

Human rights and mining: national and international human rights obligations and recommendations

Abigail Noko

OHCHR Regional Representative

*Implementing a Human Rights Framework in the Minerals
Sector Seminar Series*



**UNITED NATIONS
HUMAN RIGHTS**
OFFICE OF THE HIGH COMMISSIONER

Session Objectives

Relevant national standards

Overview of the international human rights system

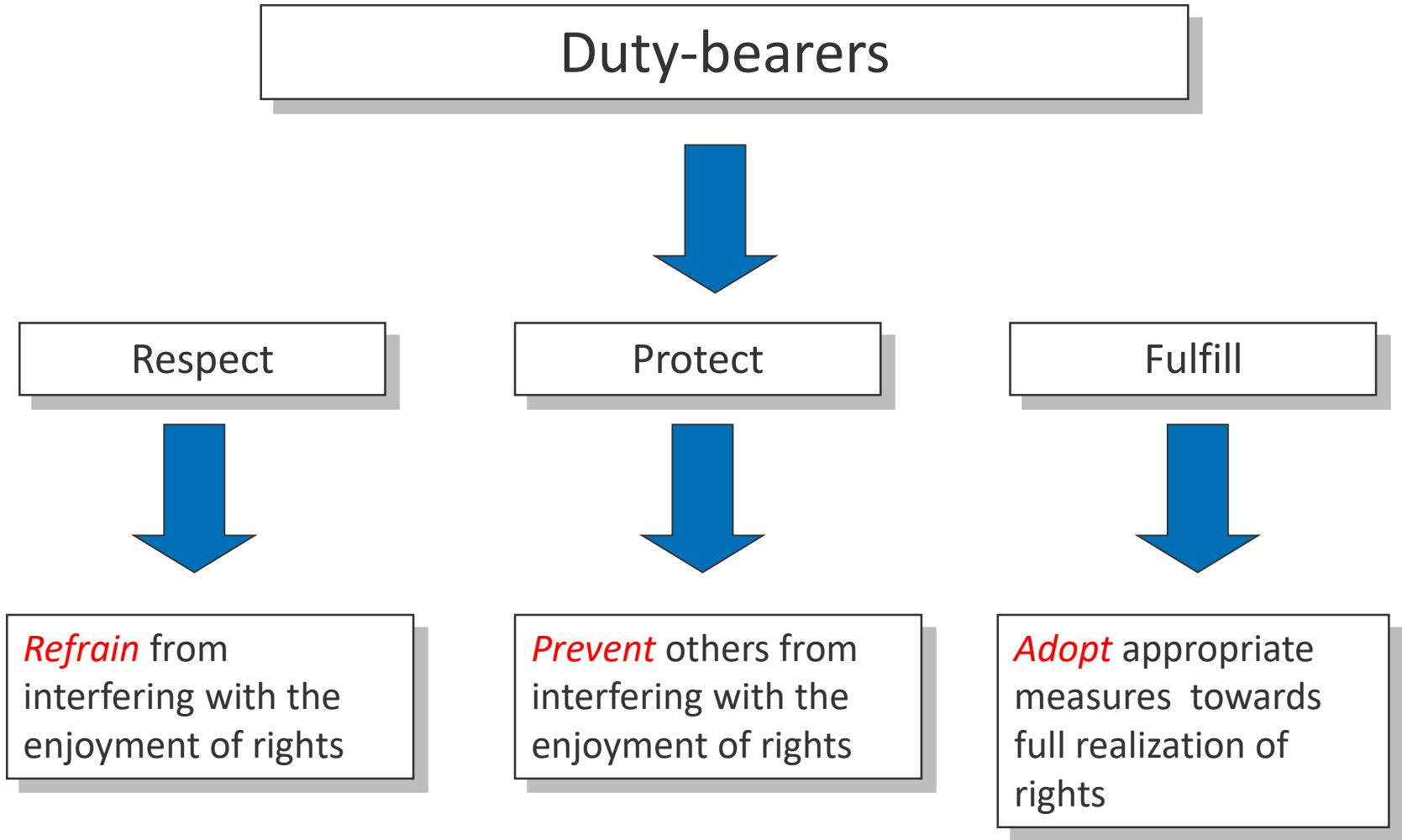
Challenges and recommendations for South Africa

Global business and human rights agenda



**UNITED NATIONS
HUMAN RIGHTS**
OFFICE OF THE HIGH COMMISSIONER

Human rights obligations



Constitution of South Africa: Bill of Rights

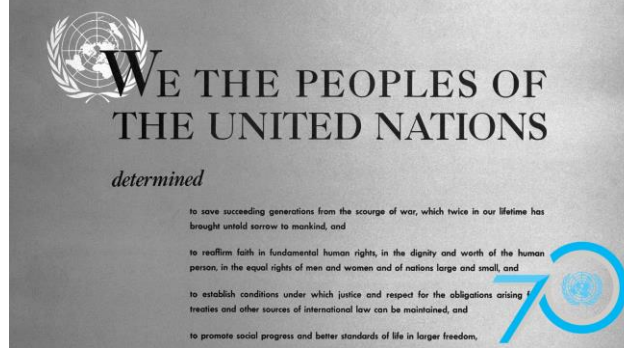
- Business activities (whether privately or government-owned) are linked to the realisation of human rights entrenched in the Constitution
- Supplemented by laws on labour rights, environmental protection, property and land management, health and safety, corporate and securities, tax, procurement, anti-bribery and corruption, data protection, Broad-Based Black Economic Empowerment (BBBEE) policy

African human rights system

- African Charter on Human and Peoples' Rights
 - ACHPR established a WG on the impact of extractive industries on human rights in 2009
 - press statement on the impact of COVID-19 regulations in South Africa as it relates to mining operations mine workers and mining affected communities.
- African Charter on the Rights and Welfare of the Child
- Maputo Protocol on the Rights of Women in Africa
- African Charter on Democracy, Elections and Governance.



International human rights law



UN Charter (1945)

- Art.1(2) UN purpose to promote and encourage respect for HR & fundamental freedoms for all
- WW2 atrocities the impetus for establishing an int'l system of binding human rights protection

UDHR (1948)

- Fundamental rights and freedoms that belong to all human beings
- Recognises non-discrimination, civil and political rights, economic, social and cultural rights
- A common std for all people and all nations
- Not legally binding but elements considered customary law
- Commonality, interrelatedness and interdependence of all rights

Human rights mechanisms

Treaty-based

Conventional bodies



ICESCR



ICCPR



CERD



CEDAW



CAT



CRC

CMW



CRPD

CED

Int'l Bill
of Rights
(incl.
UDHR)

Charter-based

Extra-conventional bodies

Human Rights Council

Special Procedures

Universal Periodic
Review

Complaint
Procedure

Advisory Committee



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

South Africa



UPR

- 1st review April 2008
- 2nd cycle review May 2012
- 3rd cycle review May 2017

Treaty bodies

- **Ratified 7/9 treaties** (CAT, CCPR, CESC, CEDAW, CERD, CEDAW, CERD, CRC, CRPD – pending CMW, CPED)
- **Ratified 6/9 optional protocols** (CRC OPAC and OPSC, CCPR OP 1 and 2, CRPD OP, CEDAW OP, pending OP CESC, OP CAT, OP CRC IC)

Special procedures

- Standing invitation issued in July 2003
- 13 country visits conducted overall (since late 1990s), the most recent IE on persons with albinism in Sept 2019
- 23 country visit requests are recorded/pending. 10 special procedure **communications** since 2011.

HRC

- Member for 2006-2010
- Member for 2014-2019



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Reported human rights challenges

- Killings, attacks, threats, and harassment against activists in mining-affected communities
- Restrictions on protest in mining-affected communities and police crackdown on protests
- Use of courts and social media campaigns by non-state actors to harass activists
- Displacement of communities leading to the destruction of livelihoods and traditions
- Poor working conditions, with low pay
- Environmental effects: depleted water supplies, pollution of the air, soil, and water, and destroyed arable land and ecosystems
- Lack of consultation with local communities
- Lack of transparency and accountability
- Lack of benefits to local communities

CESCR

recommendation to South Africa(2019)

Human rights defenders

Paragraph 12 -The Committee is concerned at reports of human rights defenders, particularly those working to promote and defend the rights under the Covenant in the mining and environmental sectors, being threatened and harassed. It is also concerned at the overly broad and vague definition of “public violence”, which may have a deterrent effect on participants in peaceful protests. It is further concerned at the high number of rejections of protest applications owing to deliberate restrictions or inadequate understanding of legislation by public officials.

- 13. The Committee recommends that the State party provide a safe and favourable environment for the work of human rights defenders to promote and protect economic, social and cultural rights, including by:
 - (a) Ensuring that all reported cases of intimidation, harassment and violence against human rights defenders are promptly and thoroughly investigated and the perpetrators are brought to justice;
 - (b) Ensuring that law enforcement personnel are appropriately trained so as to prevent the excessive use of force against protesters;
 - (c) Reviewing the Regulation of Gatherings Act No. 205 (1993) with a view to preventing it from being abused to suppress peaceful protests and ensuring that the Act and its related regulations are adequately enforced by public officials. The Committee draws the attention of the State party to its statement

CESCR

recommendation to South Africa (2019)

Mining sector

Paragraph 37-The Committee is concerned at the working conditions of mineworkers and the lack of labour inspections in the mining sector, which have led to a high incidence of occupational injuries and diseases. It is also concerned that most mineworkers live in informal settlements around mines without water, sanitation facilities or electricity, and that social and labour plans are often not implemented by employers. It is further concerned at the vulnerable situation of female mineworkers, who are constantly subjected to discrimination and exposed to sexual violence

- The Committee recommends that the State party intensify its efforts to improve the working and living conditions of mineworkers, especially those who are women, in the light of lessons learned from the Marikana incident, in particular by:
- (a) Ensuring the strict enforcement of the Mine Health and Safety Act and the Occupational Health and Safety Act in the mining sector;
- (b) Strengthening labour inspections in the mining sector;
- (c) Ensuring that injured mineworkers and mineworkers with occupational diseases, regardless of their status, have access to effective remedies, including through liability actions against their employers;
- (d) Carrying out regular risk assessments of hazards to the safety and health of mineworkers, in particular temporary or contract workers;
- (e) Promoting the safety and dignity of female mineworkers, addressing gender inequalities and violence, and eradicating the male-dominant work culture in the sector;
- (f) Improving living conditions in mineworker communities, and ensuring mineworkers' access to adequate housing, water, electricity, sanitation, health care, education and other social services;
- (g) Strictly enforcing social labour plan-related obligations and imposing penalties on employers in cases of non-compliance, including by revoking their licences.

HRC

recommendation to South Africa (2016)

Excessive and disproportionate use of force

Paragraph 26 26. The Committee is concerned about numerous reports of excessive and disproportionate use of force by law enforcement officials in the context of public protests that has resulted in loss of lives. The Committee is also concerned about the slow pace of the investigation into the Marikana incident, including with respect to the criminal responsibility of members of the South African Police Service and the potential liability of the Lonmin Mining Company (arts. 6, 7 and 21).

- The State party should:
- (a) Expedite the work of the Task Team and the Panel of International Experts established by the Ministry of Police in implementing the recommendations of the Marikana Commission of Inquiry, revise laws and policies regarding public order policing and the use of force, including lethal force by law enforcement officials, to ensure that all policing laws, policies and guidelines are consistent with article 6 of the Covenant and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- c) Ensure that prompt, thorough, effective, independent and impartial investigations are launched into all incidents involving the use of firearms and all allegations of excessive use of force by law enforcement officers, as well as the potential liability of the Lonmin Mining Company for the Marikana incident, prosecute and punish perpetrators of illegal killings and provide effective remedies to victims;
- (d) Review the compliance of companies with their responsibilities under all relevant legal standards for operations in the mining sector.



CRC

recommendation to South Africa(2016)

Children's rights and the business sector

Paragraph 19. The Committee is concerned that activities of business enterprises operating in the State party, in particular those of extractive industries, have a negative impact on the enjoyment of the rights of the child, including through environmental pollution and the exploitation of child labour.

- (a) **Establish a clear regulatory framework for the business enterprises operating in the State party to ensure that their activities do not negatively affect human rights or endanger environmental and other standards, especially those relating to children's rights;**
- (b) **Conduct an independent study on the impacts on children's health from environmental pollution caused by the activities of extractive industries, including the impacts from water pollution and from dust from mining;**
- (c) **Ensure effective implementation by business enterprises, especially large-scale and artisanal extractive enterprises, of international and national environmental and health standards;**
- (d) **Establish an effective mechanism for monitoring adherence to the above-mentioned standards by business enterprises, especially large-scale and artisanal extractive enterprises, and in case of violations, sanction appropriately, and provide remedies to child victims;**
- (e) **Be guided by the United Nations "Protect, Respect and Remedy" framework of 2008.**



UPR 3: recommendations to South Africa concerning the business sector

Employment, housing, social development and protection of the environment

- 139.104 Increase the efficiency and the systematic implementation of the law on the development of mining resources, in the field of employment, housing, social development and protection of the environment (Cabo Verde);

Define regulations for compliance to human rights by companies

- 139.105 Continue to develop and implement a framework that holds companies, particularly those in the extractive sector, accountable for the human rights violations and the environmental degradation caused by their operations (Philippines);
- 39.106 Define and enforce regulations to ensure that companies comply with international and national standards relating to human rights, labour, the environment and others (Togo);

UN Special Rapporteur on the environment

- High Court, Gauteng Division, Pretoria case against Government regarding poor air quality in the Highveld Priority Area in Mpumalanga province
- Breach: rights to an environment that is not harmful and the decision not to promulgate regulations to implement and enforce the Highveld Priority Area's air quality management is unconstitutional and invalid.
- Companies involved Eskom and Sasol
- SR on the environment request to submit an amicus brief in the case.

SAHRC reports and findings

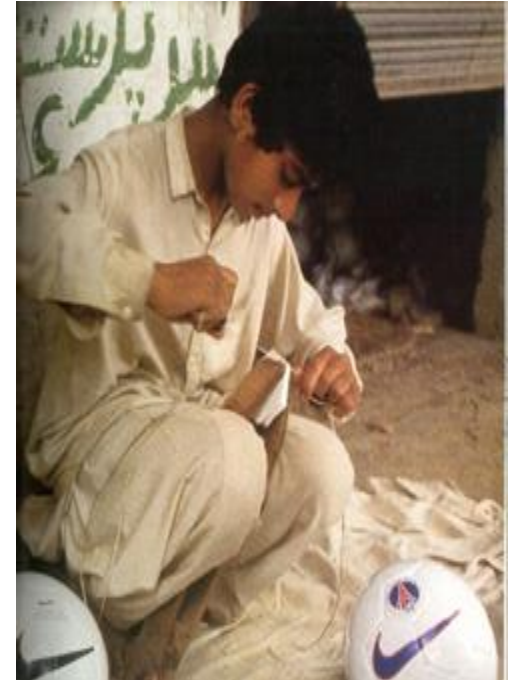
- Compliance, monitoring and enforcement of legal and policy frameworks with human rights
- Meaningful participation, consultation and consent
- Access to information
- Housing, water, land use management
- Relocation and compensation
- Mining in sensitive and protected areas
- Rehabilitation and closure of mines
- Environment, air quality and blasting
- Nuclear waste management
- Social labour plans

The global business and human rights agenda



Why a business and human rights agenda?

- Growing reach and impact of business has lead to “governance gaps”;
- States and companies playing complementary but different roles;
- Modern business and human rights agenda: response to high-profile scandals in the 1990s;
- A political process initiated in 2005 eventually led to the UN Guiding Principles on Business and Human Rights in 2011: the authoritative global standard



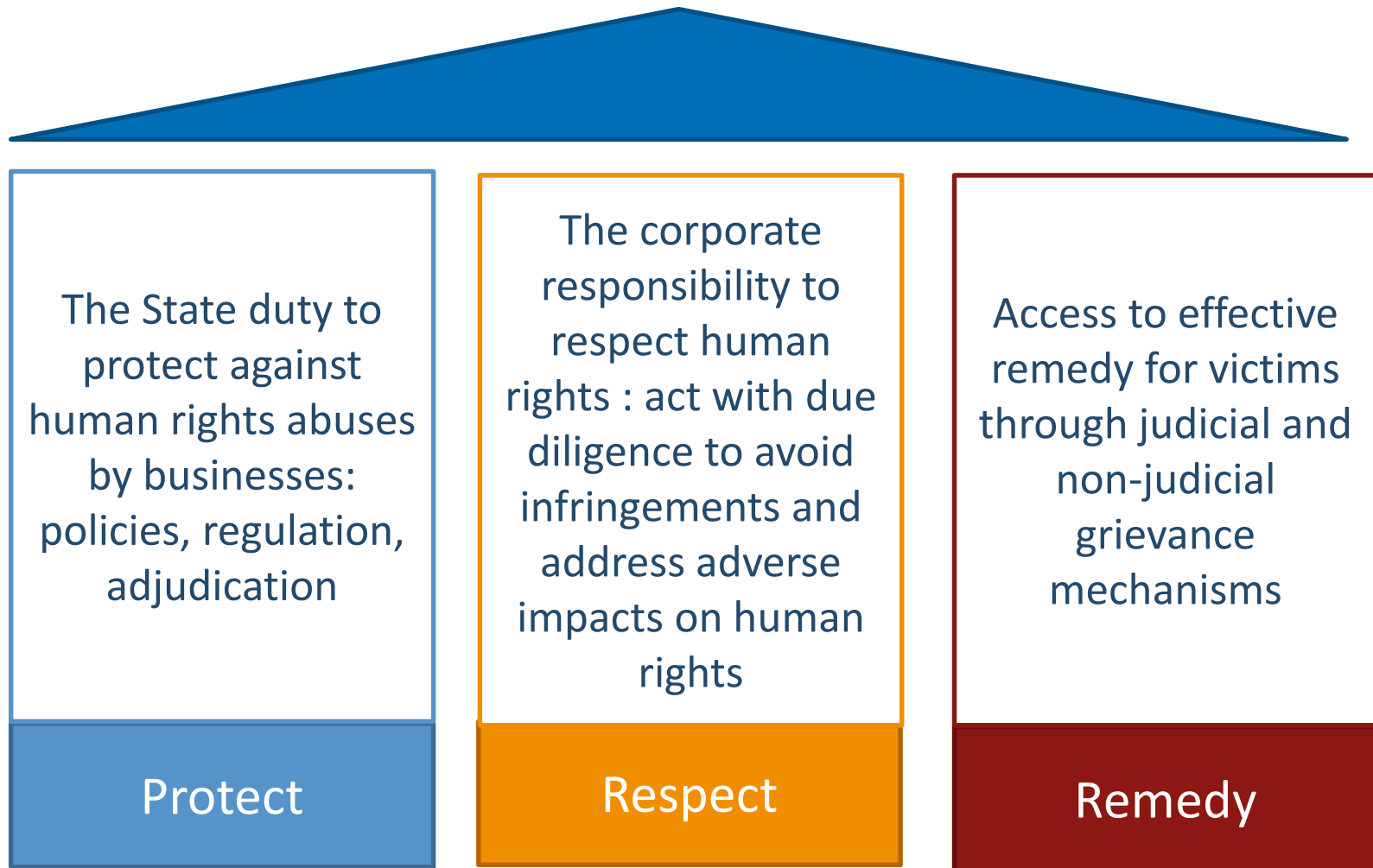
The UN Guiding Principles on Business and Human Rights

- A global normative framework with a strong political foundation
- Evidence-based: voluminous research, 47 multi-stakeholder consultations
- 2011: The United Nations Human Rights Council unanimously endorsed the Guiding Principles
- Structured on three pillars – Protect, Respect and Remedy
- Do not preclude international or national legal developments



*John
Ruggie
Special
Representative
of the
UN Sec-
Gen
(SRSG)*

The Guiding Principles – Three Pillars



Thank You!
follow us: @ohchr_sa

**STAND UP
FOR HUMAN
RIGHTS**

#STANDUP4HUMANRIGHTS

