



20 YEARS OF

Business & Human Rights  
Resource Centre

# Financing mining for transition minerals in South Africa

ARE BANKS DOING ENOUGH ON HUMAN RIGHTS?

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# Executive summary

South Africa is home to significant deposits of some of the world’s most strategic minerals, including lithium, zinc, platinum and chrome. It is also the [world’s largest producer of manganese](#), a mineral critical for renewable energy technology. Investment has already begun pouring into South Africa’s mining industry as the pressure intensifies to transition to low-carbon economies. However, in the rush to obtain cleaner sources of energy, the serious human rights concerns associated with this increased mineral demand are being overlooked.

Despite [mounting evidence](#) of the human rights impacts caused by transition mining activities, insufficient action is being taken to prevent – and provide remedy for – the harmful impacts of transition mineral mining for local communities. The private sector and governments must do more to ensure Indigenous communities’ rights, including the right to free, prior and informed consent (FPIC) are protected in mining operations.

This includes the banks financing the extraction of transition minerals, given their pivotal role in shaping the energy transition. Mining operations are cash-intensive, especially during the development phase. Banks can use their leverage to implement conditions on respect for human rights to their provision of corporate and project finance services. They have an opportunity to ensure we build a new energy sector which respects human rights, thus ensuring our transition is not only fast, but also fair – and does not replicate the abuses of the fossil fuel sector and the poor human rights practices associated with the traditional mining sector in South Africa and across the continent.

It is, first and foremost, a responsibility they have under the UN Guiding Principles on Human Rights (UNGPs). Banks must have robust policies and due diligence procedures that go beyond the [Equator Principles](#), addressing the most salient risks of the mining sector, before providing corporate or project finance services. The key findings of this report suggest leading banks with potential exposure to the South African mining sector have a long way to go. They also reinforce [the case for inclusion of financial services](#) in the scope of emerging legislation on mandatory human rights and environmental due diligence, in the European Union and elsewhere.

## KEY FINDINGS



**Over 80%** (12 out of 15) of the local and international banks surveyed as possibly financing mining for transition minerals in South Africa, have a policy or public statement to respect human rights. However, this commitment is not complemented by specific policies and procedures to address the most salient risks in the mining sector.



**None** of the banks surveyed have a clear requirement for their clients in the mining sector to respect FPIC of communities in all circumstances. Eight international banks do mention FPIC, but only in relation to project finance.



**None** of the local banks have specific human rights due diligence policies regarding the mining sector covering both corporate and project finance services. Only one has ‘some consideration’ of human rights due diligence.



Of the 10 international banks surveyed, **only three** have clear exclusion policies in place based on poor track records of human rights or environmental abuses. Locally, only one of the five banks has such a policy.



**Only four** of the 10 international banks have a clear cross-sector commitment to provide remedy when associated with human rights harms. None of the local banks have such a policy of commitment.



# Background

South Africa is home to significant deposits of lithium, platinum, manganese and chrome, which are essential for the global transition to renewable energy. In his 2023 [State of the Nation Address](#), President Cyril Ramaphosa explained that approximately R1.5 trillion (approx. US\$80 billion) will be invested over the next five years to kick start the country's [Just Energy Transition Investment Plan](#) (JET-IP), as the first beneficiary of a multilateral Just Energy Transition Partnership, agreed at COP26 in 2021. This plan will spark large-scale investment in South Africa's mining industry, particularly in the mining of transition minerals. But the increased demand for these minerals poses [significant threats](#) to local communities, including severe health conditions, access to water and exploitation amongst others. These threats are likely to be more severe if the communities are not consulted and or have not been adequately consented prior to the extraction of these minerals.

In South Africa, legislation, such as the Mineral and Petroleum Resources Development Act, require "consultation" to be undertaken with communities. Further, the Constitutional Court, South Africa's highest court, ruled in 2018 in a landmark judgement that a [community's consent was required after recognising them as the lawful occupiers of their land](#). The [Mining Charter](#) and guidelines for [Social and Labour Plans](#) also provide some guidance on FPIC, including the "consultation of host communities to identify community development needs" and "ensur[ing] that mining contributes to the development of communities in the areas where mining takes place." The reality, however, demonstrates that impacts for communities by the sector have historically been negative – and the increase in demand for these new minerals may result in more of the same. The banking and financial sector can, and should, do more to ensure local communities and holders of informal land rights' FPIC is obtained prior to the initiation of mining activities.

In a global analysis of the human rights abuse allegations associated with the largest transition mineral mining companies for six key minerals (copper, cobalt, lithium, manganese, nickel and zinc), the Business & Human Rights Resource Centre (the Resource Centre) found violations of rights of local communities, land rights and of the rights of Indigenous communities – in particular to give, or refuse to give, their FPIC to projects affecting their lands and resources – feature prominently. As the pressure to mine for transition minerals intensifies, the frequency of human rights abuses is also likely to intensify without sufficient human rights safeguards in place. Banks bear the obligation to ensure mining companies have procedures in place at the right level.



According to research conducted by the [Centre for Research on Multinational Corporations \(SOMO\)](#) in 2021, manganese mines reduce the already scarce amount of water available to communities and harm the quality of the water available. Local communities complained they had no access to water at times or had to travel long distances to access water. These communities were also concerned by the quality of the water, citing concerns about lime, saltiness, discolouration and contamination. Several local community members also argued that the mining of manganese in their area was putting their health at risk, as some were suffering from respiratory illnesses.

The extraction of transition minerals from the ground, however, is expensive and risky. Banks, therefore, play a critical role in funding mining operations. Most mining companies approach banks for loans to fund their mining projects. Banks are required to undertake due diligence on their potential clients before they can fund them to ascertain their corporate social responsibility and corporate governance levels. Yet, BankTrack's [human rights benchmarks](#) found none of the banks it researched in 2022 showed adequate implementation of the UNGPs and that banks are evasive when challenged on specific human rights violations.

In this report, the Resource Centre analyses the human rights commitments and actions of 15 international and local banks financing mining companies in South Africa. The study focuses on banks funding the mining of transition minerals and aims to establish whether banks are conducting adequate human rights and environmental due diligence before funding mining activities, as well as whether they are taking other steps to avoid contributing to abuses in this particularly risky sector.









# Research methodology

The Resource Centre commissioned Profundo to identify international banks with potential exposure to significant transition minerals mining projects in South Africa. Additional research was conducted to identify domestic banks in South Africa associated with the domestic mining sector. A questionnaire was sent to 15 banks and their responses were complemented by analysis of banks’ public human rights policies, risk assessment frameworks, due diligence policies and other statements.

## International banks

Four significant mining projects and their shareholders were identified:

↓ Mine	↓ Mineral	↓ Ownership structure
<b>Gamsberg</b> See allegation against this project in the Resource Centre <a href="#">Transition Minerals Tracker</a>	Zinc	 <ul style="list-style-type: none"> <li>70% <a href="#">Vedanta Resources</a> (Indian company)</li> <li>24% <a href="#">Exxaro Resources</a> (South African company)</li> <li>6% ESOP (Employee Stock Ownership Plan)</li> </ul>
<b>Assmang</b> See allegation against this project in the Resource Centre <a href="#">Transition Minerals Tracker</a>	Manganese	 <ul style="list-style-type: none"> <li>50% <a href="#">Assore Limited</a></li> <li>50% <a href="#">African Rainbow Minerals</a></li> </ul>
<b>Mokala Manganese</b>	Manganese	 <ul style="list-style-type: none"> <li>51% <a href="#">Ntsimbintle Holdings Pty</a>, a Broad-based Black Economic Empowerment company led by businessman Saki Macozoma</li> <li>49% <a href="#">Glencore plc</a>, through its wholly owned subsidiaries</li> </ul>
<b>Kalahari Basin Mines</b>	Manganese	 <ul style="list-style-type: none"> <li>44% <a href="#">South32 Ltd</a></li> <li>56% divided between <a href="#">Anglo American Plc</a> and Broad-based Black Economic Empowerment entities<sup>1</sup></li> </ul>

<sup>1</sup> Broad-based black economic empowerment (BEE) is a government policy to advance economic transformation and enhance the economic participation of Black people (African, Coloured, and Indian people who are South African citizens) in the South African economy.

Using finance databases, research by Profundo identified the top 10 creditors (syndicated loans, corporate finance, bonds and share issuance underwriting) for the five biggest mining companies listed above: Anglo American Plc, Glencore Plc, South32 Ltd, Vedanta Resources and Exxaro Resources. The provision of bilateral financing was not included in the scope of the research.

The top 10 creditors selected are: **Bank of America, Barclays, BNP Paribas, Citigroup, Crédit Suisse,<sup>2</sup> Deutsche Bank, JP Morgan Chase, Mizuho, Standard Chartered** and **UBS**. These banks were selected based on their exposure to mining companies operating in South Africa. However, this should not be read as ascertaining that those banks finance mining projects in South Africa.

## National banks

In the absence of information available on exposure of credit portfolios of South African banks to domestic mining projects, the [top five banks](#) selected are the ones financing the green energy transition based on their public affirmation and commitment to doing so. These banks are [ABSA Bank Ltd](#), [FirstRand National Bank \(FNB\)](#), [Investec](#), [Standard Bank](#) and [Nedbank](#).

## Research by the Resource Centre

The Resource Centre sent a list of questions to 10 international banks and five South African banks. For the 10 international banks, assessment of existing commitments to respecting human rights and of due diligence processes in BankTrack Human Rights Benchmark (2022) have been cross-referenced.

Seven banks provided full responses to the questionnaire (**Bank of America, Barclays, BNP Paribas, Crédit Suisse, Deutsche Bank, Mizuho** and **ABSA Bank**). Two banks provided limited responses to the questionnaire (**Standard Chartered** and **UBS**). Six banks did not respond (**Citigroup, JP Morgan Chase, Standard Bank, Investec, FirstRand National Bank** and **Nedbank**).

Research was conducted by analysing publicly available statements on company websites, regional publications, as well as surveying companies directly about their policies and practices. As banks may be associated with financing the mining sector in South Africa through general corporate finance (providing credit facilities, underwriting bond/share issuance), and/or project finance (either through bilateral loans – not in scope here, or syndicated loans), the present analysis considers both.

The detailed results of the research can be found [here](#).

<sup>2</sup> On 19 March 2023, it was announced that UBS will acquire Crédit Suisse. As the merger remains to be completed, and as it is unclear how the human rights policies and due diligence processes of the newly formed entity will be formed, this briefing considers them as separate entities.



# Findings

## 1. Have banks publicly committed to respecting human rights and is there evidence they expect their clients to as well?

All international banks have a clear policy commitment to respect human rights in place – associated with clear expectations that their clients will also respect human rights. Of the five South African banks we surveyed, only **one bank (FNB)** had no evidence of publicly committing to respecting human rights and expecting its clients to also have such a policy. While this is an important starting point, such commitment needs to be complemented by specific policies and procedures to address the most salient risks in the mining sector.

## 2. Do banks have specific policies regarding the mining sector and/or the mining of transition minerals?

Among the 10 international banks surveyed, **only four (BNP Paribas, Crédit Suisse, Deutsche Bank and Standard Chartered)**<sup>3</sup> have specific policies regarding the mining sector, covering both corporate and project finance. However, **only three (BNP Paribas, Crédit Suisse and Deutsche Bank)** have clearly identified risks associated with the mining sector.

### “ BNP Paribas

Key areas for due diligence in the mining sector include:

- *“Whether the mining project requires physical or economic resettlement resulting from land acquisition and restrictions on land use [...]*
- *Whether the mining project has put in place a consultation plan commensurate to its scale and impacts as well as grievance mechanism through which stakeholders’ concerns can be raised and addressed.*
- *Whether the mining project has established initiatives benefitting positively to the local communities (including local employment programs, local sourcing of goods and services, or public infrastructure financing).*
- *In addition, BNP Paribas expects Mining Projects to implement effective, transparent, and culturally adapted communication to project-affected people.”*

<sup>3</sup> Barclays states having additional procedures for 10 sectors including metals and mining, but those are not publicly accessible.



## “Crédit Suisse

Crédit Suisse’s Summary of Mining Policy indicates that it assesses the performance of the client based on “its ability to demonstrate that it has adequately addressed the following issues”:

- “Water management
- Air emissions
- Habitat and biodiversity fragmentation and degradation
- Waste management
- Site decommissioning and remediation
- Worker and community health and safety
- Public involvement, consultation and disclosure.”

## “Deutsche Bank

*Although the mining industry is an important source of metals and minerals for the global economy, mining operations present a range of environmental and social impacts requiring management and mitigation. Therefore, any transaction involving financing of mining (the extraction of minerals and metals) requires enhanced Environmental and Social (ES) review. We look at a number of sector-specific factors including the client’s management systems and track record. This includes assessing how the client’s ES management system addresses:*

- contamination of water and soil;
- waste management;
- impacts on local ecosystems;
- workplace and community health and safety; and
- community consultation, especially where operations are close to tribal areas or places of worship.”

Others only mention the mining sector may be associated with increased conflict-risks and requires heightened due diligence (**Citigroup** and **Mizuho**). This approach fails to recognise that the human rights, social and environmental impacts of mining are not only limited to areas of conflict activities.

## The limits of the Equator Principles

All international banks except Bank of America and UBS made a reference to the Equator Principles (EP) in relation to project-related transactions. The EP is a set of voluntary principles developed by banks for banks. The last set of the EP, [the fourth iteration \(EP4\)](#), was published in 2020. The EP is a risk management framework and a set of environmental and social standards that banks commit to implement in project transactions. They are articulated around 10 principles and are based on the International Finance Corporation standards.

The EP have been criticised by civil society organisations (CSOs) for not being sufficient to effectively prevent human rights abuses. Firstly, the EP apply to project-finance only and, as such, cannot be considered as a replacement for proper client due diligence for the provisions of corporate finance in high-risk sectors such as mining. CSOs have pointed out the EP has largely failed to prevent egregious abuses against Indigenous communities in the extractive sector – [as the financing of the Dakota Access Pipeline by Equator Principles banks has established. The last revision process was considered too limited](#) to bring effective change and guarantee banks ensure Indigenous rights in particular, and human rights in general, are fully respected when providing financial services to clients. In particular, EP4 does not include a clear requirement to implement FPIC in all circumstances. Other issues include the absence of a requirement to operate a grievance mechanism to collect complaints.



Two banks include a clear recognition of the risks faced by Indigenous peoples and of their rights (**Citigroup** and **Deutsche Bank**), while three (**Bank of America**, **Crédit Suisse** and **JP Morgan Chase**) mention Indigenous rights only in relation to project finance.

**No international banks have a clear requirement for clients in the mining sector to respect FPIC in all circumstances. A majority (eight) mention FPIC, but only in relation to project finance (Bank of America, BNP Paribas, Citigroup, Crédit Suisse, Deutsche Bank, Mizuho, Standard Chartered and UBS).** Among them, not all explicitly require clients to have obtained FPIC and some use ambiguous wording, such as **BNP Paribas**, which only “*encourages*” its clients to obtain FPIC, and **Citigroup**, which states it simply expects project sponsors to “*have engaged*” in consultation with affected Indigenous communities, “*with the goal of achieving FPIC*”. **Deutsche Bank** has the most explicit requirement as it expects its clients to obtain FPIC – but only in circumstances where the International [Finance Corporation Performance Standard 7](#) applies (project-related transaction).

Among the local banks, **none** have specific human rights due diligence policies regarding the mining sector covering both corporate and project finance. Four of the five banks, except for **Investec**, have some consideration of human rights due diligence. For example, **ABSA Bank** “*has the Environmental & Social Management System, which provides for environmental and social risks requirements to be considered and mitigated when lending decisions are made which applies across all sectors and a mining and metals financing standard which supports due diligence requirements*”. While the process is not described, **Standard Bank** said its human rights statement includes a commitment to human rights due diligence.





### 3. Do banks examine past track records of human rights of mining companies as part of an exclusion policy?

Many international banks have a clear list of exclusion cases in relation to certain mining subsectors – such as coal mining or drilling in the Arctic region – based on the nature of the activity itself. However, exclusion based on poor track record of human rights or environmental abuses is rare. **Only three banks have clear cross-sectoral policies in place:**

#### “ BNP Paribas

Whether “*the [mining] company has been regularly and repeatedly criticised for its environmental, social, security (including use of security forces) and governance performance on material issues and enquire about actions taken to address them*” may lead to deciding not to onboard the company.

#### “ Crédit Suisse

*Credit Suisse will not finance or advise mining companies against which there is credible evidence of involvement in grave human rights abuses such as, e.g., forced labour, employment of children or the use of violence against local communities and Indigenous groups.”*

#### “ Deutsche Bank

*We consider past track records of clients in conducting due diligence. The core principle of the bank’s approach is to not engage in business activities where Deutsche Bank has substantiated evidence of material adverse human rights impacts and it is determined through Deutsche Bank’s internal processes that such adverse human rights impacts cannot be avoided or appropriately mitigated.”*

**Deutsche Bank** also publishes detailed statistics on the number of clients/transactions it has reviewed under its Environment and Social Policy Framework, broken down by sectors (including metals & mining). **UBS** has a partial policy in place. It states it appreciates past and present environmental and human rights performance of potential new clients but will assess them against commitments to voluntary standards. **JP Morgan Chase** and **Mizuho** also have exclusion policies in place in relation issues of forced labour, modern slavery and human trafficking. However, this does not cover all human rights risks associated with the mining sector.

Similar to their international counterparts, local banks also have clear lists of exclusion cases in relation to certain mining activities. **ABSA Bank** has exclusion policies on the use of child labour or harmful or exploitative forms of labour. **Standard Bank** has certain exclusions for thermal coal mining. However, only one bank (**Investec**) has an exclusion based on poor track record of human rights or environmental abuses. In its Way We Do Business report of 2022, Investec provides that: “*The Group does not engage in projects: that are in non-compliance with human rights, and especially non-compliance with the rights of local communities and indigenous peoples that are in non-compliance with minimum standards for occupational health and safety.*” Whilst not in its exclusion policy, **Standard Bank’s** sustainability report provides that, “[*we*] will take appropriate steps where we discover, or are made aware, that we have caused or contributed to actual or perceived human rights abuses. This may include disciplinary action, exiting a particular business relationship, or constructive engagement with others to promote better practice.”



## 4. Do banks provide information on due diligence procedures in the mining sector? Do they require new clients in the mining sector to have their own HREDD in place?

Most international banks have adopted their own cross-sectoral human rights and environmental due diligence policies and practices. However, these are not always complemented by specific policies for the mining sector as outlined in section 1. One crucial aspect of bank due diligence should be to investigate whether clients themselves have adopted robust due diligence processes and accompanying policies to effectively identify and prevent violations of human rights abuses. While six out of 10 international banks (**Bank of America, BNP Paribas, Citigroup, Mizuho, Standard Chartered** and **UBS**) have a policy to investigate potential new clients' "policies", "practices", "measures" or "management" of environmental and social challenges, **none have a clear commitment requiring clients in high-risk sectors and/or involved in high-risk projects to have their own human rights due diligence in place.**

On a local level, the situation is slightly different. **None of the local banks** have their own human rights due diligence policies and practices, nor a requirement for clients to have their own human rights due diligence in place. Only **Nedbank** comes close to this requirement as it provides in its Human Rights statement of 2022 that "*clients are required to undertake social and environmental assessments before financing decision by the Bank based on Social and Environmental Management System (SEMS), the industry best practice and Environmental, Social and Human-rights Benchmarks.*"

Of the five local banks surveyed, only one (**ABSA Bank**) has a requirement of community consultation with the affected communities in its due diligence process. **ABSA Bank** provides this as a "standard consideration as part of its Environmental and Social Risk Assessment process". No evidence of such a policy was found by any other local bank.



## 5. Are banks committed to track association with human rights abuses and to provide remedy and to reexamine relationship with clients in case of actual violations of human rights?

Only four international banks (**Barclays, Citigroup, Mizuho** and **Standard Chartered**) have a clear cross-sector commitment to provide remedy when associated with human rights impacts. However, banks offer very little insight as to how effectively they track possible associations with violations of human rights as a result of project finance or corporate finance services. Two banks have detailed engagements with companies in the mining sector.

### “ BNP Paribas

The bank indicates in its 2019 Universal Registration Document having received information from an NGO about communities in West Africa allegedly being displaced as a result of mining operations. Discussions are ongoing with the company.

### “ UBS

UBS Asset Management Stewardship report includes an example in relation to mining company Freeport McMoran in relation to “*environmental, labour and human rights controversies*” and “*lack of disclosure on the specific environmental management and impacts.*” UBS has “*encouraged the Company to bring its management of these controversial issues up to industry best practice, as well as to more systematically disclose its approach and performance.*”

**None of the local banks** have a clear cross-sector commitment to provide remedy when associated with human rights impacts. However, **ABSA Bank** states its “*ESMS process requires remediation [by the client] of any identified human rights abuses, and where appropriate remediation is not demonstrated, the continuation of the client relationship is assessed at applicable governance committees.*”



# Conclusion and recommendations

Banks have a strong influence on companies' behaviour as they are often involved from an early stage in funding projects. Banks can also condition access to corporate finance on having a robust approach to human rights. This requires banks to have the necessary capacity to undertake risk analysis, not only concerning financial but environmental and social risks.

## Banks should:

- ➔ Adopt specific and separate policies on the mining sector, covering the most salient human rights and environmental risks.
- ➔ Commit to a rights-respecting financial sector: undertake and promote analysis consistent with the UNGPs for corporate finance and project-finance services to mining companies.
- ➔ Require their clients in the mining sector, for corporate finance or project-related finance, to have human rights and environmental due diligence in place, alongside a strict policy of obtaining FPIC from Indigenous communities affected by mining operations, as well as to seek to obtain consent from all communities.
- ➔ Corroborate the information provided by mining companies through engagements with affected communities and workers to the extent possible to ensure adequate consultation and risk disclosure was undertaken. Commit to conduct ground assessments for all project-related transaction. Be more transparent on exclusion/engagement cases on human rights abuses.

## Mining companies should:

- ➔ Work to the international standards of the UNGPs to implement human rights and environmental due diligence in operations and commit to provide remedy. This must include adopting and effectively communicating zero-tolerance policies for abuse of communities, workers and human rights defenders, including labour rights activists and Indigenous, land and environmental defenders, and provide guarantees of protection and non-retaliation for participants in these processes.
- ➔ Assign clear Board responsibility for and oversight of respect of human and environmental rights.
- ➔ Adopt specific policies on the most salient human rights risks in the sector: land rights and Indigenous people's rights. Commit to a strict respect for the right of Indigenous communities to give or withhold their FPIC.



## The Government of South Africa should:

- ② Ensure full and complete implementation of FPIC regulatory frameworks in line with international law and as contained in legislation and policies, as well as pronounced by the courts.
- ② Implement legislation on mandatory gender-responsive human rights and environmental due diligence that are inclusive and supported by corporate civil liability. Ensure access to domestic and extra-territorial justice and effective remediation for victims of abuses.
- ② Adopt ambitious green policy and regulatory frameworks to direct foreign and domestic investment flows to responsible renewable energy infrastructure, while protecting local communities and Indigenous peoples' rights – with specific consideration given to land rights, FPIC and human rights defenders, including labour rights activists and Indigenous, land and environmental defenders.

**Governments of other jurisdictions where international banks are headquartered should ensure financial services are included in the scope of application of emerging legislation on mandatory human rights and environmental due diligence.**







**Business & Human Rights Resource Centre** is an international NGO which tracks the human rights impacts of over 10,000 companies in over 180 countries, making information available on our 10-language website.

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