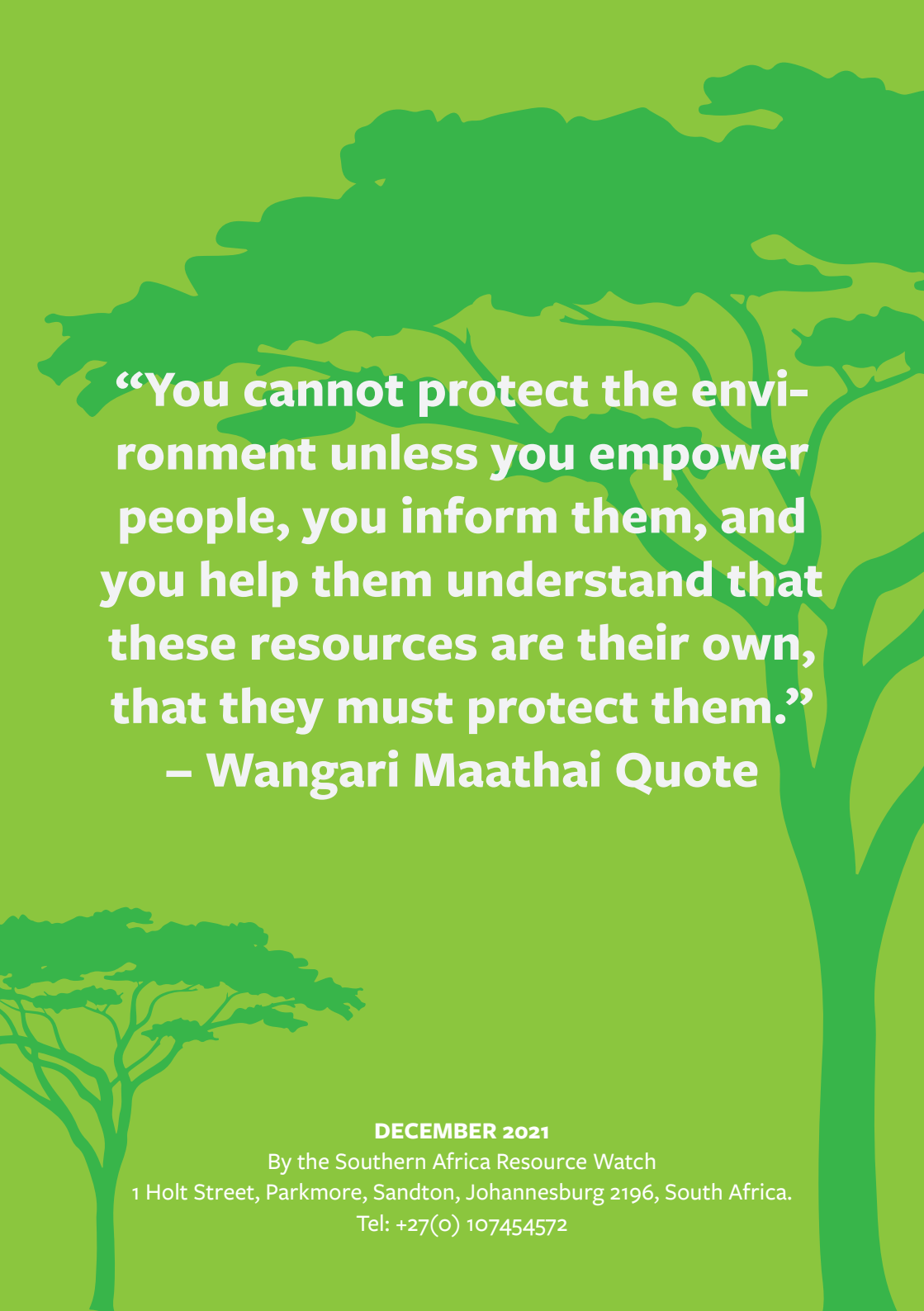# Toolkit for Effective and Sustained Community Participation, Grievance Redress Mechanism and Environmental Justice Financing in Mining Projects

"You cannot protect the environment unless you empower people, you inform them, and you help them understand that these resources are their own, that they must protect them."
– Wangari Maathai Quote

Toolkit for Effective and Sustained Community Participation, Grievance Redress Mechanism and Environmental Justice Financing in Mining Projects

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Southern Africa Resource Watch

Southern Africa Resource Watch (SARW) is a regional non-profit organisation that promotes the transparent and accountable use of natural resources in Southern Africa. SARW's mandate is to monitor corporate and state conduct in the extraction and beneficiation of natural resources in this region, which hosts all strategic minerals that are vital in the transition towards green energy. SARW also assesses the extent to which mining activities uplift the economic conditions of communities in the Southern African Development Community (SADC). SARW operates in the 12 countries in the region with active offices in the Democratic Republic of Congo (DRC), South Africa, Zimbabwe, and Zambia.

The organisation was founded in 2006 by the Open Society Initiative for Southern Africa (OSISA) as a semi-autonomous project. SARW's establishment is related to the global natural resources boom of the 2000s but outlived that specific economic boom as well as numerous extractive industry cycles over the years to become an independent watchdog in 2018. The focus of the organisation is to ensure that Africans benefit optimally from the extraction of natural resources on their land.

For the past 15 years, SARW has documented evidence-based research on the activities of mining companies and their impact on the rights of women, men, youth and children in local communities living adjacent to their operations. We have produced research papers and publications with the aim of creating awareness of the specific dynamics of natural resources in Southern Africa and building an understanding of the regional geopolitical dynamics of resource economics. Our research has profiled mining companies' relationship with communities and systematic human rights abuses perpetrated by extractive industries.

We have worked towards building capacity for communities and civil society to hold governments and corporations accountable. Our programmes have facilitated the participation of communities in the decision-making processes related to how natural resources are managed. In the DRC, SARW has signed a Memorandum of Understanding with two decentralised entities to build their capacities on how to manage revenues they receive from mining companies.

Our organisation has been active in the process of revising the mining code and regulations in the DRC that culminated in their promulgation in 2018. It has been a model of successful tripartite collaboration between government, companies and civil society. We have trained local activists in countries where we work to lead the mobilisation of communities of those who are affected by mining activities.

SARW is committed to promoting human rights and environmental protection in resource extraction activities. We collaborate with like-minded organisations to promote extractive industries that create wealth for local communities and support SADC governments in building accountable and transparent management of natural resources.
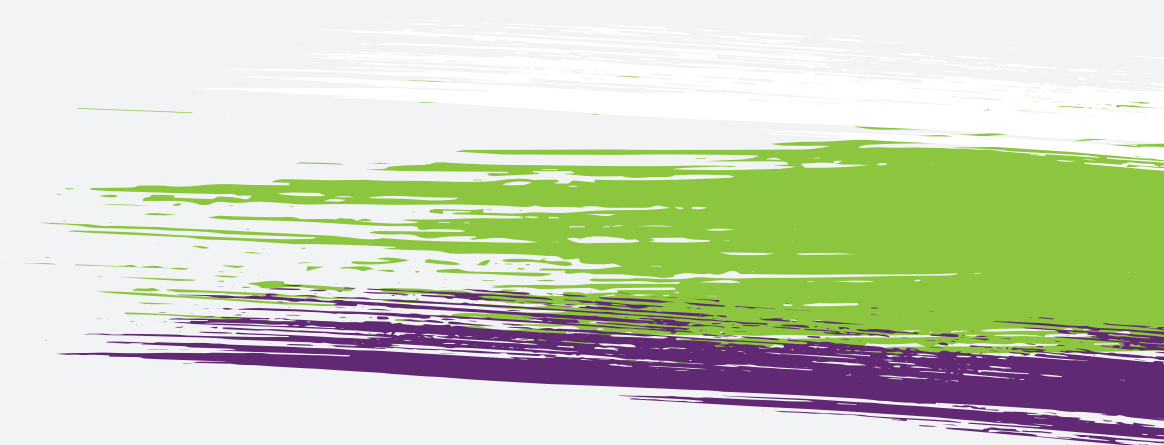
SARW is aware of the impact of extractive industries on climate change and has partnered with Konrad Adenauer Stiftung (KAS) on a project to address the nexus between climate change and the extractive industries in Southern Africa. SARW continues to strengthen corporate and state accountability in natural resources extraction in a way that ensures that these activities occur in a peaceful and collaborative manner.

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Definitions

Access to Remedy — refers to a victim's right to compensation for any human rights harm they have suffered.

Remedy — in the context of human rights, a remedy must "make good" any human rights harm that has occurred.

Civil Society Organisation (CSO) – an organisation that is distinct from the family, state, or market and is created by individual and collective actions to advance shared interests.

Community – a group of people who share something in common, such as norms, values, identity, and often a sense of place such as a village, town, or neighbourhood.

Community-Based Organisation (CBO) – an organisation that provides social services or campaigns at the local level and relies mainly on community members for labour, material, and financial support.

Due diligence – refers to two separate concepts in business and human rights. Unless stated otherwise, all references to due diligence in this handbook refer to the responsibility of the business to respect human rights.

Duty-Bearer — actor that has an obligation (in the case of states) or responsibility (in the case of a company or other non-state actor) to respect, protect, and realise human rights and abstain from human rights abuses or violations.

Duty to protect – the term used in the UN Guiding Principles on Business and Human Rights to refer to actions a state must take to prevent, investigate, punish, and redress human rights abuses by businesses.

Development Financial Institutions (DFI) – any actor that provides financial services. This includes privately owned and State-owned financial institutions, as well as international financial institutions.

Free, prior, and informed consent (FPIC) – the principle that a community has the right to give or withhold its consent to proposed projects that may affect the lands they customarily own, occupy or otherwise use.

Grievance –a complaint that an individual or community has when they believe they have been wronged.

Grievance Mechanism – refers to any kind of process that aims to resolve the complaints of individuals or communities who believe they have been wronged.

Guiding Principles on Business and Human Rights – a non-binding UN instrument that represents a global standard for preventing and addressing human rights abuses linked to business activity.

Human Rights Abuse – ddamage to or denial of a person's human rights by a person or people who are not state officials or acting on behalf of the state. When a state carries out a similar act, it is called a human rights violation.

Human Rights-Based Approach – empowering people to understand and claim their rights and to increase the ability and accountability of individuals and institutions responsible for respecting, protecting, and fulfilling rights.

Human Rights Defender – a person who promotes and protects human rights

Vulnerable groups – a group of people who, because of their gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by a project, activity, or natural disaster than others.

ACRONYMS

ACHPR - African Charter on Human and People's Rights.

CAT - Convention against Torture and other cruel, Inhuman or degrading treatment or Punishment

CBO - Community Based Organisation

CEDAW – Convention on the Elimination of all forms of Discrimination Against Women

CERD – Convention on the Elimination of Racial Discrimination

CRC – Convention on the Rights of Children

CRPD - Convention on the Rights of Persons with Disabilities

CSO – Civil Society Organization

CSR – Corporate Social Responsibility

EITI – Extractive Industries Transparency Initiative

GRM - Grievance Redress Mechanism

HRBA – Human Rights Based Approach

HRDD - Human Rights Due Diligence

ICCPR - International Covenant on Civil and Political Rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

ICMW - International Convention on Migrant Workers and their Families.

IFC – International Finance Corporation

NGO – Non – governmental organization

OECD - Organization for Economic Co-operation and Development

SDG - Sustainable Development Goals

SME – Small Medium Enterprise

UDHR - Universal Declaration of Human Rights

UN – United Nations

UNGPs - United Nations Guiding Principles on Business and Human Rights

ABOUT THIS TOOLKIT

Effective community participation, grievance mechanisms, and environmental justice in mining operations are essential to preventing and mitigating the adverse impacts of mining operations on local communities, the environment, and individuals or stakeholders.

As an organisation, SARW works for participatory, transparent, and accountable utilisation of extractive resources in a manner that optimises transformative social and economic benefits and inter-generational equity, with sensitivity to environmental and human rights impacts.

It is this extensive experience in the SADC region that has provided the organisation with a resource base of practical and hands-on methodologies for developing and implementing different kinds of advocacy in the subject matter.

The aim of this toolkit is to ensure that there are strategies for affected communities and individuals to advocate for effective and sustained community participation, grievance redress mechanism and environmental justice through enhanced transparency, good governance, and accountability among mining projects.

It is intended to provide concrete tools for appropriate actions/ strategies to all stakeholders that include community members, environmental defenders, hu-

man rights defenders, traditional leaders, civic leaders, regional and national leaders who work with affected communities.

We hope it will contribute to regional and global endeavours to build and promote responsible business conduct among mining companies and development finance institutions.

Stakeholders should not be overwhelmed with what is provided in the toolkit but should rather treat it as a pool of ideas and strategies to effectively respond to mining impacts.

It is important for respective communities to identify issues affecting the community and choose the most effective actions for the situation. The effectiveness of these actions will depend on the local situation, national and regional legal and policy framework and, most importantly, remedy mechanisms for DFIs.

While several publications on toolkits exist, this toolkit builds and combines different strategies from existing guidelines such as the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, the United Nations Guiding Principles on Business and Human Rights, ICMM principles, Equator Principles, Global Compact, and many other guidelines and principles. The tool kit development process was also informed by five-country assessment studies on the development financing by business and financial institutions on human rights and community participation of mining companies in South Africa, Mozambique, DRC, Zimbabwe, and Zambia.

PURPOSE OF THE TOOLKIT

The toolkit aims to contribute towards building an environment for responsible business conduct in mining projects, specifically by strengthening the capacity for effective and sustained community participation, the grievance redress mechanism and environmental justice financing. This is expected to be achieved by:

● Fostering constructive working relationships and alliances among communities, companies, and governments to achieve effective and sustained community participation, grievance redress mechanism and environmental justice financing in mining projects.

● Improving opportunities for the sustainable development of communities around mining and metals operations and regions during all phases of the mining and metals cycle.

● Providing guidance on how members of the

communities, human rights activists and environment defenders would strongly be involved in community participation, grievance redress mechanism and advocate for environmental justice financing in mining projects.

● Building capacity within governments, companies, and communities to contribute towards the achievement of sustainable development. This includes Sustainable Development Goals, especially those related to environmental justice.

● Enhance capacity of communities and individuals to advocate for mitigation measures on the adverse impact of business operations.

● Provide insight on how to develop and implement fundraising strategies; strategies for effective stakeholder engagement; and to carry out assessments on the many challenges communities may be facing due to the negative effects of business operations.

TARGET AUDIENCE

The toolkit targets affected community members, human rights defenders, environmental justice defenders, individuals, government departments/agencies, companies, Civil Societies Organisations, NGOs, DFIs, etc. who work to promote responsible mining (business) conduct where human rights are highly integrated in operations. In addition to being a valuable resource to key stakeholders (communities, individual, government, companies), the toolkit is also a useful guide for:

● Researchers or practitioners interested in the subject matter.
● Community leaders in the vicinity of the business.

● Civil society groups such as non-governmental organisations and community-based
  organisations.
● Policy makers and civic leaders.
● Consulting firms or individuals who are commissioned to carry out or design measures aimed
  at improving community justice.
● Academics, training, and education providers.
● Trade unions, business associations and mining services companies.
● Any others interested in community participation, grievance redress mechanisms and environmental justice.

AN OVERVIEW OF MINING COMPANIES IN THE SADC

In the SADC region, the extractive industries play a significant role in the economic growth and development of national economies. The region is endowed with different types of mineral resources which are key drivers to social and economic development growth.

The extractive industry, especially mining, accounts for more than 50% of exports and is the largest foreign exchange earner. It also provides employment opportunities and contributes to building trade relations with the rest of the world.

For example:

(a) In Zambia, since the liberalisation of the economy in the early 1990s, there has been a considerable increase in foreign direct investment in the mining sector.

The industry is dominated by copper production (73.6& of the total production[1]), with a small share of cobalt, gold, coal, manganese, limestone (cement) and semi-precious stones.

(b) This scenario is also seen in South Africa where the mining sector continues to account for 9% of the GDP, 12% of total investment, 30% of merchandise exports and 8% of the total non-agricultural employment.[2]

According to the South African Chamber of Mines, the mining sector in South Africa accounted for 66% of the country's exports in 2020. The sector, therefore, plays a vital role as a foreign exchange earner from the trade of minerals such as gold, platinum, diamond, and coal.

In the DRC, the extractive sector is also the main driver of economic development in the country, it is the world's largest producer of cobalt despite being endowed with other types of minerals such diamond, gold, copper etc which are also mined. This makes mining the main source of revenue for the country. According to data from EITI (2007-2017), revenues collected in the mining sector surpassed that of the oil and gas sector in 2010, when 63% of the US$ 875 million came from mining companies.

In 2017, the sector generated US$1.68 billion, accounting for 17.4% of the GDP, 55.16% of the total government revenues, 99.3% of total exports and quarter of the total employment.

Dependency on the mining sector is also being observed in other SADC countries despite not being individually highlighted in this toolkit.

Studies and reports conducted by various scholars and institutions (i.e., EITI) show that almost all the SADC countries have in the recent decades attracted huge Foreign Direct Investment (FDI) in the mining sector. Therefore, mining activities are taking place all around the SADC countries despite the varying degree or magnitude and the kind of minerals being mined.

However, the extractive industries have been destructive to most surrounding communities, especially to indigenous and farming communities. There have been reports of water and air pollution, displacement of people, destruction of land, denial of freedom of expression and association, child labour, threats and killing of human rights defenders, environmental degradation, and resource depletion, which have often proven devastating to local ecosystems and has threatened indigenous cultures and livelihoods[3].

In most SADC countries with weak laws on business and human rights, mining companies have operated irresponsibly, impacting the environment negatively and causing harm and irreparable damages. This has contributed to climate change due to the environmental degradation around the mining communities. The harm and degradation affect the health and wellbeing of individuals, groups and communities because of the toxic environments created by the mining companies."[4]

It has been realised that mining companies operating in SADC countries with a weak environmental protection legal and policy framework deliberately flout principles or guidelines of responsible business conduct resulting in less or no strategies to mitigate adverse impacts of their operations.

Such mining companies neglect to put in place measures to uplift the welfare nor build the capacity of affected communities to seek remedy or reparation where mining companies violate human rights standards. The situation is usually exacerbated by governments that are preoccupied with relaxing laws just to attract FDI for their targeted economic growth. This has continued to contribute to increased climate change effects caused by poor environmental management practices.

Most countries in the SADC region continue to supervise mining operations through the central government without effective devolution of power to the local authority. This doesn't seem to inspire local authorities to formulate appropriate and adequate laws to influence effective environmental management.

Furthermore, it creates challenges for effective and sustained community participation, grievance redress mechanism and environmental justice. For example, in Zambia, it is difficult for communities to veto any mine operations in their surroundings that have been sanctioned by the central government. By law, ownership of land doesn't include minerals below the surface of the land.

This implies that those with mining licences have more authority over the land and minerals. There are no deliberate measures by mining communities to comply with the SADC mining protocol, DFIs grievance redress mechanism and Environmental, Social and Governance Standards other than the fulfilling requirements of conducting an Environmental Impact Assessment at the inception of the project.

With contemporary changes in the human rights discourse in which business and human rights are being integrated by the United Nations, DFIs and other accountability institutions like the Compliance Advisor Ombudsman

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[1]   Zambian Ministry of Finance, Annual Economic Report 2017.
[2]   South Africa Chamber of Mines 2014.

[3]   Horowitz et al, 2018 see: sciencedirect.com/science/article/pii/S2214790X20302732#bib0010
[4]   Makua M. Pretty, Kola O. Odeku (2017) "Harmful mining activities, environmental impacts and effects in the mining communities in South Africa: a critical perspective"

(CAO), some countries in the region have been undertaking reforms aimed at improving accountability, transparency and community participation in the extractive sector.

However, there has been some level of scepticism resulting in reforms that fall short of full disclosure of the terms and conditions entered into with investors or names of the DFIs supporting mining projects.

Most governments in the SADC region have state secret laws in place that give them wide powers to control the release and publication of information deemed potentially damaging to the national interest. Under such laws, the government and companies reduce levels of transparency, accountability, community participation, effective grievance mechanism and environmental justice, which increases the potential for corruption.

Confidentiality clauses are common among extractive sector contracts and are usually ac-

cessed by a selected few. This creates challenges for communities and other environmental defenders to refer to the terms of the contract when seeking community justice against adverse impacts caused by mining operations.

Community justice provides a base for fighting against social, political, cultural and environmental factors that sustain irresponsible business conduct by mining companies. Availability of mechanisms for community participation, report of grievances and environmental justice can result in community members, individuals and organisations working together to find sustainable solutions to resolve the adverse impacts of business operations.

This improves social justice by focusing on the root causes of social, economic, and environmental injustices. It strives to include the people who are impacted by those injustices as decision-makers and leaders.[5]

5   Social Justice Community Foundations, Rapid Response Funds, and Intermediaries (resourcegeneration.org)

HUMAN RIGHTS IN CONTEXT

Defining Human Rights
Human rights are basic rights and freedoms that belong to every person in the world, from birth until death. These rights are based on dignity, fairness, equality, and respect without any form of discrimination. Several developments have taken place in the human rights area and community development in general as well as in the extractive sector. It is internationally recognised that businesses, including mining companies, must respect human rights for all without any form of discrimination.

Mining Sector and Business and Human Rights
There are a series of international legal frameworks, standards and rules which stipulate the obligations of various parties to protect human rights in all areas of business operation. They provide principles that contribute towards social and economic development through enhanced accountability, transparency, good governance, and equity in business operations. These include:

● United Nations Guiding Principles on Business and Human Rights.
● International Council on Mining and Metals (ICMM).
● Global Compact.
● The Escazú Agreement for environmental sustainability in Latin America and the Caribbean

● Equator Principles, and others.

I. United Nations Guiding Principles on Business and Human Rights
UNGPs on Business and Human Rights are the global standard for preventing and addressing the risk of adverse human rights impacts linked to business activities.

To avoid infringing on the human rights of others, the UNGP requires businesses/companies to put in place measures aimed at preventing and reducing the impact of business operations on the communities.

These measures include a policy commitment; having a human rights due diligence process to identify, prevent, mitigate and account for how the company addresses its impacts on human rights; and instituting remedy mechanisms such as grievance redress mechanisms to resolve any adverse human rights impacts.[6] This requires applying a human rights lens to existing policies, procedures and practices, as well as being open to adapting and improving these to incorporate human rights considerations not previously captured.

The UNGP is basically an instrument that gives reference to international human rights treaties whilst setting out standards, obligations and responsibilities for the state and businesses (mining included) on how to prevent, address

6   Ruggie, J, (2011) Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, May 2011

and remedy human rights abuses in business operations.

In terms of objective achievement, its principles can be grouped into three pillars, which can be interlinked, interdependent, and complementary.

Table 1 gives an analysis of the three core pillars of the UNGP's Protect, Respect and Remedy framework.

Table 1:

Cluster	Measure
Protect	• States have a duty to protect against human rights abuses by third parties, such as business, through their policies, regulation, and adjudication. its own duties.
Respect	• Companies have a responsibility to respect human rights, that is, to avoid infringing on the rights of others and to address any infringements with which they are involved, i.e., "do no harm", regardless of whether the State takes up its own duties. • Companies are required to implement measures aimed at preventing, reducing impact of their operations on the communities by having in place a policy commitment, a human rights due diligence process to identify, prevent, mitigate and account for how the company addresses its impacts on human rights and having processes in place for the remediation of any adverse human rights impacts.
Remedy	• Victims of business-related human rights harm must be provided with effective access to remedy. States and companies must take steps to ensure that there are effective and accessible judicial and nonjudicial remedies that are available to people whose human rights are violated. • Non-State-based GRMs should also be available. In particular, business enterprises should establish or participate in effective operational-level GRMs for individuals and communities who may be adversely impacted, to make it possible for grievances to be addressed early and remediated directly.

II. International Council on Mining and Metals (ICMM)

The ICMM is an international organisation dedicated to creating a safe, fair and sustainable mining and metals industry. Its standards and principles are the codes of conduct that establish best practices in the mining sector. The ICMM has cardinal important principles and standards that mining communities, central and local governments, human rights defenders, environmental defenders, mining companies etc. are to understand and ensure that they are integrated into the mining company's operation

The principles include:

1. Implement and maintain ethical business practices and sound systems of corporate governance.
2. Integrate sustainable development considerations within the corporate decision-making process.
3. Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.
4. Implement risk management strategies based on valid data and sound science.
5. Seek continual improvement of our health and safety performance.
6. Seek continual improvement of our environmental performance.
7. Contribute to conservation of biodiversity and integrated approaches to land use planning.
8. Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products.
9. Contribute to the social, economic and institutional development of the communities in which we operate.
10. Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.

III. United Nations Global Compact

This is a United Nations pact that encourages businesses and firms worldwide to adopt sustainable and socially responsible policies, and report on their implementation. These are guidelines for DFIs when assessing whether specific businesses qualify for financial and technical support. Its principles hinge on human rights, labour rights, environment and being against corruption.

Businesses that obtain or aspire to obtain financial and technical support from DFIs are expected to implement measures aimed at upholding human rights, respect labour rights, exercising restraint from adverse impacts on the environment and do not tolerate corruption (directly or indirectly) in their dealings or operations.

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These are explained as follows:

Cluster	Measure
Human Rights	• Businesses should support and respect the protection of internationally proclaimed human rights. • Make sure they are not complicit in human rights abuses.
Labour	• Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining. • The elimination of all forms of forced and compulsory labour. • The effective abolition of child labour. • The elimination of discrimination in respect of employment and occupation.
Environment	• Businesses should support a precautionary approach to environmental challenges. • Undertake initiatives to promote greater environmental responsibility. • Encourage the development and diffusion of environmentally friendly technologies.
Anti-Corruption	• Businesses should work against corruption in all forms, including extortion and bribery.

IV. Equator Principles.

These are principles that were adopted by financial institutions for determining, assessing, and managing environmental and social risk in project finance. They are standards for due diligence to support responsible risk decision making. They serve as a common baseline and risk management framework for financial institutions to identify, assess and manage environmental and social risks when financing projects.

Where it is completely inevitable and unavoidable, negative impacts should be reduced, mitigated and or compensated for appropriately.

Compliance with the EPs contributes to increased attention and focus by businesses on social/community responsibility, including robust standards for indigenous people, labour standards and consultation with locally affected communities with the Project Finance market. They aim to achieve common environmental and social standards.

OVERVIEW OF THE 10 EQUATOR PRINCIPLES	
Principle 1	• Review and Categorization of projects in terms of level of their impact to social and environment risks.
Principle 2	• Environmental and Social Assessment. This principle proposes for accurate, adequate, and objective evaluation of the proposed project. The developers are required to propose measures to minimize, mitigate and where residual impact remains, to compensate or remedy for risks and impacts to workers, community, and environment, in manner relevant and appropriate to the nature and scale of proposed project. It should refer to UNGPs on Business and Human Rights.
Principle 3	• Applicable Environmental and Social Standards must be compiled e.g. relevant country laws pertaining to environmental and social risks.
Principle 4	• Environmental and Social Management System and Equator Principles Action Plan. Develop ways of attending to the gaps observed through the Assessment
Principle 5	• Stakeholder Engagement where all affected communities (indigenous people included) participate and are consulted in an informed manner, and without discrimination.
Principle 6	• Grievance Mechanism, this principle requires clients to establish effective grievance mechanisms which are designed for use by Affected Communities and workers, as appropriate, to receive and facilitate resolution of concerns and grievances about the Project's environmental and social performance. The mechanism should seek to resolve concerns promptly, using an understandable and transparent consultation that is culturally appropriate, readily accessible, at no cost, and without retribution to the party that originated the issue or concern. It is required that Affected Communities and others must be informed of the grievance mechanism. Further, its mechanism should not impede access to judicial or administrative remedies.
Principle 7	• Independent Review which requires engagement of an independent expert to conduct an objective environmental and social assessment on the impact of the project.
Principle 8	• Covenants. This principle requires the developer (recipient) to enter into a covenant to comply with the host country's environmental and social laws, regulations and permits in all materials.

OVERVIEW OF THE 10 EQUATOR PRINCIPLES

Principle 9	● Independent Monitoring & Reporting.
Principle 10	● Reporting & Transparency.

In all the standards and principles that have been discussed, businesses are required to prevent or reduce the risk of negative impacts on the affected people/communities. Therefore, all mining businesses, whether transnational or otherwise and regardless of their size, sector, location, ownership, and structure, are required to conduct their businesses responsibly without adverse impacts on the environment, communities, individuals, workers, and others.

HUMAN RIGHTS DUE DILIGENCE

Human rights due diligence involves the actions taken by a company to identify actual and potential human rights infringements — and act upon it.

Principle 15(b) of UNGPs states that business enterprises should have appropriate policies and processes in place including "a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights".

This being a requirement for responsible business conduct, affected communities and other stakeholders should take deliberate steps to assess whether mining companies operating in the region are carrying out due diligence. This is an important component of responsible business conduct, it takes cognisance of the changing social, legal, political, and environmental atmosphere that could interfere with the effec-tiveness of risk management measures set out in the initial project setting Environmental and Social Impact Assessment.

Over time initial mitigation measures may not be effective to respond to the changing situation. This should cover adverse human rights impacts that mining companies may cause or contribute to through their own activities, or which may be directly linked to their operations, products or services by its business relationships.

This can only be implemented effectively if companies prioritise community engagement and understand adverse impacts and risk associated with their operations. Therefore, communities must embrace this opportunity by engaging and participating in the identification, prevention and mitigation of impacts and holding mining companies accountable.

Strategies for consideration on HRDD

Note: Affected communities/stakeholders must assess human rights performance of companies on actual, potential, and perceived risks rather than the features of management process performance and procedures set out. Communities should assess whether mining companies are upholding fundamental human rights and respect cultures, customs, and values in deal-ings with employees and others who are affected by mining operations. Implementation of HRDD is the means rather than an end.

Effective stakeholder engagement supports accurate assessments of human rights impacts, by enabling companies to understand the concerns of potentially affected stakeholders.

This can be achieved through the following action:

a) Develop a checklist to assess whether a mining company has put in place a Human Rights Due Diligence mechanism.

b) Whether HRDD is a continuous process where data is gathered to understand specific human rights risks and implement effective actions to prevent and miti-gate them.

c) Build capacity of affected communities/individuals and stakeholders on inter-national human rights standards with special reference to the UNGPs, OECD gGu-idelines and many other guidelines that have influence on the extractive sector.

d) Engage mining companies for the initial Environmental and Social Impact As-sessment (ESIA) report to familiarise themselves with strategies on how to safe-guard communities and the environment from adverse impact of the mining op-erations.

e) Review measures that the mining company was applying to identify and devel-op sufficient risk management approaches effectively and responsibly.

f) Assess whether the risks observed are being communicated to affected com-munities or stakeholders, verify whether mitigation measures being initiated are developed with the involvement of the affected community/stakeholders. This is to make such measures culturally appropriate and meet reparation desires/claims for the affected community/individuals and stakeholders.

g) Affected communities/individuals and stakeholders, human rights enforcement are required to advocate for mining companies to comply with responsible busi-ness conduct principles.

h) Monitor and audit the process to track human rights impact and the effective-ness of measures put in place to prevent and mitigate impacts on mining opera-tions.

INITIATING EFFECTIVE GRIEVANCE REDRESS MECHANISM IN MINING OPERATION

Experience has shown that even where there are best policies and practices in place, extractive operations cause or contribute to adverse impacts to human rights. Therefore, grievance mechanisms provide an opportunity to remedy the situation. A grievance mechanism offers a formalised means through which individuals or communities (e.g. including workers in supply chains, consumers and local communities) can raise concerns about the adverse impact of the mining company, and seek remedy.

Access to remedy is an essential aspect of human rights protection and promotion in business operations. Several GRM have been developed and are being used by various business entities including mining. These may include internal and external GRMs.

Grievance mechanisms start somewhere and with someone. It is common practice for the company's community relations, external affairs, human resources, or legal department to be charged with initiating the effort. These offices, however, are not the backbone for resolving community grievances. Grievance resolution is everybody's business, from the company's core business operations, to production, to environmental management.

A grievance is basically an existence of actual or perceived dissatisfaction or feeling of injustice that is related to an adverse impact of the mining operation. It is a concern or complaint raised by an individual or affected members of the community impacted by mining operations. This could have been as a result of a real or a perceived impact of operation and requires reparation.

A remedy in international law is categorised as a human rights issue. When human rights are breached, the rights holder or aggrieved should have the opportunity to seek remediation from the perpetrators.

Remedy is conceptually both the processes involved in providing remedies and the outcome of the process, including reparations provided.

Remedies play several roles:
(a) redress, making victims "whole" and returning them to the "status quo ante" (the previously existing state of affairs);
(b) prevention, pre-empting future abuses; and
(c) deterrence, discouraging others from causing harm.[7]

Remedies are central to the "Do No Harm" principle as well as sustainability objectives and development. Reparations can be in any of the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

In respecting human rights, UNGPs require businesses to "establish or participate in effective operational-level grievance mechanisms to provide opportunities for affected individuals and communities who may be adversely impacted."

This is in line with Principle No 15(c) and 22 of the UNGPs on business and human rights. Further, the development of GRM is also in line with the principles from guidelines that DFIs use to assess compliance by its clients seeking project financing. Based on international human rights standards, mining companies must develop GRMs that meet the minimum criteria of effective GRMs.

CRITERIA OF AN EFFECTIVE GRIEVANCE REDRESS MECHANISM

Accessible: This requires that GRMs are community centred. It must not be unnecessarily difficult, it should be simple, clear, understandable and known by all segments of affected communities or stakeholder groups for whose use they are intended. There should be adequate assistance for those who face particular barriers to access like cost, culture, literacy, distance etc.

Legitimate: GRMs should inspire confidence and trust from the affected communities or stakeholder groups for whose use they are intendeds.

Predictable: Providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcomes available and means of monitoring implementation.

Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms. All complaints should be treated without any form of discrimination regardless of race, status, political affiliation, tribe or education of the reporter. All aggrieved parties should be given equal opportunity to be heard by the responsible person without prejudice.

Transparency: Members of the community or the aggrieved party should have the right to information on the GRM and the responsible officer handling the case, should be informed about its progress, and provided with sufficient information about the mechanism's performance. This will build confidence in its effectiveness.

Rights-compatible: Ensuring that outcomes and remedies accord with internationally recognised human rights.

Cultural Appropriateness: GRM must be designed on specific cultural attributes as well as traditional mechanisms for raising and resolving issues. It is believed that concerns of significantly different groups and subgroups could be effectively received and appropriately addressed e.g. grievances on burial sites that could be mining project sites.

Social Licence to Operate: Companies' Social License to operate obliges them to engage with communities before and during the mining activities. A good Best GRM is one that engages a community at the license negotiation. Prior and planned engagement creates an informed community, and it consolidates and build trust between community, the company and government. Any well-structured engagement strengthens and creates communication channels for sustained future grievances resolution. Any sustainable and feasible mechanism require financial support to even allow for the aggrieved party to seek and access expert advice.

7 United Nations publication, issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR). (2022) Remedy in Development Finance: Guidance and Practice

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DEVELOPMENT OF GRIEVANCE REDRESS MECHANISM

When Developing a Grievance Mechanism for Existing Mining Projects

1. Assess the kind of grievances, key actors, causes, and costs.

● What are the current types of grievances related to company operations? What additional issues do people anticipate? What are the possible causes of these grievances? How often do they seem to arise?

● Whom do the community members blame for the issues (the company, a particular employee, a subcontractor, or others)?

● Whom do the issues being raised typically affect:; individuals, whole families or communities? Why are these grievances arising?

● Are there structural problems that could be changed to reduce conflicts, such as different policies, rules, roles, decision-making processes, communication systems or a better division of labour?

● What are the costs of these conflicts for the company and the community? (Costs should be discussed not only in monetary terms but also in broad terms, such as relationship costs, time and reputation.) How severe is the impact?

● Who will use the grievance mechanism? How do users differ? Are they from different ethnic, tribal, language, or religious groups? Do they have different levels of education? Are some rural and some urban? Are there some women and some men? Based on any of these differences, do they maintain different assumptions about conflict and its resolution that will affect how they feel about a new grievance resolution mechanism?

● Who will have a locus standi (the right to be heard in court) to bring a complaint (local individuals, local community groups, local or national NGOs, international NGOs, local governments, regional or national governments)?

2. Review existing systems for handling grievances.

● How are complaints handled now? Identify formal, informal and ad hoc approaches inside the company for addressing grievances.

● Are there mechanisms for early intervention or resolution so cases do not escalate?

● How well are any of these systems working? Are the existing channels for dealing with community complaints able to handle future grievances?

● Why are particular procedures being used or not used?

● Where are the gaps?

● What are the existing barriers for those who might want to complain? Identify existing preventive measures.

● What form of stakeholder engagement does the company have in place?

● How does the company communicate with the community?

● Does the company have methods for anticipating potential conflicts?

3. Review on the existing community systems that are used for handling grievances and assessing the capacity of local dispute resolution systems

● How does the community typically handle conflicts? (Consider traditional systems based on clan, religious, or other customary institutions; government systems such as an office of human rights; or privately created systems such as centres for mediation, arbitration or conciliation.)

● Are trusted institutions within the community engaged in resolving grievances, and might they play a role in the grievance mechanism? Evaluate dynamics working for or against the introduction of a grievance mechanism inside and outside the company.

● Are there existing mechanisms that could be viewed as competing?

● Does the company have the support of senior management?

● Have both contract employees and others been consulted and is there a plan to win their support?

Development of Grievance Mechanism for New Mining Project

● **Review the existing community systems that are used for handling grievances and assess capacity of local dispute resolution systems**

● How does the community typically handle conflicts? (Consider traditional systems based on clan, religious, or other customary institutions; government systems, such as an office of human rights; or privately created systems, such as centres for mediation, arbitration or conciliation.)

● Are trusted institutions within the community engaged in resolving grievances, and might they play a role in the grievance mechanism?

1. Evaluate dynamics working for or against the introduction of a grievance mechanism inside and outside the company.

● Are there existing mechanisms that could be viewed as competing?

● Does the company have the support of senior management?

● Does the company work with contractors to establish procedures consistent with its own?

Grievance Redress Mechanisms

It is recommended that DFIs:
- Highlight the multiple roles that GRMs play in:
- Informing decision-making.
- Providing early warning and timely resolution of concerns, thereby avoiding escalation of problems into social conflict and potential project delays.
- Serving as an accountability and remedy mechanism.
- Improving due diligence and learning through identifying trends and themes arising in connection with grievances.
- Review their overall GRM architecture, assess the relative accessibility and effectiveness of the various components taking into account the effectiveness criteria in annex 2, and communicate the results publicly.
- Require full transparency and early consultation with communities and workers in connection with: (a) the design and functioning of the GRM; (b) the choice of remedy, and (c) quality and impact of remedial outcomes.
- Ensure that project-affected people are able to exercise an informed choice about what GRMs (including from among IAMs in co-financed projects) and procedures (conflict resolution and/or dispute resolution) to utilise, without prejudice to other judicial or administrative mechanisms in parallel.
- Require clients to inform affected communities about the remedy mechanisms available in addition to IAMs and GRMs and prohibit clients from obstructing or lobbying governments to restrict access to remedy.

- Ensure that GRMs have the mandate and flexibility to address a full range of reparations, alone or in combination, as the case requires, and that outcomes are non-discriminatory (e.g. do not privilege men over women), prompt, adequate and effective to address the given harms.
- Require that grievance redress processes seek to redress imbalances in power, including through:
  - Encouragement of (local and international) representation of claimants.
  - Special measures to support marginalised or vulnerable people (including by making information available in appropriate languages and formats, building the capacities of claimants and advising on sources of technical, financial or other support).
  - A presumption of the legitimacy of complaints.
  - Fair and reasonable rules regarding the burden of proof.
- Require clients to report periodically and publicly on the effectiveness and outcomes of their GRMs.
- Clarify and strengthen requirements regarding financial intermediaries' GRMs in line with the Guiding Principles on Business and Human Rights' effectiveness criteria.
- Ensure that basic due process principles and fairness are integrated within the requirements of safeguard policies for grievance redress processes, including requirements relating to:
  - The provision of reasoned decisions.
  - The production, access and control of information pertaining to the claims.
  - The structural independence of GRMs from the clients' operations.
  - Separation of investigations and dispute resolution functions.

- Develop specific assessment/diagnostic tools and guidance for DFI staff concerning the design and operation of an effective GRM, addressing the following questions:
  - **Functions.** Does the mechanism have the appropriate: (a) mandate and authority to address and resolve concerns raised by stakeholders and to influence project design and implementation decisions, (b) staffing, (c) processes, (d) budget;and (e) oversight?
  - **Effectiveness.** Does the mechanism meet the effectiveness criteria and indicators in annex 2?
  - **Interactions with other mechanisms.** Particularly in situations in which the mechanism is operating in fragile and conflict-affected contexts or otherwise dealing with potentially serious issues, is there a clear framework governing interactions with and referrals to other mechanisms in the national and international remedy ecosystem?
  - **Protection of complainants.** Given closing civil space and the increasing risks and threats faced by complainants and communities, do GRMs have clear policies and robust, comprehensive procedures to prevent and respond to intimidation and reprisals?

Source: United Nations publication, issued by the Office of the UN High Commissioner for Human Rights, 2022. Remedy in Development Finance: Guidance and Practice

Actions that can contribute to the development of GRMs
- Develop specific approaches acceptable to communities for raising and resolving grievances, depending on volume and types of grievances that are anticipated, and the remedies the company can offer. In this process, information disclosure and stakeholder consultation is paramount.

- Determine the level of detail for grievance mechanism procedures (for example, a brief procedure document or an elaborate policy, detailed guidelines for community/staff, and procedures for contractors).

- Decide on financial resources to invest in the procedures for grievance receipt and tracking, such as number and locations of places where grievances can be collected, whether to establish a dedicated telephone line(s), and the type of tracking system to use (for example, a log or spreadsheet or a computerised system).

- Determine the number and requirements of personnel dedicated to collecting grievances and managing or overseeing the entire process, and the expense their training will require.
- Decide whether external resources are required, and how and to what extent to involve independent third parties.

Note: A mechanism is scaled to a project's risk and impact when specific processes behind basic grievance-handling steps, as well as associated resources, are adequate to deal with the volume and types of grievances anticipated during the project's impact assessment.

Toolkit for Effective and Sustained Community Participation, Grievance Redress Mechanism and Environmental Justice Financing in Mining Projects

Toolkit for Effective and Sustained Community Participation, Grievance Redress Mechanism and Environmental Justice Financing in Mining Projects

STRATEGIES TO EFFECTIVELY PURSUE REMEDIES

a) Legal and Policy Framework

Victims or their representatives should be familiar with the law (national or international) and any other regulatory framework governing GRMs. Claims that are not based on any policy, legal and regulatory framework would not succeed. Communities must have access to companies' grievance mechanism procedures and familiarise themselves with what regulates mining projects, including the ones that regulate DFIs that provide financial and technical support. The laws/policy could be based on local authority, traditional, central government, international human rights standards, guidelines for responsible mining conduct (e.g. Global Compact, Equator Principles, ICMM principles, OECD Guidelines for Meaningful Stakeholders Engagements in the Extractive Industry Sector).

b) Enhance Capacity

Capacity of affected communities/individuals should be built for them to have an understanding on the dos and don'ts in remedy pursuit. This includes skills to prepare grievances and negotiations. This can be done through experiential learning and peer to peer exchanges to learn new strategies from other groups.

c) Raise Awareness

It is important for all the stakeholders to be familiar with existing GMs and the kind of grievances that can be handled through them. Therefore, communities must design a plan to regularly conduct community outreach and train community members on the available GMs and how they are accessed. This can lead to a broad cross-section of the community being provided with adequate information about how

GRMs function and participating in improving GRMs where it is not offering appropriate reparation.

d) Negotiation

There must be an interactive process between mining companies and affected communities providing an opportunity for parties to settle for a mutually acceptable agreement that can be honoured by the parties concerned. If the affected community has no skills in negotiation, it is advisable to find an external expert to facilitate negotiation. The community has the right to legal counsel to help them negotiate the various legal aspects

When communities need to negotiate with mining companies, the terms below become paramount:

- Clearly stipulate the purpose.
- There must be a mutual agreement on those to represent the victims with consideration for balancing power among the team.
- Outline roles and responsibilities.
- Set standards of behaviours, principles, and procedures.
- Reasonable time limits for community representatives to consult their communities. This helps to avoid tension and prevent a company from unfairly using time pressure at key moments in the negotiations.
- Negotiation process should not block transparency and accountability to the broader public.
- Freedom of expression should be upheld.

e) Clearly state the remedy that you seek

The remedy being sought should be made clear to determine the correct mechanism that has jurisdiction to award the remedy. Lawyers or educated stakeholders can help in framing the remedies. For example, if the victim(s) are seeking financial compensation, the amount to be paid needs to be clearly stated.

Tips:
- Review formal participation opportunities provided under law.
- Identify community capacity building needs required to strengthen community participation and inform decision-making.
- Help local community members to understand the technical information (e.g., the impacts of pollution on water, health, land and climate change).

HUMAN RIGHTS AND ENVIRONMENTAL JUSTICE

There is a strong relationship between human rights and the environment. This relation is symbiotic in nature. All human beings depend on the environment in which they live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, human beings are unable to fulfil their aspirations or even live at a level commensurate with minimum standards of human dignity. At the same time, protecting human rights helps to protect the environment. According to the Special Rapporteur on Human Rights and the Environment, when people learn about, and participate in the decisions that affect them, they can help to ensure that those decisions respect their need for a sustainable environment.

Environmental damage caused by mining companies or other companies can impact a range of substantive human rights, including the rights to life, health, food, water and sanitation. Mining operations cause severe, long-term environmental damage, which are injurious to health and livelihoods.

Its negative externalities include air pollution, water pollution, and contribute to global warming causing climate change. There are growing calls for the global recognition of the right to a safe and healthy environment.

In other jurisdictions, theUS Environmental Protection Agency points out, that there is "a concept that embraces the principle that all people and communities are entitled to equal protection under environmental law". It means fair treatment of all people regardless of race, colour, or national origin and requires stakeholder involvement in the implementation and enforcement of environmental laws, regulations, and policies.

In many areas where there is a mining boom, communities are left without jobs, no economic development activities, and increased poverty. The host communities bear the brunt of negative environmental impacts and health-related issues such as cancer, asthma, respiratory illness, and cardiovascular diseases. Some communities tend to be stressed by poverty, unemployment, and inadequate access to health care or lack of access to healthy food choices.

To ensure environmental justice, it is recommended that these strategies are considered:

- Understand the legal and policy framework on environmental and risk management.
- Collect information on the potential and actual adverse impact of mining operations. This information can also be obtained from the initial ESIA and sustainability reports from the mining companies operating in the area.
- Develop an advocacy strategy on identified risks and appropriate but acceptable mitigation measures.
- Organise engagement meetings with mine management and highlight the impact of the operations on the environment and the national and international laws , and the DFI' guidelines and principles being violated.
- Advocate for mining companies to comply with and integrate environmental management standards/principles.
- Review processes on community involvement in environmental management and make their voices heard.
- Enhance community and individual right to access relevant environmental information and participate in decision

making strategies.
- Build capacity of key stakeholders and ensure that comprehensive understanding of human rights and environment is enhanced.
- Stakeholders/communities should ensure that environmental remediation and ecological restoration are guaranteed and accessible by all victims and stakeholders.
- Develop a strategic plan to advocate for the states to adopt a national framework and corresponding implementation mechanism to better protect people's human rights and prevent business-related human rights abuses.
- Hold mining companies accountable for their adverse impact on the environment according to national and international standards. It is important to know the role of environmental management agencies in holding erring companies accountable. To effectively hold companies to account for their reckless behaviour, affected communities can seek the service of experts to provide technical and legal help.
- Seeking out justice and remedy for adverse impacts caused by mining operations.
- Engage with DFIs supporting the project to achieve environmental justice. Principles governing DFIs operation provide guidance on the need to have sustainable environment management strategies

Principles on Human Rights and the Environment

1. States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.
2. States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.
3. States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.
4. States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.
5. To avoid undertaking or authorising actions with environmental impacts that interfere with the full enjoyment of human rights, states should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.
6. States should provide for and facilitate public participation in decision-making related to the environment and take the

views of the public into account in the decision-making process.
7. States should provide access to effective remedies for violations of human rights and domestic laws relating to the environment.
8. States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and respect, protect and fulfil human rights.
9. States should ensure the effective enforcement of their environmental standards against public and private actors.
10. States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.
12. States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

Source: Framework Principles of Human Rights and the Environment: The main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2018

ADVOCACY STRATEGY

World over, almost all the mining companies that operate in organised societies are legally recognised. This means operations are regulated by the legal and policy framework of the country or community. Even issues of businesses financing for community justice and environmental defenders depend on the kind of legal and policy framework obtained in the country.

In countries where laws and policies are weak and do not promote access to community justice, communities surrounding business operations suffer a great deal. Studies that were undertaken in Southern Africa show that community funding to communities is guided by the legal and policy framework that was obtained in the country. This was also the case in DRC where taxes or funds meant for the communities surrounding mines were collected by the central government and later were to be remitted to communities that follow laid down procedures. However, there are no laws that compel mining companies to pay communities directly. Without clear and easy to follow laws or policies that provide guidance on how communities can access such monies, it is difficult for affected communities to access the money.

Therefore, it is imperative for communities to develop strategies to advocate for improved community participation, grievance redress mechanism and environmental justice financing. Advocacy is an assertive form of communication or activity that promotes, protects and defends the rights of people who experience

Tips: For successful advocacy
- Identify the problem
- Define your goal and choose strategies
- Determine who can be of influence
- Determine who can undermine your efforts
- Find and create a space for advocacy
- Create a space for action plans
- Develop messages
- Create materials and data visualisation

disadvantage, or are at risk of being disadvantaged.[8]

An advocacy strategy is a combination of approaches, techniques and messages by which the planner seeks to achieve the advocacy goals and objectives.

It is imperative for community members to develop a customised advocacy strategy for respective communities. The strategy should be aimed at influencing reforms in law, policies and other measures that usually impede financing of measures that promote effective and sustained community participation, GRMs and environmental justice by businesses and other financing institutions.

Strategy for advocacy that can be considered includes:

Approach for Advocacy

1. Identify Advocacy Issue
Community members need to identify issue(s) that need to change or be improved upon. It should be picked based on how it contributes to adverse impact to the communities. To objectively identify such issues, systematic research needs to be instituted. The research should refer to discrepancies in mining operations in relation to the ESIA report, and national and international human rights standards and principles. This will also provide an understanding of root causes e.g., weaknesses in legal and policy framework in the country.

2. Prioritising Advocacy Issues
The identified issues must be assessed and prioritised based on the importance of the affected communities. This can be guided by different approaches that include relevance of the issue to be solved, resources, timeline, potential for success, level of support from affected people, and laws that support the issue etc.

3. Identification of Advocacy Goal
This requires setting out what needs to be achieved once advocacy has been implemented. As a general rule, the goal should be specific, measurable, achievable, realistic, and time-bound (SMART). If the goal identified is particularly ambitious or long-term, it should also identify more concrete short or medium-term goals. All goals being set should respond to identified problems being caused by mining operations.

4. Identification of Potential Partners
The third step is to identify the entities and/or individuals that can deliver the change that needs to be achieved. The main entities/individuals with the power to change the conduct of the business are business owners or management and policy makers and government departments/agencies providing leadership of the area where the mining company is based. It also involves identification of financing institutions that can provide financial and technical support.

5. Evaluate the Advocacy decision
It is important for the community to evaluate its decision to advocate for a particular issue. This includes assessing whether the issues are culturally appropriate, and within the legal and policy framework, human rights standards and principles, whether the issues were relevant to what needs to be resolved, whether the issues are with SMART criteria, whether the issues have support from the affected communities.

8   Advocacy Framework and Strategy - 2016 Wellways Australia Limited ACN 093 357 165

EFFECTIVE AND SUSTAINED COMMUNITY PARTICIPATION

What is Community Participation?

Community participation can be loosely defined as the involvement of people in a community in projects to solve their own problems. It's concerned with the engagement of individuals and communities in decisions about things that affect their lives. Community participation is not the same as consultation where input obtained may not influence decisions made.

Community participation is a democratic process where everyone in the community is given an opportunity to be part of the decision-making process. It is a mechanism that is inclusive in who makes decisions, contributes effectively to building the capacity of the community to be effective and efficient in managing information, understanding of issues, developing ideas and finding innovative solutions together.

This implies that communities should be involved in the development, implementation and evaluation of strategies aimed at enhancing effective and sustained community participation, grievance, and environmental justice in mining operational areas.

Why is community participation essential?
- Active participation of residents is essential to improve democratic and service accountability.
- It enhances social cohesion because communities recognise the value of working in partnership with each other and with statutory agencies.
- It enhances effectiveness as communities bring understanding, knowledge and experience essential to the regeneration process. Community definitions of need, problems and solutions are different from those put forward by service planners and providers.
- It enables policy to be relevant to local communities.
- It adds economic value both through the mobilisation of voluntary contributions to deliver regeneration and skill development, which enhances the opportunities for employment and an increase in community wealth.
- It gives residents the opportunity to develop the skills and networks that are needed to address social exclusion.
- It promotes sustainability because community members have ownership of their communities and can develop the confidence and skills to sustain development once the "extra" resources have gone.

Community participation in mining operations can only be achieved if communities are able to create and maintain better relationships between community and mining companies through effective channels of communications that enable effective community participation.

AREAS FOR COMMUNITY PARTICIPATION

Technical Project Components that affect access to resources used by the community (i.e., technical aspects such as sitting, layouts and alignments, technologies to be used, etc.).

Predicted Impacts that would affect the community's way of life, quality of life, livelihoods, etc. Project components can result in direct socio-economic and environmental impacts, including land take, air pollution, noise pollution, etc., which could translate to social impacts such as resettlement, public health risks, as well as community health and safety risks.

Proposed Management Plans to minimise, mitigate, avoid, or compensate for negative project impacts. Some of the strategies proposed in these management plans would require community input either in designing them, implementing them, or in the monitoring and evaluation process.

Proposed Benefit-Sharing, Community Development and CSR Interventions: Community engagement around these positive gains for the community promotes transparency, ownership, social sustainability, and promotion of inclusiveness and equity principles.

Best Approach to Grievance Redress and/r Negotiation: This must be a guided engagement, especially for a community that has no experience with the process. Guidance in this case, however, should never be confused with coercion.

Project Acceptance: Communities must be engaged to determine their level of acceptance of the project. Possible scenarios include broad acceptance, broad acceptance with certain conditions or rejection.

Unintended/Unforeseen Consequences: Such as gender-based violence.

WHAT TO CONSIDER TO IMPROVE COMMUNITY PARTICIPATION

- **Develop a shared understanding**
  There is a need to develop a shared understanding of community participation. It's important to realise that people in the community have different interests, priorities, cultural beliefs, religious beliefs and identities hence the need to share and discuss these different perspectives.

- **Establish the current position**
  Communities are required to carry out a baseline assessment to ascertain that the mining companies have fulfilled their responsibilities to principles of good business conduct. It is also an opportunity to identify the level of community participation in relation to business and human rights. This includes an assessment of power relations that exist between mining companies, government and the community.

  Further, review both national and international legal and policy frameworks that could facilitate effective community participation

- **Identify issues and needs**
  Establish issues that could impede or enhance effective community participation.

This will help to highlight issues that need to be addressed. The community can begin to identify the different activities that will help to develop greater and more meaningful community participation.

- **Agree on an action plan**

It is important to be realistic about what is achievable within any given timescale and the level of resources available. It is probably needed to agree on priorities and identify other groups and agencies that will lend their support. This is because some mining companies' management may take advantage of weak national laws due to poor domestication of international human rights standards and principles of good business conduct.

- **Develop capacity within institutions**

A community must be capacitated on business and human rights in terms of state obligations, responsibilities of businesses, and grievance mechanisms in order to participate effectively. This should be based on international, regional, and national laws governing business and human rights, especially those that compel businesses to have a strong engagement with the community. For example,

United Nations agencies and country teams; World Bank and other DFIs.

- **Establish a multi-sectoral working group**

Given that the number of stakeholders relevant to effective community participation is substantial, it's advisable to establish a multi-sectoral team or advisory committee made up of representatives from across stakeholder categories. Selection of representatives must be grounded on inclusiveness, making sure that not only local leaders are involved but other marginalised groups

OECD guidelines, Equator Principles and ICMM requires businesses to promote community engagement.

- **Conduct stakeholder mapping**

For effective community participation, there is a need to identify stakeholders who can be of value. This is because community participation requires the involvement of all stakeholders on an equal basis. Stakeholders' analysis will cover assessment of the following categories:

- **Government agencies such as local government, environmental management,**

law enforcement (police, labour, anti-corruption) and other relevant developments.

- Policymakers and lawmakers, including relevant committees.
- Businesses, including significant industry sectors, business associations, SMEs and cooperatives.
- Media, including community radio stations.
- Academia, including research institutes, individual experts and relevant educational institutions.
- International and regional organisations, (women, older people, people with disabilities, children and youth, indigenous people) are included. Engaging through such multi-stakeholder groups is an effective way of ensuring a participatory approach. Multi-sectoral working groups should include, at least, CSOs, unions, businesses, community members, traditional leaders, local government and civic leaders. Each of the stakeholders must have equal decision-making power and be involved at every stage of the process.

Harmonise power relations

Power is often considered to be centralised and embedded in structures where the powerful are those with resources and expertise who control the powerless. For community participation to be effective and achieve its intended purposes, there is a need for members of the engagement team to be empowered with human rights-based approaches that promote equity.

It is important to develop guidelines governing equal participation for both community members, stakeholders and mining companies. These guidelines should be based on respect and equal treatment/footing as provided in various human rights standards and principles governing DFIs and responsibilities of business in participatory decision making process. Power inequalities can prevent marginalised groups from benefiting from the participatory programmes seeking to help them.

Facilitate participation by marginalised groups

Rights holders from affected groups and communities, especially those marginalised groups, will often have relevant information and experiences for consideration. Yet these stakeholders may be weary of or prevented from participating due to a lack of resources and capacity, intimidation, fear of reprisals, social hierarchies, stigma, unequal access to the public sphere as well as ineffective public dialogue. Any negative repercussion for the participation of marginalised people should not be allowed or condoned. Outreach activities for marginalised groups should be encouraged to build their confidence and trust in community justice initiatives.

- Review

Overtime community participation strategies should be reviewed in the light of contempo-

rary social and political changes. This isn't just about what processes and procedures are in place but how effective they are.

- Maintain continuous community engagement

Continuous engagement makes both community and businesses realise their objective easier and builds a close relationship with mining companies and contributes to building the social licence for mining operations.

- **Informed consent**

Community participation requires that members take part in the decision-making process, design, and implementation of decisions without being coerced. Ensure that participation is based on consent from members where there is a close relationship between mining companies and communities.

- **Enhanced transparency**

Transparency is critical in legitimising a programme, it creates confidence among mining companies and financing entities. It's, therefore, important for transparency to be upheld at every stage. It's important for all key stakeholders to be aware of issues that are to be raised and what will be achieved. Further, transparency fosters trust in the community, and ensures that the views and interests of the people are respected.

To enhance transparency, there is a need for stakeholders to be adequately informed, with due notice of key milestones achieved through participation. This could be done through dialogue, consultation events, and sustainability reports by mines and other appropriate interaction mechanisms.

Information from engagement meetings should be made public as much as possible. It is access to information that determines

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values, priorities and builds collective action. Information allows members of the community to process, analyse and challenge the dominant power structure and status quo. This builds trust and deepens community involvement in the process of designing various mechanisms for effective and sustained community participation, grievance mechanisms and environmental justice financing.

- **Language for use**
It is important for a deliberate policy to allow engagement to be done in the language that both mining companies and communities are comfortable to express themselves in. An effective mode of communication is paramount if effective community participation is enhanced. The desire to use the official language of the country may be a barrier for members of the community to fully express themselves on various risks being observed.

A HUMAN RIGHTS-BASED APPROACH TO EFFECTIVE REALISATION OF COMMUNITY JUSTICE

For communities to achieve their intended goal(s) there is a need to apply a human-rights based approach (HRBA) in programming. HRBA programming is based on international human rights standards and principles. It applies human rights-based principles that include participation, non-discrimination, empowerment, transparency, and accountability. It is basically an approach that emphasises the importance of accountability by recognising entitlements of rights holders and the obligation of duty bearers. All the decisions, strategies and measures should fulfil the following:

Equality and Non-Discrimination
Article 1 of the Universal Declaration of Human Rights states that "all human beings are born free and equal in dignity and rights." All human beings are entitled to the same human rights without discrimination on grounds of race, colour, sex, ethnicity, age, language, religion, polit-

ical or other opinion, national or social origin, disability, property, birth, or other status.

Effective and sustained community participation, grievance redress mechanism and environmental justice in mining projects must anchor its decision on equality and non-discrimination based on the following:

- Consultation processes must be gender sensitive, with women and men given equal opportunities to participate in all activities.
- Identify and recognise the most marginalised groups in the society, ensuring the inclusion of those rights holder groups who may be marginalised or discriminated against in the given context, especially those individuals subject to multiple forms of discrimination.
- All activities identified must address issues of discrimination against women and

other groups in the context of mining or extractive.

i. Participation
This aspect of HRBA requires that all stakeholders and groups should be involved in each phase if effective and sustained community participation, grievance redress mechanism and environmental justice in mining projects is to be achieved. The goal of participation is to create ownership and attachment by rights holders over their development which in turn requires access to information to ensure effective participation.

ii. Transparency
Access to information is necessary for ensuring effective stakeholders' participation in advocating for redress and improved community justice. Transparency requires that information relevant to any decision is made available to all stakeholders. It's important that people know and understand how major decisions affecting their rights are made and how public institutions that are established for the protection of these rights are managed. However, the mere availability of information is not enough, this information must also be accessible and available in languages and formats that suit the needs and literacy levels of all. Transparency includes:

- Publishing and regularly updating the plan for effective and sustained community participation, grievance redress mechanism and environmental justice in mining projects.

- Publishing key documents, sustainability reports, minutes of meetings, contributions

from stakeholders, any draft measures being put in place for effective and sustained community participation, grievance redress mechanism and environmental justice in mining projects.

- Ensuring that information published is adequate and accessible to ensure meaningful participation by rights holders and other stakeholders.

iii. Accountability
This entails recognising the entitlements of rights holders and the obligations of duty-bearers so that duty bearers in government and mining projects can be held accountable for their actions. Rights holders can take the matter to court (locally or internationally) with decisions being arrived at based on local laws or international human rights instruments. See for example, the case of Nyasulu and Others v Konkola Copper Mines Plc and Others.[9]

This is done where there are clearly defined responsibilities of mining projects as stipulated in the laws and policy framework.

If there aren't clearly defined laws or policy, it's important for stakeholders to maintain pressure for increased transparency and accountability by continuing to monitor the extractive industries and advocating for appropriate additional reforms.

Taken together, the different elements of a HRBA also help the community to command the confidence of all stakeholders.

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[9] (HP 1286 of 2007) [2010] ZMHC 86, 31 December 2010

COMMUNITY RESOURCE MOBILISATION

Community mobilisation is the bringing together of as many stakeholders as possible to raise people's awareness of and demand for a particular programme, to assist in the delivery of resources and services, and to strengthen community participation for sustainability and self-reliance.[10]

Therefore, community members must take a keen interest in working together to create effective and sustained community participation, grievance redress and environmental justice in mining areas.

While there's a strong desire to mitigate or resist the adverse impact caused by mining operations on the community and environment, most community members or environmental defenders/human rights defenders have failed to achieve their intended goals due to a lack of financial and technical capacity to promote community justice.

The surrounding communities also need to take measures in order to equip themselves against legal violations, raise money for vulnerable communities through realistic and detailed fundraising plans, and create key messages about the work they wish to share with prospective donors. To prepare for these plans, there needs to be reflection on the following questions and overarching principles of fundraising:

Reasons for fundraising
The purpose of the funds raising is to support and strengthen community efforts to protect the environment and advance environmental justice rights. It should be done with recognition that supporting those most affected by environmental injustice to design and implement their own responses, offers the best chance of reversing the tide of environmental destruction and building a better, sustainable, and just world.

Evidence shows that affected communities/ people are increasingly seeking improved community justice and environmental performance through enhanced capacity of the communities.

Community resource mobilisation strategy
Resources are available in every community, no matter how small or poor. Each community has assets upon which to build its future. While you prepare to raise funds, first identify and list the range of financial and non-financial resources of community members and local institutions. Non-financial or in-kind resources can include donations like office supplies, food for an event and volunteer staff. Recognise the talents of groups that have been traditionally marginalised and disempowered and include these groups in your work so that all community members have the chance to contribute to your organisation's work.

Strategies for community resource mobilisation

Formalise legal institutions
There's a need for communities to organise themselves and form committees that are legally recognised, and therefore accountable. This approach could create confidence for those who may be willing to provide support to the community. There are several types of institutions that can be formed such as community trusts, cooperatives, and community level corporate entities.

Effective oversight
Without the necessary oversight, well-meaning community leaders may waste investment revenue on unsustainable activities that don't contribute to community justice. Through transparent budgeting and accounting procedures, community development committees can take full advantage of investment revenue to finance sustainable development initiatives and support grievances redress mechanisms in the community. It's imperative that communities develop fair and transparent rules for managing income and expenditure and submit themselves to periodic review by an independent party.

Situation analysis for community resource mobilisation
To prepare for appropriate fundraising strategies for environmental justice financing, there's a need to carry out a comprehensive situation analysis. This should cover a spectrum of issues affecting the community due to mining operations. It considers how political, environmental, social, technological, economical, and legal factors affect their desire for community justice. Further, carry out retrospective assessment on the strength, weakness, opportunities, and threats of the community considering the issues identified.

- Carrying out research and understanding legal and tax structures and the culture of the community will help to determine strategies and activities that can be floated for mining entities or financial institutions. Strategies should be aligned to issues that are backed by existing national or local government legal and policy frameworks, cultural beliefs and practices, political ideology, social norms, CSR policies in mining companies, national development plans, national action plan on human rights (business and human rights), tax excuses or incentives, tax relief for individual or corporate donations may be an incentive for giving.

- Be familiar with the tax laws in the country.

- Get to know the resource mobilisation tools commonly used, e.g., submitting of proposal, tapping into the CSR.

- Get to know financing institutions that are willing to provide funds for environment and community justice.

Reason for fundraising (Why do you need the money?)
This is a very important question that needs to be answered. There is a need for the community to be specific on the type of funding they seek.

Develop a clear, simple, and coherent plan for the utilisation of resources. It should show expected outcomes that are developed based on the SMART analysis. SMART is an acronym that you can use to guide your goal setting.

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[10]   Community-Based Rehabilitation: CBR Guidelines - NCBI Bookshelf (nih.gov)

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Specific (simple, sensible, significant).
Measurable (meaningful, motivating).
Achievable (agreed, attainable).
Relevant (reasonable, realistic and re-sourced, results-based).
Time bound (time-based, time limited, time/cost limited, timely, time-sensitive).

Effective guiding points for fundraising

● Communities must develop strategic plans with objectives that are linked to mining or financial institutions community investment plans.

● Identify target stakeholder(s) and specify eligibility criteria for their involvement.

● Link the strategy to the local context by drawing upon adverse impact especially socioeconomic scenarios.

● Establish an interactive process of engagement with local stakeholders and partners on the project.

● Draw on core competencies and resources from the company to support communities (financial and technical).

● Promote cross-functional coordination and accountability for supporting objectives.

● Integrate strategies with other mining company programmes that involve communities such as community participation (stakeholder engagement), grievance process, environmental and social impact management.

● Set out criteria and guiding principles against which all funds provided will be utilised and accounted.

● Identify the key programme areas in which the company or financial institution seem to prioritise. This will be an avenue for the community to seek financial assistance.

● Identify the implementation model and decision-making/governance structures with well-defined roles and responsibilities.

● Consider putting up sustainability strategies.

● Develop a monitoring and evaluation framework.

MONITORING AND EVALUATION

Measures that communities are putting or have put in place may end up being a drain on communities' resources without knowing how they are faring. This requires development of a monitoring and evaluation framework. Therefore, communities need to develop robust manage-ment systems to mitigate potential adverse impacts, by consistently monitoring, and evaluating prevention and mitigation measures over time, and ensuring management and community buy-in and accountability in this area.

The role of monitoring and evaluation is (M&E) to ensure that:

● Greater accountability on the use of resources (human and finances).
● Greater focus on the achievement of results.
● A clearer basis for decision making
● The promotion of institutional learning and knowledge sharing.

Qualities and skills required of those monitoring projects they must:

● Have good analytical and reporting skills e.g., qualitative, and quantitative data collection techniques.

● Have knowledge on input and output.
● Understand laws and policies in the country and international and regional /national human rights standards in mining operations (preferably gained from prior experience in similar operations).
● Be honest, observant, perceptive, inquisitive, persistent, and diplomatic.
● Be sensitive listeners who also can influence and convince people through discussion, willing to travel and spend most of their time in the field, capable of reviewing problems with officials on-the-spot, be team players, able to determine and focus on what is important.

Steps in the design of a monitoring and evaluation system
Evaluation questions

Step	To-do-list
Check the operation's design time	Review and revise (and if necessary, prepare) a logical framework. Ensure that objectives for Goal (impact), Purpose (outcome), Outputs and Assumptions are clearly stated and measurable. Ensure that indicators are adequately specified with quantity and quality.
Assess capacity for monitoring and evaluation	Identify what human and financial resources are available. Assess training requirements for all monitoring staff, both from International Federation and National Societies and counterpart bodies. Specify training requirements.
Plan for data collection and analysis	Check existing information sources for reliability and accuracy to determine what data is already available. Decide what additional information should be collected, for baseline purposes, for monitoring and for evaluation, set a timeframe and schedule for data collection and processing, and agree on responsibilities.
Prepare the monitoring and evaluation plan and budget	Summarise agreed information needs, data collection, information use, reporting and presentation in a monitoring and evaluation plan. Summarise capacity building and support requirements. Cost all monitoring and evaluation activities, and identify funding sources.

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Step	To-do-list
Plan for reporting and feedback	Design the reporting system, specifying formats for reports. Agree arrangements for country delegation supervision and oversight of the partner's reporting system. Devise a system of feedback and decision-taking for management.

M&E	Criteria Examples of questions
Impact	• What changes did the operation bring about? • Were there any unplanned or unintended changes? • What worked and why? • What did not work and why?
Effectiveness	• Were the operation's objectives achieved? • Did the outputs lead to the intended outcomes? • What could have been done differently?
Efficiency	• Were stocks of items available on time and in the right quantities and quality? • Were activities implemented on schedule and within budget? • Were outputs delivered economically?
Relevance	• Were the operation's objectives consistent with beneficiaries' needs and with business and human rights issues/policies?
Sustainability	• Are the benefits likely to be maintained for an extended period after assistance ends? • What have we learned? • What adjustments and changes are required now?

Best practices in effective M&E

Step 1 Importance of community involvement
Involve community in deciding how to monitor, what to monitor and how to interpret the results

Step 2 Participatory Monitoring
It should be participatory, all key stakeholders (women's groups, tribal authorities and government) should be involved in all parts of the evaluation process, from the design, selection of questions and topic, data collection, to analysis and use of the findings. This process will strengthen transparency, accountability and build trust amongst the stakeholders.

Step 3 Reporting
Sharing evaluation results with stakeholders is an essential part of the learning process and ensures that the lessons are used to improve the issues.

Step 4 Human rights-based monitoring and evaluation
Rights-based monitoring and evaluation of citizen participation measures progress in people's ability to demand their rights and to influence decisions that affect them.

Step 5 Inclusive evaluations
A rights-based approach demands an inclusive approach to programme planning, implementation and evaluation. This means that different stakeholder groups should be included in the evaluation and that data need to be collected from different groups of people.

Step 5 Feedback and dissemination
The evaluation process does not end when the evaluation report is complete. In fact, learning and active use of knowledge generated from the evaluation is the most important. Once the response is finalised and endorsed by stakeholders, it can be posted for public viewing for transparency and accountability reasons.

Step 6 Documenting stories of change – through community participatory action research
Inspiring stories from experienced communities can deepen knowledge, inspire and bring hope. Lessons learned throughout the process of handling grievances can help ensure continual improvement.

Examples of the importance of M&E in mining operations.
In South Africa like in most matured mining jurisdictions, the most difficult aspect faced by mining industry stakeholders has been to ensure the collaborative efforts made in mine community development projects yield the intended results. One of the problems is inadequate programme and project planning. Results Based Management (RBM) monitoring and evaluation techniques have been identified as having an important role to play in ensuring the commitments reached by the community and the mining company are achieved because it allows for the constant monitoring of activities against results set by both parties.

Source: Mpho Ndaba Defining a reliable Planning Monitoring and Evaluation, Johannesburg, South Africa, 14 to 15 June 2016
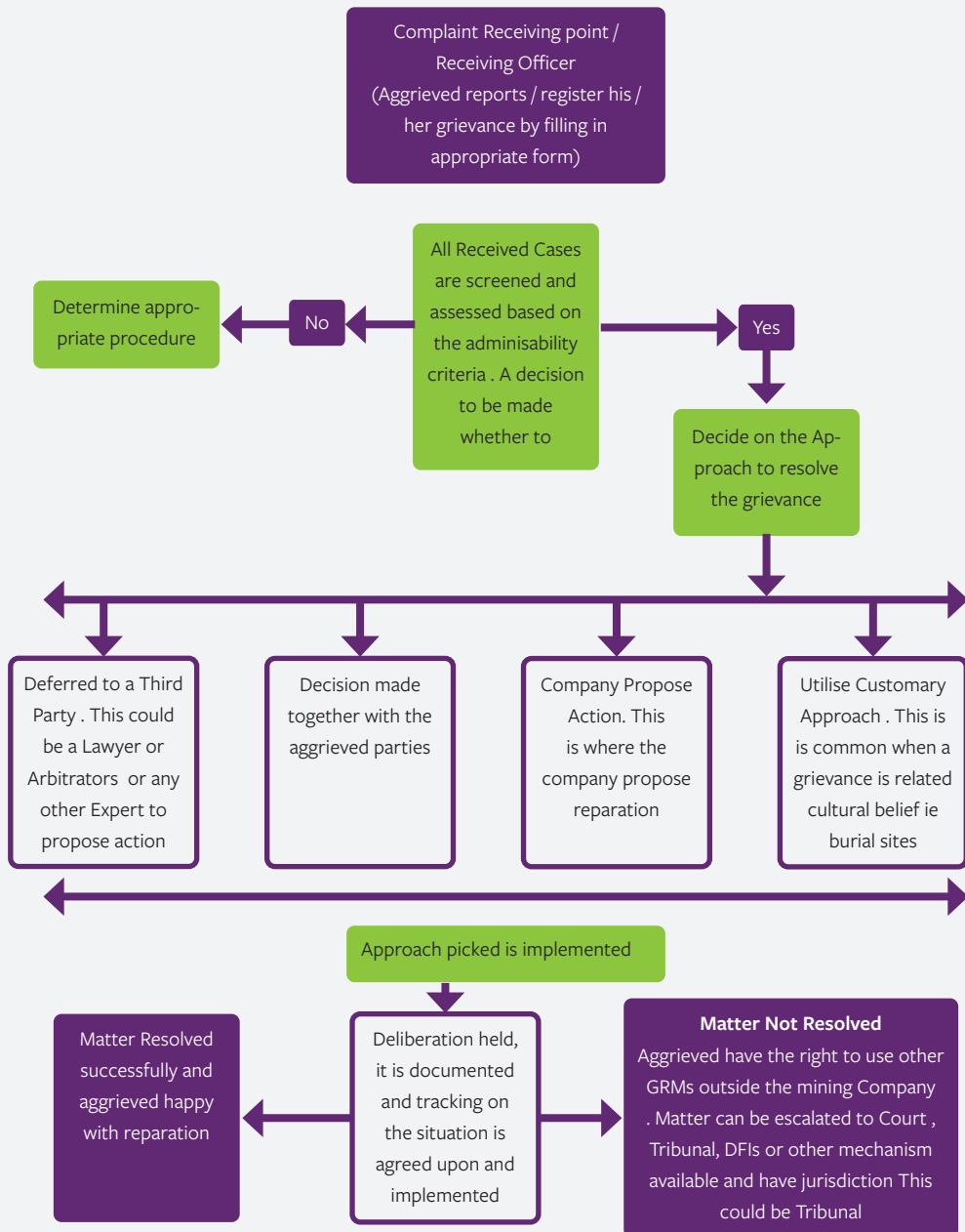
ANNEX 1: Selected Internationally Recognised Human Rights and Examples of How Business Might Impact Them

Relevant human rights	Brief explanation	How business might have an impact on the right
Right to self determination	A right of groups of peoples, rather than individuals. Groups are entitled to determine their political status and place in the international community. It includes the rights to pursue economic, social and cultural development, to dispose of a land's natural resources and not to be deprived of the means of subsistence. A particular right of indigenous people to self-determination has been specifically recognised by the international community.	Engaging in business activities on land that has traditional significance to the peoples that inhabit an area when that land was acquired by the government without due consultation with the local population. Any activity that might have impacts on indigenous people's lands, whether through acquisition, construction, or operation, may give rise to impacts on their right to self-determination.
Right to life	Right not to be deprived of life arbitrarily or unlawfully. Right to have one's life protected, for example, from physical attacks or health and safety risks t	The lethal use of force by security forces (state or private) to protect company resources, facilities or personnel. Operations that pose life-threatening safety risks to workers or neighbouring communities through, for example, exposure to toxic chemicals. The manufacture and sale of products with lethal flaws.

ANNEX 1: Selected Internationally Recognised Human Rights and Examples of How Business Might Impact Them (Cont.)

Right to participate in public life	Citizens have the right to take part in the conduct of public affairs, including the rights to vote and be elected in free and fair elections, and the right of equal access to positions within the public service.	Failing to give time off to workers for the purpose of voting. Bribery of political figures or other improper uses of company influence may distort the electoral process or otherwise impede free and fair elections.
Right to an adequate standard of living	This right includes access to adequate housing, food, clothing, and water and sanitation. Individuals have a right to live somewhere in security, dignity and peace and that fulfils certain criteria (such as availability of utilities and accessibility). Food should be available and accessible to individuals, in sufficient quality and quantity, to meet their nutritional needs, free from harmful substances and acceptable to their culture. The right to water and sanitation was recognised as a distinct right in 2010. Individuals are entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use and to sanitation services that fulfil certain criteria (such as being safe, physically accessible, and providing privacy and dignity).	Poor-quality housing or dormitories provided to workers. Failing to provide adequate sanitation facilities for workers in a company-owned factory. The expansion of a company's operations significantly reduces the amount of arable land in an area, affecting local community members' access to food. Business activities pollute or threaten existing water resources in a way that significantly interferes with local communities' ability to access clean drinking water. In such situations, there may be particular negative impacts on women and girls, who are responsible for water collection in many communities

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ANNEX 2: Grievance Procedure Flow Chart

Complaint Receiving point / Receiving Officer (Aggrieved reports / register his / her grievance by filling in appropriate form)

All Received Cases are screened and assessed based on the adminisability criteria . A decision to be made whether to

Determine appropriate procedure

No

Yes

Decide on the Approach to resolve the grievance

Deferred to a Third Party . This could be a Lawyer or Arbitrators or any other Expert to propose action

Decision made together with the aggrieved parties

Company Propose Action. This is where the company propose reparation

Utilise Customary Approach . This is is common when a grievance is related cultural belief ie burial sites

Approach picked is implemented

Matter Resolved successfully and aggrieved happy with reparation

Deliberation held, it is documented and tracking on the situation is agreed upon and implemented

Matter Not Resolved
Aggrieved have the right to use other GRMs outside the mining Company . Matter can be escalated to Court , Tribunal, DFIs or other mechanism available and have jurisdiction This could be Tribunal

Annex 3: Sample of an Action Plan

Goal : (Identify a goal you are addressing with the strategy)
Objective: (Use the SMART to develop the over objective of the Action/Plan)
Strategy: (Create an action plan for each strategy in your Positive School Discipline Plan)

Activities / Action	Responsible Person(s) or Partners	Resources Needed (Internal/External)	Progress Indicated at Benchmark	Timeline	Means of Verification
What needs to be done to implement the strategy	Who is responsible for carrying out each action step	What resources are required (internally and externally) to complete each action step?	How will you know that you are making progress? What are your benchmarks?	When action will be implemented and expected to be completed	The result of completing each action step

Notes:

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