



## Business unusual: Mining in the aftermath of Marikana

*The human rights impacts of southern Africa's extractive sector*

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The shooting to death by police of 34 miners engaged in strike action at [Lonmin's Marikana](#) mine in South Africa in 2012 has compelled mining companies to acknowledge and confront how extractive operations can harm human rights, and lead to extensive loss of life in extreme cases. The families and colleagues of the deceased as well as the broader public eagerly await the findings of the [Farlam Commission of Inquiry](#), mandated by the South African Government to establish the circumstances and actors responsible for the massacre at Marikana.

Mining is central to the economies of southern Africa. It accounts for 7% of GDP in South Africa, 15% in Zimbabwe, and 24% in Zambia; it provides 390,000 jobs in South Africa and 60,000 in Zambia. But there is so much more that this wealth-generating industry could be doing with the right policies, incentives and regulation. As government officials, mining executives and civil society prepare for the annual [Investing in African Mining Indaba](#) (Cape Town, 9-12 February), this briefing deliberately focuses on challenges to the industry to eradicate harm and abuse of human rights in its operations. What lessons can companies learn, what best practices can they emulate to protect and promote human rights, and to mitigate the risks they face, such as opposition from communities, labour unrest, stricter regulatory environments, adverse court decisions and reputational damage?

### Mining & human rights by the numbers

Mining companies already suffer major financial losses from inadequate respect for human rights:

- Losses to the South African mining industry due to strikes: **R15 billion (US\$1.3 billion)** from mid-2012 to April 2013 – the period leading up to and following the Marikana massacre – [according to South Africa's Institute of Race Relations](#). The strikes continued through 2014, with [some of the largest](#) occurring in the last 12 months.
- Losses due to delays in mining projects: **US\$20 million per week** on average for active, large mine projects, according to [researchers at Harvard Kennedy School and University of Queensland](#). Such delays include those caused by companies failing to obtain consent from local communities, and being blocked by communities' protests or legal claims.
- Potential payments to 17,000 former mine workers for silicosis claims in a lawsuit against mining companies: **R51.5 billion (US\$4.4 billion)**.

To address and prevent these risks and respect workers' and communities' rights, [Business & Human Rights Resource Centre](#) recommends that mining companies:

- **Increase transparency in their operations**, particularly regarding payments to governments, contractual terms, and environmental impacts and emissions;
- **responsibly engage with all relevant stakeholders**, particularly workers, affected communities, and governments; and
- **take steps to better protect rights to health & safety**, among both workers and communities near mine sites.

To manage these risks coherently and better respect human rights, mining companies should go beyond adopting human rights policies and **"mainstream" respect for human rights into their management and governance**. Specific, practical recommendations are at the end of this briefing note.

### Transparency

According to the chair of the African Union Commission, citing the AU High Level Panel on Illicit Financial Flows from Africa, extractive industries are [the greatest culprits in diverting taxes](#) away from governments, depriving them of much-needed funds that could be allocated to health, education, and development. The African Union has just launched a [new initiative to stem illicit financial outflows](#), particularly citing the mining industry in South Africa. Blame falls to governments as well as mining

companies: an assessment by Revenue Watch (now Natural Resources Governance Institute) of natural resource governance by southern African states gave most a grade of “[failing](#)” or “[weak](#)”. The issues of resource governance and fair taxation/tax evasion have, therefore, been prominent on the national agendas of many southern African countries.

Zambia received one of the stronger marks in the Revenue Watch report. International Council on Mining and Metals (ICMM) recently [reported](#) on mining’s contribution to Zambia’s economy and society – but also recommended steps for mining companies to enhance their role in local development and in transparent and inclusive governance. Even in Zambia, questions persist about transparency and equity in mining deals. A video purporting to [show Vedanta Resources](#) chairman, Anil Agarwal, boasting of obtaining the [Konkola Copper Mines](#) concession for significantly less than market value, provoked vociferous [calls](#) by the local Publish What You Pay coalition to strengthen citizen oversight of Zambian mining royalties. Local officials have also [urged](#) the Extractives Industry Transparency Initiative to improve its reports, and the government to [review Zambia’s Mining Act](#), to enhance government’s ability to hold extractive companies to account. [Proposed changes](#) to Zambia’s taxation regime and resultant [upward tax adjustments](#) have met with opposition from mining companies. Their interest in paying reasonable taxes and royalties, however, must be balanced against Zambia’s urgent social needs.

South African companies have also recently come under fire for alleged tax avoidance. The [Association of Mineworkers and Construction Union](#) and [Alternative Information and Development Centre](#) have claimed that mining companies including [Implats](#), [Lonmin](#) and [Anglo American](#) may be avoiding paying higher wages and taxes by shifting profits outside the country. The companies [denied](#) the allegations, but public sympathy towards them was undermined by the union’s [statement](#) that senior management at the three companies earned salaries up to 209 times higher than their entry-level workers. In a report by Leverhulme Centre for the Study of Value, [De Beers](#) was also accused of attempting to [evade tax](#). Business & Human Rights Resource Centre invited De Beers to respond to the allegations, which the company [denied](#).

Companies’ transparency obligations extend to informing communities of environmental emissions and impacts. [Vaal Environmental Justice Alliance](#) (VEJA) recently scored a [significant legal victory](#), when South Africa’s Supreme Court of Appeal ordered [ArcelorMittal](#) to release environmental records to independently verify the company’s environmental claims and better understand its impacts on local communities’ health. The court emphasised the importance of corporate transparency, stating, “corporations...must be left in no doubt that, in relation to the environment in circumstances such as those under discussion, there is no room for secrecy and that constitutional values will be enforced”.

### **Responsible engagement with workers, communities, governments & other stakeholders**

*Avoiding complicity in government & security abuses, respecting & protecting human rights defenders*

A further advantage of corporate transparency is that it reduces avenues and opportunities for unlawful or unethical engagement between companies, government and other stakeholders. The Lonmin-Marikana case raised precisely these concerns: management [emails](#) submitted to the Farlam Commission show that Lonmin’s management reached out to then-ANC leader Cyril Ramaphosa, who was also a board member of Lonmin (he is now Deputy President of South Africa), to appeal for government intervention in ending the strike. Mr. Ramaphosa’s response to Lonmin’s appeal, calling for police action against the strikers whom he called “criminals”, has been [seen](#) as [contributing to the violence](#) that left 34 striking miners dead.

Mining investors have allegedly contributed to state violence in Zimbabwe as well. Rights and Accountability in Development [recently reported](#) that [a consortium of companies](#) including [Och-Ziff Capital Management](#), [ENRC](#) and [Palladino Holdings](#) provided funds to Zimbabwean President Robert Mugabe to secure mining concessions. These resources were allegedly used by Mugabe and his supporters to implement a campaign of terror following the defeat of his ZANU-PF party in the first round of 2008’s election. Business & Human Rights Resource Centre invited the companies to respond to the report; [only Palladino](#) did so.

In Angola, investigative journalist and human rights defender Rafael Marques [faces libel charges](#) for exposing human rights violations, corruption and the relationship between the country’s political elite and diamond mining companies. Marques was [a winner](#) of Transparency International’s Integrity award in 2013; however, it is likely that his court date scheduled for March 2015 weighs more heavily on his mind. There have been [numerous appeals](#) to the Angolan government to drop the charges against Marques.

Local residents also raise grievances about the use of force by security agents employed or contracted by extractive companies. In Zimbabwe, Centre for Research and Development (CRD) [reported](#) that people had dogs set on them, and were killed, tortured and beaten in incidents involving security personnel employed by [Anhui Foreign Economic Construction](#), [Zimbabwe Mining Development Corporation](#) and [New Reclamation Group](#). None of the companies responded to these concerns when invited to do so by Business & Human Rights Resource Centre. CRD [continued to report abuses](#) by diamond companies' security personnel in 2014.

#### *Engagement with communities*

A Bench Marks Foundation [report](#) raised concerns about South African coal mining companies' community engagement. The report alleged that "mining firms fail to address complaints from communities", and their "corporate grievance mechanisms intimidate stakeholders and are ineffective". Anglo American [responded](#) to these concerns, focusing on the company's community engagement policies and practices, and defending its approach of attempting to "resolve [issues] through constructive dialogue and partnerships with government, the community and civil society..."

Bench Marks Foundation recently [announced](#) that it will engage mining companies in an effort to garner their support – in the form of Corporate Social Responsibility obligations – for an Independent Fund aimed at facilitating communities' access to expertise, to address the knowledge imbalance and put communities on a more level footing with mining corporations. The NGO will also implement a project, Recourse to Justice for Communities, with the objective of establishing an independent grievance mechanism.

*"Civil Society Organisations (CSOs) are often viewed as being anti-business by mining companies. This cannot be any further from the truth. What CSOs are calling for is responsible investments by business that respect, protect and fulfil human rights in general and community rights in particular. CSOs do understand the role that business can and does play in the fulfilment of human rights. However, business also has the potential to undermine the realisation of human rights. The UN Guiding Principles on Business and Human Rights (UNGPs) provide a platform for CSOs and business, including mining companies, to engage in constructive dialogue so that business activities do not have adverse impacts on human rights."*

– Mutuso Dhliwayo, Zimbabwe Environmental Law Association

#### *Free, prior & informed consent as a matter of policy*

In Mozambique, Human Rights Watch has [raised concerns](#) about government policy and company implementation of a resettlement that uprooted largely self-sufficient farming communities and moved 1,429 households to arid land far from rivers and markets, to make way for mining operations of [Vale](#) and [Rio Tinto](#). The displaced communities reported serious disruptions to their access to water and work and their ability to produce food. This incident highlights the need for companies to view free, prior and informed consent (FPIC) as a continuous rather than one-off process of engaging affected communities. [Oxfam](#) and others have urged mining companies and governments to seek and obtain communities' FPIC as best practice. Where negative impacts are noted, NGOs studying mining in Mozambique [have recommended](#) that companies exercise human rights due diligence, and that access to remedy be provided where harms occur.

#### **Communities' and workers' right to health and safety**

The Zambian Government increasingly takes a hard line on health and safety at mining companies. In the case of Chinese-owned [Collum Coal Mining](#), the government [revoked the company's licence](#) following a series of incidents, including allegations that [Chinese supervisors shot at workers during a protest](#). Despite improvements in some countries, notably South Africa, mining remains very hazardous, with [two workers](#) killed at [Glencore's](#) Mopani Copper Mines in Zambia, [seven killed](#) at Golden Valley Mine in Zimbabwe, and a total of [84 killed](#) in South Africa – including [13](#) at [Harmony Gold's](#) mines alone – all just in 2014. South Africa's COSATU union federation recently recognised gains in the country's mine safety, but called the mortality rate still ["unacceptably high"](#).

Anglo American has set an industry-leading goal of zero worker fatalities in its global operations. Fatalities have fallen in recent years, although the company still reported nine deaths at its South African mines in 2013 (it has not yet reported on 2014). Unfortunately some companies take the opposite approach: In Namibia, Purity Manganese's mine safety manager was reportedly [dismissed](#) when he raised concerns about poor living and work conditions at the company.

A Zimbabwean [study](#) found mine workers and people living near mines are six times more at risk of contracting tuberculosis. In South Africa, longstanding concerns about mine-related work causing deadly [occupational lung disease](#) known as silicosis eventually formed the basis of a [class action lawsuit](#) against 30 gold mining companies by as many as 17,000 former miners. This could cost the companies R51.5 billion (US\$4.4 billion), based on [AngloGold Ashanti's 2012 estimate](#) that 31 claims it faced would amount to US\$9 million. In response to the litigation, Anglo American, [AngloGold Ashanti](#), [Gold Fields](#), Harmony Gold, and Sibanye Gold have [announced](#) that they have established a working group to jointly address issues relating to compensation and medical care for occupational lung disease in the industry.

Zimbabwean mining companies have also raised the ire of communities and regulatory authorities for [polluting water bodies](#), [degrading](#) landscapes and impairing people's [health](#). In response a group of NGOs, including local partner Zimbabwe Environmental Law Association, launched a project, [Pillars in Practice](#), "to promote knowledge, understanding, and implementation of [the UN Guiding Principles on Business and Human Rights] by mining companies in Zimbabwe".

Mining firms have also undertaken notable positive health-related interventions. For example, ICMM [has reported](#) on community health initiatives by its member companies, highlighting key lessons learned.

## **Recommendations**

Mining companies should:

- Adopt and implement a human rights policy based on internationally accepted principles
- Implement human rights due diligence, including commissioning independent human rights impact assessments, taking findings into account in planning and implementing projects, and reporting on human rights performance
- Commit to seeking free, prior and informed consent of communities affected by projects
- With workers, local communities and civil society, develop grievance systems that are accessible to workers and residents, are independent and effective, and comply with international human rights
- Protect workers' rights by taking steps to respect ILO norms, and promote transparency and respect for human rights in connection with security provision, by joining and implementing the Extractive Industries Transparency Initiative and the Voluntary Principles on Security & Human Rights
- Respect rights of human rights defenders and others who raise concerns about companies' impacts, and urge governments to protect and respect the rights of human rights defenders and trade unionists
- Adopt and work toward a goal of zero worker fatalities
- Pay a fair share of taxes

## **Conclusion**

[South Africa's mining industry lost an estimated US\\$1.5 billion](#) in the 2012-13 financial year due to strike action. Losses from delays in mining projects, such as those caused when a company fails to obtain consent from local communities and is blocked by their protests or legal claims, can amount to an average of [\\$20 million per week](#) for active mining projects. What these sums reveal for mining companies is that not only is it right to respect human rights, it is also sound business practice. A genuine commitment to mainstream respect for human rights into all aspects of corporate governance and management is beneficial not only to employees, supply chains, and the broader community, but ultimately for shareholders as well. To play its full part in national development, promoting human rights, and regaining its social licence to operate, the mining sector must now take the lead in this commitment.

## **About Business & Human Rights Resource Centre**

[Business & Human Rights Resource Centre](#) is a global non-profit organization, providing the leading online information hub on business & human rights. Our researchers are based in Brazil, Colombia, Hong Kong, India, Japan, Jordan, Kenya, Mexico, Senegal, South Africa, Thailand, UK, Ukraine and USA. Mary Robinson, former UN High Commissioner for Human Rights and President of Ireland, is Chair of the Centre's International Advisory Network. For further details, see "[About us](#)" on our website. This paper was authored by Nokukhanya (Khanya) Mncwabe – Anglophone Southern & Western Africa Researcher, based in Cape Town. Email: [mncwabe@business-humanrights.org](mailto:mncwabe@business-humanrights.org). Tel: +27 783362181.

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