



THE ROLE OF INTERNATIONAL LAW FOR THE PROTECTION OF THE RIGHTS OF WOMEN LIVING IN POST-CONFLICT RESOURCE-RICH AREAS IN AFRICA: THE SOUTH AFRICAN EXAMPLE

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Abstract

The Post-conflict situation in African countries rich in minerals and natural resources such as South Africa and the resultant negative effect on women living in these regions cannot be over-emphasised. Although, efforts have been made to mitigate the effects of the conflict on the inhabitants of resource-rich communities through national and international legislation, and government policies,¹ the after-math of conflict contribute to the violation of the social and economic rights of vulnerable groups in communities, particularly the women. Some of the causes of the extreme deprivation and harm are the loss of cultivable lands and homesteads, displacement due to incessant conflicts in the areas as well as devastations of farmlands and environments from activities of international mining companies.² However, the inability of international law, and the international human rights regime, to effectively regulate the extractive industry and multinational mining companies in general contributes to the inadequacy of states' implementation of their obligations under international law with regard to eradicating violence against women.

Furthermore, international conventions such as the “Convention on the Elimination of All forms of Discrimination against Women” (CEDAW) have provided for “human rights protection” for “women in post-conflict situations” and this paper will seek to add that women can be involved in the peace-making process, in addition to the intervention of domestic courts, in order to ensure that their rights violated in conflict situations can be restored.

Keywords: Post-conflict, Vulnerable Groups, Socio-economic rights, natural resources

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¹The 1996 South African Constitution and the enactment of laws such as the Mineral and Petroleum Resources Development Act 28 of 2002, (MPRDA).

²Kamga S and Ajoku O “Reflections on How to Address the Violations of Human Rights by Extractive Industries in Africa: A Comparative Analysis of Nigeria and South Africa,” (2014) 17 (1) *Potchefstroom Electronic Law Journal* 452.



Introduction

Formal mining has existed in South Africa for more than a century.³ The primary emphasis of mining at the time was on its economic benefits, and legislation mostly concentrated on surface remediation.⁴ Mining corporations generally comply with the bare minimal regulations while also taking a reactive stance in terms of environmental management and restoration.⁵ The environmental effects of mining in general are significant, and South Africa has unavoidably left behind a severe economic, social, and environmental legacy. Before the Minerals Act of 1991 (Act 50 of 1991) was passed, mining firms frequently shied away from their need to restore the environment by abandoning a region without doing so before closing their operations or leaving the nation.⁶ This situation has thus provoked violence and protests against mining companies in South Africa.

This paper discusses one of the major causes of violence in resource-rich African countries and it is known as “Eco-violence,” also referred to as “environmental conflict.” Homer-Dixon created this hypothesis in an effort to clarify the causal connection between natural resource endowment and the outbreak of violent conflict. Accordingly, Homer-Dixon stated that,

For some population groups, the shortage of flora, farmland, water, woods, etc. is increased by a decrease in the quality and quantity of renewable resources, either alone or in diverse combinations. Ecological resource scarcity can lower economic output for local populations as well as for bigger regional and international economies. As a result, the afflicted people may move to new lands or be driven there... while decreases in wealth can cause deprivation conflicts.⁷

This paper will also discuss the various ways environmental violence has affected women living in extractive areas and their attempts at recovery during and after the conflicts. Although, the conflicts in South Africa are yet to fully abate, this paper shall propose that using international

³ Swart E ‘The South African legislative framework for mine closure’ (2003) *The Journal of the South African Institute of Mining and Metallurgy* 489.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Thomas F. Homer-Dixon, *Environment, Scarcity, and Violence*. Princeton, Princeton University Press (1999), mentioned in Ajodo-Adebanjoko "Towards Ending Conflict and Insecurity in the Niger Delta Region: A collective non-violent approach" (2017) 1 *African Center for the Constructive Resolution of Disputes (ACCORD)*.

human right conventions, with women exercising their right to public participation can be part of national efforts to end the conflict situation.

Overview of mining disputes in South African communities

South Africa is the fourth-biggest producer of diamonds and one of the world's top producers of gold, platinum, and chromium. Thus, mining is currently one of the largest contributors to the economy of the nation.⁸ The only purpose of the mining sector in South Africa, particularly in the years prior to the establishment of the 1996 South African Constitution, was the exploitation of the nation's abundant mineral resources.⁹ The fact that approximately 60% of South Africa's export earnings is attributed to mining, mineral, and secondary beneficiated goods demonstrates the importance of mining to the country's economy.¹⁰ Furthermore, it is estimated that South Africa holds 13 percent of the world's gold deposits and 89 percent of the world's reserves of platinum group metals.¹¹ However, allegations of human rights violations against South Africa's extractive sectors are frequently made.¹² Human rights are violated during the mining development stage, which is characterised by intrusions on the rights to land, food, a safe environment, a livelihood, and local communities' general way of life.¹³ Furthermore, mining and extraction activities also harm the ecology. In this sense, the process of mining the mineral destroys or alters the landscape due to erosion that occurs during the mining process.¹⁴

In South Africa, violence has resulted from the rights of local mining communities' members being violated. The Marikana massacre, one of many violent assaults against the people who live in appalling conditions in mining villages, served as the culmination of such brutality. 34 protesting miners were killed by police intervention at the Lonmin Platinum mine in Marikanaon

⁸ Transparency and Accountability in Africa's Extractive Industries: A Report by the National Democratic Institute for International Affairs (NDI) DC, Washington (2007) 88, referenced in Kamga S and Ajoku O "Reflections on How to Address the Violations of Human Rights by Extractive Industries in Africa: A Comparative Analysis of Nigeria and South Africa," (2014) 17 (1) *Potchefstroom Electronic Law Journal* 452, 457.

⁹ Kloppers H and Du Plessis W "Corporate Social Responsibility, Legislative Reforms and Mining in South Africa," (2008) 26 (1) *IBA Journal of Energy and Natural Resources Law* 91.

¹⁰ National Development Plan: 'Vision for 2030' National Planning Commission, (2011) 24 cited in Leon P., "Whither the South African Mining Industry?" (2012) 30 (1) *IBA Journal of Energy & Natural Resources Law* 5, 6.

¹¹ Yager T, "The Mineral Industry of South Africa," 2009. *Minerals Yearbook: South Africa (Advance Release)*, US Geological Survey, September 2011 cited in Leon P, *ibid*.

¹² Kamga and Ajoku (note 8 above) 462.

¹³ *Ibid*.

¹⁴ *Ibid*.



August 16, 2012, following several days of labor unrest sparked by pay demands. In that tumultuous week, there were a total of 43 fatalities, 78 injuries, more than 250 arrests, and several other injuries.¹⁵ According to reports, the episode was the largest case of police violence since South Africa's transition to democracy, and it brought up memories of the abuse endured at the hands of the apartheid security police.¹⁶ High levels of inequality and ongoing service delivery issues are among the primary and enduring causes of the disaster, contributing to the deplorable circumstances in the Marikana community. This is well supported by Philip Frankel's vivid descriptions of Marikana's deteriorated environment:

The entire region is severely contaminated, making many parts of it unusable for mining and living. This is the direct result of environmentally harmful policies implemented by businesses like Lonmin, whose operations have a significant influence on water quality, air pollution, and eventually, people. The role of the state in all of this is quite prominent, and it reflects issues with local government and the legal system that, 20 years after 1994, reflect poorly on a nation that purports to be stable, effective, and democratic. Like municipal governments around the country, local governance in this area is notoriously corrupt, openly deadly, and nearly completely ineffective.¹⁷

Many local women in the neighborhood lost their husbands and family members as a result of the Marikana Massacre. They endured unspeakable stress in the days and weeks that followed the massacre as they tried to process their grief and support ongoing labor strikes.¹⁸ A few months after the killing, the women of Marikana created their own community-based organisation named "SikhalaSonke," which literally translates to "we are crying together," in keeping with their experiences.¹⁹

¹⁵ Bradshaw G and Haines R, "After Marikana: Rethinking conflict resolution in Africa: The South African case" (2014) 4 (1) *Stability: International Journal of Security & Development* 1-16 at 2.

¹⁶ South African History online. Available at <http://www.sahistory.org.za/article/marikana-massacre-16-august-2012> accessed 30 June 2019.

¹⁷ Frankel P "Marikana: 20 Years in the Making," (2012) *IOL*. Available at <http://www.iol.co.za/business/opinion/marikana-20-years-in-the-making-1.1407448#> cited in Bradshaw G and Haines R, "After Marikana: Rethinking conflict resolution in Africa: The South African case," (2014) 4 (1) *Stability: International Journal of Security & Development* 1-16 at 3.

¹⁸ Madi P 'The Women of Marikana' Centre for Applied Legal Studies. Available at <https://www.wits.ac.za/media/.../CALs%20vignette%20the%20women> 1 accessed 16 January 2023.

¹⁹ Ibid.

President Jacob Zuma established a commission of investigation into the killings, led by retired judge Ian Farlam.²⁰ Only one hour of the commission of inquiry's nearly three years of deliberations were devoted to hearing from the Marikana women. The women of the village were not given a voice in the proceedings, with the exception of the statement from the Chairperson of SikhalaSonke regarding the living circumstances in Marikana. Once more, their impact on the community and the effects of the tragedy on them were minimised, and their voices were muted. The ladies created a documentary about their living situations and their protest actions in collaboration with the Centre for Applied Legal Studies at the University of the Witwatersrand. This documentary was introduced as evidence before the Commission of Enquiry. This documentary's goal was to present Marikana's women's living situations.²¹ The living conditions of mine workers in Marikana are still appalling, with proliferation of shacks and informal settlements, formal infrastructure such as roads and housing rapidly deteriorating, access to electricity and water being severely restricted, and broken down drainage systems resulting in direct pillage into nearby rivers, which are more frequently used as a source of drinking water.²² In addition, in accordance with Article 21 of the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention), the Committee on the Elimination of Discrimination Against Women (the Committee) decided to adopt a general recommendation on the protection of women's human rights in conflict and post-conflict situations at its forty-seventh session in October 2010. The general recommendation's goal is to give States Parties appropriate and authoritative advice on the steps they should take to fully uphold their obligations to protect, uphold, and advance the rights of women during times of armed conflict and in all peace-building initiatives, including the immediate aftermath of conflict and long-term post-conflict reconstruction.²³ Women and girls experience specific, severe types of gender-based

²⁰ Nick Davies Available at <https://www.theguardian.com/world/2015/may/19/marikana-massacre-untold-story-strike-leader-died-workers-rights> Tuesday 19 May 2015 accessed 16 January 2023.

²¹ Madi (note 18 above).

²² Ojatorotu V, Kamidza R, Oduaran C, "Mining Corporations Psycho-social, Economic and Political Impact on Local Communities: The Case of North West Province Mining Complex," (2015) 34 (1) *Politeia* 22, 37.

²³ Report of CEDAW Committee's Africa Regional Consultations on the Proposed General Recommendations on Women's Human Rights in Conflict and post-conflict situations 2. Available at https://www.ohchr.org/Documents/HRBodies/CEDAW/Womenconflictsituations/AddisAbabaApril2012_womeninconflict.pdf accessed 5 October 2018.



violence during and after conflicts, including rape, sexual mutilation, sexual humiliation, forced prostitution, and forced pregnancies carried out routinely for military or political reasons.²⁴ Africa's continental and sub-regional institutions have prioritised the promotion of peace and security, which has resulted in the creation of impressive normative frameworks for the protection of human rights, including the rights of women in conflict and post-conflict situations. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which lays out broad criteria and promises in this regard, is particularly noteworthy. For instance, Article 10 requires state parties to ensure that women participate in conflict prevention, management, and resolution at all levels and to cut back on military budget in favor of investment on social development, especially for the advancement of women. Article 11 reaffirms the duty of states parties to uphold international humanitarian law and safeguard civilians—especially women—during armed conflict. The obligation of States Parties to protect women seeking asylum, refugees, returnees, and internally displaced people from, among other things, rape and other forms of sexual exploitation, and to ensure that such acts are regarded as war crimes, genocide, and/or crimes against humanity, is expressly mentioned in this clause²⁵ as follows:

“States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.”²⁶

The above provisions can be canvassed particularly during proceedings of Truth and Reconciliation commissions and not only in the regular criminal courts.

Women's reactions in post-conflict situations

International organisations and International law experts have emphasised the significance of taking gender equality into account while negotiating and carrying out peace agreements.²⁷ There are three main justifications for including women in a peace process. First, human rights norms

²⁴ Ibid.

²⁵ Ibid.

²⁶ Article 11 Protection of Women in Armed Conflicts.

²⁷ Chinkin C, “Gender, Human Rights, and Peace Agreements,” (2003)18 *OHIO ST. J. DISP. RESOL.* 867.

demand that women participate equally in public life. Second, women at the peace table can help highlight the potentially different experiences that women have during conflict. Thirdly, if women are involved in negotiating peace, they become active agents in rebuilding rather than passive victims of conflict. To confirm these three reasons Professor Chinkin argues:

“The experiences of local women during the conflict and their tremendous responsibilities after the conflict must be included in order for the peace process to be effective. Gender balance means taking into account the varied experiences of women who have experienced the conflict rather than inserting a few highly placed international women into the process.”²⁸

In line with the above quotation, the Isis-International Women's Cross Cultural Exchange (Isis-WICCE), a global women's organisation and civil society group, interviewed some of the women about the conflict's effects after it began in Uganda in 1996. This organisation revealed that these women were still residing in deplorable conditions and had little to no sources of support, which made the healing process more challenging. Additionally, the majority of their homes, which were destroyed during the war, could not be rebuilt. Isis-WICCE engaged the Minister for Housing at the time, a government official, and urged him to visit the specific village under surveillance on behalf of the government. The Minister realised during the visitation that these women were not living in regular homes and were vulnerable to weather-related disasters. He thus ordered that iron sheets and cement be supplied immediately to provide the women and their families with suitable and proper housing.²⁹ This example illustrates how non-governmental organisations that aid these groups in post-conflict conditions can facilitate the engagement of women and other vulnerable people. Comparatively, advocates for gender parity were successful in Rwanda in changing the societal connotation of women's political participation. Women's political participation was successfully portrayed by these activists as a crucial element of peace and healing in post-genocide Rwanda.³⁰

On the contrary, the obligations of the state under the above-mentioned conventions were not met during the Marikana episode in South Africa narrated above. It was clear that the

²⁸Ibid at 873.

²⁹Okazawa-Rey M, “In conversation, Healing Work with War Survivors,” Interview with OjiamboOchieng about Isis-WICCE’s work in Northern Uganda, cited in Women’s Responses (2008) 10 *Feminist Africa*, 111-121 at 116.

³⁰Banks A, “Challenging Political Boundaries in Post-Conflict States,” (2007) 29 *U. PA. J. INT’L L.* 105, 157 cited in Banks A “CEDAW, compliance and custom: Human rights enforcement in sub-saharan Africa,” (2009) 32 *Fordham International Law Journal* 781 at 793.



municipalities (local governments) involved perpetrated more harm in the face of the peaceful protests organised by the women. For instance, initially, the women of Marikana organised food and shelter through their crisis organisation, “SikalaSonke.” They then decided to organise a march against police brutality when the police started knocking down doors and shooting into residents' shacks as they entered the neighborhood.³¹ Their planned march was initially refused a permit, but it eventually took place on September 29, 2012. They were once again able to carry out the march thanks to the assistance of other women's organisations, despite being unable to deliver the memorandum they had originally intended to. The march, which was originally scheduled to take place on September 22, 2013, was twice prohibited by the municipalities of Madibeng and Rustenburg. The justifications given were unconstitutional, and the Marikana women sued both municipalities in the North West High Court for depriving them of their freedom to demonstrate. Similarly, when the Marikana women successfully appealed against the Rustenburg and Madibeng municipalities, as well as the North West police force, in the Rustenburg High Court, they demonstrated the same dedication to participatory democracy and belief in due process.³² The women were bold enough to challenge the illegal actions of the municipalities despite threats and attempts to intimidate them because they were exercising their access to citizenship, something which government would rather deny poor people. They continued to adhere to democratic and political ideas despite being ignored and refused the right to march on numerous occasions. Even though they had been repeatedly ignored and denied the right to march, they maintained a fidelity to democratic and political principles.³³

Presently, South African women have formed organisations to ensure their voices are heard and to stop the violation of their social and economic rights through mining operations. The Mining and Environmental Justice Community Network of South Africa (MEJCON) is one of these organisations. The chair of this organisation is Margaret Molomo who has been in the forefront of fighting against mining developments near her home in Mokopane, Limpopo. She stated that:

³¹Naicker N, “Marikana: Taking a Subaltern Sphere of Politics seriously.” Chapter Four: *Worker struggles as Community Struggles*, MA Thesis at 13. Available at https://www.ru.ac.za/media/rhodesuniversity/content/politics/documents/Naicker_Marikana.pdf accessed 16 January 2023.

³² Ibid.

³³ Ibid.

“I have personally seen the damage that non-compliant mining has caused to our land and to our people over the past ten years. Women are the ones who often raise food to feed their families, but because of soil and water contamination, they are no longer able to do so. Women have to walk a greater distance to find clean water.”³⁴

The quantity and quality of agricultural land that women need to feed their families and generate extra for local markets are greatly threatened by mining ventures in rural areas. Through the release of hazardous minerals and heavy metals, inadequate rehabilitation techniques, and deforestation, mining operations contaminate and impair the fertility of the soil. Crop yields are reduced as a result. Subsistence agriculture, which is predominantly managed by women in rural regions, is impacted by mining. Water is impacted as well as soil. Water is used extensively during mining, and local communities frequently lose access to the water sources they depend on for home consumption and small-scale subsistence farming. Water can also become contaminated and unsafe for home or agricultural use.³⁵

Molomo says there are many other ways that mining negatively impacts women. “Fewer women can look for work outside the home because they have to care for relatives who have been sickened by pollution. The mines often hire male workers from other areas who already have experience in the industry. This leads to higher unemployment amongst local men and in turn increases rates of domestic violence, underage sex work and teenage pregnancy.”³⁶ Research demonstrates that women who live close to mines are more likely to encounter “heightened insecurity and violence, limited voice in decision-making, health risks from pollution, heightened socio-economic vulnerability, increased prostitution, and greater exposure to sexually transmitted diseases, such as HIV/AIDS.” These findings are consistent with Molomo's experience.

The South African extractive industry has not done much to achieve one of the goals of the South African Minerals and Petroleum Resources Development Act 2002, which was to

³⁴“How mining erodes Rights of Women.” Available at <https://www.groundup.org.za/article/how-mining-erodes-rights-women/> accessed 31st March 2022.

³⁵ Ibid.

³⁶ “How mining erodes Rights of Women.” Available at <https://www.groundup.org.za/article/how-mining-erodes-rights-women/> accessed 31st March 2022.



"meaningfully enhance possibilities for historically disadvantaged groups, especially women."³⁷ The Minerals Council of South Africa (MINCOSA) highlighted in its "White Paper: Women in Mining" publication issued in March 2020 that women make up only 12% of the mining industry, lagging behind other sectors in the nation in terms of gender parity. Women who do work in mines, particularly those who do so underground, suffer a variety of dangers, such as sexual harassment and abuse from male coworkers in the form of physical and verbal assault. Mining frequently displaces alternative sources of income. Women start offering a variety of services, like selling meals to workers, and they become incredibly reliant on the mine for their livelihood.³⁸

The recent case of the plan of the South African government along with an Australian Multinational mining company (MNC) for mining in Pondoland³⁹ is an important case revealing the gross disregard of the rights of people living in mining and potential mining areas. As a result of this issue, there have been numerous controversies and acts of violence directed towards the "Amadiba crisis committee," an organisation established to coordinate community opposition to the mining. The group's chairman, "Bazooka" Rhadebe, was killed in March 2016 as a result of the unrest in the neighborhood. In summary, the Australian business Mineral Commodities Ltd. (MRC) proposed to mine ilmenite, rutile, zircon, and other minerals from historic sand dunes at Xolobeni on the Pondoland Coast through its subsidiaries in South Africa, Transworld Energy and Minerals (TEM), and local partner Xolco.

There was stiff opposition due to the discovery by the community that it is unlikely that the company would be able to rehabilitate the area after mining. According to the report, the locals themselves were aware that no amount of Corporate social Responsibility (CSR) would be able to make up for the loss of their productive farmlands and other traumatic environmental conditions such as water pollution, dust pollution, noise pollution, and degradation of local communities' reliance on natural resources, which would make it difficult for those communities

³⁷Section 2(d) of the MPRDA, Act 28 of 2002.

³⁸"How mining erodes the rights of women" 7 Oct 2021. Available at <https://www.groundup.org.za/article/how-mining-erodes-rights-women/> accessed 31st March 2022.

³⁹ Environmental Justice Atlas, "Pondoland Wild Coast Xolobeni mining threat, South Africa." Available at <https://ejatlas.org/conflict/pondoland-wild-coast-xolobeni-mining-threat-south-africa> updated 24 January 2021 accessed 16 January, 2023.



to survive due to the destruction of grazing lands, fields, gardens, and water resources. Additionally, the community was not properly consulted before the mining application was submitted. Due to their illiteracy, government representatives appeared to be undermining the rights of the local populace. The truth is that mining in this area would result in the loss of the land that the locals have relied on for their livelihood for the past 500 years or more.⁴⁰ Even regional customs that dictated that elected village elders were the proper channels for community consultation were disregarded. The right method was not followed, and in order to correct this, the MNC and the state were supposed to hear the local population's preferences for development possibilities rather than ignoring them. In addition, the disregard for the law has aroused the concern of civil society groups like Sustaining the Wild Coast (SWC), who have petitioned the court for an injunction against the violations of human rights and intimidation on behalf of the community.⁴¹

Effects of mining on social and economic rights of women in South Africa

The loss of land and displacement are two effects of mining that have an impact on the socioeconomic rights of women in communities that extract resources. This may result in women losing their livelihoods and having to work harder to support their families.⁴² The majority of mining corporations in South Africa are now turning to moving communities in order to make room for opencast mining operations.⁴³ Hilson and Yakovleva make a strong case for this issue, claiming that widespread mineral extraction is to blame for regional conflict and a wide range of social issues, the most significant of which is community dislocation.⁴⁴ Controversy and unrest in those areas have tarnished these relocations. The two most notable relocation projects, Ga-

⁴⁰Ibid.

⁴¹ Ibid.

⁴² Oxfam Australia, 'Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment,' December 2009. Available at www.oxfam.org.au/explore/mining 1-20, 7, accessed 16 January 2023.

⁴³Nthai, S "Host Communities and Mining Projects in South Africa: Towards an Equitable Mineral Regulation," (2009) 30 *Obiter* 120, 121.

⁴⁴Hilson G and Yakovleva N, "Strained relations: a critical analysis of the mining conflict in Prestea, Ghana" (2007) 26 *Political Geography* 98, 119.



Pilaand Mothlotlo, were carried out by Anglo Platinum, the largest primary producer of platinum in the world.⁴⁵

Anglo American Platinum's parent company, Anglo American, was charged in a study by the British charity "War on Want" in August 2007 for making money off of the mistreatment of people in the developing nations where the corporation conducts business. Anglo American Platinum was charged in the study with uprooting South African communities, including ejecting the whole Magobading community from its land and forcing them into the Mecklenberg township.⁴⁶ Whereas, the United Nations guarantees "the right not to be displaced arbitrarily under the United Nations Guiding Principles on Internal Displacement."⁴⁷ However, projects that involve extracting resources could rob people of this right. When such initiatives involve displacement, the indigenous people are not adequately compensated or are not provided any compensation at all,⁴⁸ including women who also suffer the consequences of displacement. In addition, the requirements of the women who are the primary Caregivers are not always taken into account by community development projects, whether they are supported by the government or by businesses through corporate social responsibility (CSR). Following the advent of the 1996 South African Constitution and the enactment of laws such as the Mineral and Petroleum Resources Development Act 28 of 2002, (MPRDA), focus on social obligations developed rapidly.⁴⁹ The MPRDA is cognisant of the need for government to support rural and local development as well as the social advancement of communities impacted by mining.⁵⁰ The objects of the Act are linked to the principle of empowerment and improvement of the quality of life of those who have been affected by previous unfair discrimination while opportunities must be provided to previously disadvantaged persons, specifically women.⁵¹

⁴⁵ Anglo American Platinum Limited. Available at https://en.wikipedia.org/wiki/Anglo_American_Platinum accessed 16 January 2023.

⁴⁶ "Anglo-American: the Alternative Report" (PDF). *The War on Want*. Updated 21 March 2022, accessed 16 January 2023.

⁴⁷ United Nations Guiding Principles on Internal Displacement, Principle 5 and 6 (1) & (2).

⁴⁸ Adeola R, "The Right not to be arbitrarily displaced under the United Nations Guiding Principles on Internal Displacement" (2016) 16 *African Human Rights Law Journal* 83, 89.

⁴⁹ See also sections 26 & 27 of the South African Constitution.

⁵⁰ Kloppers and Du Plessis (note 9 above) 93.

⁵¹ Section 2(d) of the MPRDA.



The Right of Women to Participation for the prevention of conflicts

Mining companies are required by government regulations, such as those controlling the issuance of mining licenses, to create social participation plans to meet community needs in the regions in which they operate. As a result, these businesses must participate in stakeholder engagement procedures and keep track of their social and environmental implications.⁵² “The standard expected in view of the Constitutional Court’s position on such issues and international norms are rarely met by public consultation procedures in South Africa, which are typically little more than box-ticking exercises for mining companies.”⁵³ This failure has a variety of causes. Companies conducting public consultations neglect to account for specifics that might require various consultation procedures in various communities. For instance, traditional communities—many of which are impoverished and marginalised—rarely receive consultation from businesses in a way that is compatible with their customary norms. As a result, the advice provided frequently does not correctly reflect the opinions or choices of the community.⁵⁴ Despite legal requirements such as section 16(4)(b) and Section 22(4)(b) of the MPRDA (as amended),⁵⁵ many communities claim that mining firms only consult with their traditional leaders, entering into private agreements that may not benefit the entire community.⁵⁶ Furthermore, “Consultations at insensitive times or venues exclude sections of the community, such as workers or those with childcare responsibilities.”⁵⁷

⁵² Patel L and Mushonga H, “Corporate Social Responsibility and Development: A study of Stakeholder perspectives of Listed South African Companies” (2014) 44 (2) *Africanus* 50, 59.

⁵³ In the matter of Bengwenyama (Pty) Ltd v. Genorah Pty Ltd, 2011 (3) BCLR 229 (CC), the plaintiffs alleged that the head of the community was given a form to complete and check boxes to express their agreement or disapproval of future mining company activities. This effort, according to the court, was insufficient consultation because the parties were unable to participate in appropriate interaction (The mining company and the community).

⁵⁴ Patel L and Mushonga H, “Corporate Social Responsibility and Development: A study of Stakeholder perspectives of Listed South African Companies” (2014) 44 (2) *Africanus* 50, 59.

⁵⁵ Section 16 (4) (b) substituted by Section 12 (d) Act 49 2008 with effect from 7 December 2014. Section 22 (4) (b) of the MPRDA substituted by Section 18 (e) of Act 49 of 2008 with effect from 7 December 2014.

⁵⁶ Claassens A, “Contested power and apartheid tribal boundaries: the implications of ‘living customary law’ for indigenous accountability mechanisms” (2011) *Acta Juridica: Pluralism and Development: Studies in Access to Property in Africa* 174-209; Oral submissions made by the Mining and Environmental Justice Communities Network of South Africa (MEJCON-SA) to the South African Human Rights Commission on 13 September 2016 in Johannesburg. Available at <http://www.sowetanlive.co.za/news/2016/09/15/traditional-leaders-fuel-mining-tension> accessed 31 March 2017.

⁵⁷ Groenewald Y, “Coal’s hidden water cost to South Africa,” Greenpeace June 2012, at 7, available at <http://www.greenpeace.org/africa/Global/africa/publications/coal/CoalsHiddenWaterCost.pdf> accessed 31 March 2017.

Unfortunately, there are flaws in the regulatory structure that impede meaningful public engagement while applications for mining authorisations are being considered. Environmental impact assessment legislation in South Africa stipulates a 30-day public involvement period, yet this period is insufficient to allow for genuine community input.⁵⁸ Additionally, mining application notice policies and procedures are defective, which results in the exclusion of numerous interested and impacted parties from the approval process.⁵⁹ In the case of *Bengwenyama Minerals (Pty) Ltd v. Genorah Resources (Pty) Ltd and others*,⁶⁰ the applicants sought to have the State's grant of a prospecting right on their property to the mining company, Genorah Resources (Pty) Ltd, reversed because the community had not been properly consulted. The Constitutional Court ruled, among other things, that one of the goals of consultation with landowners (the community) must undoubtedly be to determine whether there is room for an accommodation between the applicant for a prospecting right and the landowner insofar as the interference with the landowner's right to use the property is concerned⁶¹ is a standard consistent with South Africa's international human rights obligations. The Court further ruled that the granting and execution of prospecting rights constitute a grave invasion of a property owner's rights and that the Act's Section 10 requirement for consultation with landowners served to arm them with the knowledge they needed to decide how to respond to the application. The land's owner, however, is not the typical landowner, the court added. It is a group of people who were previously denied legal title to their land as a result of racial discriminatory laws. The Constitutional Court emphasised that the apartheid system had resulted in discriminatory laws by stating that:

The Constitution was written with equality, freedom, and dignity as its guiding principles. The complete and equal enjoyment of all rights and liberties is a component of equality. The Constitution calls for legislative and other actions to be taken to safeguard and advance those who have been negatively affected by unfair discrimination in order to advance the achievement of substantive equality. Among other things, the Mineral and Petroleum Resources Development Act

⁵⁸See section 10 (b) of the MPRDA as amended.

⁵⁹ See Centre for Applied Legal Studies (CALs), *The social and labour plan series, trends and analysis report* (2016) 95. Available at https://www.wits.ac.za/media/wits_university/faculties_and_school/commerce_law_and_management/researchentities/cals/document/programmes/environment/resources/Social1%20and%20Labour%20Plans%20First%Report%20Trends%20and%20Analysis%2030%March%2016.pdf (accessed 1 April 2017).

⁶⁰ 2011 (3) BCLR 229 (CC).

⁶¹Ibid 39.

was created to put these fundamental principles into practice. It includes clauses that materially affect community ownership of land, private land ownership, and the ability of those who were previously marginalised to utilise the abundant mineral resources of this nation.⁶²

The Court's decisions in this case were intriguing, demonstrating the value of laws that businesses must abide by while also requiring that these restrictions be made public so that impacted communities are aware of them. According to Froneman J, the Constitutional Court came to the conclusion that Genorah had violated the Act's provisions for consultation with the community, a hearing with the community, and compliance with environmental standards. As a result, the community had not received the treatment that the Constitution required. Accordingly, the community had not been treated as required by the Constitution. The Constitutional Court further analysed and applied the provisions of the MPRDA which governs “equal distribution of benefits of the mining industry especially for black people and previously disadvantaged persons including women,” by stating that, amongst the objects of the Act⁶³ are:

1. “The promotion of equitable access to the nation’s mineral and petroleum resources for the country’s people;”
2. “The substantial and meaningful expansion of opportunities for historically disadvantaged men and women to enter the mineral and petroleum industries and to benefit from the exploitation of these natural resources;” and
3. “To ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.”⁶⁴

Thus, one of the critical rights for women in extractive communities is the right to participation. CEDAW covers requirements on nationality in detail as well as political involvement, access to equal opportunity in public life, and in the professions. Also, several international laws support the right to public engagement/participation.⁶⁵ For instance, Article 14 of CEDAW stipulates that:

States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that

⁶²Ibid 3.

⁶³ See Section 2 of the MPRDA.No. 28 of 2002.

⁶⁴Per Froneman J 16.

⁶⁵See for example Article 13 of the African Charter on Human and Peoples Rights.

they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (a) to participate in the elaboration and implementation of development planning at all levels. The Convention underlines the equal responsibility of women and men in family life and stresses the social services needed for combining family responsibilities and participation in public life”⁶⁶

The Maputo Protocol, an addendum to the African Charter on Women's Rights, also guarantees women's rights to participate in politics and decision-making.⁶⁷ Designing company-sponsored community activities with input from women and women's groups can lead to better outcomes for the larger community; as a result, businesses see a stronger return on their socially responsible spending.⁶⁸ A comment from a mining company official demonstrates this as follows: “The women came with the intention of addressing their top concerns—health and nutrition—while the men brought initiatives for building roads. We are still witnessing the same levels of domestic unhappiness five years after pouring money into infrastructure; perhaps the women were correct.”⁶⁹

Conclusion and recommendations

In conclusion, in order to ensure post-conflict restoration and rehabilitation in war-torn extractive communities, the international regulatory framework, international codes, and international guidelines for multinational companies to operate within human rights considerations in the course of their business can influence the effective implementation of policies for development in rural extractive communities, particularly for women and other vulnerable groups. It is common knowledge that businesses must support human rights, particularly in the extractive sector, in order to maintain their social license to operate and to ensure that the substantial financial gains from these operations may be distributed to the local population. According to the results of this article, it can be said that the widely held belief that host communities receive very few benefits from mining compared to the financial profits is true. Thus, this paper has shown

⁶⁶Article 14 of CEDAW.

⁶⁷Article 30 of the Maputo Protocol.

⁶⁸ Ward B and Strongman J *Gender-sensitive Approaches for the Extractive Industry in Peru: Improving the Impact on Women in Poverty and their Families. Directions in development; energy and mining*. World Bank. © World Bank (2011). Available at <https://openknowledge.worldbank.org/handle/10986/2516>, 128 accessed 26 March 2017.

⁶⁹Ibid 1.



that most of the challenges of allocation of benefits are partly governance issues which Mining companies can influence having a certain level of responsibility through their corporate governance structures.

Secondly, the major cause of conflicts in mining areas, as discovered in this paper, is as a result of gross human right abuses particularly to the women and inhabitants of resource rich communities. In order to prevent these conflicts, it is thus recommended that consultation with members of the communities must be comprehensive in order to win the confidence of members of the communities and ensure that they are not denied their right to participation and basic necessities. Relocation is usually one of the solutions proposed by the government and the mining companies. This may however not augur well for the communities and can provoke hostilities. On the other hand, relocation of communities to a more suitable environment may assist the communities to cooperate with the mining companies (MNCS) particularly where adequate notice of the relocation is given to the communities.

Additionally, the methods and procedures of land acquisition and relocations—either through unfair policies or forced evictions as a result of the allocation of the land space to an extractive company—are one of the unsustainable practices by states and MNCs that have an adverse effect on women in local communities and seek to deprive them of their socioeconomic rights. It is imperative to note that land is one of the most crucial resources for rural populations. Unfortunately, if the location of the mine is close to the rural village, land is the main resource that is first taken away from those who live there. The principal resource on which the majority of rural populations rely for both agricultural and non-agricultural requirements is land, which is a natural resource that provides the necessities of society, particularly in rural areas.⁷⁰ Rural areas in most countries have most of the natural resources including large land sizes, fertile soils, vegetation, wildlife and mineral deposits. However, “large tracts of land are extracted from the communities and are often awarded to companies or individuals for mineral resource exploration and mining.” In view of this, for effective enforcement of policies developed to ensure peace in these communities, the international guideline of meaningful stakeholder engagement, for

⁷⁰Moomen A and Dawan A, “Probing the perspectives of stakeholders’ engagement and resistance against large-scale surface mining in developing countries,” (2017) 24 *Corporate Social Responsibility and Environmental Management* 85, 86.



MNCs, should be developed as part of domestic policies as well as for ease of enforceability by the courts. This may ensure the implementation of appropriate measures such as remediation and adequate living conditions for the vulnerable in communities where these MNCs operate and also to ensure that empowerment opportunities are made available for women to secure their socio-economic rights, hence ensuring adequate recovery from conflict situations and prevention of such conflicts in the future.