymous. While this limits opportunities to provide specific contextual information, it does not impede a critical discussion of how mine sites perform in terms of advancing justice through grievance mechanisms.

The data collected were not part of one research project, but rather several conceptually linked yet practically discrete research projects undertaken over a two-year period between 2008 and 2010. Two of the cases were part of an industry-commissioned research project undertaken in collaboration with an international NGO, three were independent evaluations funded by companies, and one was facilitated by a University grant. In each case, data collection methods included analysis of public domain information as well as company documentation, such as internal procedures, monitoring data, social baseline and impact assessments, risk assessments, research reports, and incident investigations. In-depth interviews were undertaken with company personnel either face-to-face on-site and/or via telephone, with some follow-up email exchange. On-site rapid organizational ethnographies (Handwerker, 2001) were undertaken at four of the six sites to make direct observations and talk in depth with operational staff and mine management about internal processes associated with conflict management in situ.<sup>5</sup> All of the studies were subject to University research ethics approvals.

### **Framework for analysis**

The key organizing concept for this article is that of justice. Justice is a normative ethical principle used to assess equity and fairness, and can be applied to many situations and contexts (Logsdon and Buren, 2008), including company–community relations. The spread of classical and modern work on “justice” discerns several layers and types of justice, ranging from distributive justice through to commutative. Scholarship in this general field can be broadly differentiated on the basis of three basic features. First, one must consider which *layer* of the social system is brought into consideration; for instance, whether one is concerned with the interaction between macro-level social institutions (such as States) and individuals (i.e., distributive justice), or whether the focus is on the interface between individuals (interactional or commutative justice). Second, the *context* in which the interaction takes place is of significance. While scholars have made distinctions between types of justice based on their location within the hierarchy of social layers, recent

study in this field has also demonstrated the particular nature of “justice” and “fairness” in specific human domains, such as the environment or in markets (O’Neill, 1998; Owen, 2009). A third, and historically recent distinction, has been on the *micro-principles* on which a theory of justice might or should be formulated (Rawls, 1971; Sen, 2009).

In this study, the authors draw primarily on the study of Whiteman (2009). What is significant about Whiteman’s study is her application of organizational justice theory to company–community conflicts in mining through the articulation of three forms of justice: distributive, procedural, and interactional. In this framework both the formal and substantive qualities of justice are considered. For the purposes of this article, the authors have taken Whiteman’s framework to reflect the systemic, contextual and the relational dimensions within the wider justice debate. Whiteman (2009) explains that distributive justice focuses on the fairness of the ends achieved. In mining, this would relate, for example to perceived fairness of concession rights, access to land and water, distribution of social, gendered and environmental impacts, compensation monies and distribution of taxes, royalties and other development benefits. The authors do not consider distributive justice as outcomes in specific and particular cases are not examined. As outlined above, this ground is well covered, with much scholarly literature highlighting the many injustices experienced by local communities, women or indigenous peoples as a result of resource extraction, including mining. Mining companies also tend to prioritize conflict outcomes, despite the recognized importance of paying attention to quality processes in negotiating conflict-based scenarios (Lederach, 1995). In other words, the focus is often on resolutions, agreements, compensations and so forth, more so than the process of achieving those ends. In popular literature, an overemphasis on outcomes is termed the “iceberg effect” to denote the pitfalls of focusing on what is easily observed, rather than also considering what lies beneath; that is, processes and relationships that are central to conflict management (Furlong, 2005, p. 76).

Procedural justice, according to Whiteman (2009), refers to the more formal processes through which decisions are made. Applied research on company–community conflict in the extractive



industries suggests that procedural justice can be equally and sometimes even more important than distributive justice (Zandvliet and Anderson, 2009). Without robust internal systems companies may fail to identify or recognize community-level concerns before they escalate. In such instances, companies are unlikely to have the capacity to effectively track the origin and progress of community grievances and issues to produce consistent and satisfactory outcomes. The authors maintain that procedural justice in the context of mining includes grievance mechanisms and procedures that aim to ensure accountability over internal processes but also extends what many observers regard as good community engagement practice.

The third form is interactional justice, which includes informal interactions between actors and brings the relationship between conflicting parties to the fore. Interactional justice is a central consideration in the mining context, particularly in light of the fact that company–community relationships are ongoing for the life of mine and often beyond mine closure. Whiteman’s articulation of interactional justice extends the more traditional two-dimensional approach in conventional justice theory (Husted, 1998) by advocating for decision-making processes that ensure that stakeholders are treated with “respect, politeness, kindness, honesty and consideration ... [and consider] aspects of social conduct that affect other people’s dignity” (Whiteman and Mamen, 2002, p. 303).

Our examination of grievance mechanisms in the mining industry focuses on procedural and interactional forms of justice in relation to company–community grievance mechanisms. The authors draw three core concepts from the literature: power, dialogue, and participation, and use these concepts to provide a window into various aspects of procedural and interactional forms of justice. Before introducing the six cases and presenting our analysis, let us explain how these three concepts relate to procedural and interactional forms of justice in mining.

Power and its effects on justice have dominated peace and conflict literature for some time (Lederach, 2005), but this perspective has largely been overlooked in CSR theory (Calvano, 2008). Scholars concerned with company–community relations in the minerals industry highlight stark imbalances in

relations of power between global capital and local communities (Bebbington and Bury, 2009; Bridge, 2004; Walton and Barnett, 2008; Whiteman 2009). These relations of power tend to prioritize large-scale investment over local livelihoods; and, at times, the mineral rights of multi-national companies over the human rights of local people. The authors consider the power relations between companies and communities as well as *within* organizations in the context of establishing and implementing grievance mechanisms, including spaces for resistance against *status quo* power structures and inter-departmental relations. An underlying principle in discussions of procedural and interactional forms of justice is that disparate exchanges between agents will be acknowledged and ideally addressed by either a practical or principle-based process or mechanism of some kind. The objectives of procedural and interactional forms of justice in mining are two-fold. First, to avoid exacerbating existing imbalances in power relations between companies and communities and second, to promote standards of practice that either create alternative spaces in which imbalances are less overt or to modify existing systems to off-set inherent systemic biases.

The second dimension that is focused upon is that of dialogue. Dialogue is defined here as co-development of knowledge where the emphasis is on building mutual understanding through human connection (Westoby and Owen, 2010). There has been longstanding recognition that consultation and dialogue are different in both content and process (Arnstein, 1969). In relation to mining, it is Whiteman’s (2009) view that dialogue is less time constrained than consultation; relates to stories and experiences, not just information gathering relevant to the extractive project; and is motivated by a desire to build mutual understanding, not meet extractive project objectives. Other scholars use dialogue to differentiate between a public relations approach to company–community interaction in mining and community relations and development (Kemp, 2010). Given the implied relational qualities associated with this format of communicating, dialogue sits squarely within the realm of procedural and interactional forms of justice.

Companies and communities usually operate on vastly different knowledge and value bases (Calvano, 2008; Cragg and Greenbaum 2002; Garvin et al., 2009;

Whiteman and Mamen, 2002). Different understandings can relate to environment or resources; the nature of justice; or the character of a conflict or dispute (Dietz et al., 1989; Walton and Barnett, 2008). Unless there is dialogue between disputing parties to develop mutual understanding about interests and values and agreement on the process involved in resolution, justice is less likely to be achieved. Mining companies state their intent to enter into dialogue with local communities, but the reality is that they often fall short. Co-production of knowledge and understanding through dialogue can open up possibilities for managing conflict (Bebbington 2009; Boege and Franks, in press; Franks, 2009; Ruggie, 2010; Sherman, 2009). While the provision of a conceptual space for dialogue is not always an assumed pre-requisite for justice, it is a measure of whether procedures capture the essence of understanding required to respond to the substance or heart of issues, and this has a direct bearing on the likelihood of processes and outcomes being considered fair or just by women and men who raise their concerns.

The third dimension of our analytical framework is participation. There is a significant literature examining the issue of control over resources and the participation of local people in development that also includes critical perspectives (Cooke and Kothari, 2001). However, there is basic agreement that participatory development seeks to promote human rights, equity, and decision-making at the local level (Dipholo, 2002). In relation to governance over mineral resources, one prominent perspective is that local participation is more likely to contribute to sustainable development than processes imposed from the outside (Bebbington and Bury, 2009; Veiga et al., 2001). This includes the participation of local people in company–community conflict management, a central theme in emerging global norms and self-regulatory frameworks. Scholarly research has highlighted cases where lack of participatory processes has contributed to the escalation of company–community conflict at the project-level (Muradian et al., 2003). Husted (1998) cites Thibaut and Walker (1975) who find that process control in the hands of disputants leads to perceptions of fairer decisions. Other organizational justice scholars argue that all parties should participate in conflict management systems (Carter, 1999). In the context of

local-level grievance mechanisms in mining, this approach would see key organizational personnel and potential complainants collaborate in the design of the mechanism as well as in the resolution of complaints. In other words, procedures that facilitate participation of all parties serve to build trust and secure broad-based support of the process.

In summary, the key concepts of power, dialogue and participation provide “windows” into aspects of procedural and interactional forms of justice of the company–community grievance mechanisms in the mining industry. Our core assumption is that in the context of mineral resource extraction, if these concepts are addressed, justice will be better served (Whiteman, 2009; Zandvliet and Anderson 2009). As such, the authors believe that procedural and interactional forms of justice can be *advanced* regardless of the actual outcome (distributional justice).

## **Background to case studies**

All the six mining operations involved in the research are owned or operated by one of four members of the International Council of Mining and Metals (ICMM), the industry’s apex body. Two of the parent companies are large multi-national firms, and two are medium sized but global, with three operations owned by the one company. All but one operation would be considered remote. There are four gold mining operations, one copper/gold, and one alumina. The sample is evenly split in terms of the regulatory context, with some operations working in strong regulatory contexts, and others in variously weak regulatory environments. All operations studied are required by the ICMM as well as by their corporate offices to have conflict management, dispute resolution, and/or grievance mechanisms in place, with three additionally mandated to have such as part of in-country permitting requirements.

The six mining operations are located in vastly different locations around the globe, but there are some broad commonalities in social context. According to publicly available information and company-provided documents (including some third-party reports and reviews), all the six operations have either indigenous or rural populations living within close proximity, with different groups

identifying significant landscapes, sites, and artifacts as sacred or otherwise important to the cultural and customary practices and beliefs of the community. In all the cases, there were tensions with indigenous and other community groups, from minor matters and disagreements to escalated tensions. Common conflict issues that were experienced by at least five of the six sites included those related to either lack of or inequitable employment and contracted business opportunities; loss of traditions, including either loss of livelihoods or damage to sacred sites or artifacts; land and property issues, including damage, resettlement and ownership; levels of compensation; environmental impacts, including visual amenity or quality-of-life impacts; unfulfilled commitments or expectations; and concerns with communication and relationships. Other issues experienced by three sites included in-migration and pressure on services and social structures; adverse effects on local governance structures; and violent incidents associated with company–community conflict.

### **Case descriptions**

This section provides a collective overview of the approaches taken with grievance mechanisms at the six case study sites involved. The following procedural aspects are covered: purpose and scope; governance and administration; lodgment and admissibility; resolution; close-out, monitoring and enforcement; reporting; and continuous improvement. These aspects reflect those architectural elements commonly outlined in global norms and self-regulatory frameworks about company–community grievance mechanisms referenced in the introductory section. The discussion and analysis that follow uses this description as a basis for considering the three core concepts of power, dialogue, and participation, including the implications for procedural and interactional forms of justice.

All the six sites have formally documented their community grievance-handling processes, although to different degrees. Four had site-wide standard operating procedures (SOPs). Another had made a formal commitment to recognizing customary processes for signaling a major dispute as part of a formal company–community agreement and has drafted a policy (but not a formalized procedure) to reflect

this. A sixth site did not have a site-wide complaint and grievance-handling mechanism, as different departments followed discrete processes, not all of which were formally documented. Five sites considered the “local community” to be residents around the mine’s operation. A sixth site explicitly included stakeholders outside the geographic area who may have an interest in the land where the mine is located.

#### *Purpose and scope*

The stated purpose of most of the grievance processes was to meet regulatory commitments and/or risk management by identifying issues before they escalate – akin to an early warning system – which allows them to take corrective action. Only one procedure conceived of building trust and understanding between the operation and local communities as a primary goal of complaints resolution, requiring that complaints received are “handled in a carefully planned manner to promote confidence and trust and to build positive rapport” between the company and local stakeholders. Two procedures required respect and sensitivity in the handling of complaints, but more so as a means to identify corrective actions and avoid escalation of complaints, rather than as a primary aim or purpose in itself.

#### *Governance and administration*

The governance and administration arrangements of three of the six grievance resolution processes were company-controlled with limited external input. Of concern was that one of these processes was presented to the community as independent, even though this was clearly not the case. The function was entirely company-controlled, resourced, and funded. Two other processes incorporated some provision for external input through the formation of committees that comprise company personnel and community stakeholders. A sixth process utilized a vastly different model, involving external third party committees and government authorities at very early stages in the process and then continually throughout in the case of upward elevation of grievances in the process.



## *Just Relations and Company–Community Conflict in Mining*

An external affairs or community relations-type department administers each of the six grievance-handling processes, with varying degrees of involvement from other departments. At one site, for example, interviews with company personnel indicated that departments other than community relations were often reluctant to be involved in complaints resolution. They expected community relations to “deal with it” whenever possible without their involvement. In contrast, four other sites had specific provisions for the establishment of multi-disciplinary dispute resolution teams and/or processes to involve the department to which the complaint relates in the dispute resolution process. Nevertheless, interviews with teams on the ground indicated that genuine interdepartmental buy-in is difficult to achieve, with significant push-back from technical departments to get involved, many only considering the potential for conflict as “an after-thought.” There is limited evidence of inter-departmental collaboration at the one operation without a site-wide process.

At three of the four sites with SOPs in place, staff roles and responsibilities in the grievance resolution process are defined and responsibilities attributed. Only one SOP had specific requirements for training community relations staff on the grievance resolution process. However, interviews and site-based research suggest that sites are becoming increasingly aware that capacity and skills development in conflict management is important. For example, one site had just completed an on-site dialogue-based conflict management training for the community relations team.

### *Lodgment and admissibility*

Complaints can be made at all the six sites either verbally or in writing, and at one site also via customary or more symbolic means. None of the mechanisms included provisions for gender differentials when lodging complaints. Speaking in general, each site had a central point of lodgment, such as a town office, with satellite opportunities for lodgment via field workers or community relations officers. Procedures at all the six sites contained minimal information about how the grievance resolution process was to be communicated to potential

complainants. Only one SOP contained a provision requiring that the grievance mechanism be marketed to the community on an annual basis. Interviews from this and two additional sites indicated that processes are largely communicated to local communities through informal means, such as visits by community relations staff. No formal evaluations of the effectiveness of these communication activities had been undertaken.

None of the processes were comprehensive in their explanation of admissibility, that is, what kind of grievances will be accepted into the process. The operation without a site-wide approach to community complaints used different admissibility criteria for each department. All the four SOPs were silent on whether a complainant is able to elect to have his/her identity remain confidential. Interviews from two of these sites indicated that grievances can be lodged confidentially, even though this is not documented in the SOP.

Once a grievance is admitted into the system, five of the sites required matters to be classified in some way, largely to reflect the seriousness of the issue and the risk it poses to the business, financial implications, company reputation, and/or production schedules. It is still difficult, however, to determine how the criteria are applied. Two operations used the site-wide incident classification system, but community complaints are not always event-based. Rather than being limited to discrete events, conflict is a dynamic process that tends to progress over time, and can relate to communications and other interactions, not just events. In all the six cases, grievance classification is performed by company personnel and does not involve the complainant or other parties. Notwithstanding this lack of external input, discussions with mine personnel suggest that these decisions are informed by interaction with complainants as part of broader community engagement processes. At the site using customary processes, a complaint is categorized as “legitimate” or “not legitimate” by a dispute resolution committee, comprising operational personnel and community members.

### *Resolution process (including elevation)*

At the initial stage of the resolution process, two sites explicitly stated a preference for resolving issues

directly with complainants via dialogue, collaboration, and/or negotiation. At these sites, where initial attempts to resolve the dispute via dialogue proved unsuccessful, the complaint moves into an investigation phase. Protocols for investigations are not stipulated in SOPs or guidance documentation, but interviews indicated that interaction between the complainant and the investigation team is required. A third site moves into an investigation phase immediately upon receiving a complaint. While investigation at this site may require interaction with the complainant, the company determines the outcome. This represents a “decide-announce” attitude, not a collaborative approach to solutions finding. None of these sites specified methodologies for complaints investigation outside standard mine site incident investigation processes. A fourth site appeared to use minimal dialogue in the dispute resolution process, instead focusing on internal processes, such as data collection, recording, and elevation to external parties. At yet another site, dispute resolution appeared to be occurring primarily through formal submissions and notices to a dispute resolution committee, rather than direct dialogue.

Across the six sites, points of elevation included department managers, mine managers, and various committees, some of which include external stakeholders. At one site, the process of elevation can at times be circular where a case may return to the originating department for resolution. Three of the four SOPs have provisions for elevation to an external third party body, such as customary or local governmental institutions and, in one case, the state justice system is acknowledged as both a point of elevation and an alternative pathway. The remaining three sites made no reference to elevation to external third parties as part of their dispute resolution process, and our on-site research suggests that external elevation is not a priority.

Two of the sites with SOPs stipulated clear time frames for each step of the dispute resolution process. Some sites used an electronic incident management system that imposes timeframes for actions to be taken. Failure of personnel to respond in a timely way automatically elevates the issue to a higher level of management, although our site-based research suggests that these reminders do not always result in action from management.

#### *Close-out, monitoring, and enforcement*

Three sites considered complaints closed only once the complainant had agreed to the proposed outcome. Two of the sites sought written confirmation from the complainant to this effect. Close-out at the remaining three sites appeared to be based on a “decide-announce” model, where the complainant is simply informed of the remedial measure decided upon by the company. Only one of the sites formally evaluated a complainant’s satisfaction with the resolution process, although site-based research indicated that informal follow up is common at most sites.

None of the processes was clear about how they monitored agreed outcomes, commitments, or the way mitigation measures are implemented. One procedure simply notes that follow up may be required in some circumstances, to determine whether the actions taken were effective. None of the processes made provision for enforceability of dispute resolution outcomes – that is, recourse to sanction for non-compliance with agreed outcomes. However, there are some factors that may act as incentives. For example, the “elevate up” process may act as an incentive to try to resolve complaints at the early stage, to avoid further elevation.

#### *Reporting and continuous improvement*

Four of the processes had explicit requirements for keeping records, including attributing responsibility for the upkeep of records to staff members. Systems for keeping records at the other two sites were less clear. Requirements for data recording at some sites include explicit reference to recording the nature of complaints; however, systematic analysis of trends and patterns with the view of long-term continuous improvement appears to be more limited. Only one of the SOPs explicitly required that complaint patterns and trends be reviewed annually with the objective of identifying systemic issues, noting that this “may include less obvious technological or cultural issues that need addressing.”

Three of the sites have provisions for internal reporting of data that have been recorded, including within the community relations department, and between departments and management. These

reporting requirements include details on the number of complaints made as well as their rate of resolution and the nature of the complaints raised. Requirements for internal reporting at the remaining three sites are more limited or non-existent. None of the procedures articulates requirements for external reporting on grievances and none of the companies report externally in a systematic way on grievance resolution.

## **Discussion and analysis**

The findings above indicate that, on aggregate, approaches to conflict management and community grievance handling at the six case study sites were limited in terms of their ability to significantly advance either procedural or interactional forms of justice. In relation to the key dimensions of power, dialogue, and participation: there are negligible attempts to address power imbalances; partial attempts to facilitate dialogue; and, while two sites emphasize collaborative solution finding, none of the six sites encourage collaborative design of the grievance mechanisms themselves. The next few paragraphs explore these findings further.

### *Power*

Our preferred justice orientation features less powerful groups attaining greater voice in conflict management processes and for relationships to be restructured on more equal terms (Husted, 1998; Whiteman, 2009). Recalling that mining increasingly operates in contexts with marked imbalances in political and economic decision making, company–community conflict management is meaningfully affected by power relations. The majority of grievance mechanisms analyzed did not mention local community or customary conflict-handling processes or structures, despite the fact that all the six sites were operating in areas with indigenous or rural populations in close vicinity. There was no emphasis on storytelling, healing, or any cultural- or gender-specific method embedded in the majority of procedures examined; essentially rendering those discursive spaces closed. This has negative implica-

tions for advancing procedural and interactional forms of justice. Whiteman (2009) argues that if local communities consider storytelling a key process for resolving conflict and this is not fostered by the company, then conflict resolution processes may be considered invalid because the data required to identify the dimensions of the concern have not been exposed or explored by the respective parties. Similarly, story-telling and story-listening reinforce relational bonds between participants (Carr, 2010) and a failure to listen, or exchange conflict narratives can erode community-level relations. These relationships provide the basic framework for interactional justice, and without fostering a context in which the importance of immediate relations is recognized, interactional justice will be severely compromised.

Discussions with site-based personnel revealed that alternative methods of conflict management tend to be overlooked because management personnel are focused on retaining an acceptable level of control over a conflict situation that is aligned with their goals. This supports research undertaken by Cragg and Greenbaum (2002, p. 326) who found that when reasoning about their corporate responsibilities, mine managers are predominantly driven by an instrumental logic built around the notion of “getting on with the job.” This approach sees managers attend to stakeholder concerns in ways that largely serve their own interests, rather than to engage with broader ethical and value-based differences and conflicts. This begs the question of whether instrumental logic automatically precludes the advancement of procedural or interactional forms of justice or whether the enhancement of company–community relations is an instrumental outcome in its own right. While the outcome-oriented approach is pervasive in corporate culture, this should not be taken as suggesting that mining companies could not adopt the goal of procedural reform as a series of logical outcomes. This is problematic, however, in relation to interactional justice, where the logic is non-linear and largely context driven.

Furthermore, procedures around governance arrangements in most cases were controlled by either the company or various levels of government, with limited opportunities for input from independent third parties or involvement and interaction from complainants. Notwithstanding some references to

building trust, the language used within SOPs to describe the dispute resolution processes was embedded in managerial discourse of compliance, risk management, and corrective action, rather than a dialogic discourse reflecting concepts of mutuality, connection, and relationship building. More practically, even the fact that company personnel classify the seriousness of complaints according to company-determined criteria suggests that the company controls the process from the outset. As a result, the company retains power by determining what is important. This is in contrast to the belief that if a less powerful party has a role to play in designing and developing conflict management processes, sharing of narratives, and making decisions, then procedural justice is more likely to be advanced.

The matter of concern about the collection of cases analyzed here is that there was little evidence of company efforts to address imbalances in power, for example, through collaborative design of the mechanism itself. There are few explicit provisions for companies to assist minority or marginalized groups within a community, such as indigenous peoples, women, youth, and the elderly, to secure access to support, advice, and other resources to insure that they are able to participate fully in the grievance-handling process. Individual company personnel were observed making efforts to provide support to community members who needed assistance to lodge their grievances according to the required procedure. But these “good deeds” could also be read as perpetuating the company-centric process. Arguably, company officers might also have worked to change the company’s procedure to better accommodate the community’s capacity to lodge complaints. However, internal power dynamics preclude many community relations officers from influencing other departments in this regard.

As the department responsible for administering grievance mechanisms, community relations functions were often constrained by organizational power dynamics, the most obvious of which was relations between different departments. It is observed that departments such as operations, processing, exploration, and even environment tend to hold the balance of power in the operational domain, not community relations. This was evident in several instances where other departments

relegated community complaints and grievances to the community relations team for fixing. The issue at this point is that by deferring responsibility wholly to the community relations team, other key departments automatically frame community engagement in terms of solutions and outcomes. What is missed in this approach is the opportunity to engage and resolve conflict at the early stages, before escalation. Conflict management processes must involve other organizational departments, particularly those that are frequently the source of the issue – for example, those charged with land procurement or managing environmental impacts. Unless these internal processes are in place and endorsed by senior management and those who hold authority, internalization of justice principles is unlikely to be advanced.

Our findings, from the category of “power” alone, suggest that it is foreseeable that communities may mistrust or otherwise avoid project-level mechanisms, choosing a legal route (where it is available) or avenues such as protest to assert their position and challenge the legitimacy of existing power dynamics.

### *Dialogue*

Our justice orientation speaks to the sustainable development principle of *subsidiarity*; that is, taking collaborative decisions and action at the most local level possible (Brundtland, 1987) enabling local people to express their views in relation to the development process. Our research finds that few project-level processes emphasize dialogue as a core method of conflict management. Some sites have formulated broad-based policies for company–community relations that include a commitment to consult with local people but, it seems, such commitments are not always procedurally embedded in community grievance mechanisms.

The authors observed and heard from a range of organizational personnel about a range of day-to-day pressures that constrain dialogue between community and company representatives. For example, community relations and other departments were often under-resourced, under-staffed, and under pressure to deliver organizational imperatives, such as timely access to land and water. There were examples where the knowledge and skills of staff

were under-developed, for example, in dialogue-based approaches to handling conflict, and some staff members not being able to speak the local dialect of a particular local group with a grievance. There was also evidence that some key performance indicators lead to perverse organizational behavior. At one site, bonuses were tied to close-out of complaints by the end of the month. There was evidence that some high-risk grievances went unreported until the following month, while staff focused on closing out lower-level issues so that bonuses could be guaranteed. Practices such as these have serious negative implications for advancing procedural justice in particular, which has flow on effects for interactional justice.

The avoidance of dialogue is also linked to power relations. When an aggrieved party is not engaged, their sense of frustration and powerlessness can increase, negatively affecting procedural justice. According to Whiteman (2009, p. 108) “Procedural justice is highly dependent upon whether or not people feel that they have the institutional space to voice their opinion in a meaningful way within decision-making processes.” While it may run counter to managerial intuition, allowing space to address power imbalances early may mitigate the larger risk of conflict escalation in the future and will lead to an advancement of justice.

Several obvious spaces for dialogue were not open within the grievance mechanism processes. For example, processes did not require systematic investigation or retrospective analysis of grievances at all, let alone from a dialogic perspective. But without dialogue, how do companies know what the problem is? How do they know whether conflict is values or fact-based? Research shows that mining companies often assume that conflict is based on misunderstandings about facts, rather than fundamentally divergent values (Zandvliet and Anderson, 2009). This point cannot be emphasized strongly enough. Husted (1998) argues that conflicts of fact require different approaches than conflicts about values and ethics. Without full understanding of what the conflict is about, there are limits to the potential of identifying the best pathway forward for conflict resolution, transformation, or healing.

Across the six cases, the lack of problem definition via dialogue at the “front end” of project-level grievance-handling processes is mirrored by a lack of

follow up with complainants to understand experiences and perceptions of the way their issue was handled. Such follow up could focus on substantive, as well as procedural and interactive forms of justice; such as checking levels of complainant satisfaction with outcomes, the grievance-handling process itself, as well as how they were treated. These inquiries could be made by the mine or a third party. None of the companies involved in this study requires this procedurally, although there is evidence at the personnel level that feedback is sometimes tracked informally. Nevertheless, the processes in place at the majority of case study sites were more bureaucratic than dialogic.

### *Participation*

One of the most difficult challenges for any company is to commit to taking a more collaborative approach with external stakeholders toward determining the cause of a dispute to earn the trust of the community and build long-term relationships (Sherman, 2009). The six case study sites are indicative examples. Across the board, there is limited evidence that any of the mine sites encouraged genuine community participation in the development of grievance mechanisms or processes of grievance resolution. In other words, communities have limited ability to feed their dissatisfaction with this situation back to companies, other than through informal interaction or other forums; certainly, however, it seems, not through formal procedural means. This effectively prevents the incorporation of local frameworks of justice into grievance mechanisms, which in turn severely inhibits the advancement of procedural justice.

As there are no requirements for external reporting at any of the mines involved in this research, either at the mine site level or within corporate sustainability reports, there are no formal provisions for sharing of knowledge about the conflict management process. This situation assures that the company retains control of information generated. Research highlights that mining company sustainability reports often fail to provide full accounts of conflict situations, but instead use these documents to represent their own perspectives (Garvin et al., 2009). Clearly, a limited focus on



participation belies a lack of attention to power and dialogue, stymies fair process, and inhibits the advancement of justice.

From our analysis of conflict management and grievance-handling processes, it is surmised that – on balance – the companies involved in our research are not strongly aligned with the value orientation of justice scholars, nor are they well aligned with self-regulatory frameworks across the three dimensions of power, dialogue, and participation. In fact, most are failing to harness the positive potential of conflict and move toward the achievement of just relations on procedural and interactional dimensions. The result is that they may even be exacerbating the likelihood that low-level conflict will escalate, eventually manifesting in more intense or severe expressions.

## **Conclusion**

This research has engaged with issues of company–community conflict in mining by focusing on procedural and interactional forms of justice: two key elements of a three-dimensional justice framework canvassed by Whiteman (2009). The inequitable distributions of risks, impacts, and benefits are key drivers of resource-related conflict and are likely to remain at the forefront of mining-related research and advocacy. However, procedural and interactional forms of justice lie at the very heart of some of the real and ongoing challenges in mining, including: intractable local-level conflict; emerging global norms and performance standards; and ever-increasing expectations for the industry to translate high-level CSR policy into on-the-ground practice. Process aspects of resource related conflict warrant greater scholarly attention, alongside a focus on outcomes and impacts.

The pragmatic shift in corporate responses to local-level conflict assumes a deeper change in terms of the advancement of justice. For that to bear out, it is vitally important that local communities, indigenous peoples, women, ethnic minorities, and other minority and marginalized stakeholders continue to engage companies in the face of natural resource-related injustice. In cases where companies have made principle-based commitments to local-level grievance mechanisms, they are obligated to address

power imbalances, facilitate dialogue and encourage participation in the design of the mechanisms themselves. Fulfillment of these obligations would elevate non-distributional aspects of resource-related conflict from “below the line” to centre stage; thus avoiding the so-called “ice-berg” effect. Approaching conflict in this way does not detract from critical or conflictual engagement, but it does appeal to rather a different set of communication and relational ethics than to the more orthodox oppositional standpoint.

Our analysis of justice invoked three core concepts from the existing scholarly literature on resource-related conflict: power, dialogue, and participation. These concepts provided a critical perspective for considering the extent to which mining companies can advance procedural and interactional forms of justice within their grievance-handling processes. By using the three core concepts as an analytic lens to examine the various architectural elements commonly outlined in global norms (i.e., purpose and scope; governance and administration; lodgment and admissibility; resolution; close-out, monitoring, and enforcement; reporting; and continuous improvement), it was found that companies had made negligible attempts to address power imbalances; only partial attempts to facilitate dialogue; and none of the mining operations had encouraged collaborative design of the grievance mechanisms themselves. Consequently, in their current form, and on their own, the six mechanisms were found to be insufficient in their capacity to advance justice.

This finding reflects the deeply ingrained instrumental logic that continues to underpin management decisions in mining. It is here that a sharp distinction can be drawn between traditionally “soft” concepts like “power,” “dialogue,” and “participation” and the “hard” realities of the mining business. It becomes evident that the so-called soft principles actually function as “hard-wired” enablers within the corporate–community dynamic that determined to a large extent whether grievance procedures or strategies will achieve their desired goal. A key consideration here is that while the grievance procedures in each of the six cases proved to be less than optimal, this should not be mistaken as a suggestion that the foundations for engagement and change were entirely absent. Whether or not there is room to foster a

corporate logic that genuinely engages with non-linear realities, cultures, contexts, and stories requires ongoing examination.

Care must be exercised while generalizing across the industry from just six cases, however emblematic their practice may appear. This research could be extended by considering a smaller number of cases in more detail and undertaking fieldwork that is not bound by confidentiality, which would enable contextual information to be incorporated into the discussion and analysis. More focused case studies would also benefit from the incorporation of data from a community standpoint in addition to a broader set of perspectives from within the company, including from operational-level departments and the corporate office. A more focused analysis of the internal power relations within companies would also serve to better understand spaces for resistance against dominant corporate and operational-level discourses and logics and the potential for the “internalization” of the principles and practices required to advance justice.

Grievance mechanisms have both procedural and interactional components that serve to shape, frame, and direct conflict-based company–community engagement processes and relationships in mining. If the overall objective of global norms is that companies construct and perform grievance handling in ways which strongly preference just practices, then “mechanisms-in-practice” must be better understood and constructively critiqued along all justice dimensions. Scholarship has much to contribute in understanding grievance mechanisms as a new regulating force that is informed by increasing calls for self-determination from local communities, ethnic minorities, and indigenous peoples around the world – those women and men who are often the most affected by mineral resource development.

## Notes

<sup>1</sup> The article excludes full consideration of mining in conflict zones or areas of active warfare. Business has an important role to play in these contexts, but such issues require more consideration than that falling within the scope of this article.

<sup>2</sup> The authors use “conflict management” as an overarching term that includes actions taken by conflicting parties to handle conflict, including initiation, escalation, the ensuing complications, containment, grievance resolution, and transformation as sub-topics (Hamad, 2005). The authors do not equate “management” with its narrower interpretation that indicates simply containment or suspension of conflict, or the achievement of harmony without justice.

<sup>3</sup> A grievance mechanism is defined in this context: “A company-supported, locally based and formalized method, pathway or process to resolve community concerns with, or grievances about, the performance or behavior of a company, its contractors or employees” (Hill, 2010, p. 7).

<sup>4</sup> Grievance mechanisms represent only one part of an organization’s overall approach to conflict. Other means that companies may employ include processes, such as impact assessment and management, respectful negotiation of Agreements, fair compensation packages, and so forth.

<sup>5</sup> Handwerker’s (2001) specific methods for “quick ethnography” were not followed in these studies, although his research principles did provide guidance.

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*Just Relations and Company–Community Conflict in Mining*

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