

Glossary of Terms

The thirty terms the guide uses precisely, from the after-phase and proper rem to perpetual care and transformative reparations. Drafting a settlement is easier when both sides are using the same words.

From Legacy Grievances and Historical Claims: A Guide to Post-Operational Dispute Resolution by Thomas Gaultier

This glossary defines the key terms used throughout the guide. Practitioners should use these terms consistently when drafting resolution documents, engagement charters, and legal instruments. Terms are listed alphabetically. Where a term has a distinct meaning in this guide that differs from its common usage, the distinction is noted.

After-phase. The period in the mine lifecycle when active extraction has ceased but grievance mechanisms have evaporated, leaving host communities without formal recourse for harms that may still be unfolding. Distinguished from “post-closure” (a technical term referring to the engineering phase following mine closure) by its focus on the accountability vacuum rather than the physical state of the site. See Chapter 1.

Carried interest. A stake in the future economic value of a concession or operation, granted to a community as part of a resolution settlement. Unlike a lump-sum payment, a carried interest provides ongoing returns that are linked to the success of the operation, aligning the long-term interests of the company and the community. See Chapter 4.

Commons, The. Shared natural resources, including air, water, soil, and wildlife, that belong to no single entity and upon which communities depend for their health, livelihoods, and cultural identity. Protection of The Commons is one of the Five Rules of Perpetual Care. See Chapter 6.

Community Commitment Register. A complete record of all commitments made by an operator (or its predecessors) to a host community over the life of an operation, including verbal promises, written agreements, resettlement action plans, benefit-sharing frameworks, and infrastructure pledges. One of the most consequential gaps in standard due diligence. See Chapters 3 and 8.

Confidence (in the dual-mode model). An assessment of past performance. A community has confidence in an institution when it can point to a track record of competent, reliable behaviour. Confidence does not require shared values. Distinguished from trust. See Chapter 5.

Corrective reparations. Reparations designed to address specific, discrete harms suffered by identified victims, such as compensation for property loss, medical treatment for occupational illness, or rebuilding of destroyed infrastructure. Distinguished from transformative reparations. See Chapter 2.

Dual-mode trust and confidence model. A framework distinguishing two bases for community acceptance of institutional actors: trust (belief in shared values) and confidence (evidence of competent past performance). In most post-operational settings, both have been destroyed. Practitioners must diagnose which deficit is primary before designing engagement strategies. See Chapter 5.

DUAT (Direito de Uso e Aproveitamento da Terra). Under Mozambique’s land law, all land belongs to the state. Communities and individuals hold use and benefit rights (DUATs) that are frequently undocumented, creating complex overlaps with formal mining concessions. See Chapter 4.

Ecocentric repair. Remediation that acknowledges territories and ecosystems as victims of industrial harm rather than as technical engineering problems to be solved. Rooted in the Colombian JEP precedent recognising territories as

victims. Distinct from standard environmental cleanup by incorporating symbolic acknowledgment of the destruction of shared ecological commons. See Chapters 2 and 5.

FPIC (Free, Prior, and Informed Consent). The principle that communities, particularly Indigenous communities, have the right to give or withhold consent to proposed projects or activities that may affect their lands, territories, or resources. In the perpetual care context, extends to consent regarding long-term stewardship decisions that will affect future generations. See Chapter 6.

Guarantees of non-recurrence. The fourth pillar of transitional justice. Structural measures designed to ensure that the conditions that produced the original harm cannot arise again. In the corporate context, includes regulatory reform, governance restructuring, independent monitoring, and changes to industry practice. See Chapter 2.

High Reliability Organisation (HRO). An organisation that operates in conditions where the consequences of errors are severe, yet achieves sustained safety performance by prioritising reliability, vigilance, and learning from near-misses. Applied in the perpetual care context to describe the institutional design requirements for oversight bodies that must maintain alertness across decades or centuries of quiescent site management. See Chapter 6.

Just transition litigation. The emerging category of legal challenge, so termed by the Business & Human Rights Resource Centre, in which communities and workers contest new renewable energy or critical mineral projects on the grounds that they replicate the abuses of the fossil fuel era, such as dispossession, environmental degradation, and broken promises. See Chapters 1 and 7.

Legacy grievance. A claim arising from historical harms that persists or emerges after active operations have ceased. Distinguished from an operational grievance (which arises during and is addressed within the active lifecycle) by its temporal displacement: the harm occurred in the past, but the consequences persist, the responsible entity may have changed, and the mechanisms for redress have often evaporated. See Chapter 1.

Legacy multiplex. The compounding effect of multiple types of historical and emerging claims that lack established resolution pathways. In the current context, amplified by the simultaneous decommissioning of fossil fuel assets and the expansion of critical mineral extraction. See Chapters 1 and 7.

Legacy shareholders. Both corporate and community stakeholders who retain an interest in the long-term outcomes of a legacy site. The concept recognises that a community's stake in the region's future does not end when operations cease, and that responsible corporate entities retain obligations that extend beyond the balance sheet. See Chapter 4.

Overburden. The rock and soil that lie above a coal seam or ore body and must be removed to reach it in surface mining. Overburden removal permanently reshapes the land surface and can bury prior land uses, including burial grounds. See Chapter 2.

Perpetual care. The obligation to maintain, monitor, and remediate a site indefinitely, across generations or millennia. Distinguished from “long-term maintenance” by its explicit acknowledgment that the care obligation has no foreseeable endpoint and requires governance and funding structures designed for intergenerational durability. See Chapter 6.

Post-operational. The period after active extraction has ended but before full relinquishment of the site to a successor custodian. Preferred over “post-closure” (which implies a technical engineering endpoint) and “abandoned” (which implies absence of responsibility). See throughout.

Propter rem. Latin: “on account of the thing.” A civil law concept under which certain obligations, notably the duty to repair environmental damage, attach to the title of property rather than to the person who created them, and transmit automatically with the asset regardless of what the purchase agreement says. Well developed in jurisdictions such as Brazil, Portugal, and Mozambique. Common law systems reach comparable results through narrower devices (CERCLA-style status-based liability; covenants running with the land; equitable servitudes) rather than through a propter rem doctrine as such. There is no universal “run with the land” doctrine. A buyer may negotiate an indemnity

from the seller, but if the seller becomes insolvent, the indemnity is worthless; the obligation remains with the land. See Chapter 3.

Relinquishment. The formal transfer of custodial responsibility for a remediated or perpetual care site from the remediating entity to a successor custodian (typically a government agency or trust body). Should never be a unilateral corporate decision. Requires demonstrated achievement of ecological, social, and governance criteria validated by both regulators and the affected community. See Chapters 6 and 8.

Right relationship. An aspirational framework, drawing on Indigenous governance traditions of reciprocity and intergenerational responsibility, that describes the conditions (trust, principled partnership, intentionality, accountability, and reciprocity) under which post-operational settlements between companies, host communities, and governments produce outcomes that endure. See Chapter 9.

Sites of wisdom. Legacy sites deliberately transformed into places of knowledge and education rather than prohibition, communicating the history of the site, the nature of the hazard, and the reasoning behind the care programme so that future generations are equipped to maintain and adapt it, as opposed to “sites of despair” marked only by warnings to keep out. See Chapter 6.

Social Licence to Operate (SLO). The ongoing acceptance and approval of a mining operation by local communities and stakeholders. Used with caution in this guide: SLO is a metaphor, not a methodology, and its invocation can obscure the power asymmetries inherent in company–community relationships. See Chapters 5 and 8.

Structural violence. The systematic exclusion of populations from decision-making processes, economic opportunities, and social protections as a consequence of embedded institutional arrangements. In the mining context, includes exclusion from land-use decisions, enclave economies that extract value without local benefit, and impoverishment upon resource depletion. See Chapter 2.

Successor liability. The legal doctrine by which a purchaser of assets inherits the seller’s liabilities, notwithstanding the general rule that asset transfers are “free and clear.” Four traditional exceptions recognised in United States and broader common law: express or implied agreement, de facto merger, mere continuation, and fraudulent transfer. Expanding in a minority of jurisdictions through public policy and continuity of enterprise doctrines. The civil law analogue for environmental obligations is the *propter rem* principle (see separate entry). See Chapter 3.

Tailings. The finely ground rock and process residue left after the valuable minerals have been separated from mined ore, typically stored as slurry behind engineered dams or in surface impoundments. Tailings facilities require monitoring and care long after operations cease, and their failure is one of the most severe risks a legacy site can present. See Chapters 1 and 6.

Transformative reparations. Reparations that go beyond compensating for discrete harms to alter the underlying conditions of marginalisation that made the harm possible. May include land tenure reform, livelihood development programmes, governance capacity building, and structural changes to the relationship between the community and the extractive sector. See Chapter 2.

Transitional justice (TJ). The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses (OHCHR definition). In this guide, adapted for the corporate context of historical mining harms. Built on four pillars: truth-seeking, justice and accountability, reparations, and guarantees of non-recurrence. See Chapter 2.

Truth-seeking. The first pillar of transitional justice. In the corporate context, community-led documentation of historical harms, institutional acknowledgment of what occurred, and the creation of a shared factual foundation for resolution. Functions as both an empowerment tool and a precondition for meaningful negotiation. See Chapters 2 and 8.



Use the words the settlement will have to use.

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