



# The South African mining sector

Labour rights in transition mineral mining

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## About this report

This report has been commissioned by CNV Internationaal to inform an incipient programme on transition minerals and the South African mining sector.

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## Summary

The working conditions for mine workers in South Africa are perilous, leading to numerous fatalities annually despite legal protections for Freedom of Association. Mining companies often hinder unionisation efforts through practices like contract labour and outsourcing, contributing to the persistent impoverishment of workers despite incremental wage improvements. The urgency to address these challenges is critical, particularly given South Africa's significant role in the global production of transition minerals. As CNV Internationaal explores the South African mining sector, it aims to develop informed strategies to engage with upstream and downstream stakeholders, advocating for improved conditions throughout the mineral supply chain.

This report presents the results of a study that mapped the mineral mining value chain in South Africa, identifying key stakeholders such as producers, traders, processors, and buyers. Additionally, the structure of the supply chain was examined, focusing on the main players, including mines, traders, smelters, processing plants, and buyers. This study also assessed leading companies' due diligence policies and practices, explored linkages between downstream and upstream companies, and analysed challenges related to labour rights in the value chain. Specific attention was given to different contract forms at various points in the chain, with detailed data collected on women, youth, and other vulnerable groups such as migrant workers.

The findings of this research underscore the critical role of South Africa's mining sector in the global energy transition due to its substantial production of essential minerals such as chromium, manganese, platinum, titanium, and vanadium. Chromium is vital for manufacturing stainless steel used in solar, hydroelectric, and wind energy infrastructure, as well as in geothermal power plants. Manganese is crucial for steel production and electric vehicle batteries, with demand projected to rise significantly. Platinum is essential for fuel cells, and clean hydrogen technologies are key to reducing carbon emissions. Titanium is important for geothermal power and experimental energy storage technologies. Vanadium, essential for energy storage systems like Vanadium Redox Flow Batteries (VRFBs), meets the rising global demand.

Despite its importance, the conditions of workers employed in the South African sector remain harsh and dangerous, with frequent accidents and exposure to harmful substances like silicosis-causing dust and hazardous minerals. Despite some improvements in wages and safety over the past two decades, workers continue to face low real wages, inadequate and unaffordable housing, and a hostile environment towards unionisation. The widespread use of outsourcing, contract labour, and other precarious employment forms further exacerbates their plight, resulting in fragmented workplaces and limited access to benefits.

Adding to this, mining in South Africa has severe environmental consequences, including significant water usage and the risk of contamination. Communities near mining sites voice concerns over water depletion and home damages, with insufficient government intervention. Additionally, large-scale mines generate excessive waste, risking environmental hazards like tailings dam failures. Socially, mining exacerbates historical injustices against Black communities, leading to displacement and inadequate consultation. Gender disparities are evident, with women marginalised in decision-making and job opportunities.

While the South African government has made some efforts to mitigate the negative effects of mining on people and the environment (chiefly through requiring mining companies to publish Social Labour Plans (SLPs)), criticism from NGOs highlights widespread non-compliance and failure to fulfil promises within SLPs among South African mining companies. Reports indicate issues such as insufficient feasibility studies, inappropriate project choices, lack of transparency, and inadequate community involvement. Many companies are accused of environmental degradation and human rights violations, raising doubts about the effectiveness of legislation and voluntary sustainability programmes in ensuring labour rights and sustainable development.

Overall, the industry seems to prioritise profits over the well-being and safety of its workers, leaving many trapped in poverty and substandard living conditions.

Further, the analysis of CSR policies by South African mining companies and their buyers downstream shows a mixed picture. On the one hand, all the companies reviewed have published human rights policies and ethical codes of conduct, many of which apply to their suppliers and are embedded in international human rights legislation. However, significant loopholes and gaps in implementation, gender sensitivity, and stakeholder engagement suggest that human and labour rights breaches could still occur. As such, the African mining sector, including buyers of minerals in downstream countries, still shows a passive stance on promoting workers' rights, and the vague nature of its mitigation strategies further exacerbates these risks.

Considering these findings, this report presents recommendations for South African mining companies and their buyers in downstream markets, as well as recommendations for CNV Internationaal and its trade union partners.

## Abbreviations

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<b>BIC</b>	Bushveld Igneous Complex
<b>CBA</b>	Collective bargaining agreement
<b>JV</b>	Joint venture
<b>kt</b>	Kilotons (where 1 kt = 1,000 tons of TNT)
<b>koz</b>	Thousand ounces (29,573.5 millilitres)
<b>kwmt</b>	Thousand wet metric tons
<b>LRA</b>	Labour Relations Act
<b>Mt</b>	Million (metric) tons
<b>mtV</b>	Metric tons of vanadium
<b>OSH</b>	Occupational safety and health
<b>oz</b>	Ounces (1 ounce = 29.5 millilitres)
<b>PGM</b>	Platinum Group Metals
<b>PPE</b>	Personal protective equipment
<b>RoM</b>	Run-of-Mine (raw, unprocessed)
<b>SA</b>	South Africa
<b>3TG</b>	Tin, tantalum, tungsten, and gold

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## Background

CNV Internationaal aims to improve the labour rights of low-wage workers, specifically in the supply chains of textile, palm oil, mining, sugarcane, and cashews. These labour rights include the right to organise and bargain collectively, decent wages, safe and respectful working conditions, gender equity, and freedom from discrimination at the workplace.

In the context of the mining sector, CNV Internationaal emphasises the importance of a fair and just transition: A transition that should implement new technologies for a greener economy but, at the same time, protect the affected workers across the globe. CNV Internationaal primarily focuses on workers at the mining stage of international value chains, both those workers who mine for minerals necessary for a greener economy and the workers who are affected by anticipated mine closures.

Over the past years, CNV Internationaal has made considerable efforts to get a better insight into the situation of workers in the mining value chain and the related labour rights risks they are facing. To this end, CNV Internationaal commissioned Profundo to conduct comprehensive analyses on outsourcing in the mining sectors of Peru, Bolivia and Colombia, as well as a study on the relationship between Europe's energy transition and mining in Latin America. In Latin America, this has, among others, resulted in the establishment of a fair work monitor to analyse current cases, share good practices and develop proposals, and the launch of a collective project in the field of occupational health and safety in Peru and Bolivia, together with European metal companies and global metals associations.

CNV Internationaal aspires to extend its work to improve the labour rights of mining workers in other parts of the world. South Africa is a globally important exporter of metals, including "critical" minerals which are crucial for the energy transition: manganese, lithium, zinc, platinum, chromium, palladium, and nickel, among others. To identify opportunities for potential interventions by CNV Internationaal and its partners in South Africa, a better understanding of the country's mineral mining value chain needs to be developed. This report has been commissioned by CNV Internationaal as a first step in that direction.

# 1

## Introduction

**This chapter provides a brief introduction to the South African mining sector. Moreover, it lays out the methods used in the investigation of supply chain links between South Africa and downstream buyers of minerals in Europe, as well as the labour rights situation in the country and the corporate social responsibility policies of manufacturers likely sourcing from this country.**

The mining sector has been one of the main driving forces behind South Africa's economic development,<sup>1</sup> particularly with the discoveries of diamonds and gold in the late 19th century. To support the mining industry, policies based on land-grabbing and the subjugation of black communities in what is nowadays known as South Africa, Mozambique, Zimbabwe, Zambia, Swaziland, Lesotho and Malawi were implemented to provide capital and cheap labour.<sup>2</sup> This resulted in significant profits, which allowed the expansion of gold mining into other mining sectors, including coal, platinum, palladium, iron, and chromite, between the 1920s and 1960s.<sup>3</sup>

In the 1960s, mining giants like Gencor (currently owned partly by Gold Fields and BHP Billiton) and Anglo-American diversified into finance and industry, monopolising the industrial sector.<sup>4</sup> However, in the 1990s and 2000s, these conglomerates unbundled, focusing on core sectors. Many shifted their listings to the London Stock Exchange, becoming foreign-owned. Despite changes, mining companies in South Africa became financially driven, prioritising shareholder value over labour costs. Profits never stopped relying on low wages, particularly for black workers.<sup>5</sup> Adding to this, historical land dispossession and ongoing environmental and social rights violations by mining companies persist, often met with resistance and violence against affected communities and activists.<sup>6</sup>

Despite its historically central role in the South African economy, mining as a percentage of the Gross Domestic Product (GDP) has been in decline for the past four decades, falling from 20% in 1980 to 6.2% in 2023.<sup>7</sup> Nonetheless, South Africa is currently ranked 5th internationally in terms of mining contribution to GDP, with non-energy minerals valued at over US\$ 2.4 trillion, making it the wealthiest mining jurisdiction globally, excluding petroleum reserves.<sup>8</sup> It has been noted, however, that this value may be much larger, as large-scale mis-invoicing is a problem in the mining sector, given that companies seek to illicitly take capital out of South Africa for political reasons but also to reduce the amount of tax paid.<sup>9</sup>

In addition to its economic importance, the mining sector is a source of employment for thousands of South Africans. In 2023, mining employed 477,000 workers.<sup>10</sup> However, the quality of employment is questionable, not least because of the high rate of subcontracting, which is estimated to make up 25% of the total employment in the sector.<sup>11</sup> Outside of the formal sector, there is also a relatively large number of artisanal miners, but also people employed to mine illegally in operations run by criminal syndicates. There are an estimated 30,000 such miners in South Africa. Most work on the 6,000 disused and closed gold mines in the country. However, some also work illegally in operational mines, including in the platinum and palladium sectors.<sup>12</sup>

Working conditions for mine workers remain harsh and dangerous in South Africa, with dozens of workers dying in accidents each year.<sup>13</sup> While legally upholding Freedom of Association, mining companies tend to resist unionisation efforts, employing tactics like contract labour and

outsourcing to deter workers' organisation. Moreover, despite some wage improvements over the past decades, many mine workers still struggle with poverty, finding it challenging to meet their own and their families' needs on their current earnings.<sup>14</sup>

The urgency to tackle these issues cannot be overstated, especially considering the country's abundance of transition minerals. South Africa is one of the top three globally in terms of production of platinum/palladium (59%), vanadium (25%), titanium minerals (19%), and manganese ore (17%).<sup>15</sup> It also has the world's largest reserve of chromite.<sup>16</sup> The escalating global demand for these minerals may intensify the negative impacts of mining on workers, communities, and the environment. Given this context, downstream purchasers of these raw materials have a role to play, leveraging their influence to advocate for better conditions.

Recognising the potential of downstream players in the mineral supply chain, CNV Internationaal has commissioned this research to better understand the South African mining sector and plan informed engagement strategies with key upstream and downstream actors.

## 1.1 Objective

The objective of this project is to map the mineral mining value chain in South Africa, identifying key stakeholders such as producers, traders, processors, and buyers. Additionally, the structure of the supply chain is examined, focusing on the main players, including mines, traders, smelters, processing plants, and buyers. This study also assesses leading companies' due diligence policies and practices, explores linkages between downstream and upstream companies, and analyses challenges related to labour rights in the value chain. Specific attention is given to different contract forms at various points in the chain, with detailed data collected on women, youth, and other vulnerable groups such as migrant workers. Furthermore, the analysis considers the level of organisation among workers and other labour support organisations active in the sector.

## 1.2 Methodology

## 1.3 Supply chain and market research

This study focuses on six of the most important minerals for the energy transition mined in South Africa: chromium, manganese, platinum and palladium, titanium, and vanadium. These minerals were chosen based on their importance in the country's role in global reserves and (growing) supply to the world market.

Profundo mapped the supply chain of each of the six selected minerals, from mining to export, covering the period from January 2019 to the latest available data. Links with Dutch businesses were given special attention. The purpose of this mapping was to investigate:

- where the mining sites are for the selected minerals;
- who are working there;
- which companies and other stakeholders are active and what their role is.

Profundo also profiled mid- and downstream companies that likely use minerals sourced from South Africa in their products. In identifying links between the mining companies and relevant downstream sectors in Europe, the complexity of the mineral supply chains with various processing stages between the mining and the use in end products is a limiting factor. A lack of supply chain monitoring, tracing and transparency hampers a mapping of the flows of minerals that play a role in the energy transition. In this context, while a link with the processing and refining stages of exported ores and concentrates could be made in some cases, no connections to the following processing stages could be identified. Due to the importance of transition minerals, and the global ranking of South Africa as a supplier of these minerals, and the general lack of supply chain tracing and segregation, it can be assumed that the minerals mined and exported by this

country are entering international supply chains and likely also those of key downstream companies active in Europe.

The analysis includes the following companies:

- Five key mining companies active in South Africa. These include national companies as well as groups incorporated in other countries that have subsidiaries operating in that country. Most of these companies mine multi-mineral deposits, meaning that a relatively broad selection of minerals is covered.
- Five EU-based companies producing photovoltaic (PV) panels, on- and offshore wind turbines, and stainless-steel alloys were selected.

## 1.4 Policy analysis

The Corporate Social Responsibility (CSR) policies of both upstream and midstream companies, identified through supply chain analysis, were evaluated for their adherence to human rights and labour rights standards outlined in the United Nations' Guiding Principles on Business and Human Rights (UNGPs), the International Labour Organization (ILO) Fundamental Conventions, and the OECD Guidelines for Multinational Enterprises.

In this context, CSR policies encompass a range of corporate regulatory frameworks and standards governing sustainability efforts. This may include but is not limited to (Supplier) Codes of Conduct, Human Rights Policies, Environmental and Human Rights Due Diligence Policies, and Sustainability Reports.

All publicly available CSR policies were retrieved from the companies' websites for analysis. The companies were given the opportunity to comment on our analysis of their policies. The policy frameworks that were used for the CSR policy analysis are presented in Appendix 1.

## 1.5 Analysis of working conditions in the South African mining sector

This research activity was conducted by three local consultants, Shawn Hatting, Mthetho Xhali, and Lara French of the International Labour Research and Information Group (ILRIG). The ILRIG consultants mapped how South African mining sector workers are organised, the current role of trade unions, federations, and other sector initiatives, and the high-potential interventions that trade unions can make to improve labour rights conditions in this sector.

To this end, the ILRIG consultants conducted a desk review of reports by trade unions, government, labour support organisations, NGOs, etc. Moreover, interviews were conducted with key informants, including trade union leaders/workers' representatives, labour authorities, academics, sector association representatives, and representatives of subcontracting companies, among others.

## 1.6 Structure of this report

This report is structured as follows. Chapter 2 provides a brief overview of the six selected minerals, detailing their primary uses both generally and within the context of the energy transition, identifying the main upstream companies involved, and examining the trade relationships between South Africa and the Netherlands. Chapter 3 outlines the state of labour rights in South Africa, particularly in the mining sector, maps key actors influencing the rights situation of mining workers, and provides an overview of the social and environmental impacts of mining, with a focus on the impacts of the mining companies selected in the previous chapter. Chapter 4 analyses the CSR policies of the companies profiled in Chapter 2, focusing on their alignment with internationally recognised human and labour rights frameworks. Lastly, Chapter 5 provides conclusions and recommendations.

A summary of the findings of this report can be found on the first pages of this report.

# 2

## Mining companies in South Africa

**This chapter provides a brief overview of the six selected minerals, the main uses in general and in the context of the energy transition, and the main upstream companies involved. Trade relationships between South Africa and the Netherlands are described as well.**

### 2.1 Introduction

Six minerals mined in South Africa have been selected for this research: chromium, manganese, palladium, platinum, titanium, and vanadium. These minerals were selected mainly because of their importance for the energy transition and the importance of South Africa in terms of deposits. The link with the Netherlands has been taken into account as well. For each mineral, the main companies, their owners, mining sites, and, if available, annual production statistics and staff are identified. Based on trade statistics for the six minerals for both South Africa and the Netherlands, exports of South Africa, the main destinations for the minerals (distinguished between the ores and concentrates, oxides and the ferroalloys made of the minerals), and the role of the Netherlands and other European countries are described.

### 2.2 Chromium

Chromium, extracted from chromite, is mainly used in stainless steel products to increase their hardness. Stainless steel is an alloy of iron with a minimum of 10.5% chromium and accounts for around 80% of world chromium consumption.<sup>17</sup> Stainless steel is used in solar energy plants (i.e. the inner and outer shells of water tanks, pumps, frames, and fasteners), in hydroelectric energy power generation, and in onshore and offshore wind energy (in fasteners, safety cables, davit cranes, and fittings).<sup>18</sup>

Chromium is important for concentrated solar power plants (CSP) because it efficiently converts solar energy into thermal energy. CSP uses mirrors to direct solar radiance to a central receiver, where energy is transmitted to a heat-exchange fluid used to generate electricity. Two main types of CSP technology—parabolic troughs and central towers—account for most of the installed, planned, and projected additions. The central tower system requires more materials, including chromium (and manganese).<sup>19</sup>

Chromium is also used in geothermal power plants that generate electricity by powering turbines using underground hydrothermal resources (steam or hot water) piped to the surface. Specialised steel (chromium and titanium, among others) is required to resist high temperatures and corrosion.<sup>20</sup> Geothermal energy is expected to account for nearly half of the total chromium demand from all low-carbon power sources in 2040.<sup>21</sup>

However, chromium demand is not expected to increase a lot in the coming decades, according to the World Bank.<sup>22</sup>

The main producer is South Africa, holding about 70% of the world's total chromite reserves.<sup>23</sup> Many countries depend on South Africa for chromium imports.<sup>24</sup> Since 2018, South Africa's exports of chrome ores and concentrates have increased by around 3.3% per year.<sup>25</sup> Approximately 3.7 million tons of the world's production of 14.4 million tons of ferrochrome, an alloy of chromium

and iron, was supplied by South Africa in 2021.<sup>26</sup> This comes in particular from the Bushveld Igneous Complex (BIC) in Northern South Africa, which contains some of the richest mineral deposits, among other platinum, chromium, and vanadium globally.

### 2.2.1 Upstream companies

Table 1 gives an overview of the chromium mines and mining companies in South Africa.

**Table 1 Chromium mining and processing companies in South Africa**

Company	Parent or owned by	Chrome mines in South Africa	Supplies to	Annual production and staff	Source
<b>Samancor Chrome</b>	Africa Chrome (majority), Hanwa/Jogmeg, and Black Empowerment Shareholders, representing entrepreneurs, employees, women in mining and communities.	Eastern Chrome Mines (ECM) in Steelpoort Valley, incl. 3 underground mines, 2 opencast mines; Western Chrome Mines (WCM) in Rustenburg area, NW Province, incl. 3 underground mines; 6 ferrochrome plants	Over 90% of the chrome ore output is consumed in the production of ferrochrome in SA. Remaining ore is exported. Some 90% of chrome alloy production is exported to stainless steel producers globally.	'Largest integrated ferrochrome producer in the world' (website)  About 70% of the world's reserves of chromium, and of that, about 70% of its ore is owned by Samancor.	<sup>27</sup>
<b>Jubilee Metals Group (Jubilee Platinum)</b>  (chrome, PGMs, copper)	Publicly traded	No mines, but 4 chrome processing operations (BIC <sup>i</sup> )	Not available	1.3 Mt (2023)	<sup>28</sup>
<b>Merafe Resources</b>	Glencore (29%), Industrial Development Corporation (22%), SA free float (42%), offshore free float (7%). <sup>ii</sup>	11 Glencore-Merafe chrome venture operations (incl. 6 mines and 5 ferrochrome and sinter plants).	Not available	384,000 tons ferrochrome (2022) (Merafe);  1.16 Mt of ferrochrome produced at own assets (2022, Glencore)	<sup>29</sup>
<b>Impala Chrome</b>	JV of Glencore (25.8%), Implats (65%)	Not available	Not available	Not available	<sup>30</sup>

<sup>i</sup> Bushveld Igneous Complex

<sup>ii</sup> Glencore has a 79.5% stake in the Glencore-Merafe Chrome Venture, and therefore having interests in different chrome mines and smelters. Merafe Resources has a 100% stake in Merafe Ferrochrome and Mining. The latter has a 20.5% stake in Glencore-Merafe Chrome Venture. Source: Merafe Resources (n.d.), "Group Profile", online: <https://www.meraferesources.co.za/group-overview.php>, viewed in January 2024, and Glencore (n.d.), "Ferroalloys", online: <https://www.glencore.com/what-we-do/metals-and-minerals/ferroalloys>, viewed in January 2024.



Company	Parent or owned by	Chrome mines in South Africa	Supplies to	Annual production and staff	Source
<b>African Rainbow Minerals</b>	Merafe Resources (5.4%), Deltrade (3.8%) Publicly traded	Modikwa (50%) and Two Rivers (54%) – JVs with resp. Amplats and Impala	Not available	252,816 tons (2022)	31
<b>Clover Alloys</b>	Private	Rustenburg Chrome Mining (underground + open pit) (74%) close to Rustenburg in NW Province + plants	Chromite sand concentrates are sold in SA and exported to a.o. China, US, Europe, Japan, Korea, Brazil.	Not found	32
<b>Tharisa Minerals</b> (chrome, PGMs)	Tharisa (100%), listed on JSE + LSE.	Tharisa mine (BIC) + plants and other companies.	China, Indonesia	1.58 Mt chrome ore concentrate; approx. 900 staff in SA	33
<b>Afarak Group</b> (ferroalloys)	Publicly listed	Vlakpoort, Zeerust, Mecklenburg mines. Also mining and processing facilities in Turkey, Germany.	Not available	Mining in SA: 71,271 tons; 94 staff (2022).	34
<b>Assore South Africa</b> (iron, manganese via Assmang, lithium, chrome)	Private	Dwarsrivier Chrome Mine (100%)	Sold to local and export market	Not available	35
<b>Bauba Platinum</b> (chrome, platinum)	Publicly listed	Moeijelijk Chrome Mine (BIC), Kookfontein Chrome Project (Nuco Chrome Bophuthatswana (74%)) and Hartebeesfontein Chrome Project (70%) in NW Province	Not available	294,480 tons RoM <sup>iii</sup> and 182,390 tons ore sold; 499 employees (2021)	36
<b>Mineral Technologies</b> (mineral processing)	Downer Group	Not available	Not available	Not available	37

<sup>iii</sup> Run of Mine or RoM means the ore from the source prior to processing, consisting of the soil, rock of overburden, minerals, contamination and impurities.

Company	Parent or owned by	Chrome mines in South Africa	Supplies to	Annual production and staff	Source
company, and processing plant supplier)					

### 2.2.2 Trade

South Africa exports chromium mostly in the form of ores and concentrates, as well as ferro-chromium alloys to produce steel and alloys. In 2022, South Africa exported 14 million tons of chromium ore, 49% of which went to China, followed by Mozambique (37%). In Europe, the Netherlands is the main direct importer (though only 0.7%, amounting to 93.9 kilotons in 2022) of South African chromium ore, followed by Switzerland and Italy.

South Africa exported 3.4 million tons of alloys, 37% of which went to China and 27% to Mozambique. The Netherlands imported 2% of South African chromium ferroalloys (an estimated 8 kilotons).<sup>iv</sup> Other European importers of these alloys from South Africa were Italy, Belgium, and Spain.

Of the 6.4 kilotons of chromium imported by the Netherlands in 2022, 92% came from Mozambique. As Mozambique is an importer buyer of South African chromium ore, it is likely that chromium from South Africa entered the Netherlands via Mozambique.

Of the 215 kilotons of ferrochromium alloys imported by the Netherlands, 31% came from Finland, 18% from Russia, 12% from Turkey, 10% from Albania and 4% each from Germany and South Africa. None of the other trading partners seem to import ferro-chromium alloys from South Africa. Minor quantities might be traded through Belgium, which imported 1.4% of South African chromium alloys, and exported 1.3 kilotons to the Netherlands (2022).

## 2.3 Manganese

Manganese is important for iron and steel production, and for alloying aluminium to increase corrosion resistance. Steel production accounts for 90% of global manganese demand.<sup>38</sup> Manganese alloyed steel is used for the manufacturing of EVs and in CSP.<sup>39</sup>

Other uses of manganese include battery cathodes, electronics, water treatment chemicals, and in-home energy storage.<sup>40</sup> Manganese is used in the cathode material of lithium-ion batteries.<sup>41</sup> The amount used depends on the type of battery.<sup>42</sup> Among the most commonly used varieties is lithium manganese oxide (LMO), currently used in the production of electric bikes.<sup>43</sup> There is growing interest from carmakers, including Volkswagen and Tesla, in manganese-rich batteries for mass-market models, as manganese is less expensive and safer than nickel and cobalt-based batteries.<sup>44</sup>

Manganese is also used in offshore and onshore wind power generation.<sup>45</sup> While estimates vary per company and type of turbine, a single wind turbine can contain up to 7.5 tons of manganese.<sup>46</sup>

As manganese is a relatively inexpensive mineral, it is seen as key to making supply chains more reliable and electric cars more affordable.<sup>47</sup> The industry's demand for manganese has quintupled over the past five years, and analysts predict it could increase a further ninefold by 2030 due to the expansion of CSP and EVs.<sup>48</sup> In Europe, the manganese demand is expected to grow the fastest as major EV production companies have set up their manufacturing factories there.<sup>49</sup>

<sup>iv</sup> There are discrepancies in trade data. Import data was given preference as it is considered to be of higher quality.

South Africa possesses an estimated 70% to 75% of world's manganese resources,<sup>v</sup> and is the world's main producer of the mineral.<sup>50</sup> Between 2017 and 2022, the country's production of manganese increased by more than one-third and accounts for roughly a third of the global manganese production. Since 2018, South Africa's exports of manganese ores and concentrates have increased by an estimated 4.4% per year.<sup>51</sup>

South Africa's (and the world's) manganese is concentrated in the 425 km<sup>2</sup> Kalahari Basin, 60 km northwest of Kuruman in the Northern Cape province. This Basin constitutes 75% of the world's manganese resources and the largest land-based manganese ore body in the world. All leading manganese mining companies in South Africa operate in the Kalahari Manganese Field,<sup>52</sup> where 18 mines are located. In total, South-Africa counts 22 operating manganese mines.<sup>53</sup>

### 2.3.1 Upstream companies

Table 2 provides an overview of the manganese mines and mining companies in South Africa.

**Table 2 Manganese mining and processing companies in South-Africa**

Company	Parent or owned by	Manganese mines	Supplies to	Annual production and staff	Source
<b>Assmang</b> (iron ore and manganese ore)	Assore (50%) African Rainbow Minerals (publicly listed) (50%)	Black Rock mining complex (Nchwaning and Gloria mines) + Cat Ridge Works smeltery + Cato Ridge Alloys (JV with Mizushima Ferroalloy Co. and Sumitomo Corp.)	Bulk is exported to Asia, Europe, India, US. Remainder is supplied to a subsidiary (smeltery Cato Ridge Works in KwaZulu-Natal) to produce alloys, and the domestic market.	4.1 Mt ore (of which 3.6 Mt exported); 6,365 staff in manganese mining and smelteries (permanent and contracted)	54
<b>Tshipi é Ntle Manganese</b>	Ntsimbintle Mining (50.1%) (owned by Ntsimbintle Hld (74%), OM Hld (26%)) and Jupiter Kalahari (49.9%) (100% owned by Jupiter Mines)	Tshipi Borwa Manganese Mine (open pit)	China, among others	3.47 Mt ore (2022); 'Largest manganese ore exporter of SA'	55
<b>Mokala Managanese</b>	JV Glencore (49%), Ntsimbintle Mining (51%)	Mokala Manganese Mine	Not available	Not available	56
<b>Hotazel Manganese Mines (HMM)</b>	South32 (operator) (44%, via its 60% stake in Samancor Hld, which holds	Mamatwan (open pit) & Wessels (underground)	Not available	2.11 mln wet tons (2023) <sup>vi</sup>	57

<sup>v</sup> There is a difference between mineral resources and mineral reserves. Mineral resources are defined as natural concentrations of minerals or, in the case of aggregates, bodies of rock that are, or may become, of potential economic interest. A mineral reserve is the part of a mineral resource, which has been fully evaluated and is deemed commercially viable to extract.

<sup>vi</sup> The equivalent dry tons depend on the percentage of solids, which is unknown here.

Company	Parent or owned by	Manganese mines	Supplies to	Annual production and staff	Source
<b>Khwarra Manganese</b>	74% in HMM); Anglo American (30%); Broad-Based Black Economic Empowerment entities (26%) Ntsimbintle Hld (50.1%) and Traxys Projects (trader, 49.9%)	Not available	Not available	Not available	58
<b>Kalagadi Manganese</b>	Kgalagadi Alloys (44%), Kalahari Resources (36%), Industrial Development Corp. (IDC, 20%)	Kalagadi Manganese + processing facilities	Not available	3 Mt manganese ore, out of which 2.4 Mt of sinter	59
<b>Kudumane Manganese Resources</b>	Kudumane Investment Hld Ltd (49%) (owned by AML (75%), Nippon Denko Company (25%), under Nippon Steel Group), Bold Moves 1715 (25,5%), Afris Manganese (25,5%)	Kudumane Manganese Mine, York and Hotazel (both open pit) + processing plant	Not available	2 Mt	60
<b>United Manganese of Kalahari</b>	Majestic Silver Trading 40 (51%), Renova Mang. Investments (49%)	UMK Mine in Hotazel	Export	Not available; 4 <sup>th</sup> largest manganese producer of SA	61
<b>Manganese Metal Company</b>	MM Hld Pty Ltd. (100%, owned by Bright Resources (70%) and Tothepoint Growth Specialists (30%))	Electrolytic Manganese Metal Refinery	Export	Not available	62

### 2.3.2 Trade

South Africa exports manganese mostly in the form of ores and concentrates, and only small volumes of manganese oxides (referring to a group of compounds containing manganese and oxygen) and ferroalloys. Ferroalloys are alloys of iron and one or more other elements (manganese in this case), used in the production of steel and other alloys. In 2022, South Africa exported 20.7 million tons of manganese ore, 171.4 kilotons of ferro-manganese alloys and 44.7 kilotons of manganese oxides.

Key destinations (2022) of the ore were China (64%), India (13%), Singapore (4%), Norway (3%), Latvia, and Japan. Around 0.1% of the ore was directly exported to the Netherlands. Other European importers were France, Spain, and Poland, but they accounted only for minor shares of total South African exports. The destinations of the ferro-manganese alloys were the US, followed by Italy and the Netherlands. The oxides went to Australia, followed by India, the US, Colombia, Spain, and the Netherlands.

In 2022, the Netherlands primarily imported ferro-manganese alloys (154.1 kilotons in 2022), the majority of which came from Norway (37.3%), followed by South Korea (12.5%), and India (11.9%). Around 6% of those alloys were directly imported from South Africa (around 4 kilotons). As India and Norway are among the importers of South African manganese alloys, part of those alloys might end up in the Netherlands as well.

In 2022, the Netherlands imported 38 kilotons of manganese ore, approximately three-quarters of which came from South Africa. As most of the South African manganese mines are located in the Kalahari Manganese Field, we can conclude that a significant share of the manganese imported into the Netherlands likely came from that region.<sup>63</sup>

## 2.4 Platinum and palladium

Platinum belongs to the Platinum Group Metals (PGMs), which consist of platinum, palladium, ruthenium, rhodium, osmium, and iridium. PGMs occur in nature together with nickel and copper and are often mined by the same actors. Mineable deposits of PGMs are very rare, with world annual production amounting to around 400 tons. Due to their economic values and bigger quantities, platinum and palladium are the most important members of the group.<sup>64</sup>

Platinum is important for the global energy transition as it plays a crucial role in making electrolysers and fuel cells cost-competitive. Fuel cells containing platinum catalysts power automobiles or generate power for buildings.<sup>65</sup>

Moreover, it will be key to making clean hydrogen technologies competitive. Platinum is already used to reduce transport emissions with catalytic converters in cars.<sup>66</sup> It is considered a critical mineral by the United States, European Union, and China, which recognise its importance for the energy transition and establishing policies to stimulate demand.<sup>67</sup> For example, the EU's REPowerEU effort aims to produce 10 million tonnes of hydrogen and import 10 million tonnes by 2030.<sup>68</sup> According to the World Platinum Investment Council, this global push could make clean hydrogen production the largest source of platinum demand by 2040, accounting for as much as 35% of demand.<sup>69</sup>

South Africa accounts for 70-80% of global platinum supplies,<sup>70</sup> producing approximately 130 tons out of global production of 190 tons (2022).<sup>71</sup>

### 2.4.1 Upstream companies

Table 3 gives an overview of the platinum and palladium mines and mining companies in South Africa.

**Table 3 Platinum and palladium mining and processing companies in South Africa**

Company	Parent or owned by	PGM mines in South Africa	Supplies to	Annual production and staff	Source
<b>Anglo American Platinum (AMPLATS)</b> (PGM, manganese)	Anglo American	Platinum: Mogalakwena, Amandelbult complex incl. Dishaba and	Not available	Refined: 37 tons palladium and 56	<sup>72</sup>

Company	Parent or owned by	PGM mines in South Africa	Supplies to	Annual production and staff	Source
		Tumela mines, Mototolo mine; JVs in Modikwa Platinum Mine (50%); JV with African Rainbow Minerals Mining Consortium and Kroondal (50%); JV with Sibanye-Stillwater; JV with Atlatsa Resources Corporation in Bokoni Platinum Mine (49%).		tons platinum (2022) <sup>vii</sup> Around 24,000 employees and contractors in SA	
<b>Sibanye-Stillwater</b> (platinum, palladium, gold, lithium, nickel, PGMs)	Publicly traded	Kroondal, Rustenburg and Marikana	US, UK, SA, other	52 tons PGMs in SA (platinum 35 tons and palladium 26 tons); 84,481 employees and contractors globally, majority in SA (2022)	73
<b>Tharisa Minerals</b> (chrome, PGMs)	Tharisa Plc (100%), listed on JSE + LSE.	Tharisa Mine (BIC)	Not available	45 tons	74
<b>Impala Platinum Hld (IMPLATS)</b>	Publicly traded	Impala Rustenburg (96%), Marula (73%), Two Rivers (JV African Rainbow Minerals (54%) and Implats (46%)), subsidiary Impala Bafokeng operates 2 mines, Bafokeng Rasimone Platinum Mine and Styldrift Mine	South Africa, Japan, China, US and Europe.	Refined platinum: 21 tons; refined palladium: 16 tons; 66,027 employees in the four mines	75
<b>ARM Platinum</b> (iron ore, manganese ore, chrome ore, PGMs, nickel, coal, gold)	African Rainbow Minerals (100%)	Modikwa (50%) and Two Rivers (54%) – JVs with resp. Implats and Impala	Not available	18 tons 6E (6 minerals, concentrated)	76

<sup>vii</sup> The unit of weight of PGMs is ounce (oz). The figures in this table are converted to tons (1 ton = 32 koz).



Company	Parent or owned by	PGM mines in South Africa	Supplies to	Annual production and staff	Source
<b>Sedibelo Platinum Mines</b>	Sedibelo Resources (owned by diverse minority shareholders)	Pilanesberg Platinum Mines (BIC)	Not available	3 tons 4E (4 minerals); 2,384 employers and contractors	77
<b>Jubilee Metals Group</b> (chrome, PGMs, copper)	Not found	Inyoni PGM and Tjate (PGM exploration asset),	Not available	1.3 tons	78
<b>Bauba Platinum</b> (chrome, platinum)	Not found	Platinum exploration project (BIC)	Not available	Not available	79
<b>Waterberg PGM Project</b>	JV of Platinum Group (37.05%), Implats (15%), JOGMEC (Japan Oil, Gas and Metals National Corporation) (12.195%), Hanwa Co. (9.755%) and BEE partner Mnombo Wethu Consultants (26%). Due to PG's 49.90% ownership in Mnombo, <b>Platinum Groups effective interest in the Waterberg JV is 50.02%.</b>	Waterberg PGM Project	Not available	Not available	80
<b>Eastern Platinum (Eastplats)</b> (PGMs, chrome)	Listed on TSX and JSE. Not available	Crocodile River Mine, Mareesburg, Kennedy's Vale and Spitzkop Project (all on BIC)	Not available	Not available	81
<b>Northam Platinum</b> (platinum, palladium, rhodium)	Publicly listed	5 mines	Not available	25 tons 4E equivalent refined metal; 22,368 permanent employees and contractors (2023)	82
<b>Wesiswe Platinum</b>	Jinchuan Mining and China-Africa Development Fund	Bakubung Platinum Mine (in development)	Probably China	Not available	83

## 2.4.2 Trade

South Africa mostly exports palladium and platinum in raw or powder form or semi-manufactured. Out of a total of 197 tons in 2022, a third went to Japan, followed by the UK (21.6%), the US (20.9%), Germany (10.1%), China (6.5%) and Switzerland (3%). The Netherlands did not import these minerals directly from South Africa.

The Netherlands mostly imports base metals, silver or gold, that are clad with platinum in a semi-manufactured form, which makes up a very negligible share of South African platinum and palladium exports. In 2022, the Netherlands imported 559 tons, almost all of which (558 tons) from Germany.

## 2.5 Titanium

Titanium, derived from a group of minerals including ilmenite and rutile, is known as an important refractory metal. It is resistant to corrosion from seawater and chemicals and deformation. Ilmenite and rutile are mined from heavy mineral beach sands in coastal open pit mining. Titanium is used in the aerospace, automotive, marine, and medical industries, among others.<sup>84</sup>

In the energy transition, titanium has an important role in the production of geothermal power. Geothermal power plants require specialised steel (chromium and titanium, among others) to resist very high temperatures and corrosion.<sup>85</sup> Geothermal is forecasted to account for the majority (40-60%, sources differ) of the titanium demand from energy technologies in the coming decades.<sup>86</sup>

Titanium is also used as a stabiliser in stainless steel, in experimental energy storage, and in PV technologies, such as perovskite solar cells, an upcoming low-cost solar technology.<sup>87</sup> Titanium dioxide (particularly TiO<sub>2</sub>) can be used in lithium-ion batteries.<sup>88</sup>

However, according to the World Bank, the role of energy transition demand in total titanium production remains below 1% based on the 2018 production level.<sup>89</sup>

With 1.1 million tons (2023), South Africa is the second largest producer of raw titanium minerals, representing 13% of global ilmenite mining.<sup>90</sup> The country exports its extracted titanium minerals in a relatively raw form and is not involved in processing.<sup>91</sup>

### 2.5.1 Upstream companies

Table 4 gives an overview of the titanium mines and mining companies in South Africa.

**Table 4 Titanium mining and processing companies in South Africa**

Company	Parent or owned by	Titanium mines in South Africa	Supplies to	Annual production and staff	Source
<b>Richards Bay Minerals</b> (ilmenite, rutile and zircon)	JV Rio Tinto (74%) & Blue Horizon (i.e. cons. of investors + host communities Mbonambi, Sokhulu, Mkhwanazi & Dube – owning 24%. Remaining shares held in employee trust)	In northern KwaZulu-Natal province. In total, 4 mines (not only titanium).	Not available	1.2 Mt titanium dioxide (2022); 2,530 people in Africa or 9,000 people in minerals (Rio Tinto)	92
<b>Tronox</b>	Publicly traded	KZN Sands operation at Empangeni in KwaZulu Natal, incl.	Not available	1,829 people	93

Company	Parent or owned by	Titanium mines in South Africa	Supplies to	Annual production and staff	Source
		Fairbreeze Mine at Mtunzini +Central Proc. Complex in Empangeni; Mineral Sands (Namakwa, West Coast)			

### 2.5.2 Trade

South Africa mostly exports titanium ores and concentrates, totalling 1.4 million tons in 2022. Most of the ore went to the US (31.7%), Belgium (19%), Japan (18%), and the Netherlands (approximately 11%, between 67 and 77 kilotons). Titanium oxides and ferro-titanium are only exported in minor quantities.

The Netherlands imported 155 kilotons of titanium ores, mostly from South Africa (68 kilotons, 44%) and Australia (37 kilotons, 24%), but also from Belgium (12 kilotons, 7.8%). As Belgium is a major importer of South African titanium ore, some amount of this ore might end up on the Dutch market.

The Netherlands imported 9 kilotons of ferro-titanium alloys, mostly from Russia and the UK, but none from South Africa. South Africa had no direct trade relations with either Russia or the UK.

## 2.6 Vanadium

Vanadium is an important feedstock for both the steel and the chemical industries worldwide. In Germany, the steel industry alone absorbs about 90% of the total vanadium imported.<sup>94</sup> Vanadium Redox Flow Batteries (VRFBs) are seen as the most promising solution for medium and large energy storage systems. Vanadium's projected annual demand from energy technologies is expected to reach 189% of the annual global production in 2018, suggesting strong market pressure to increase output.<sup>95</sup> Vanadium is on the list of critical metals by the European Commission.<sup>96</sup>

As the demand for batteries and alternative energy sources rises, South African vanadium production is expected to increase further as new mines are commissioned.<sup>97</sup> South Africa possesses 18% of vanadium world resources<sup>98</sup> and accounted for around 14% of global exports of vanadium oxides and hydroxides in 2022.<sup>99</sup>

### 2.6.1 Upstream companies

Table 5 provides an overview of the vanadium mines and mining companies in South Africa.

**Table 5 Vanadium mining and processing companies in South Africa**

Name company	Parent	Vanadium mines in South Africa	Supplies to	Annual production and staff	Source
<b>Bushveld Minerals</b>	Publicly traded	Vametco vanadium mine and processing plant in Bushveld Complex; Mokopane and Brits projects; Vanchem processing facility	Not available	3,842 tons (2022)	100

Name company	Parent	Vanadium mines in South Africa	Supplies to	Annual production and staff	Source
<b>Glencore</b> (coal, oil & gas, copper, cobalt, nickel, zinc, vanadium)	Publicly traded	Rhovon vanadium mine, close to Brits, open-cast mine and smelter complex, produc. ferrovandium+ vanadium pentoxide; JV Glencore Bakwena-Ba-Mogopa Rhovan Pooling & Sharing JV (74%)	Not available	8,981 tons vanadium pentoxide; 140,000 employees and contractors globally	101
<b>Vanadium Resources</b>	Not found	Steelpoortdrift Vanadium Project + Tweefontein Processing project (BIC), both in development	Not available	Not available	102

## 2.6.2 Trade

In 2022, South Africa exported 403 kilotons of niobium, tantalum, vanadium, or zirconium ores and concentrates and 5 kilotons of ferro-vanadium. The key destinations for the ore were China (58.5%), Spain (7.6%), the Netherlands (6.7%), and Italy (5.3%). The key destinations for the ferro-vanadium were the Netherlands, followed by Japan and Sweden (2022).

The Netherlands imported 9 kilotons of the ore in 2022, mostly from Senegal and Australia, and only minor quantities from South Africa. South Africa hardly imports vanadium ore from either Senegal or Australia, so links are difficult to establish.

## 2.7 Conclusions on selection

Ten enterprises are selected for further profiling based on the identified companies involved in the mining and processing of the six minerals in South Africa. The final selection is based on a combination of several factors, namely the number of mines, the number of minerals, and production.

1. Ntsimbintle Mining (manganese)
2. Jubilee Metals Group (chromium, PGMs)
3. Glencore (minority stakes in chrome and manganese mining companies and controlling stake in vanadium)
4. Tharisa Minerals (chromium, PGMs)
5. Sibanye-Stillwater (PGMs)
6. African Rainbow Minerals (stakes in PGMs, manganese, chromium, incl. Assmang)
7. Anglo American (PGMs, manganese)
8. Samancor (chromium, manganese)
9. Bushveld Minerals (vanadium)
10. Rio Tinto (titanium)

## 2.8 Downstream companies

Five downstream and midstream companies were selected in total. They were selected based on their use of one or more of the six minerals this report focuses on, their use of these minerals, and their links with South Africa.

### 2.8.1 Acerinox

The Acerinox Group, founded in 1970 and headquartered in Spain, produces stainless steel for which it uses chromium and titanium. These stainless steels are used in a wide variety of industries, including transport, energy and environmental technologies. Acerinox has a melting shop capacity of 3.5 million tonnes and has a production network of 13 factories including six stainless steel factories. The other seven factories are located in the United States and Germany and manufacture high-performance alloys. Its products are sold in 77 countries, and the company has a revenue of 6,6 million euros (2023).<sup>103</sup>

The sales in the Benelux go via the group company VDM Metals. VDM Metals has a stainless-steel factory in South Africa (the Columbus stainless steel factory, 477,000 tons capacity and 1248 employees), mostly producing for local and African markets.

Founded in Spain in 1970, the Company is listed on the Continuous Market of the Spanish Stock Exchange and is a member of the selective IBEX35 index. With an international vocation since the beginning, Acerinox has now become the leader in the stainless-steel market both in the United States and in the African continent. The Group is a recognised player in the European market and is the world's largest manufacturer of special alloys.

### 2.8.2 Heraeus

Heraeus is a family-owned technology company headquartered in Hanau, Germany. It operates in the environmental, electronics, health, and industrial applications sectors. Total revenues in 2022 were 29 billion euros, and the company operates in 40 countries, employing more than 17,000 worldwide. Heraeus is, among other things, a manufacturer of metallisation pastes for solar cells, for which it uses PGMs.<sup>104</sup>

The PGMs are supplied by its PGM producer and supplier Northam in South Africa, which owns several mines in South Africa.<sup>105</sup> Heraeus also had three locations in South Africa.

In Europe, Heraeus has locations in the Netherlands, Germany, Greece, and Romania. It also has a PGM refinery supplying international markets.

### 2.8.3 Northvolt

Northvolt is a Swedish company (4,100 employees), founded in 2016, producing lithium-ion and other batteries, based on manganese (and nickel and cobalt), for carmakers like VW, BMW, and Volvo.<sup>106</sup> Its batteries are produced in a factory based in Northern Sweden.

Northvolt imports manganese via Swedish Polarium which has a factory in South Africa, and supplies the European market, the US, and Canada. The company has various locations in Europe.<sup>107</sup> The Netherlands imports batteries via NordiconVolt, a Dutch company based in Sneek, that produces battery energy storage systems.<sup>108</sup>

### 2.8.4 Tronox

Tronox is an American company, producing titanium dioxide. Tronox mines and processes titanium ore, zircon, rare earths, and other materials and manufactures titanium dioxide pigment, speciality-grade titanium dioxide products and titanium chemicals. The products add brightness and durability to among other paints, coatings, inks, plastics, and paper.<sup>109</sup>

To a lesser extent, Tronox produces lithium-ion batteries based on titanium via its company CristalACTIV.

The company possesses mines and smelters in South Africa. Tronox was identified as an upstream titanium producer in South Africa, where it sources titanium from ilmenite ore found in mineral sands in South Africa and Australia. Tronox has various locations in Europe, including in the Netherlands.

Tronox, which is listed on the New York Stock Exchange, has approximately 6,500 employees across six continents and revenues of US\$ 3.572 billion in 2021.<sup>110</sup>



# 3

## Labour rights situation and the social and environmental impacts of mining in South Africa

**This chapter sketches the state of labour rights in South Africa and, in particular, the mining sector. Moreover, it provides a mapping of key actors who affect the labour rights situation. Lastly, it offers an overview of the social and environmental impacts of mining in South Africa, paying special attention to the impacts of the mining companies selected in the previous chapter.**

### 3.1 Working conditions

Working conditions for mine workers remain harsh and dangerous in South Africa with dozens of workers dying in accidents each year.<sup>111</sup> Along with accidents, workers in the underground mines of South Africa are subjected to intense heat and dust, leading to diseases such as silicosis.<sup>112</sup> Even in open-cast mines, workers are often exposed to dangerous minerals being mined, such as chrome and manganese, which have adverse impacts on the long-term health of workers.<sup>113</sup> Thus, profits are put before occupational health and safety even though there have been some improvements in the last two decades.

While freedom of association is mostly legally adhered to, in practice, mining companies remain hostile to unions and adopt various tactics – including the use of contract labour and outsourcing – to make it difficult for unions and workers to organise. During strike action, mining companies are particularly hostile to the workers involved and will often try to break strikes by using temporary workers, using security to intimidate workers, and even working with the police to try and undermine strikes.<sup>114</sup>

Whereas wages have improved over the last two decades, mine workers remain mired in poverty and are unable to meet their and their families' needs on what they earn.<sup>115</sup> Consequently, many mine workers and their families live under appalling housing conditions, including in corrugated iron shacks, due to issues of affordability.<sup>116</sup> Indeed, in general, formal housing for workers and their families is limited, and mining areas experience a massive shortage of decent housing.<sup>117</sup> Linked to this problem, because of being forced to live in areas where housing is cheaper, such as informal settlements, many areas where mine workers and their families live lack basic services such as sewerage.<sup>118</sup>

A major issue in the mining industry is that outsourcing, contract labour, and other forms of precarious work have become widespread.<sup>119</sup> Such workers are often paid less than permanent workers and denied benefits. Many are also unable to effectively unionise as the workplace has become increasingly fragmented by design.<sup>120</sup>

Consequently, the key issues that workers in the mining industry face are unsafe, unhealthy, and dangerous workplaces, continuing low real wages, a shortage of decent and affordable housing, and an increase in more precarious work revolving around the growth of outsourced, contract, and “learnership” labour.<sup>121</sup>

### 3.1.1 Legal framework

On paper, South Africa has several laws that protect workers. The reality, however, is that companies regularly violate these laws, especially when it comes to contracts and other vulnerable workers.<sup>122</sup> Enforcement of labour law in South Africa is also weak: laws are only enforced if workers are strongly organised. Compounding this problem is that the Department of Labour has very few inspectors to conduct inspections to ensure that they are adhering to labour law. Indeed, there are not even enough inspectors to properly deal with complaints about the violations of worker rights – there is only one labour inspector for every 120,000 workers employed in South Africa.<sup>123</sup>

Despite the problems surrounding the enforcement of labour laws in South Africa, the South African state has ratified several conventions and has various laws on its books that, on paper, offer workers some protection, including the following ILO conventions that are relevant to mining:<sup>124</sup>

- C045—Underground Work (Women) Convention, 1935 (No. 45)—This convention prohibits women from working underground but allows countries to renounce it after 10 years. South Africa renounced the convention in 1996.
- C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – It provides the rights of both workers and employers to establish and join organisations of their own choice. It was ratified by South Africa on 19/06/1996.
- C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – It provides rules that allow unionisation and collective bargaining as well as protecting workers from discrimination for their union membership and participation in union activities. It was ratified by South Africa on 19/02/1996.
- C155 - Occupational Safety and Health Convention, 1981 (No. 155) – this requires employers to ensure that the workplace, machinery, equipment and processes under their control are safe and without risk to health. It was ratified by South Africa on 18/02/2003.
- C176 - Safety and Health in Mines Convention, 1995 (No. 176) - It regulates the various aspects of safety and health characteristics for work in mines, including inspection, special working devices, and special protective equipment for workers. It was ratified by South Africa on 09/06/2000.

The South African Constitution, which contains a Bill of Rights, enshrines the rights of all South Africans and provides the legal framework for the country. Among the rights that are contained in the Bill of Rights are labour rights. Section 23 of the Constitution deals with labour relations and states the following:<sup>125</sup>

1. Everyone has the right to fair labour practices;
2. Every worker has the right:
  - a. to form and join a trade union;
  - b. to participate in the union's activities and programmes; and
  - c. to strike.

To give effect to the labour relations that are outlined in the South African Constitution, the Labour Relations Act (LRA) of 1995 was passed.<sup>126</sup> Among other things, the LRA:

- regulates the organisational rights of trade unions,
- promotes and facilitates collective bargaining,
- regulates the right to strike and the recourse to lock-outs,
- provides procedures for the resolution of labour disputes,
- gives effect to the international law obligations of South Africa that relate to labour relations.

The LRA also includes several Schedules, with codes and guidelines for various provisions, of which the most important one is Schedule 8, which deals with fairness in dismissal on grounds of conduct and capacity.<sup>127</sup>

To give effect to the right to fair labour practices of section 23(1) of the Constitution and to South Africa's obligations in terms of ILO Conventions, the Basic Conditions of Employment Act (BCEA) was passed in 1997. The BCEA makes provisions for the minimum basic conditions of employment for all employees. Some of the provisions deal with hours of work, overtime, leave, termination of employment etc. For example, in terms of the BCEA, no employee is allowed to work for more than 45 hours per week or more than nine hours per day if the employee works for five days a week. If the employee works more than 45 hours, the employee is entitled to payment for overtime, but the overtime cannot be more than 3 hours per day or more than 10 hours a week. Regarding leave, an employee is entitled to 21 working days of paid leave in every annual leave cycle. Employees are also entitled to 30 days of paid sick leave in every three-year cycle. Female employees are entitled to four months of maternity leave. Employers are not supposed to employ workers on terms less than the minimum basic conditions of employment contained in the BCEA.<sup>128</sup>

### 3.1.2 Child labour

The South African Constitution section 28 (1)(e) grants every child the right to be protected from exploitative labour practices. Section 28(1)(f) of the South African Constitution further states that every child has the right not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age or place at risk a child's well-being, education or mental health or spiritual, moral, and social development.<sup>129</sup>

In South Africa, the BCEA stipulates that no person may employ a child under the age of 15 years or who is under the minimum school-learning age, if this is 15 or older.<sup>130</sup> The mining industry in South Africa abides by this standard and there are no known incidences of mining companies using child labour. There is, however, a booming network of illegal mining that is at times controlled by criminal syndicates in the many abandoned mine shafts in South Africa. These syndicates are known to sometimes use child labour.<sup>131</sup>

### 3.1.3 Forced labour

All forced labour is prohibited under the South African Constitution as well as in section 48 of the BCEA.<sup>132</sup> The BCEA specifies the maximum working hours for an employee as 45 hours per week. This translates into either a maximum of 9 hours a day if the employee is working for five days or fewer in a week, or 8 hours a day if the employee works more than five days in a week.<sup>133</sup> The BCEA also stipulates that all overtime is voluntary and that the maximum permissible overtime is either 3 hours on a single day or a maximum of 10 hours in a week. It also stipulates that overtime pay be 1.5 times the normal wage rate (although this does not apply to work on public holidays or Sundays where the remuneration is twice the normal wage rate). An employer may allow an employee paid time off for overtime instead of overtime pay. In this case, the employee would be entitled to 90 minutes of paid time off for every hour of overtime worked.<sup>134</sup>

Although there are no reports of forced labour in the South African mining sector, in terms of forced labour, there have been issues around workers working excessively long hours and at a rapid rate of work required to meet production targets. In this context, massive pressure exists in mines on workers to meet production targets to receive bonuses. This poses a danger to workers, as in attempting to reach high production targets accidents can and do occur. For instance, a study in the platinum sector has shown that intense production pressure exerted by companies has led to accidents.<sup>135</sup> There have also been problems at some mines where workers have been expected to work overtime. When they have refused, citing the safety issues related to long hours of work, they have been unfairly dismissed.<sup>136</sup> Likewise, there has been abuse of overtime in the

gold mining sector. In 2013 the Chamber of Mines asked for an exemption in paid overtime, their motivation being that the long transport time to transport mine workers from the surface to the worksite and back should not form part of paid overtime.<sup>137</sup> Their request was granted by the Minister of Labour. The Association of Mineworkers and Construction Union (AMCU) objected to this and highlighted that the gold mining industry had been deceitful in disclosing their overtime pay. Workers had been working 10 hours or more overtime but were only being paid 3 hours of overtime.

AMCU highlighted that from 2000 onwards gold mining companies had stolen millions of Rands from workers in unpaid overtime wages.<sup>138</sup> Furthermore, the gold and platinum/palladium mining sectors also set up a bonus system for reaching production targets. To reach these targets and get their bonuses, workers have worked many hours of overtime. But mining companies have tried to insinuate that the bonuses that have incentivised workers to work overtime can count as overtime pay. However, the law stipulates that any overtime hours must be paid for, and a bonus is something that is separate and in addition to overtime pay.<sup>139</sup>

### 3.1.4 Freedom of association

According to section 18 of the South African Constitution, everyone has the right to freedom of association. Consistent with this, sections 4 and 5 of the LRA spell out the freedom of association and protection rights of employees.

Section 4 of the LRA guarantees employees the right to freedom of association, encompassing the ability to form or join trade unions and engage in their lawful activities, including participating in elections and holding office as office-bearers or representatives. Members of trade unions also retain the right to participate in the activities of federations of trade unions, including elections and holding office within those federations, provided they adhere to the respective constitutions of the unions and federations.<sup>140</sup>

Likewise, Section 5 of the LRA provides robust protection to both employees and individuals seeking employment. It prohibits discrimination against employees for exercising their rights under the LRA and prohibits specific actions such as pressuring employees to refrain from joining or participating in trade unions or workplace forums, as well as retaliating against employees based on their union membership or participation. Moreover, it safeguards employees from being advantaged or disadvantaged in exchange for refraining from exercising their rights under the Act. Any contractual provisions contradicting the protections outlined in sections 4 and 5 of the LRA are deemed invalid unless permitted by the Act, ensuring the preservation of employee rights and fair treatment within the workplace.<sup>141</sup> However, while the labour law covers all employees, including the mining sector workers, many of these rights and protections are only available to registered trade unions.<sup>142</sup>

According to the LRA, state intervention in strikes can occur under three circumstances. Firstly, if a strike or lockout or any related conduct fails to comply with Chapter IV of the LRA, the Labour Court holds exclusive jurisdiction. Here, it can issue interdicts to restrain individuals from participating in strikes or related activities or order the payment of just and equitable compensation for losses incurred due to the strike or lockout. This compensation consideration factors in various aspects, including attempts to comply with LRA provisions, premeditation of the strike or lockout, response to unjustified conduct by another party, adherence to court orders, the impact on collective bargaining, duration of the strike or lockout, and the financial circumstances of the employer, trade union, or employees involved.<sup>143</sup>

The second scenario where state intervention in a strike is permitted occurs when the Minister of Labour instructs the Director of the CCMA to establish advisory arbitration, as outlined in section 150A of the LRA. This advisory arbitration aims to facilitate dispute resolution and can be initiated upon the issuance of a certificate of unresolved dispute by a commissioner under section 135(5)(a), or upon the notification of strike or lockout commencement as per section 64(1)(b), (c),

and (d), whichever happens earlier. The Director is mandated to establish the advisory arbitration panel either at the direction of the Minister, upon application by a party involved in the dispute, by order of the Labour Court, or through mutual agreement among the parties.<sup>144</sup>

Section 150A(3) of the LRA outlines the conditions under which the Director of the CCMA may appoint an advisory arbitration panel. These circumstances include situations where the strike or lockout has prolonged without progress towards resolving the dispute, where there is a risk of constitutional rights being violated due to violence or property damage associated with the strike or lockout, or when the strike or lockout threatens to exacerbate a national or local crisis affecting societal and economic functioning. Additionally, according to section 150A(4), the Labour Court may only compel the Director to appoint the panel upon application by an affected party if there are reasonable grounds to believe that the aforementioned circumstances exist and will materially impact the party making the application.<sup>145</sup>

The third scenario involving state intervention occurs when the police are deployed. As outlined in Section 33(1) of the Code of Good Practice Collective Bargaining, Industrial Action and Picketing, their role is not to assess the merits of a strike or lockout but rather to maintain law and order. The police are empowered to take measures to ensure that strikes and pickets remain peaceful, unarmed, and orderly. These measures include intervening with individuals in possession of firearms or dangerous weapons, those who commit or threaten violence or damage to property, or those who unlawfully disrupt business operations. Additionally, the police may disperse a picket or gathering if there is reasonable cause to believe that individuals may engage in criminal activities or if the gathering has been interdicted by a court order.<sup>146</sup>

Lastly, Section 33(5) of the Code of Good Practice Collective Bargaining, Industrial Action, and Picketing outlines guidelines for police members tasked with monitoring strikes, lockouts, and pickets. They are advised to adopt a non-threatening presence, remain sensitive to the presence of individuals with disabilities, and consider their safety during dispersal operations. Furthermore, the use of force should be minimised, with non-lethal equipment such as shields, rubber bullets, and tear gas utilised only as a last resort after non-violent methods have been exhausted. It is emphasised that the use of such equipment can lead to serious injury or death and should only be employed proportionally and in compliance with the law and police regulations, taking into account the prevailing circumstances.<sup>147</sup>

### 3.1.5 Living wages

The way wages are negotiated and decided differs depending on the sector within the mining industry. For the coal and gold sectors, there is a bargaining council comprising the employers' association (i.e., the Minerals Council of South Africa) and trade unions, and wages are largely set in these sectors through this. For the platinum-palladium, chromite, manganese, vanadium, and titanium sectors, wages tend to be established between individual companies and recognised unions.<sup>148</sup>

Wages in the mining sector also usually include access to several benefits beyond a basic salary. For instance, the DMRE in 2019 gazetted companies, as part of working conditions and wages, had an obligation to ensure that workers had adequate housing, healthcare services, balanced nutrition, and water. It also stipulated that mining companies must include housing as part of the remuneration package, and this must be negotiated through collective bargaining. This can include providing company housing but also access to private housing, rentals, access to government-subsidised housing or providing a living-out allowance that workers can use to source their own housing.<sup>149</sup> Thus, all employers are meant to include housing as part of remuneration, however, workers employed through contractors and sub-contractors don't tend to be provided with any benefits, including housing or living-out allowances, provident funds and medical aids. They also tend to earn well below the wages of workers who are employed by the mining companies directly.<sup>150</sup>

Other benefits such as provident fund contributions, private medical aid contributions and production bonuses are also negotiated with a registered and recognised union(s), if present. This is especially so for large mining companies. For example, in the platinum-palladium sector, the wages of the following companies are comprised of:

- Sibanye-Stillwater: basic salary, a living-out allowance of R 2,500 (US\$ 133), provident fund contribution, and medical aid contribution.<sup>viii</sup>
- Impala Platinum: basic salary, living-out or home-ownership allowances, medical aid, and pension fund contributions.<sup>151</sup>
- Northam Platinum: basic salary, living out allowance, risk allowance, transport allowance, standby allowance, funeral cover contribution, and provident fund contribution.<sup>152</sup>

In the chromite sector, Samancor's remuneration in 2024 includes a basic salary, a medical aid contribution, a production bonus if targets are met, and a travel allowance.<sup>153</sup> In the manganese sector, Assmang's remuneration incorporates a basic salary, underground allowance, standby allowance, travel allowance, provident fund contribution, and a long-term service award.<sup>154</sup>

The wages within the mining industry between companies and between sectors vary widely. According to the Labour Research Services (LRS), the median lowest wage in the mining sector was R 13,670 (US\$ 742.81) per month in 2021.<sup>155</sup> Statistics South Africa noted that the average monthly salary in the mining sector in 2021 was R 28,666 (US\$ 1,528).<sup>156</sup> There do, however, appear to be large variances even within sectors. For example, remuneration differs markedly between companies in the platinum/palladium sector, which are negotiated with the largest unions namely AMCU and NUM. The difference can be seen in the following, which are claimed as the lowest pay in these companies:

- It is claimed that the lowest wage a month for a semi-skilled worker at Impala Platinum, including benefits such as housing allowance, medical aid and provident fund contributions, is R 21,000 (US\$ 1,120) per month before tax.<sup>157</sup>
- It is claimed that the entry-level average salary – including all benefits - is R 22,806 (US\$ 1,216) a month at Sibanye-Stillwater's platinum operations.<sup>158</sup>
- In 2022, the lowest-paid worker at Siyanda Bakgatla Platinum Mine received a basic salary of R 14,309 (US\$ 763) a month.<sup>159</sup>

It must be noted that the above wages are for permanent workers employed directly by these companies. In the mining sector there is large-scale use of workers employed through sub-contractors and contractors that would earn well below the above wages.<sup>160</sup>

In the chromite sector, recent figures for workers' wages come from Samancor. In 2022, the National Union of Metalworkers of South Africa (NUMSA) noted that the lowest-paid workers at Samancor earn R 7,000 (US\$ 373) after deductions, which the company disputed.<sup>161</sup>

All of the wages outlined above exceed the national minimum wage in South Africa, which, as of 1st March 2024, is R 27.58 (US\$ 1.47) an hour -which translates into approximately R 4,854.08 (US\$ 259) per month for an 8-hour workday.<sup>162</sup> The national minimum wage, however, has been set at a very low level in South Africa and has been criticised by some labour unions. For example, the South African Federation of Trade Unions (SAFTU) has noted that such a low wage cannot meet the basic needs of workers and their families, which means workers receiving the minimum wage remain mired in poverty.<sup>163</sup>

The national minimum wage is confirmed each year by the Department of Labour and announced by the Minister of Labour. The National Minimum Wage Commission (comprised of academics

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<sup>viii</sup> In the context of a reference study conducted by Finnwatch in 2024, Sibanye-Stillwater communicated to Finnwatch that the living-out allowance goes up by R 100 (US\$ 5.44) a year. Based on the reference wage of the said study of R 2,400 (US\$ 130.48) in 2023, ILRIG has calculated that it will be R 2,500 in 2024.



and representatives from NGOs, labour, and business) makes recommendations to the Minister each year on the minimum wage. According to the Act, factors that need to be considered when establishing the minimum wage include the inflation rate, gross domestic product, and productivity.<sup>164</sup>

There are a number of organisations that have also attempted to calculate and present figures on a living wage in South Africa. As stated SAFTU notes the minimum wage is too low and has called for a minimum wage of R 72 (US\$ 3.84) an hour or approximately R 12,672 (US\$ 675) a month.<sup>165</sup> The Living Wage Network of South Africa, which is an NGO housed in the University of Cape Town, has calculated that a living wage in the country would be between R 12,000 (US\$ 634) and R 16,000 (US\$ 853) a month.<sup>166</sup> PriceWaterHouseCoopers has, in turn, calculated that a living wage for a single person in South Africa would range from R 5,582 (US\$ 298) to R 9,648 (US\$ 514) a month, which increases to R12 756 (631 Euros) for a family of four and to between R17 232 (853 Euros) and R32 271 (1 597 Euros) for a family of six.<sup>167</sup> In 2021, the LRS calculated a living wage to be R 7,911 (US\$ 422).<sup>168</sup> The Global Living Wage Coalition set the living wage for rural Western Cape South Africa at R 5,354 (US\$ 285) per month in 2023.<sup>169</sup> This is far off what workers themselves are demanding. For example, in 2022, AMCU demanded a minimum basic wage of R 20,000 (US\$ 1,066) a month in the mining sector.<sup>170</sup>

Besides wages, there have been many studies that have focused on poverty in mining-affected communities in South Africa. Notably, the Bench Marks Foundation, Swedwatch, Africa Groups of Sweden, ActionAid, the Centre for Research on Multinational Companies (SOMO); Mining Affected Communities United in Action (MACUA); Amnesty International, Sekhukhune Combined Mining-Affected Communities (SCMAC) and Centre for Applied Legals Studies (CALs) have done a number of papers that look at the issues that communities surrounding mines, - notably from the platinum/palladium, manganese and titanium sectors - face. Over and above this, there have also been numerous articles by academics and journalists on the impact of mining companies on communities. All these studies and articles have shown that communities surrounding mines in South Africa tend to live in poverty; often lack basic services such as access to clean water, decent housing and electricity; suffer from high unemployment rates; are subjected to pollution and ecological degradation; and are at times subject to violence from mining companies and local political allies.<sup>171</sup>

Specifically, Bread for the World, in conjunction with Bench-Marks Foundation, conducted research on working and living conditions amongst platinum/palladium mine workers employed at Lonmin (now Sibanye-Stillwater). In the report, it was noted that the wages and working conditions for permanent workers had improved at Lonmin since the Marikana massacre in 2012 (where the police killed 34 striking mine workers). It was noted, however, that this had only occurred after a long struggle by these workers. It was, however, noted that for contract workers at Lonmin's operations little or nothing had improved. Contract workers were excluded from the collective bargaining agreement (CBA) with Lonmin and paid less than permanent workers employed directly by the company. It was also noted that contract workers were tasked with the most dangerous work, and if they were injured, they were made redundant. There was also a finding that contractors would tell injured workers not to report their injuries to avoid the relations between contractors and Lonmin being negatively impacted.<sup>172</sup>

The living conditions and poverty levels of workers employed by Lonmin were also examined in the report. Under apartheid, mine workers were forced to live under appalling conditions in company-owned hostels. Only men were allowed to live in these hostels, and most were migrant workers from the apartheid homelands or neighbouring countries. Conditions were harsh, there was overcrowding and there was no privacy. Post-apartheid, the mining companies were forced by the state to close the inhumane hostels. According to law, the companies were still responsible for workers' housing, however, the reality is that few housing projects – whether in the platinum/palladium, chromite, manganese or titanium – have been built. Rather companies have mainly reverted to providing Living Out Allowances that workers can use to find their own



accommodation. The reality, however, is that there is a shortage of decent housing, and many workers consequently end up living in corrugated iron shacks in informal settlements. In fact, at Lonmin's Marikana mine, Bread for the World found that many workers were living in an informal settlement of 30,000 people called Wonderkop, which had sand roads in poor condition, lacked proper sanitation/sewerage, often lacked electricity and had pit latrines.<sup>173</sup>

Several academics have also examined the wages and poverty of mine workers, specifically in platinum mines. These, too, have found that workers often state their wages are too low, and consequently, they live in poverty in informal settlements, in the remaining company hostels or in housing provided by the state.<sup>174</sup>

The largest study conducted within the last decade on the living conditions of mine workers was done by Pelders and Nelson and reported on in 2018. The study surveyed 875 mine workers, in addition to conducting focus groups with 120 mine workers. Of the 8 mines examined, 3 were in the platinum/palladium sector and one in the manganese sector. This translated to 37% of respondents being employed in platinum mines and 10% being employed in a manganese mine. Over 89% of respondents were male, 11% were women, and 83% were employed on a permanent basis. Of the permanent workers, 37% lived in formal housing, 19% in structures in the backyards of houses (rooms or shacks), 15% in hostels, 14% in shacks in informal settlements, and 12% in flats/townhouses. It was found that contract workers were more likely than permanent workers to live in shacks or in structures in the backyards of houses. Over 50% of the workers were renting. The worst living conditions were experienced by workers living in informal settlements where the roads were often poor, and few had adequate sanitation. In terms of quality of life, 30% of respondents considered their quality of life as very poor or poor.<sup>175</sup>

In 2023/24, ILRIG, on behalf of Finnwatch, examined wage and poverty levels amongst Sibanye-Stillwater's platinum mine workers in Marikana. The study found that while the wages of the permanent workers were above the national minimum wage, there are other factors that often mean the wages at Sibanye-Stillwater are not enough even for the permanent workers to live a decent life and are often a poverty wage. South Africa has an exceptionally high unemployment rate with the percentage of people unemployed standing at 41,1% according to the expanded definition. This means that people who are working often have to support a large number of dependents and extended family who cannot find employment.<sup>176</sup>

Indeed, all of the workers interviewed at Sibanye-Stillwater's Marikana operations by ILRIG reported that they were in a position whereby they supported a large number of dependents, including children, siblings, parents, nieces, nephews and cousins. Of the 15 workers interviewed, on average each worker was supporting 7.3 dependents, with two workers supporting as many as 12 dependents. This translated into a situation whereby, on paper, the wages of the permanent workers were decent, but in reality, most of them could not meet their needs, and those of their dependents, on what they earned.<sup>177</sup>

Adding to this, it was found that contract workers earned below the wages of the permanent workers and did not have the same benefits. Equally concerning was a scheme whereby Sibanye-Stillwater hired young workers supposedly to train them, but in reality, these young workers—called cadets—did similar or even the same work as permanent workers. They were only, however, paid between R 4,500 (US\$ 240) and R 7,000 (US\$ 373) a month and did not receive the benefits that the permanent workers did.<sup>178</sup>

The Finnwatch/ILRIG report also found that most of the workers interviewed at Sibanye-Stillwater's Marikana operations lived in poverty. Of the 15 workers interviewed, 8 lived in shacks, 3 lived in Sibanye-Stillwater housing, one lived in a private flat, one lived in a brick room in someone's backyard, one lived in a private house, and one lived in a Reconstruction and Development (RDP) house supplied by the state. Most of the workers interviewed lived in overcrowded shacks and housing, and at the informal settlement of Wonderkop (where most of the workers lived), there was no sewerage, no tarred roads, and few shacks had electricity.<sup>179</sup>

### 3.1.6 Occupational safety and health

Occupational health and safety in all mines in South Africa are governed and administered under the Mine Health and Safety Act of 1996. The Act outlines the responsibilities of different actors in the mining sector including owners, managers, and employees. It also establishes the DMRE and the Minister as the overall government authority in terms of occupational safety and health in the mining sector. Thus, the Act sets out the following responsibilities, provides the following powers and requires the establishment of the following bodies, in terms of occupational health and safety in the mining sector:<sup>180</sup>

- Owners of mines must ensure a safe and healthy working environment; ensure that annual reports on health and safety at the mines they own are produced; ensure steps are taken to prevent injuries, work-related health problems and any loss of life due to mining conducted by their company. Owners can appoint a manager or managers to oversee the above, although the owners still remain legally responsible.
- Managers must maintain healthy and safe work environments; identify and assess any risks; supply health and safety facilities and equipment to employees; establish a health and safety policy and code; consult with workplace Health and Safety Committees to ensure a safe environment; ensure training for employees on health and safety; ensure investigations are conducted into any serious illness or accidents related to workplace activities; establish a workplace medical surveillance system (including appointing a medical practitioner/s). Besides employing medical practitioners at mines as outlined by the Mine Health and Safety Act, some of the larger mining companies have their own clinics for permanently and directly employed workers. For example, Sibanye-Stillwater has clinics for workers directly employed at its platinum/palladium mines in South Africa. However, in conducting the report for Finnwatch on Sibanye-Stillwater, ILRIG found that cadets and workers employed through contractors did not have access to these company clinics. Managers, under certain conditions, can request an exemption from part or all of the Act from the Minister of Mineral Resources and Energy if they have consulted with affected workers, their union and/or representatives.<sup>181</sup>
- Employees at a mine must take responsibility for their own health and safety, take reasonable steps to protect the health and safety of other persons, and use and properly care for protective clothing and equipment. The Act specifically stipulates that workers cannot be required to pay for protective clothing and equipment; and have a right to leave a workplace that is deemed dangerous/unsafe.
- For every 20 workers or more employed in a mine, there must be a full-time health and safety representative for each shift and at each designated working place – the details of which must be negotiated with the representative trade union/s. The representatives must be provided with training on health and safety at the expense of the company. The health and safety representatives must represent employees on all aspects of workplace health and safety; direct any employee to leave a situation or working area that is deemed unsafe; identify potential hazards and risks; make recommendations on health and safety to management or the Health and Safety Committee; request information from Inspectors; attend meetings of the Health and Safety Committee (if one is established); and request an Inspector to conduct an inspection.

- In any mine employing 100 or more workers there must be one or more Health and Safety Committees. Each Health and Safety Committee must comprise at least 4 health and safety representatives (and can include employee representatives appointed by the health and safety representatives) and a number of managers equal to or less than the employee/health and safety representatives. A Health and Safety Committee may represent employees on all aspects of workplace health and safety, participate in consultations on any health and safety issue, request the Chief Inspector (see below) to review the company's health and safety code, and request an Inspector to undertake an investigation. There must be at least one monthly meeting of the Health and Safety Committee at the mine if it has been established.
- Under the Act, a sector-wide Health and Safety Council has been established covering all mining activities. The Council is tasked with advising the Minister of Mineral Resource and Energy on health and safety in mines. To do so, it has a Mining Regulation Advisory Committee; a Mining Occupational Health Advisory Committee and a Safety in Mines Research Advisory Committee. The Council also has a Mining Qualifications Authority, which is tasked with ensuring workplace health and safety training in the mining sector is accredited within the national accreditation framework. The Council itself is comprised of 5 members representing owners in the mining sector, 5 members representing workers in the sector, 4 members representing the state and the Chief Inspector of Mine Health and Safety who must also act as the chair.
- Under the Act an Inspectorate of Mine Health and Safety has been established by the government for mines in each province of South Africa. The Inspectorate is headed by the Chief Inspector who is appointed by the Minister of Mineral Resources and Energy. The functions of the Chief Inspector must be to ensure the provisions of the Act are complied with and enforced. The Chief Inspector can instruct any Inspector to initiate an investigation into any accident or death, any occurrence or practice of concern to health and safety, or actual or suspected contravention of the Act. The Chief Inspector can appoint Inspectors and must oversee the Inspectorate. They can also determine and implement policies to promote health and safety in the mining sector, consult the Council before issuing guidelines; advise the Minister of Mineral Resources and Energy on health and safety in the mining sector and submit annual reports to the Minister.
- Inspectors from the Inspectorate of Mine Health and Safety are empowered to enforce and monitor workplace health and safety in mines through inspections and inquiries. They can enter a mine at any time and without a warrant to carry out an inspection – this can include also questioning any person on a matter related to the Act, having access to relevant documents, and inspecting any article, any work performed or any condition in a mine. They can also halt or suspend work on a mine if the circumstances are deemed as dangerous, and they can instruct managers to rectify any non-compliance or dangerous working conditions. After completing an investigation, an Inspector must prepare a written report on the findings, recommendations and remedial steps that must be taken. This must be submitted to the mine management, health and safety representatives, Health and Safety Committees, registered trade unions or any employee requesting it and the Chief Inspector. The most recent information, from 2022/23, indicates that there are 244 Inspectors employed, with a further 39 vacancies.<sup>182</sup>

- The Minister of Mineral Resources and Energy, in consultation with the Council and via a gazette, is empowered to restrict or prohibit the exposure of a person to a substance or an environment considered dangerous or hazardous in a mine; attach conditions to any such prohibition or restriction; declare an environmental condition or substance at a mine as a health hazard to workers; impose conditions on the performance of work by workers exposed to a health hazard; stipulate standards of fitness for a worker to perform work involving exposure to a health hazard; and require managers to take measures to eliminate or control workplace health risks associated with a hazard, and require managers to conduct specified medical surveillance. The Minister must also submit an Annual Report to Parliament.
- The Labour Court has jurisdiction to determine any dispute regarding the implementation or interpretation of the Act.

Despite the above legislation, mining remains extremely dangerous in South Africa. This, in particular, pertains to underground mining, including platinum/palladium and chromite. Some of the dangers of underground mining in South Africa include cave-ins, rock bursts, gas build-ups, extreme heat, mine explosions, poor air quality, and extreme levels of dust particles. To give an example of how dangerous mining is in South Africa, between 1984 and 2005, more than 11,000 mine workers died in work-related accidents.<sup>183</sup>

Although the number of work-related deaths, injuries and ill health have been declining in recent years, they are still very high. In 2020, there were 1,747 injuries reported in the mining sector in South Africa. Of these, 752 were in the platinum/palladium sector, 84 in the chromite sector and 26 in the manganese sector. In total, 60 workers died in workplace accidents during the year. Of these, 16 were in platinum/palladium mines and 2 were in the chromite sector.<sup>184</sup> In 2022, which are the most recent figures available, there were 2,065 work-related injuries in the mining industry. Of these, 1 041 were in the platinum/palladium sector, 73 were in the chromite sector and 21 were in the manganese sector. The fatalities for 2022 were 49; of these, 18 were in the platinum/palladium sector, and 4 were in the chromite sector.<sup>185</sup> Although the full figures for 2023 are not available yet, 13 workers were killed in one incident alone, on the 27th of November 2023, at Impala Platinum's Rustenburg mine, when a lift failed whilst ascending and fell to the bottom of the mine.<sup>186</sup>

Work-related illness also remains a problem in the mining industry in South Africa. For example, 1,924 new cases of mine workers contracting occupational diseases were reported in the industry in 2021. Of these, 240 were cases of silicosis from conditions in the gold and platinum/palladium mines. There were 793 cases of new pulmonary tuberculosis (PTB) cases reported linked to cramped working conditions and exacerbated by dust in gold, chromite and platinum/palladium mines. There were also 776 cases of noise-induced hearing loss reported by mine workers due to work conditions.<sup>187</sup>

Articles and reports have also discussed work-related illness and possible health dangers in the vanadium, titanium, chromite, and manganese sectors. Titanium is mined as ilmenite, a titanium oxide ore. Being exposed to titanium oxide dust can cause breathing difficulties, coughing, and chest pain. Contact with the skin can cause irritation. Ilmenite mined in South Africa also contains radionuclide impurities, but no study has been done on the possible impact on mine workers in South Africa of this radioactivity.<sup>188</sup>

Vanadium is a known occupational hazard and has been linked to ataxia, paralysis, fetotoxicity, decreased fertility and teratogenicity in rodents. There have been at least two accusations that workers have died due to their exposure to vanadium in South Africa. In 1995, the Environmental Justice Networking Forum (EJNF) reported that 10 former workers at the Vametco mine in the North West Province died that year as a result of ill health caused by exposure to vanadium.<sup>189</sup> In 2002, it was also reported that at least 4 workers died, and more than 120 suffered ill health, from being exposed to vanadium pentoxide at the Vantech mine in Mpumalanga between 1992 and

2002. Despite this, there are no recent studies of the possible impact of mining vanadium on workers in South Africa.<sup>190</sup>

If chronically inhaled, chromite can cause coughing, wheezing, shortness of breath, perforations, ulcerations, bronchitis, asthma, and pneumonia. Hexavalent chromium is also a known carcinogen linked to the mining of chromite.<sup>191</sup> Despite this, no recent studies have examined the possible impact of chromite mining on workers in South Africa.

Manganese is a well-known neurotoxin that poses a danger to mine workers. In 2019, a study was done on the impact of manganese mining on 187 workers in South Africa and above average were found to be suffering from Parkinson's Disease.<sup>192</sup> There have also been news articles that have highlighted the high instances of Parkinson's Disease amongst ex-workers from manganese mines in the Northern Cape region of South Africa.<sup>193</sup> In 2008, there was a case by workers of Assmang – who were working in the processing unit – who had been poisoned and suffered brain damage from being exposed to manganese. During the inquiry into the events, it shockingly came to light that Assmang attempted to bribe the impacted workers into getting a second opinion from a doctor who had received funding from the manganese industry.<sup>194</sup>

According to mining companies and the mining-industry employer organisation, the Minerals Council of South Africa, they take addressing occupational health and safety – including chemical/biological/mechanical hazards and physical risks – seriously. They point out that since 1994 and the advent of parliamentary democracy, accidents and deaths of mine workers have been decreasing. They argue that between 1995 and 2021 overall fatalities in mines declined by 75%.<sup>195</sup>

The reality, as seen above, is that accident rates remain high, and in certain sectors (such as chromite, vanadium and titanium), there have not even been recent studies on the health impacts of these known dangerous substances on mine workers in South Africa. Academics have shown that working in mines remains extremely dangerous and accidents continue to happen frequently. Asanda Benya – an academic who has done extensive research on working conditions in platinum mines, including those of Sibanye-Stillwater – describes the working conditions as follows: *“The cost of platinum includes the physically excruciating and mentally unforgiving work in the hot and humid underground, with rocks constantly threatening to fall. For subcontracted workers, the cost includes not enjoying hard-won basic conditions of work, no union representation, no access to proper healthcare when injured at work, no decent wage even though they work long hours under dangerous and inhumane conditions underground producing so-called wealth”*. The reality appears that, although some progress has been made, profits are still put ahead of mine worker safety.<sup>196</sup>

Unions in South Africa also continue to highlight that companies place workers at risk in mines. After the Impala Platinum accident in November 2023 the largest union in the mining sector, the AMCU, noted that the company could have prevented the deaths of 13 mine workers by simply undertaking regular maintenance of the lift involved.<sup>197</sup> AMCU has also taken legal action to try and get the Mine Health and Safety Act amended so that companies can truly be held legally accountable when deaths and injuries happen at the mines, which currently is not really the case.<sup>198</sup>

The second biggest union in the mining sector, the NUM, has also raised concerns about the high death and injury rates in South African mines. In October 2023 they undertook a protest action to highlight the dangerous working conditions in mines and to call for better workplace health and safety.<sup>199</sup>

At Sibanye-Stillwater's platinum operations, two academics- Siphwe Mbatha and Luke Sinwell – that have undertaken extensive research on workers' struggles on mines, stated that although the fatal accident rate in Sibanye-Stillwater's platinum mines had decreased in recent years, the company was in fact putting profits before workplace health and safety. Likewise, they stated that

Sibanye-Stillwater was extending working hours to increase production, but it also led to fatigued workers and this was potentially dangerous given the challenging conditions underground.<sup>200</sup>

In the ILRIG study on Sibanye-Stillwaters operations at Marikana, one major issue that was identified by workers that were interviewed was that there was a form of collective punishment if one of the crew made a mistake and there was an accident underground. As such, even if a crew member was not directly involved in a mistake that caused an accident, they, along with the whole team, would face disciplinary action and would even be dismissed. Another problem identified that arises out of collective punishment is that workers might not report being injured. In fact, one person interviewed stated that: *“Workers, work under stress because of fear of dismissals. To avoid dismissals, people are encouraged by their fellow crew members not to report minor issues because it leads to the dismissal of the whole crew.”*<sup>201</sup>

Women employed as mine workers face even more challenges. A major problem is that women mine workers face very high levels of gender-based violence at mines, violating their rights to a healthy and safe work environment.<sup>202</sup> Women, especially those who work underground, face verbal sexual harassment, physical sexual harassment and even rape at work in the mining sector in South Africa. A problem that has been reported, too, is that often the unions do not take this seriously due to their masculine culture.<sup>203</sup>

In terms of personal protective equipment (PPE), the Mine Health and Safety Act ensures that employers are responsible for their provision and that the equipment given is of decent quality along with maintaining the equipment. They are also responsible for providing training to workers on how to use the PPE. Health and safety representatives, trade unions and the Mine Health and Safety Inspectorate also have a role in monitoring and ensuring companies comply.<sup>204</sup> The Chief Inspector of Mines, on behalf of the DMRE, has also specifically gazetted guidelines on the provision of PPE for women mine workers. It stipulates that the management of mining companies is responsible for ensuring PPE is appropriate for use by women (which was a problem in the past) and properly stored, maintained, cleaned, examined, repaired and replaced.<sup>205</sup>

### 3.1.7 Violations of trade unions' rights

According to the ITUC's Global Rights Index, South Africa falls within the category of a country where unions experience regular violations of their rights at the hands of companies and the state. This involves the state and/or companies regularly interfering with collective labour rights or failing to fully guarantee important aspects of these rights. It also involves gaps in the law and practices that allow for frequent violations of trade union rights.<sup>206</sup> As part of highlighting this, ITUC reported that Anglo-Platinum was involved in violating worker's rights in South Africa in 2019. This involved the company firing 643 workers at its operations in Mototolo in the Limpopo Province after they went on strike for better medical coverage.<sup>207</sup>

The wealth gap between the mine owners and mine workers has generally led to tension in the mining sector and companies regularly violate workers' rights. There have been a number of recent violations of trade union rights in the mining sector in South Africa. In November 2023, the NUM reported that worker leaders and its officials were blocked from entering Impala Platinum's mine after the accident that killed 13 workers on the 27<sup>th</sup> of November 2023. This was despite the fact that the NUM was the largest recognised union in the company's operations. Added to this, the union was not invited by the Mine Health and Safety Inspectorate to be part of the investigation. The company also refused to give the union figures regarding how many of its members had died or were in hospital as a result of the accident.<sup>208</sup>

In 2019 the state, via the Department of Labour, threatened to deregister the largest mining trade union, AMCU. The Registrar of Labour Relations claimed that AMCU had violated its constitution by not holding its Congress in 2018 and, furthermore, had not explained why. AMCU noted in response that it had been engaging the Department and the Registrar and had informed it that it would be holding its Congress in May 2019. Further, AMCU stated that the threat to deregister the

union was a political act and was occurring because AMCU's rivals, in the form of unions affiliated to the Congress of South African Trade Unions (COSATU), were aligned with the ANC and hence the state favoured them.<sup>209</sup> By May 2019, due to pressure, the Registrar backtracked and halted its attempts to deregister AMCU.

In order to undermine strikes and violate the rights of unions, companies often attempt to hire temporary replacement labour to weaken the position of the unions involved. This practice is unfortunately allowed within the South African labour law framework. This often leads to tensions. Along with this, companies in the mining sector strictly enforce a no-work, no-pay rule during strikes.<sup>210</sup>

Mining companies in South Africa tend to make large-scale use of contractors and sub-contractors, and workers in this context battle to exercise their freedom of association and right to collective bargaining, and many do not join unions. The contracted company is responsible for the wages and conditions of work of 'their' employees, and this deliberately divides the workforce in a mine. The use of such labour relations appears to be a tactic to reduce union membership and ensure workers employed through contractors do not receive benefits that permanent and directly employed workers do.<sup>211</sup>

A good example of how this works in practice was highlighted by the National Union of Metalworkers of South Africa (NUMSA). In 2018, NUMSA had recruited contract workers at Glencore's mining and smelting operations, and it noted that the company denied contract workers and labour broker workers their basic rights in the workplace. They also noted that contract workers were being paid less than permanent workers and their health and safety conditions were worse. This caused division amongst workers, which seemed to be one of Glencore's aims.<sup>212</sup>

Another way some mining companies are attempting to undermine the rights and power of unions and workers is to claim the smelters, refineries and concentrators they own are no longer part of their mining operations. This is then used to try and shift these operations from under the Mine Health and Safety Act – which provides workers with more rights, provides unions with more rights, and has more Inspectors employed under it - to the Occupational Health and Safety Act, which is administered under the Department of Labour – which provides workers and trade unions with less rights and has overstretched Inspectors. For example, in 2023, Anglo-Platinum tried to move its platinum smelters and refineries at Rustenburg from jurisdiction under the Mine Health and Safety Act to the Occupational Health and Safety Act, which was blocked by the NUM.<sup>213</sup> Likewise, Glencore tried in 2018 to do the same and was resisted by NUMSA.<sup>214</sup>

In fact, South Africa has a long history of companies being hostile, opposed or attempting to undermine workers organising and this continues today.<sup>215</sup> The NUM noted that the Chief Executive Officer of Sibanye-Stillwater, Neil Froneman, has regularly refused to meet and talk with the union. Added to this, the company has also aggressively downsized its operations since purchasing Lonmin and parts of Anglo-Platinum, which the NUM has stated has been an attack on workers and their families.<sup>216</sup> Indeed, unions in the industry have said that companies, at times, appear to coordinate retrenchments.<sup>217</sup>

In addition, there is also a trend of mining companies in the platinum/palladium sector of retrenching or threatening to retrench sections of the workforce after strikes – although the companies don't admit such actions are used to intimidate workers, the timing is suspect. Indeed, after the 2012-2013 strikes, Lonmin, Northam Platinum and Anglo-Platinum unveiled retrenchment plans or threatened to retrench workers.<sup>218</sup> Similarly, after 70,000 workers went on strike in the platinum sector in 2014, Anglo-Platinum, Lonmin and Impala Platinum retrenched or unveiled plans to retrench workers.<sup>219</sup>

The labour academics Luke Sinwell and Sipiwe Mbatha noted during an interview with ILRIG that many of the leaders of the 2012 and 2014 strikes at Lonmin were eventually forced out of the company through retrenchments and dismissals. Both said retrenchments and dismissals were



aimed at replacing older workers with younger workers, in particular, workers who had been through the 2012 and 2014 strikes. The reason was that these older workers were more militant and had a memory of organising. Replacing them with younger workers was an attempt to ensure a more compliant labour force and undermine workers' power.<sup>220</sup>

Workers interviewed by ILRIG at Sibanye-Stillwater's platinum mines echoed much of what Sinwell and Sipiwe Mbata said. They said fear existed amongst workers at the company and that this was used by management to undermine workers' power. Thus, two worker informants said the following:

*"There are many problems. A lot of people have lost their jobs at Sibanye`and people are scared as a result."*

*"Sibanye treats workers like prisoners. We are not happy. We work under fear of dismissals...there are fears of dismissals. When there is a hazard or injury at work, workers are not given a warning – they are dismissed".<sup>221</sup>*

In interviews conducted by ILRIG with 2 other worker informants from Sibanye-Stillwaters' platinum operations, it was also indicated that they believed the company did not want workers joining unions, in particular AMCU. As such, the workers said:

*"Sibanye is not happy with AMCU. Sibanye says that they pay the workers, and the workers must not challenge Sibanye through the unions because the unions do not pay the workers."*

*"When there was a meeting to join the union at Hossy Shaft, the supervisor said that there was no need for a union. They are afraid of people joining a union."<sup>222</sup>*

The worst violation of worker rights since the end of apartheid occurred in 2012 in the platinum/palladium sector and revolved around strikes at Lonmin, Impala Platinum and Anglo-Platinum. During the strikes, the state killed a number of workers in order try and break workers' militancy, undermine their demand for a wage of R 12,500 (US\$ 666) and ensure they returned to work.<sup>223</sup> During the height of state and company violence, the police massacred 34 striking workers of Lonmin in Marikana (Lonmin was taken over by Sibanye-Stillwater). Evidence also existed that a number of the striking workers were chased down and assassinated by the police.<sup>224</sup>

Lonmin, at the time, was well connected to the ruling party in South Africa, the ANC. In fact, the current President of South Africa, Cyril Ramaphosa, was a Board Member of Lonmin, and he contacted the Minister of Mineral Resources and Energy and the Minister of Police, stating that the police needed to end the strike.<sup>225</sup> On August 16, 2012, the state did indeed move in, and police warned explicitly that they would end the strike on that day – resulting in the massacre.<sup>226</sup>

Besides the violence against workers, the state also subjected the surrounding communities to a form of collective punishment, which included raiding people's houses, indiscriminately firing tear gas into settlements and randomly firing rubber bullets at workers and community members. At the height of the 2012 strike, the military was even deployed in Marikana, effectively against striking workers and community members.<sup>227</sup>

In 2014, workers in the platinum/palladium sector again went on strike for a living wage. Again, they faced state repression, and during the strike, a number of workers were killed. The mining companies involved – meaning Lonmin, Impala Platinum and Anglo-Platinum - also used various underhanded tactics to try and smash the strike. This included sending messages to workers calling on them to return to work. Along with this, workers were threatened that if they failed to do so, retrenchments would follow even though the strike was legally protected.<sup>228</sup>

In terms of recent strikes, there have been a number of strikes and sit-ins during the last year in the mining industry, in particular the platinum/palladium sector. In January 2024, 4,000 workers conducted a stay-away at Impala Platinum calling for the lifting of a suspension of 38 workers who were part of a sit-in at the company in December 2023 (the 38 workers were subsequently reinstated).<sup>229</sup> The sit-in that occurred in December 2023 involved 2,205 workers who undertook a

3-day action to demand the immediate payment of pension funds after the mine's recent change of ownership. The management was hostile to the action and threatened to fire 2,000 workers involved, before suspending the 38.<sup>230</sup>

On December 8, 2023, there was also a strike and sit-in underground at the Wesizwe Platinum Limited's Bakubung Mine. The workers involved were demanding medical aid, an R 6,800 (US\$ 362) living out allowance per month, and a leave allowance. The workers were also demanding that pregnant women should be provided with full benefits by the company when they are on maternity leave, including a full salary and medical aid. The company had not been paying pregnant women their salaries and medical aid while they were on maternity leave. The workers also raised issues about contracting companies that had not met promised salary increases, that had suspended medical aids and that had conducted unfair dismissals. The workers involved were backed by the NUM.<sup>231</sup> There had also been a strike earlier in the year at the company's operations in July 2023 around the same issues.<sup>232</sup>

In terms of collective bargaining, it is built on voluntarism in South Africa. As such, the system creates no legally binding duty, besides pressure from unions, on companies to bargain with workers or their unions. To balance this, a series of organisational rights are granted to a registered trade union or to two or more registered trade unions acting jointly. These rights include access to the workplace, deduction of trade union subscriptions, the right to negotiate recognition agreements, the right to approach the company to collectively bargain and trade union representatives in the workplace.<sup>233</sup>

The unions and companies in the platinum, chromite, vanadium, titanium, and manganese sectors tend to sign multi-year CBAs usually between 3 and 5 years. Thus, in the platinum/palladium sector, the main unions, AMCU and NUM, signed a 5-year CBA with Sibanye-Stillwater's platinum operations in Kroondal in November 2023.<sup>234</sup> The NUM, AMCU and the United Association of South Africa (UASA) also signed a 5-year agreement in 2022 at Sibanye-Stillwater's platinum operations in Rustenburg and Marikana.<sup>235</sup> Likewise, in 2022 the same unions also signed a 5-year CBA with Impala Platinum.<sup>236</sup> A similar situation also exists in the vanadium sector, where NUM signed a 5-year agreement with Bushveld Minerals in 2022.<sup>237</sup> Thus, CBAs are mostly, if not exclusively, multiyear.

Minority unions do not always agree with the provisions set out in a collective agreement in the mining sector. This increases union rivalry – indeed there has been a number of assassinations of NUM and AMCU organisers, shop stewards and officials that seem to be linked to intra and inter union rivalry in the mining sector. Added to this, not all workers have a say in changes brought about by a collective agreement. A number of court cases have been launched in South Africa that have challenged the principle of majoritarianism, especially where minority unions and non-members are not consulted.<sup>238</sup>

Despite collective bargaining between unions and companies, sometimes certain categories of workers are not covered. For example, ILRIG found that cadets employed by Sibanye-Stillwater in the platinum sector were not covered by the agreements that the unions negotiated. Rather, the company unilaterally set the compensation rates of cadets.<sup>239</sup>

### 3.1.8 Social protection

Section 27 of the South African Constitution specifies that everyone has the right to have access to social security. This includes appropriate social assistance if they are unable to support themselves and their dependents. It also highlights that the state must take legislative and other measures, within its available resources, to achieve the realisation of these rights.<sup>240</sup> The need for social protection in South Africa is linked to the legacy of marginalisation and exclusion under the apartheid regime, which has created a socioeconomic climate mired by inequality, unemployment, and poverty. After the ANC took power in 1994, they introduced the *Reconstruction and Development Programme* (RDP) which outlined their social development policy.<sup>241</sup> A key aim of it

was meeting basic needs and it identified social welfare as a key strategy to achieve this.<sup>242</sup> In 1997 a developmental social welfare approach was adopted by the cabinet. During this period the government began to establish an extensive welfare system. But the RDP soon ran into problems and could not mobilise sufficient funds to implement the welfare and redistribution that the RDP sought to achieve. In order to spur on economic growth, the ANC discarded the RDP and in 1996 embraced a conservative macroeconomic strategy under the *Growth, Employment and Redistribution* (GEAR) policy.

This economic move towards neoliberalism has impacted on the social grant system which has become enmeshed with finance capital. The South African Social Security Agency (SASSA) was founded in 2005 to centralise the grant system which up until then had been managed on a regional level. In 2012, SASSA outsourced the payment and distribution of grants to a private company Cash Paymaster Services (CPS). Shortly after this, grant holders began reporting unauthorised and illegal deductions off their monthly grant payments.<sup>243</sup> Scandals arising from the outsourcing of grant payment and distribution have continued since then. In 2020 following the pandemic, SASSA began the process of outsourcing the digitalisation of grant distribution. This has been critiqued for allowing private companies to profit off their access to huge swathes of people's personal data.<sup>244</sup>

It is estimated that 23 million people, which is 47% of the population, in South Africa rely on social grants.<sup>245</sup> Grants are funded by national taxes and eligibility is means-tested. SASSA grants include a pension, child support grant, war veterans grant, disability grant, care dependency grant, foster child grant and social relief in distress grant.<sup>246</sup> The SASSA pension is available to any citizen aged 60 or above. It is available to a person earning less than R 96,840 (US\$ 5,163) (R 8,070 (US\$ 430) per month) if single or R 193,680 (US\$ 10,328) annually (R16 140 (799 Euros) monthly) if married; or if the person has assets less than R 1,372,800 (US\$ 73,203) if single or R 2,745,600 (US\$ 146,407) if married. The amount of money one receives depends on age. As on April 1, 2024, citizens ages between 60 to 74 will receive a monthly payment of R 2,180 (US\$ 116) and those aged between 75 and above R 2,200 (US\$ 117). Starting on October 1, 2024, this will increase by R 10 (US\$ 0.53) per person.<sup>247</sup> The SASSA pension grant, as with all SASSA grants, falls substantially below minimum wage.

South Africa has a public healthcare system which is overseen by the Department of Health. This too is means-tested and mainly caters to citizens below a certain income threshold. There is no public health insurance scheme in South Africa as of yet, but there is a proposed National Health Insurance (NHI) Bill that is in the process of being passed by Parliament.<sup>248</sup> If it is enacted, it will impact how public healthcare is funded in South Africa.

The SASSA disability grant is paid to any person between 18 and 59 who has been designated as medically disabled, either physically or mentally, and therefore unfit for work. There is both a temporary grant, for a disability that will impact a person's ability to work for 6 to 12 months, or a permanent disability grant for those whose condition will last longer than 12 months. As of April 1 2024, the disability grant is R 2,180 (US\$ 116), this also will go up by R 10 (US\$ 0.53) on October 1.<sup>249</sup>

South Africa has an Unemployment Insurance Fund (UIF) that pays unemployment benefits. The UIF is a contributions-based system which is available to residents who were contributing to the social security fund while employed. It requires a monthly contribution of 2% of the worker's salary, 1% of which is paid by the worker and 1% paid by the employer. The UIF is meant to give short-term relief to workers who have become unemployed and is applicable if the worker has not resigned voluntarily, been suspended, or absconded from work. The amount a worker will receive depends on how long they were contributing to UIF and how much their salary is, but on average it pays about 40-60% of a worker's salary for a period of 34 weeks.<sup>250</sup>

Other than being enshrined in the Constitution, there are also two acts that legislate social security. One is the Social Assistance Act 13 of 2004 which is to provide social assistance to

persons; to provide for the mechanism for the rendering of assistance; and to provide for the establishment of an inspectorate for social assistance.<sup>251</sup> The other is the South African Social Security Agency Act 9 of 2004 which intends to provide for the establishment of the South African Social Security Agency as an agent for the administration and payment of social assistance; and to provide for the prospective administration and payment of social security by the Agency and the provision of services related thereto.<sup>252</sup>

With regards to workplace injuries, the government has a Compensation Fund which is a public entity of the Department of Employment and Labour. The fund generates its revenue from monthly payments made by employers on a basis of a percentage or fixed rate of the annual earnings of their employees.<sup>253</sup> Any worker who is employed under a contract and receives wages is eligible to claim compensation from the Compensation Fund. This also applies to the worker's family if a worker is fatally injured.<sup>254</sup> A major problem is that the Compensation Fund is plagued by internal inefficiency and fraud committed by staff is rife. Thus, major delays occur, and workers can wait years for their compensation.<sup>255</sup>

The mining sector, however, has a further Act relating to workplace or occupational health/diseases and compensation, with a particular focus on lung diseases, which is the Occupational Diseases in Mines and Works Act of 1973. Under the Act, all mine workers and ex-mine workers who contract a lung disease caused by exposure to harmful dust or material while working in mines are entitled to apply for compensation from the state. Hence, if a worker has contracted silicosis (which is prevalent in platinum mining), pneumoconiosis, mesothelioma, chronic obstructive pulmonary disease, or tuberculosis they can apply for a claim under the Act. While employed, mine workers have to undertake regular medical examinations to check for possible occupational lung diseases. Likewise, ex-mineworkers are entitled to a free Benefit Medical Examination every two years at facilities accredited and if they are found to have the above lung diseases they can lodge a claim under the Act. When a mine worker passes away (of any cause) their families are entitled to request a free autopsy to determine if the worker had an occupational lung disease. If so, the family can apply to claim compensation from the state. If an application is successful, the Compensation Commissioner for Occupational Diseases is responsible for payment of the claim.<sup>256</sup> The problem is that the system is extremely inefficient, and claimants can wait many years for payments.

### 3.1.9 Discrimination

Discrimination in employment based on sex, race, ethnicity, nationality or beliefs is a universal challenge and has historically been a problem in the mining industry in South Africa. There are a number of international legal frameworks that aim to counter discrimination in employment. Article 23 of the United Nations (UN) Universal Declaration of Human Rights states that "everyone, without any discrimination, has the right to equal pay for equal work".<sup>257</sup>

The International Labour Organisation (ILO) also has a number of conventions that aim to prevent discrimination based on gender. There is the Equal Remuneration Convention of 1951 which requires that all ratifying countries ensure there is equal remuneration for men and women who do work of equal value.<sup>258</sup> There is the Discrimination (Employment and Occupation) Convention of 1958 which defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".<sup>259</sup> It requires all ratifying countries to promote a national policy that ensures equality of opportunity in employment and prevents discrimination. The ILO also has the Workers with Family Responsibilities Convention of 1981 which requires all ratifying countries to ensure that any person with family responsibilities and are employed or wish to be employed are not discriminated against on the basis of their family responsibilities and that, when possible, there is no conflict between family and employment responsibilities.<sup>260</sup> In 2019 the ILO also adopted the Violence and

Harassment Convention which protects the right of everyone to a work environment that is free from violence and harassment, including gender-based harassment.<sup>261</sup>

The ILO also has several conventions that aim to prevent discrimination against migrant workers. Convention No. 97 and Recommendation No. 86 which aims to ensure that migrant workers are not treated less favourably than nationals and aims to enhance cooperation between member states with regards to labour migration.<sup>262</sup> There is also Convention No. 143 and Recommendation No. 151 which aims to ensure the basic human rights of all migrant workers and that there is equality of opportunity and treatment for migrant workers. It also aims to prevent any unlawful employment of migrant workers.<sup>263</sup>

International trade union organisations also have conventions on discrimination in employment. ITUC's constitution outlines that it will "act to end all discrimination on the basis of sex, religion, colour, nationality, ethnicity, sexual orientation, gender identity, political opinion, social origin, age or disability, and to uphold respect for diversity in society and employment".<sup>264</sup>

In South Africa, the Employment Equity Act (EEA) was passed in 1998. Its purpose is to eliminate unfair discrimination in employment and to implement affirmative action measures that will redress the historical exclusion or discrimination in employment against certain groups.<sup>265</sup> It stipulates that no person can be discriminated against on the grounds of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.<sup>266</sup> With regards to migrant labourers in South Africa, the LRA 66 of 1995 protects foreign employees, including migrant workers who do not have working visas. This means that a migrant worker who does not have a work permit or if their permit expires, they are still protected under the LRA. Furthermore, Section 23(1) of the South African Constitution stipulates that everyone (not just citizens) has the right to fair labour practices.<sup>267</sup> The mining industry in South Africa also has the Mine Health and Safety Act (MHSA), which holds the employer accountable for ensuring that the working environment is safe and without risk for the worker. It mandates the establishment of a Mine Health and Safety Council and Health and Safety Representative Committees to regulate and ensure the safety of mine workers. Although this act does not directly address the safety of women and migrant workers.<sup>268</sup>

In 2002 the Minerals and Petroleum Resource Development Act 28 (MPRDA) repealed the ban of women from working underground in the mining sector. In the same year, the South African Mining Charter introduced a quota of 10% of the mining workforce to be women.<sup>269</sup> As of 2018 there were 54,000 women working in the mining sector which translates to about 12% of the workforce.<sup>270</sup> Despite the increasing presence of women workers in the mines, the industry remains mainly masculine in culture.<sup>271</sup> Women mine workers have voiced grievances that range from sexual harassment in the workplace, policies that employers implemented without consulting them, and the disregard of their issues by union officials.<sup>272</sup>

Gender-based violence and harassment (GBVH) in the mining industry takes on many forms; not only is it physical and sexual violence, but also psychological violence and verbal harassment, and women mineworkers experience this from co-workers as well as supervisors or union officials.<sup>273</sup> There are no centralised statistics on GBVH in the mining sector, but there are incidences that exemplify the nature of violence that women mine workers experience. In 2012 Binkie Mosiane, who was the only woman in a team of 13 workers working on one of Anglo-Platinum's Khomanani Mine, was found alive underground after she had been attacked and raped but died shortly after. It took 20 months for one of her co-workers to be found guilty of the crime.<sup>274</sup> Cynthia Setuke, another mine worker who was raped and murdered underground in a platinum mine in Rustenberg in 2013, had complained to her workplace about how isolated, dimly lit and unsafe her workplace was shortly before she was attacked.<sup>275</sup> Although this does not directly obstruct equal employment or remuneration of women, the masculine culture and fear of GBVH create a hostile environment for women mine workers that can discourage women from seeking employment in the industry.

The mining industry in South Africa has a long and violent history of relying on the exploitation of cheap and disposable black migrant labour. The mining industry has been critiqued as “symbolic of some of the worst miseries wrought by the fusion of capitalism and apartheid”.<sup>276</sup> The mining industry, with the collusion of the apartheid state, monopolised the recruitment of migrant labourers in South Africa. This reorientated the economies of neighbouring countries away from subsistence farming and created a dependency on the remittance sent back by male migrant labourers.<sup>277</sup> In the 1980s and 1990s South African mines began to downsize their workforce due to the development of capital-intensive machinery and the decline in gold prices. This, coupled with the post-apartheid government in South Africa promoting the employment of South Africans in the mines to curb unemployment, has led to a substantial decline in the employment of migrant labourers in the mining sector.<sup>278</sup> It is hard to access individual employment records, but the Employment Bureau of Africa (TEBA), which primarily recruits for the mining industry (mainly gold and platinum), has published statistics which show that in 2003, the total number of migrant workers employed through TEBA on South African mines was 120,482 and by 2018 that number has declined to 43,234.<sup>279</sup>

Although there are no public records of it, one can assume that the prevalence of xenophobic violence in South Africa would also impact the mining industry. The lack of transformation in post-apartheid South Africa has led to widespread social discontent, as migrant labourers compete for economic survival with the South African working class amongst dwindling resources and opportunities.<sup>280</sup> Following the May 2008 xenophobic violence in South Africa, most mining companies reported a negative impact on operations. This was particularly felt at smaller gold mines in Johannesburg’s East Rand, which reported high absenteeism by migrant labourers. During this period of unrest, two Zimbabwean NUMSA members were murdered, but it is unclear whether they were mine workers.<sup>281</sup> The mining industry has been criticised for taking a business-as-usual approach to the xenophobic violence in May 2008. The Chamber of Mines sent out a “strong message” that xenophobia would not be tolerated in the industry, but other than that, it was business as usual, and no structures to safeguard migrant workers were implemented.<sup>282</sup>

### 3.1.10 Social dialogue

The National Economic Development and Labour Council (Nedlac) is a social dialogue institution in South Africa that was established on 18 February 1995. It was established as a result of the National Economic Development and Labour Council Act, Act 35 of 1994.<sup>283</sup> It aims to bring together representatives from government, labour, business and community organisations to ensure cooperation and problem-solving in addressing the socio-economic challenges the country faces.<sup>284</sup> Nedlac’s constitution states that it will conduct its work in four broad areas, covering (i) Public finance and monetary policy. (ii) Labour market policy. (iii) Trade and industrial policy. (iv) Development policy.<sup>285</sup> Nedlac has also given birth to a range of tripartite bodies such as the Centre for Conciliation Mediation and Arbitration – CCMA - (1995), Proudly South Africa (1991) and the National Minimum Wage Commission (2019).<sup>286</sup> One of Nedlac’s aims is to reach a consensus between labour, government, and business on policy matters before such matters are tabled in Parliament. Nedlac claims that it has had success in establishing social dialogue as a part of the country’s policy-making and national decision-making system.<sup>287</sup> Nedlac claims that the negotiation of national policies between government, labour and business organisations sometimes results in an explicit social pact and agreement.<sup>288</sup>

Outside of Nedlac there are no institutionalised social dialogue forums in South Africa. There is a non-profit organisation called the Institute for Social Dialogue (ISD), which states that its mission is to “contribute towards just partnerships between mining houses and communities in a constructive, mutually beneficial, and sustainable way”. It believes that social dialogue can facilitate a transition to a more sustainable socio-economic reality in mining communities. ISD was founded with funds from Sibanye-Stillwater, which remains its only sponsor. Sibanye-Stillwater is



one of the largest gold mines in South Africa and, as of 2019, owns Lonmin, the platinum mining company complicit in the murder of 34 mineworkers in 2012.<sup>289</sup>

### 3.1.11 Overall unionisation

There are over 200 registered trade unions in the country.<sup>290</sup> There are five union federations in the country in terms of the Congress of South African Trade Unions (SAFTU), the South African Federation of Trade Unions (SAFTU), the Federation of Unions of South Africa (FEDUSA), the National Council of Trade Unions (NACTU) and the Confederation of South African Workers' Unions (CONSAWU). COSATU is the largest of the federations, with 1,8 million members. In the mining industry, there are five large unions that dominate the industry, including the platinum, vanadium, chromite, manganese and titanium sectors.

The largest union in the mining sector is AMCU. AMCU was formed as a break-away from the NUM in 2001 and has approximately 200,000 members – the vast majority of whom are employed in mining. It has an extremely strong base in the platinum sector and members in the coal, gold, vanadium, and chromite sectors. It is seen as one of the most militant trade unions in the mining industry. It is not affiliated to any political party or trade union federation, although it broadly identifies with socialism.<sup>291</sup>

The NUM is the second-largest union in South Africa's mining industry, and it was founded in 1982. The union has a presence in the platinum, vanadium, titanium, chromite and manganese sectors, but its strongholds are in coal and gold. The union is also a member of COSATU, which is in an alliance with the ANC.<sup>292</sup> Before the Marikana massacre, the NUM was the largest union in the mining sector and had over 300,000 members. Today, however, the union has less than 157 868 members.<sup>293</sup> Indeed, the Marikana massacre was a turning point for the union as during the strike, most of the workforce of Lonmin left the NUM because they felt it was too close to the company and state – even though the union says it is a class struggle union - and was no longer properly representing the interests of workers.<sup>294</sup> Since then, thousands of workers at other mining companies have also left the NUM, mostly to join AMCU.

NUMSA started out organising workers exclusively in the metal sector, including in automobile manufacturing companies, in 1987. Following NUMSA's expulsion from COSATU<sup>295</sup> – revolving around different views on the Marikana massacre and NUMSA's decision to break its alliance with the ANC – the union started to organise workers in the mining sector. Thus, while its base remains the metal sector, it does have some members in the platinum, chromite and titanium mining sectors. It, however, mostly focuses on workers who are employed by contractors and sub-contractors. NUMSA, too, has seen at least two members assassinated, possibly by rival unions, during its recruitment of workers employed by contractors to Impala Platinum.<sup>296</sup> Politically, NUMSA identifies itself as socialist. NUMSA currently has over 347,948 members, but as stated, most of these are in the metal and manufacturing sectors.<sup>297</sup> NUMSA is currently affiliated with SAFTU, although tensions do exist between the union and the federation.<sup>298</sup>

UASA started out as a mine workers union, but is now a general union that organises across different industries and has approximately 30,000 members.<sup>299</sup> It mainly focuses on white collar workers, technicians, artisans, skilled miners and supervisors in the mining sector, although not exclusively so. It is a union that, in its own words, seeks to have a constructive relationship with management. The union is a member of FEDUSA.<sup>300</sup>

Solidarity began its life as the Transvaal Miners' Association in 1903. For most of its history its membership was limited to only white workers. Today, the union claims to have a membership of approximately 150,000, which includes workers in the mining sector, police, other state departments, manufacturing, airlines and state-owned companies.<sup>301</sup> It, thus, claims to represent workers at 8,000 companies in the country. The mining sector mainly focuses on skilled miners, supervisors, technicians, and artisans. Most of the union's members are still white workers. In fact, it has been estimated that between 70% to 80% of the union's membership remains white.



Politically, the union is an Afrikaner and Christian nationalist organisation. Although it has no affiliation to a political party or union federation, it works closely with other Afrikaner and Christian nationalist organisations, such as AfriForum.<sup>302</sup>

Approximately 3,927,000 workers are members of unions in total in South Africa, which represents 23% of the country's workforce.<sup>303</sup> The rate of workers who are members of unions in the mining sector – and are formally employed – is much higher than the national average: in fact, 82.5% of workers in the mining sector belong to a union.<sup>304</sup> There are, however, deep divisions among the unions in the mining industry. Thus, although there is a high number of workers unionised, deep divisions exist between rival unions.<sup>305</sup> In interviews with workers at Sibanye-Stillwaters' platinum operations in Marikana, several interviewees also stated that they were not happy with the representation of the unions they belong to. For example, one worker noted: *"I am no longer happy with my union...I feel like the unions must connive with the mine bosses."*<sup>306</sup> Likewise, another worker explained: *"I am no longer happy with the representation from AMCU at all, especially if there is a disciplinary action."*<sup>307</sup> Hence, although there are high membership numbers, some workers are discontent with the representation of the unions.

At some operations, the percentage is even higher. For example, at Sibanye-Stillwater's platinum operations in Marikana, 87% of the workforce is represented by one of the 4 recognised unions: AMCU, the NUM, UASA, and Solidarity. The largest union at the company is AMCU, followed by NUM. At Sibanye-Stillwater's operations in Marikana, approximately 73% of workers there are members of AMCU.<sup>308</sup>

In the gold and coal sectors, the Minerals Council – whose members are made up of 73 mining companies operating in South Africa – bargains with the main unions at a sector level in these industries. As such, in gold and coal, there is centralised collective bargaining. In the platinum/palladium, chromite, manganese, vanadium and titanium sectors, bargaining is done at a company level between the management and the representative unions.<sup>309</sup>

The relationship between the state and the unions in the mining sector differs from union to union. In the case of the NUM, the government and the union have close relations despite occasional tensions. The NUM, via COSATU, is in a political alliance with the governing party, the ANC. The current president of South Africa, Cyril Ramaphosa, was the former General Secretary of the NUM. Likewise, the Minister of Mineral Resources and Energy, Gwede Mantashe, was of a former NUM General Secretary. Even though the NUM has a close relationship with the government and the state, they have criticised the government for being too soft on mining companies (including taking very little real action when workplace deaths occur on the mines) and they differ with the state on it privatising electricity production in South Africa in terms of the introduction of Independent Power Producers.<sup>310</sup>

The state and AMCU have a complex relationship, with the state tending to be hostile to the union. This can be seen in the government's attempt to deregister the union described earlier. The ANC is also in alliance with the NUM, and it is alleged this means the government favours the NUM over AMCU. AMCU is highly critical of the role played by the state and the ANC (along with the NUM) in the Marikana massacre and subsequent events, including in the strikes of 2014. AMCU is also critical of the role played by the state, including the Department of Minerals and Energy, in the mining sector as the state favours corporations over workers and communities surrounding mines. They are also critical of the neoliberal policies that the post-apartheid state has implemented and believe little has changed for mine workers and their families who continue to live in poverty post-1994.<sup>311</sup> The ANC and its partner, the South African Communist Party (SACP) are hostile to AMCU and have verbally attacked it on public occasions.<sup>312</sup> The Minister of Minerals and Energy, Gwede Mantashe, and the AMCU General Secretary, Joseph Mathunjwa, also have a complicated relationship. When Gwede Mantashe was the General Secretary of the NUM, he sanctioned the expulsion of Mathunjwa from the union in 1999.<sup>313</sup>

NUMSA ended its support for the ANC, and subsequently left COSATU, in 2014. NUMSA is highly critical of the neoliberal policies of the ANC government, including what it sees as the state's close relationship with companies in the mining sector.<sup>314</sup> NUMSA was also key in forming the Socialist Revolutionary Workers Party to contest elections against the ANC in 2019, although it did not garner enough votes to gain a seat in Parliament.<sup>315</sup>

Solidarity is critical of the government's affirmative action policies in terms of the labour market. It has even taken its campaign against affirmative action to the UN claiming it discriminates unfairly against white and "coloured" workers.<sup>316</sup> It also lodged a petition against affirmative action, based on a revised draft Bill that would strengthen affirmative action, with the South African Parliament as part of its campaign in 2023. It called on Parliament to intervene to stop the Department of Labour taking the draft Bill further. The Department of Labour responded that Solidarity's petition was a misuse of parliamentary process and that the proposed Bill would go ahead and be opened for public comment.<sup>317</sup>

### **3.1.12 Global Union Federation (GUF) involvement**

Three of the five largest unions—NUM, NUMSA, and UASA—in the mining sector are members of IndustriALL and ITUC. Neither Solidarity nor AMCU are members of either IndustriALL or ITUC. In 2010, NUMSA also became a member of the smaller global federation, the World Federation of Trade Unions (WFTU).<sup>318</sup> Likewise, the NUM is also a member of the WFTU.

## **3.2 Key players with a bearing on the labour rights situation**

### **3.2.1 International organisations supporting the South African workers' movement**

The WFTU and the NUM have worked together on education programmes for women members of NUM. This has included delegates from the WFTU attending and presenting at these workshops.<sup>319</sup> NUM also participates in the Conferences of IndustriALL, including the Mid-Term Policy Conference, which took place in Cape Town from 20<sup>th</sup> to the 22 June 2023.<sup>320</sup> The NUM also has a project funded by ITUC's with a focus on training union members and shop stewards.<sup>321</sup> The NUM has close relations with a number of unions internationally, including the Swedish Mine Workers Union,<sup>322</sup> the Namibian Mineworkers Union and the Botswana Mine Workers Union.

The NUM also has the Elijah Barayi Memorial Training Centre (EBMTC), which provides accredited training to members and shop stewards on labour law, bargaining skills, political education and literacy, case preparation, and numeracy. The Centre also partners with the Department of Higher Education, Sector Education Training Authorities and the Mining Qualifications Authority to provide accredited workplace, artisanal and technical skills courses in mining and construction.<sup>323</sup> Requests were made for further information from NUM regarding its international support, via email and phone calls, but this was not forthcoming.

There appears to be no public information on the links between AMCU and international organisations. Requests for information for this were sent to AMCU, via email and phone calls, but information was not forthcoming.

NUMSA has an international desk that has a number of programmes including twinning with sister trade unions in Africa and hosting and attending international networking meetings. NUMSA has close relations with a number of trade unions internationally, including Unifor, the Zimbabwe Metal Energy and Allied Workers Union, the Metal and Allied Namibian Workers Union, Czech Metalworkers Federation and the Amalgamated Union of Kenya Metal Workers.<sup>324</sup> NUMSA also has relations with institutions such as the Friedrich-Ebert-Stiftung, which funds research and educational activities of the union.<sup>325</sup> It is also linked to Tricontinental, which is a research centre. The funder of Tricontinental, businessperson and philanthropist Roy Singham, may also be providing funding to NUMSA's programmes.<sup>326</sup>

UASA has partnered and attended ITUC and Solidarity Centre events and programmes. Specifically, UASA has worked with the Solidarity Centre on advancing gender equality.<sup>327</sup>

Through their federation membership, UASA and the NUM participate in the Southern African Trade Union Co-ordinating Council (SATUCC). Through SATUCC they advocate, lobby and campaign nationally and at a regional level for decent work, defending democracy, fighting state corruption, and promoting social dialogue. SATUCC also has programmes to strengthen trade unions and organising.<sup>328</sup>

### 3.2.2 Industry associations

The Minerals Council of South Africa plays the role of a mining industry association and was formally known as the Chamber of Mines. The Minerals Council is extremely powerful and its membership comprises of some of the largest companies in South Africa. Due to its power, historically, it played a major role in shaping the laws around mining during the apartheid era. In fact, the apartheid homelands system was designed to provide cheap labour to the companies comprising the Chamber of Mines. In 2018, the Chamber of Mines rebranded itself as the Minerals Council of South Africa.

The Minerals Council of South Africa negotiates on behalf of employers in the coal and gold sectors. It also lobbies government and makes submissions to Parliament, the DMRE, the Department of Labour and the Presidency of South Africa on any legislative changes, legislative proposals or policies related to the mining sector and even the broader economy. It also comments on political developments in the country, including economic policies. For example, each year after the South African President delivers the State of the Nation Address, the Minerals Council will release media statements and undertake media interviews that outline its analysis of the speech and what it feels should be the state's priorities.<sup>329</sup>

The Minerals Council of South Africa also undertakes research and advises member companies on political, social, economic and environmental issues, and uses the networks it has created in the private and government sectors to influence policy and gain information. Linked to this, it formulates policy and position papers that form the basis of its public relations and lobbying efforts. They also advise members on policies, investment, health and safety, employment relations, CBAs and any community issues they face.<sup>330</sup>

In fact, the Mineral Council of South Africa has a legal team that advises members on matters, including labour relations and collective bargaining. It will also act on behalf of members legally when attempting to influence or oppose legislation or in cases that negatively impact on its members' interests, public image or profits. As part of this, the Minerals Council has taken the Minister of Minerals and Energy, NUMSA, NUM, Mining Affected Communities in Action (MACUA), UASA and AMCU to court around the interpretation of the MPRDA and whether the Minister can enforce the Mining Charter of 2018 under the Act. The Mining Charter attempted to increase black ownership in the sector and promote local beneficiation of minerals mined in South Africa.<sup>331</sup>

The Minerals Council attempts to portray the mining sector in a positive light, including to the public. This includes undertaking media campaigns and engaging with the largest media companies in South Africa to promote the interests and perspectives of its member companies.<sup>332</sup>

The Minerals Council of South Africa also represents the interests of mining companies in Nedlac (see 1.10). It also plays a leading role in the Business Unity South Africa (Busa), which is a business association representing companies in all the sectors in South Africa. The Minerals Council South Africa, and through its members, are also members of the International Council on Mining and Metals and the World Platinum Investment Council.

The Minerals Council has the following members from the five sectors examined in this report:<sup>333</sup>

- Anglo-Platinum, African Rainbow Minerals, Barplats, Impala Platinum, Ivanplats, Nkwe; Platinum, Northam, Platinum Group Metals, Sedibelo Platinum, Sibanye-Stillwater, Siyanda Resources and Wesizwe Platinum in the platinum/palladium sectors;
- Bauba, African Rainbow Minerals, Chrometco Limited, Glencore, Limberg Mining Company, Samancor and Tharisa in the chromite sector;
- African Rainbow Minerals, Afrimat, Assore, Kudumane Manganese Resources, South 32 and Tshipi é Ntle Manganese Mining in the manganese sector;
- Tronox and Richards Bay Minerals in the titanium sector; and
- Bushveld Minerals and Vanadium Resources in the vanadium sector.

Although not an official association, since 1994 a yearly conference has been held in South Africa called the African Mining Indaba. The Mining Indaba aims to attract investment in the mining sector in Africa. It serves as a networking event that connects mining companies with investors and provides a platform for important industry discussions.<sup>334</sup> The South African government has often supported and participated in the Mining Indaba, with the President Cyril Ramaphosa giving a speech at the 2024 African Mining Indaba.<sup>335</sup>

### 3.2.3 Government involvement

The DMRE is the main governmental stakeholder in the South African mining sector. It consists of both the Department of Mineral Resources and the Department of Energy which were merged in 2019. The department regulates and controls mining permits in the country. The mission of this Department is “to regulate, transform and promote the minerals and energy sectors” and “ensuring that all South Africans derive sustainable benefit from the country’s mineral wealth”.<sup>336</sup>

One of the Department’s programmes that supports the mining sector is the Mine Health and Safety Inspectorate, which aims to protect the health and safety of mine workers and communities affected by mining operations in South Africa. The Inspectorate was established in terms of the Mine Health and Safety Act of 1996. It also leads the tripartite structures that the Act outlined between government, labour and business.<sup>337</sup>

Another programme that the DMRE has is the Mineral Regulation Branch which regulates the mining sector so as to ensure economic growth, employment, transformation and sustainable development are achieved.<sup>338</sup> This branch controls the administration of prospecting rights, mining rights, mining permits and environmental management. It ensures that all mining operations in the country are in compliance with the MPRDA of 2002.<sup>339</sup>

It also has a Mineral Policy and Promotion branch which oversees mineral economics, small-scale mining, beneficiation economics, mineral policy development, environmental policy and mine environmental policy research and development. The government also has a number of state owned councils or boards that regulate various aspects of minerals and mining such as: the Council for Geoscience, the Council for Mineral Technology, the Mining Qualifications Authority, the South African Diamond and Precious Metals Regulator, State Diamond Trader, Mine Health and Safety Council, and Petroleum Agency South Africa.<sup>340</sup>

Another government department involved in the mining sector is the Department of Trade and Industry (DTIC). One of the programmes of the DTIC is to develop policies to increase the growth and competitiveness of the minerals sector in partnership with businesses so as to increase investment and employment in the industry.<sup>341</sup> Part of this initiative involves the DTIC working in collaboration with the Department of Science and Innovation, DMRE, The Department of Public Enterprises (DPE), the Minerals Council and the Industrial Development Corporation (IDC) to support national mineral beneficiation initiatives.<sup>342</sup>

### 3.2.4 Dutch governmental support

Despite the Netherlands not having many large corporations involved in the South African mineral sector, the Netherlands government does have an overall strategy to secure mineral supplies for corporations in the Netherlands, and the European Union more widely, linked to the green transition. As part of this, it has noted that control over the supply of minerals is both an economic and geopolitical issue. Through this, the Dutch government aims to integrate a mineral strategy into its industrial policy; explore the possibility of establishing sustainable mining and refining in Europe; diversifying the supply of minerals; ensuring greater sustainability of international supply chains; and undertake research including into areas that can assist the interests of Dutch companies.<sup>343</sup>

The Netherlands Ministry of Foreign Affairs also supports initiatives around human rights related to the mining industry in South Africa through funding Dutch organisations such as Both Ends,<sup>344</sup> Oxfam Novib,<sup>345</sup> and SOMO.<sup>346</sup> Both Ends in turn funds an NGO in South Africa called Womin; SOMO funds the Alternative Information and Development Centre (AIDC) and has collaborated on reports on human rights and mining with organisations in South Africa; while a legal NGO named Centre for Environmental Rights (CER) receives funding from Oxfam Novib (see details on this below in section 3.2.5 on NGOs working on issues in the mining sector in South Africa). This funding is also linked to a broader funding provided by the Netherlands Ministry of Foreign Affairs for gender, equality and mining.<sup>347</sup>

The Netherlands Ministry Trade and Cooperation has also funded the International Organisation of Migration (IOM) for a project to assist address health issues faced by migrant mine workers in the areas they are from, their families and communities in South Africa, eSwatini, Lesotho and Mozambique. The project specifically focuses on a lack of healthcare facilities in the rural areas the workers are from, HIV/AIDS and tuberculosis.<sup>348</sup>

### 3.2.5 Non-governmental organisations

Most of the NGOs working around mining mainly focus on the adverse environmental, social, and economic impacts that it has on communities. Very few conduct research or popular education on working conditions or labour issues in the mining sector.

The Socio-Economic Rights Institute of South Africa (SERI) is an NGO that litigates, lobbies, researches and produces publications on the socio-economic rights of working class communities. It works closely with the worker survivors, and their families, of the Marikana massacre. SERI also legally represented worker survivors and their families at the Farlam Commission of Enquiry into the Marikana massacre. It also represented AMCU at the Commission. SERI receives funding from a number of international donors, however, none are from the Netherlands.<sup>349</sup>

The LRS is an NGO that undertakes research each year on wage agreements in the mining sector and produces information on wages generally. It is funded by a number of international donors. Both the NUM and NUMSA are member unions of the LRS. LRS has also assisted the NUM and NUMSA with information used in collective bargaining.<sup>350</sup>

Ditsela is an NGO that provides education and training to members from the major federations in South Africa. Ditsela has provided education – including tools of analysis, organising, labour law and bargaining skills - to shop stewards from the NUM and NUMSA. Ditsela is mainly funded by the Department of Labour and has no international donors.<sup>351</sup>

ILRIG has undertaken research on the living and working conditions of workers employed at Sibanye-Stillwater's platinum division. This included looking at wages, employment relations, freedom of association, health and safety, housing and services. In the past, ILRIG also facilitated a diamond mine workers network on workplace health and safety and HIV, which involved the NUM, the Mineworkers Union of Namibia and the Botswana Mine Workers Union. ILRIG currently

also provides political education, including on alternative forms of organising, to artisanal mine workers who have formed their own national organisation and co-operatives. The artisanal mine workers are workers who used to work for major corporations, mainly in the gold and diamond sector, who lost their jobs with the shrinkage of these industries and have been forced to survive through artisanal mining. ILRIG currently receives funds from international donors, but none are from the Netherlands.<sup>352</sup>

The Alternative Information and Development Centre (AIDC) conducts research and education on tax justice and extractive companies operating in South Africa. They also partner with the Amadiba Crisis Committee, which is a community in the Eastern Cape Province that has resisted a proposed titanium mine, and accompanying loss of land and environmental destruction, of the Australian company Mineral Commodities. The Amadiba Crisis Committee has faced heavy repression for resisting the mine. AIDC has also supported AMCU with research for CBA negotiations. AIDC receives funding from a number of international donors, including SOMO from the Netherlands.

Bench Marks Foundation is an NGO that works extensively with communities surrounding platinum and gold mines in South Africa. They provide popular education and research to community organisations that have formed to resist the negative impact of mining, including socially, economically and ecologically. They also have a Community Monitoring School that assists activists from mining impacted communities with their organising. Participants are drawn from 40 organisations from South Africa, Zambia, Mozambique, Democratic Republic of the Congo, Angola, Kenya, Botswana and Tanzania. In addition, the Bench Marks Foundation has cooperated with at least seven international partners in studies about the impacts of mining on communities. Much of its research focuses on exposing the shortfalls of mining companies' Social Labour Policies (see section 7) and Corporate Social Responsibility programmes. The seven studies have been used to lobby governments and conduct campaigns in South Africa and internationally. Bench Marks also works with artisanal miners to organise in a context where mining companies have left and the former workers have to mine on a small scale to survive. Bench Marks is funded by a number of international donors, although none are from the Netherlands.<sup>353</sup>

MACUA is an NGO that organises communities negatively impacted by mines in South Africa. As such, they operate as a platform to bring communities impacted by mining companies together in a coalition. They aim to try and ensure transparency by mining companies and the state; that communities' human and environmental rights are protected; oppose mining companies that do not have a community-driven process to negate the negative impacts of mining; build and mobilise movements; and strengthen the voice of women impacted by mining through Women Affected by Mining United in Action (WAMUA). MACUA also produces social audit reports of their own on mining companies. Thus far they have conducted surveys in ten communities impacted by mining. MACUA/WAMUA also run an Advice Office for communities. Added to this, MACUA works with assisting in the organising of artisanal miners. MACUA and WAMUA actively lobby and advocate government around laws and matters around mining and its impact on communities.<sup>354</sup> MACUA and WAMUA have received funding and partnered with SOMO and ActionAid Netherlands to produce a study on the negative impact of manganese mining on communities in South Africa.<sup>355</sup>

Womin is a feminist NGO that aims to build women's power to resist mining companies. Womin also works on alternative development proposals to extractivism. Womin has programmes across Africa, but in South Africa it has a focus on targeting companies in the manganese sector that are violating the rights of women community members. Thus, it has a focus in the Northern Cape Province where large-scale manganese mining is taking place. Its ultimate goal in South Africa is to get land transferred to communal ownership so women and communities can determine the development that they want. Womin also runs a school on extractivism with the theme of dreaming futures beyond extractivism. Womin receives its funding from a wide range of international donors, including Both Ends, from the Netherlands.<sup>356</sup>

CALS is an NGO that focuses broadly on human and environmental rights. Specifically, it has a programme focused on environmental rights and mining. The aim of the programme is to change the behaviour of both mining companies and the state to ensure they respect the environmental rights of communities. CALS provides research and education material on the social and labour plan system (see Section 7) and models for community benefit sharing. CALS also regularly makes submissions to the South African Parliament on any proposed legislation around mining. It has also produced a number of publications that activists can use to try and hold mining companies accountable.<sup>357</sup>

Centre for Environmental Rights (CER) is an NGO focusing on law and has a programme on mining. CER promotes environmental and climate justice for communities impacted by mining. It, thus, undertakes lobbying and advocacy for improved environmental laws and improved implementation of laws as they relate to mining in South Africa. It also embarks on legal cases and litigation on behalf of communities that have been negatively impacted on by mining companies. The work of the NGO is also aimed at ensuring that adequate assessment and provision for mitigation of mining takes place before prospecting, mining, exploration and production are commenced; that licences are transparent and lawful; and the activity of mining companies is monitored. CER has also produced a report on how mining companies are over-exploiting South Africa water resources, which is a major concern given the country is water scarce. CER receives funding from a number of international donors, including Oxfam Novib from the Netherlands.<sup>358</sup>

The Mining and Environmental Justice Community Network of South Africa (MEJCON-SA) is a network of communities, community-based organisations and community members whose environmental and human rights are affected, directly or indirectly, by mining and mining-related activities. One of its objectives is to promote and defend the environmental and human rights of communities both directly and indirectly affected by mining; and to ensure the sustainable use of mineral resources.<sup>359</sup>

groundWork is another NGO that does some work around the impact of mining on communities economically, socially and environmentally. It specifically, however, focuses on coal mining and has a campaign to try and force Eskom away from using coal as its main source of electricity production in South Africa. It is also affiliated with Friends of the Earth International.<sup>360</sup> groundWork receives funding from a number of international donors.

In 2016 the CER, CALS, groundWork, South Durban Community Environmental Alliance, Vaal Environmental Justice Alliance, Highveld Environmental Justice Network and Earthjustice made a submission to the UN Human Rights Council presenting the violation of human rights in the country through the poor regulation of the mining industry and coal-fired power stations. The submission highlighted the environmental and social harm that mining causes in South Africa such as depleting water supplies; polluting air, soil, and water; and destroying arable land leading to food insecurity. Another aspect of their submission is the way in which government inaction has allowed the mining industry in South Africa to become one of the least transparent industries in the country. The mining industry does not and is not required to release basic information that is essential to ensuring that mines are meeting their social and environmental responsibilities. They also highlighted that communities are not consulted during the mining approval process. This lack of access to information or meaningful consultation means that communities affected by mines cannot defend their rights.<sup>361</sup>

In response to the mining industry's yearly Mining Indaba, civil society organises a yearly Alternative Mining Indaba (AMI). The AMI states that it grew out of frustration with how mining companies, investors, and government meet yearly at the African Mining Indaba to discuss the future of mining on the continent, yet the communities directly impacted by mining are neglected. The AMI began in 2010 and is a pan-Africanist movement that calls for prioritisation of people over profit. The AMI aims to provide mining-affected communities with a platform to voice their concerns about the social and environmental injustices that take place in the African mining



industry. The AMI advocates for equity and justice in how the benefits of mining resources are shared. AMI also advocates for action against the structural gender imbalances and unequal gender relations inherent in the mining sector.<sup>362</sup>

### 3.2.6 Major lobby and campaign activities

There are a number of major international NGOs undertaking work around the mining sector in South Africa. These are as follows:

Oxfam has its own office in South Africa (Oxfam South Africa), which has an Economic Justice Programme that focuses on mining and is based on a number of pillars. The first pillar relates to working with communities and other civil society organisations to limit the negative impact of mining. The second pillar relates to advocating for mandatory transparency and disclosure by mining companies to ensure communities and the wider South African population benefit from the extractive industry by ensuring companies pay the correct tax rates and royalties. The third pillar is to support artisanal miners in establishing associations that regularise their work, decriminalise their work, and ensure they can make a decent living. The fourth pillar is to empower women – as the mining sector has a gendered impact socially, economically and environmentally – to challenge the adverse impacts of mining.<sup>363</sup>

In 2019, Human Rights Watch partnered with groundWorks and CER to undertake research and produce a report on the human rights violations mining companies and the government were committing against communities. This included examining how activists have been assassinated, threatened and harassed; how peaceful protests have been suppressed by the police; how mining companies are using the courts to try and silence and intimidate activists; and how the companies and government have created an atmosphere of fear amongst communities protesting or resisting mining.<sup>364</sup> More recently, Human Rights Watch produced a report and short documentary on the impact of abandoned coal mines on communities in South Africa.<sup>365</sup>

The World Wildlife Fund (WWF) produced a report in 2020 that examined how companies were generally failing to rehabilitate mines that they had closed in South Africa, as required by law. The report noted loopholes in the legislation, a lack of transparency, and poor state enforcement.<sup>366</sup>

Action Aid has an office in South Africa and a programme that looks at natural resources, including mining in South Africa. This programme assists communities impacted by mining to defend their rights, ensure mining companies and the government uphold the human rights of communities, and ensure women's rights are respected by mining companies.<sup>367</sup> Action Aid has produced a number of reports linked to mining in South Africa, including the role of women in artisanal mining,<sup>368</sup> the negative impacts of mining – specifically coal – on women community members in Carolina, Ermelo and Emalahleni,<sup>369</sup> and the responsibility of German companies and the government for human rights violations in the coal mining sector in South Africa.<sup>370</sup>

### 3.2.7 Labour rights initiatives

According to Regulation 46 of the MPRDA, mining companies need to submit an SLP as a prerequisite and legal requirement for the granting or renewing of a mining permit in South Africa.<sup>371</sup> An SLP requires a prospective mining company to develop and implement Human Resources Development Programmes (which could include skills training for workers, leadership training and bursaries), a Mine Community Development Plan, a Housing and Living Conditions Plan, an Employment Equity Plan, and processes to save jobs and manage downscaling and/or closure.<sup>372</sup>

The aim of SLPs is to address the historic socio-economic inequality in the country by ensuring that mining companies help enact socio-economic transformation in the communities surrounding mines, which are historically some of the most marginalised communities in the country. The government requires SLPs to include initiatives that will both address poverty eradication and infrastructure development. This includes plans to address the nutrition of mine workers, living

conditions and housing of mine workers, income-generating projects and school and health infrastructure.<sup>373</sup> SLPs are normally required to be revised and resubmitted every five years during the life of a mining permit.

The way in which mining companies have conducted their SLPs has been criticised from various angles. These criticisms were highlighted by the South African Human Rights Commission in its 2016 “National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa”.<sup>374</sup> One of the criticisms is that there is often a failure to conduct proper feasibility studies when an SLP is being conceptualised. This has resulted in projects either being scrapped or, if completed, having sustainability problems.<sup>375</sup> There has also been criticism of the types of projects that get chosen. For example, roads and bridges are often chosen as SLPs. This has been criticised by communities who have more immediate needs and feel that developments like roads and bridges get chosen because they also serve the profitability of mining operations.<sup>376</sup>

There has also been criticism that some projects have been chosen for how they will benefit influential stakeholders, such as Traditional Councils, and not the communities’ needs.<sup>377</sup> Mining companies have also been criticised for inconsistency and sometimes complete disregard of their responsibility to secure the meaningful participation of communities in the SLP process.<sup>378</sup> Overall, SLPs have been criticised for not having their intended benefit. Communities experience various negative impacts from the mining industry, but SLPs result in no overall improvement in the socio-economic circumstances of the community as a whole.<sup>379</sup>

Amnesty International, along with CALS, was involved in research and producing a report in 2022 on the Social Labour Plans (SLPs). The Amnesty International Study looked at the SLPs of 3 mining companies in South Africa and whether the promises were delivered. The three companies were the Twickenham Platinum Mine, Marula Platinum Mine and Sefateng Chromite Mine in the Limpopo Province. The report found that, to varying degrees, the mines were not complying with the SLPs (which are required to obtain or renew a mining licence under the MPRDA) and were not being held accountable by the government (for more on this, see section 3.3).<sup>380</sup>

Likewise, in 2016, CALS made a submission to the Portfolio Committee of Minerals and Energy of the South Africa Parliament regarding the shortfalls around SLPs. They noted that companies lacked transparency around the implementation of SLPs, there was a lack of labour and community participation in designing and monitoring the SLPs, and SLPs were low priorities for mining companies.<sup>381</sup>

In its study at Marikana, ILRIG found that both Lonmin and later Sibanye-Stillwater were not fully meeting their SLPs and that the area remained underdeveloped and in severe poverty. It also appeared that the state was not enforcing the SLPs and was taking the companies at their word instead of investigating whether projects were being done. Two informants that ILRIG interviewed had the following to say about Sibanye-Stillwater’s SLPs:

*“Sibanye makes money and leaves the community with nothing...the SLP does not really involve the community in discussions. There are always late notifications of SLP meetings...they do not rehabilitate the open shafts. The tailings dam is not properly fenced and poses a danger to the community.”*

*“There is no development. They don’t fix the roads, and the roads are gravel. No permanent development, and the SLP is not leading to development. The government just believes what Sibanye says; they need to assess whether Sibanye delivers its promises. There are chances for jobs, but there are problems. The conditions are not right; we will be in poverty.”<sup>382</sup>*

Likewise, Bench Marks has shown that aspects of companies’ SLPs are often not implemented.<sup>383</sup> Perhaps the worst example of a company failing to implement the promises of its SLP is Lonmin. In 2006, as part of its SLP, Lonmin promised to convert the single-sex hostels that workers were living in into units that could accommodate workers and their families. It also promised to build

5,000 houses for workers and their families by 2011. While it did convert the hostels, it only built 3 of the 5,000 houses by 2014.<sup>384</sup> In 2014, despite only building three houses, Lonmin submitted a new SLP that said instead of 5,000 houses for workers and their families, they would build 4,000 apartments. In the end, Lonmin only built 1 240 apartments. Despite not meeting the SLP commitments, the state never revoked Lonmin's mining licence (which they should have as SLPs are meant to be legally binding).<sup>385</sup> Since Sibanye-Stillwater took over from Lonmin in 2019, during its study at Marikana, ILRIG found that Sibanye-Stillwater had not built a single house or apartment for workers and/or their families.

The International Council on Mining and Metals (ICMM) is an international organisation that aims to ensure sustainable development within the mining sector. Some of the South African mining companies that are members of the ICMM are Sibanye-Stillwater, African Rainbow Minerals and AngloGoldAshanti. The Minerals Council South Africa, which is a mining industry employers' organisation, is also a member of the ICMM. Some of the principles of the ICMM include promoting ethical business practices, improving environmental performance, respecting human rights, health and safety and contributing to the social and economic institutions of host countries and communities.<sup>386</sup> However, despite being members of the ICMM, South African mining companies continue to be embroiled in environmental and human rights violations. Therefore, the ICMM should not be considered a genuine labour rights initiative but can be better understood as an attempt to greenwash the mining industry to make it appear to care about the environmental and social impact of the industry.

### **3.3 Environmental and social impacts of mining in South Africa**

The energy transition from fossil fuels to more sustainable sources, such as renewable energy, is a crucial factor in addressing the climate crisis. Deep decarbonisation of our energy systems requires significant critical minerals such as lithium, nickel, cobalt, platinum group metals (PGM), manganese and chromium.<sup>387</sup> With a growing demand for such materials, it is critical to identify and mitigate the potentially adverse environmental and social impacts of mining these transition minerals.

The mining sector in South Africa has historically played an important role in its economic development. It is the biggest global producer of PGM (48%), chrome (44%), and manganese ore (31%). In addition to the voluntary sustainability standards, mining companies are also required to contribute to the socioeconomic development of their host communities.<sup>388</sup> The following sections highlight some environmental and social impacts of mining in South Africa.

#### **3.3.1 Environmental impacts**

The Mogalakwena mine, near the town of Mokopane, is the world's single biggest producer of PGM and also the flagship mine of Anglo American Platinum Limited. This mine uses 66 million litres per day on-site from different sources. The increase in mining activities is expected to increase the demand for water, putting additional strain on a region with a semi-arid climate and low annual rainfall. Mokopane has a high-risk rating on wastewater and drinking water management, implying that the municipal water supply systems are poorly managed and subsequently leading to health risks for communities and the environment.<sup>389</sup>

Communities have reached out to government officials to voice their concerns. For instance, around 500 members of the Ga-Ngwepe, Lewaneng and Kgatlu communities fear that the Waterberg platinum mine, near the Vhembe Biosphere Reserve, would deplete the scarce water supply in the area and the blasting could damage their homes. Despite their concerns, the platinum miner was issued a permit claiming that the residents had not demonstrated their right to the land. The subsequent objection lodged by the community members, which should have been to freeze all activities until a government-convened mediation between the company and the community

was held, was ignored, and the company moved their mining equipment onto local farmers' fields.<sup>390</sup>

Most large-scale mines produce more waste than economic minerals. The mine tailings, a slurry of rock, water and chemicals, are stored in dams or tailings storage facilities (TSFs). In 2022, TSF failure was identified as one of the material risks at the Mogalakwena mine, as the TSFs are located within 1 kilometre of 12 villages.<sup>391</sup>

Fine mineral particles in mine dust emitted from different mining activities, such as ore processing, metal extraction, and ore transport, can cause lung diseases and other respiratory problems when inhaled. The Mogalakwena mine has dust fallout sampling stations in the project area and neighbouring residential and non-residential areas. The dust fallout concentration is below the standard residential threshold of 600/mg<sup>2</sup>/day, with the highest concentration within the mine boundary.<sup>392</sup>

In the Sekhukhune region, existing difficulties surrounding water shortage have been exacerbated by platinum and chromite mining, according to community members. The water shortage has also led to communities tapping into the 'raw water' that is meant for mining operations and not fit for human consumption. This raw water, once used in the mine, is directly discharged into the local water bodies. Community members also reported cases of illness, miscarriage, and death of livestock after drinking water discharged from the mines.<sup>393</sup> They also reported that around 15 women in their neighbourhood had suffered miscarriages and stillbirths since the local mines started blasting daily.<sup>394</sup> Changes in rainfall patterns were also observed by the community, with a shift from steady summer rains to periods of drought combined with heavy rain and floods.<sup>395</sup>

Manganese mines infringe on host communities' right to water by reducing its availability and worsening its quality. Manganese mines directly decrease the water supply available to communities through a process called 'dewatering', meant to ensure that opencast pits are not flooded. Communities in the Maipeng, Magojaneng, and Vergenoeg regions near the Kalahari Manganese Field reported having poor access to water and quality concerns such as saltiness, lime, discolouration, and contamination.<sup>396</sup>

### 3.3.2 Social impacts

The extractive industry in South Africa has a history of exploitation, discrimination, and exclusion. The industry was a driver and beneficiary of colonialism and apartheid. Black communities were driven from their lands and ghettoised into settlements, while at the same time, the industry exploited black workers. To address this, the post-apartheid government attempted to regulate the mining sector by adopting new legislation, including SLPs, which require mining companies to address the socio-economic impacts of mining on communities around the mine (see section 3.2.7 for more on SLPs).

An Amnesty report on compliance with SLPs found that the operations of three mining companies (Twickenham Platinum Mine, Marula Platinum Mine, and Sefateng Chrome Mine) were non-compliant, resulting in human rights abuses in the communities in which they operate. Twickenham, a subsidiary of Anglo American Platinum Limited, failed to complete water and sanitation projects in local schools. Marula Mine claims to have built roads in the community, but site visits contradict these claims. The lack of adequate roads makes it difficult for mobile clinics to access nearby villages and also hinders community members from accessing clinics and hospitals.<sup>397</sup> Another field study on the impact of mining at the Kalahari Manganese Field, the largest known land-based deposit of high-grade manganese in the world,<sup>398</sup> found that among 140 respondents, 98% did not know what an SLP was.<sup>399</sup>

The report also indicates that the state regulatory body, the Department of Mineral Resources and Energy (DMRE), did not adequately regulate mines and carry out its oversight responsibilities. The DMRE had not implemented the South African Human Rights Commission (SAHRC) directives

regarding public access to SLPs. A local government official identified the assignment of roles and responsibilities for SLPs as a gap in the legal framework.<sup>400</sup>

Mining-affected communities in the Sekhukhune region reported that villages suffered severe impacts, including the removal of gravesites, relocation from their ancestral and agricultural lands, and the impacts on livestock. Community members reported a decline in livestock fertility that they attributed to soil and water pollution. Loss of previous water sources and grazing land have also put their livestock in danger of attacks from wild animals. In addition to the direct effect on their livelihood, the loss of cattle further impacts their ability to pay for other important services, such as the education of their children.<sup>401</sup>

Communities also raised concerns regarding the lack of meaningful consultation in key decision-making, such as expansion plans. These consultations take place with very little notice ahead of time. Mining companies often engage with traditional leadership and co-opted community representatives, who often do not represent the true interests of the community.<sup>402</sup> The poor public participation was also reiterated by community members affected by the mines in the Kalahari Manganese Field.<sup>403</sup> There were also instances of individuals signing what they believed to be attendance registers for community meetings, but instead, they were unknowingly granting consent for the plans developed by the mining companies.<sup>404</sup>

Communities from the Sekhukhune region also reported a lack of mining companies' accountability for their impact on the environment, land, or livelihoods. For instance, improper removal of explosive material used by the mining company led to children suffering injuries, and no criminal or civil recourse has been made available to the aggrieved. The lack of effective and accessible grievance mechanisms also makes it difficult for communities to escalate their concerns.<sup>405</sup>

### 3.3.3 Gendered impacts

The gendered impacts of mining are pervasive in the Sekhukhune region. Women reported being actively excluded and prevented from participating in decision-making processes, marginalised and exploited in the job market, burdened with unpaid care work, faced with barriers in accessing health care for themselves and their children, and faced with daily threats to their safety and bodily integrity.<sup>406</sup>

A field study near the Kalahari Manganese Field, the largest known land-based deposit of high-grade manganese in the world,<sup>407</sup> revealed that despite similar levels of schooling, the employment levels of men and women at mines were significantly skewed. While 77% of respondents in the study knew a man working in a mine, only 16% knew a woman who worked at a mine.<sup>408</sup> The job opportunities open to women were also limited to cleaning, belt attendants, or cadetships. Moreover, a pattern of 'sex for jobs' at mining operations was also reported by multiple women. These women were further exposed to severe health risks since the men refused to wear condoms. The report indicates that women were systematically excluded from participating in decision-making processes such as consultations on compensation for loss of land.<sup>409</sup>

# 4

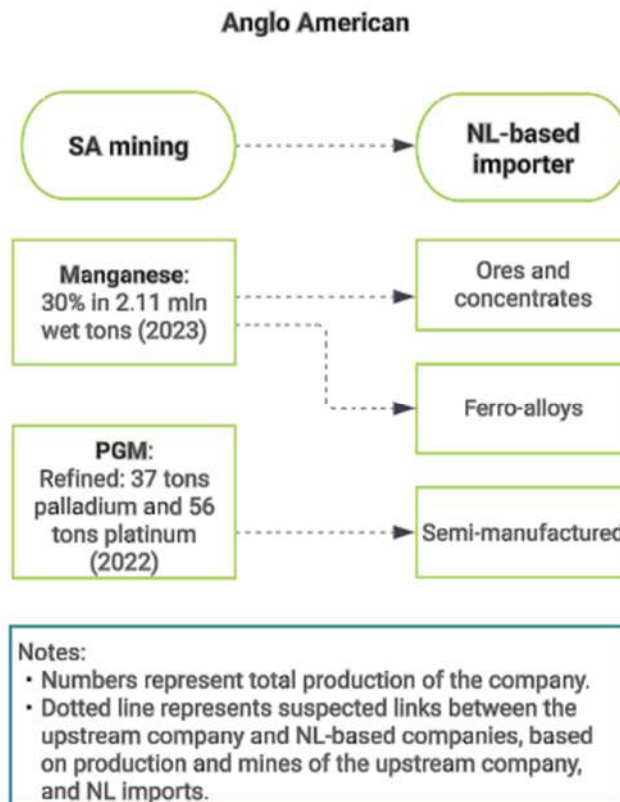
## CSR policies of mining companies and their buyers

This chapter provides an analysis of the CSR policies of the companies profiled in Chapter 2, focussing on their alignment with fundamental human and labour rights as defined in internationally accepted guidelines by the United Nations (UN), the International Labour Organisation (ILO), and the OECD.

### 4.1 Upstream companies

#### 4.1.1 Anglo American

Figure 1 Overview links with Anglo American



Anglo American discloses responsible business conduct (RBC) policies that cover labour, human rights, and the environment. These include:

- Human Rights policy;
- Safety, Health and Environmental (SHE) management policy;
- Code of Conduct;

- Responsible Sourcing Standard for Suppliers; and
- Implementation reports such as governance and sustainability reports.

Anglo American has integrated the concept of responsible corporate citizenship into its company strategy by including oversight of the safety, well-being, and livelihoods of employees, contractors, and communities.<sup>410</sup> The governance framework adopted describes how the resources (financial, intellectual, human, natural, etc.) are managed through four governance segments, namely financial, board, risk, and social and sustainable governance.<sup>411</sup> Anglo American Platinum undertakes an annual materiality determination process that culminates in key issues for a reporting year, which are then used to inform the key sustainability performance indicators. The company has also clearly identified the relevant stakeholder groups for its engagement process – employees, unions, communities, regulators, investors and media, and customers, partners, and suppliers.<sup>412</sup>

The company has also established a Safety and Sustainable Development Committee that develops frameworks, policies and guidelines for the management of safety and sustainable development issues and ensures implementation. It is also responsible for monitoring the health and safety of employees and the operational impacts of the company on the environment.<sup>413</sup> This committee oversees the sustainable mining plan (SMP), which is meant to achieve zero harm and deliver the desired sustainability outcomes. The activities of the committee in the past year, along with the focus areas for the upcoming year, are also disclosed. These include:

- Review the effectiveness of SHE strategies and policies aligned to the company's SMP framework;
- Ensure SHE risks are appropriately assessed and attended to by management and
- Monitor compliance with legislation applicable to the committee's ambit, such as the Mine Health and Safety Act and Occupational Health and Safety Act.<sup>414</sup>

The Social, Ethics and Transformation Committee monitors and oversees the establishment of an ethical culture and good corporate citizenship. The transformation objectives focus on the inclusive growth, equal opportunities, and development of employees, local communities and stakeholders. The committee also discloses the activities undertaken in the past year and focus areas for the upcoming year, such as:

- Monitoring progress towards broad-based black economic empowerment (BBBEE);
- Monitoring and ensuring that human rights are upheld and protected by companies' policies; and
- Monitoring management actions on historical community resettlement and legacy issues.<sup>415</sup>

Through its human rights policy, the company commits to respect human rights as contained in the Universal Declaration of Human Rights and the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work. The policy commitment also covers the eight core conventions, namely freedom of association and collective bargaining, right to equal remuneration, zero tolerance towards forced, bonded, and child labour, and zero tolerance towards discrimination.<sup>416</sup>

The Responsible Sourcing Standard for Suppliers lays down expectations that the company has of its suppliers. The standard defines minimum sustainability requirements and decent work principles. It is structured on five pillars that cover occupational health and safety, environmental protection, labour and human rights, contribution to thriving communities, and fair business conduct. The standard also expects suppliers to adhere to the ILO core conventions.<sup>417</sup>

The Anglo American approach to sustainability covers three main ESG pillars – a healthy environment, thriving communities, and a trusted corporate leader – and is aligned with the UN's Sustainable Development Goals (SDGs). The company's materiality assessment considers the potential impacts on both the enterprise and the environment and stakeholders. The four-stage materiality assessment process includes:



- Desktop review – identification of material issues by company management
- Engagement – identification of material issues through engagement with internal and external stakeholders
- Platinum management committee and Board validation – validate the material issues along with appropriate prioritisation
- Materiality workshop – facilitate sessions with key stakeholders to identify and prioritise the material issues that should be integrated into Anglo American Platinum’s disclosures.<sup>418</sup>

Anglo American Platinum is committed to avoiding and preventing human rights transgressions. The adopted rights-based approach aligns with the UN Global Compact, UNGPs, the Voluntary Principles on Security and Human Rights (VPSHRs), and IFC performance standards.<sup>419</sup> The code of conduct stipulates that the company does not engage in bribery when dealing with public officials, local communities, suppliers and customers.<sup>420</sup>

The safety strategy employed by the company focuses on five facets covering leadership and accountability, elimination of fatalities, embedding a safety culture, operational risk management, and learning from incidents.<sup>421</sup> The company’s health strategy focuses on employee health and well-being, lifestyle management and mental health, and preventing occupational health illnesses. The steps taken by the company cover areas such as controlling occupational health exposure, offering well-being and lifestyle management initiatives, and supporting community health.<sup>422</sup>

The company lays out minimum and common requirements to ensure responsible business conduct. These include Group standards and processes, legal compliance, leadership, occupational health and safety, human rights, and inclusion and diversity.<sup>423</sup> The company intends to audit all its mining operations against a recognised mining certification system. As of 2022, 75% of operations have conducted third-party audits by the Initiative for Responsible Mining Assurance (IRMA).<sup>424</sup> The IRMA independent third-party verification and certification is based on the IFC performance standards, ILO core labour rights and the Extractive Industries Transparency Initiative (EITI).<sup>425</sup> The approach adopted for these audits does not specify whether or how the gendered impacts of the mining operations would be assessed.

It is unclear whether the risk assessment considers different dimensions of the potential human rights risks, such as scale and scope considerations. For instance, scale considerations could include the extent of impact on workers’ health and safety or whether there are any violations of ILO core conventions. Scope considerations could include an understanding of the scope of the potential impacts, such as whether the violations are systemic in nature or have disproportionate impacts on vulnerable groups.

Suppliers are first screened against legal obligations, due diligence requirements, and global standards for ethical and human rights best practices. Subsequently, those who pose a risk are required to conduct self-assessments aligned with the pillars of the Responsible Sourcing Standard. Once risks are identified, the company commits to building supplier awareness and capacity to resolve issues and meet all the requirements. Corrective action plans are issued, and their implementation is monitored. In case of failure to comply, further action is taken by the company risk committee.<sup>426</sup> The risk management process highlights measures taken to bring suppliers up to the required level of compliance; however, it does not clarify when or if the company will disengage with a non-compliant supplier and terminate the contract.

Anglo American reports the use of an annual Social and Human Rights Impact Assessment (SHIRA) at all operations to highlight significant risks and impacts. Every operational site has formal mechanisms where stakeholders may anonymously report their grievances. The Sustainability Report 2022 also discloses the number of complaints or grievances reported in the past year.<sup>427</sup>

Stakeholder engagement is required to be open, meaningful, and respectful.<sup>428</sup> The policy also indicates that the approach must be gender-sensitive, inclusive, and designed to maximise

stakeholder participation, especially with regard to vulnerable and disadvantaged groups.<sup>429</sup> The company also recognises the importance of a site-level grievance mechanism and requires the process to be legitimate, accessible, predictable, equitable, and transparent.<sup>430</sup>

Anglo American discloses the potential impacts and mitigation measures adopted for the top-ten principal risks based on likelihood and severity. These include risks surrounding the social licence to operate, socio-economic unrest, and employee safety.<sup>431</sup>

Anglo American uses the VPSHRs as an assessment tool for potential human rights impacts in security-related activities on their sites. The parent company reports on the adherence to the VPSHRs and claims that no incidents were reported for their platinum operations in 2022.<sup>432</sup> On the contrary, the VPSHR implementation report mentions an increase in the intensity and frequency of community protests targeting PGM operations.<sup>433</sup> This discrepancy raises concerns about how the company identifies a human rights issue or incident.

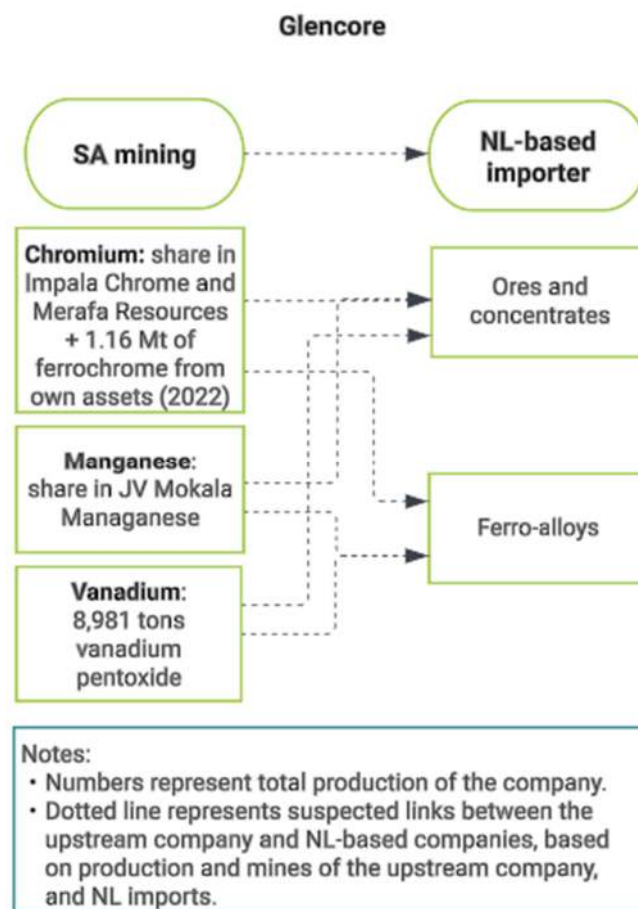
As part of the annual SHIRA in 2022, deficiencies were identified, mitigation plans were developed, and implementation progress was tracked. However, the SHIRA assessments are not publicly disclosed.<sup>434</sup>

No evidence was found that the company carries out independent third-party audits of its supply chain or identifies gender-specific trends in (potential) adverse impacts. Further, the company does not disclose measurable indicators to evaluate stakeholder engagement activities, including engagement with workers' representatives.

With regards to its obligation to communicate how impacts are addressed, Anglo American does not publicly disclose the detailed findings of its SHIRA assessments. Moreover, this company did not respond to Profundo's request to comment on our analysis of their policies.

## 4.1.2 Glencore

Figure 2 Overview links with Glencore



Glencore’s commitments to upholding responsible business conduct and implementing due diligence in its supply chains are outlined in the Responsible Sourcing Policy<sup>435</sup> and the Supplier Code of Conduct<sup>436</sup> (SCC). These policies outline expectations and requirements that direct suppliers (defined as “any individual or organisation that provides, sells or leases materials, products or services directly to Glencore companies”<sup>437</sup>) are expected to adhere to in order to maintain business relations with Glencore. These cover human rights and labour rights but do not reference women’s rights or specific gender equality issues.

The Supplier Code of Conduct and the Responsible Sourcing Policy both refer to the OECD Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the UNGPs, ILO Core Labour Standards and definitions of modern slavery.

There is an important caveat in the Supplier Code of Conduct, which distinguishes requirements (i.e., “a failure to meet that requirement will constitute a breach of contract”) from expectations of responsible business practice, which suppliers are encouraged to adopt and theoretically monitor in their efforts to do so. Their Responsible Sourcing Policy states that: “Depending on the severity of the breach, consequences may range from a warning to termination of employment.”<sup>438</sup>

With regards to the human and labour rights referenced in the Supplier Code of Conduct, only the absence of modern slavery, forced labour, child labour, and the provision of health and safety provisions for workers are strict requirements. On the other hand, suppliers are “expected” but not required to implement due diligence according to the UNGPs and uphold community rights and ILO Core Labour Standards for treating workers with fairness and respect.

Glencore's Responsible Sourcing Policy outlines its risk assessment process: *"We assess suppliers based on their risk and direct them to the most appropriate due diligence and management process for their risk level."*<sup>439</sup> This includes due diligence for risks associated with abuse of human rights such as equality, non-discrimination and diversity, respect for workers' rights of freedom of association, modern slavery, child labour, health and safety and environmental impacts.<sup>440</sup>

For suppliers of metals and minerals there is additional due diligence conducted in accordance with the framework defined by the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. The Policy states that this screens for additional risk on forced labour, any forms of modern slavery (i.e., forced labour and child labour), and other gross human rights violations and abuses such as *"widespread sexual violence."*<sup>441</sup>

The company uses the following tools for risk assessment: *"on-site inspections, third party verification, obtaining information from third party sources including authorities, international organisations and civil society, and consulting experts and technical literature."*<sup>442</sup> There is no explicit mention of potentially impacted rightsholders, including workers, workers' representatives, and trade unions being consulted in this process.

There is no evidence that the risk assessment is gender-sensitive. They do have simple gender-disaggregated metrics in their reporting, but these are only in order to understand the diversity of governance bodies and employees (e.g., number and percentage of female employees, managers and board members).<sup>443</sup>

Glencore outlines its mitigation plan when adverse impact are identified as follows: *"Where we find instances of non-compliance with the Supplier Code of Conduct, we investigate these incidents to understand causes and contributing factors, and we take appropriate action accordingly. We collaborate with our suppliers and relevant stakeholders to address the deficiencies identified and mitigate identified actual or potential adverse impacts as appropriate. [...] In the event that we identify that we have caused or contributed to an adverse impact on human rights in our supply chain, we will provide for, or cooperate in, processes to enable an appropriate remedy."*<sup>444</sup>

Though this statement is sufficiently vague, it does cover the basic elements of a company's duty to engage stakeholders in collaboration with suppliers, address and mitigate future risks and ensure appropriate remedy. There is no evidence that Glencore actively promotes and protect workers' representation and trade unions, nor that they are engaging in cross-sectoral approaches in addressing systemic labour issues.

On the issue of health and safety, Glencore does state that it actively includes workers in the implementation of better practice. They state that the majority (84% in 2022) of industrial sites have health and safety committees with both representatives of the workforce and management.<sup>445</sup>

Glencore published a Sustainability Summary 2022 with the results of different metrics on risk management and governance, health and safety, environmental indicators and social performance and human rights. Here they state that the company's progress on health, safety, environment, social performance and human rights (HSEC&HR) Standards are reviewed on a monthly or quarterly basis.<sup>446</sup>

Its not clear to what extent Glencore seeks to consult and engage impacted or potentially impacted rightsholder in their human rights due diligence process.

Glencore publicly communicates how they implement supplier due diligence obligations via regulatory reporting and their annual public disclosures.<sup>447</sup> In 2022 (the last year in which they published reports on sustainability and human rights), they published a Sustainability Report, an Ethics and Compliance Report, an ESG Data Book and a Modern Slavery Statement outlining the development and implementation of the processes they have in place to ensure due diligence takes place on human rights issues.<sup>448</sup>

Their 2022 Modern Slavery Statement has details on their risk assessment process and results, their engagement strategy, number of suppliers engaged with and some details of engagement (including in their indirect supply).<sup>449</sup> The Sustainability Report ESG Data Book section has details on metrics regarding health and safety (e.g., number of fatalities), communities (e.g., proximity to indigenous lands, number of resettled homes, etc.) and it reports on many of these metrics from 2020 onwards.<sup>450</sup> Glencore does not however disclose audit results, nor does it offer any gender-disaggregated data relevant to human rights in their supply chains.

Glencore states that it commits to provide for and cooperate in processes to enable appropriate remedy in the event that an adverse impact on human rights is identified in their supply chain.<sup>451</sup>

Glencore's grievance mechanism is called the 'Raising Concerns Platform' and is available to employees, contractor, directors and officers working in our offices and industrial assets, as well as third parties such as customers, suppliers or other stakeholders.<sup>452</sup> The Platform consists of online platform, telephone lines and email, all of which can allow for the anonymity of the person reporting an incident. Concerns are investigated either by the corporate office in Switzerland, or locally, depending on the nature and severity of the concern.<sup>453</sup> Details of the process for investigating a report are outlined in the Whistleblowing Policy.<sup>454</sup>

Further, Glencore state that they require each industrial asset where they have "operational control" to develop and implement a local complaints and grievance mechanism which includes a resolution process for community members and others to make complaints and raise concerns.<sup>455</sup>

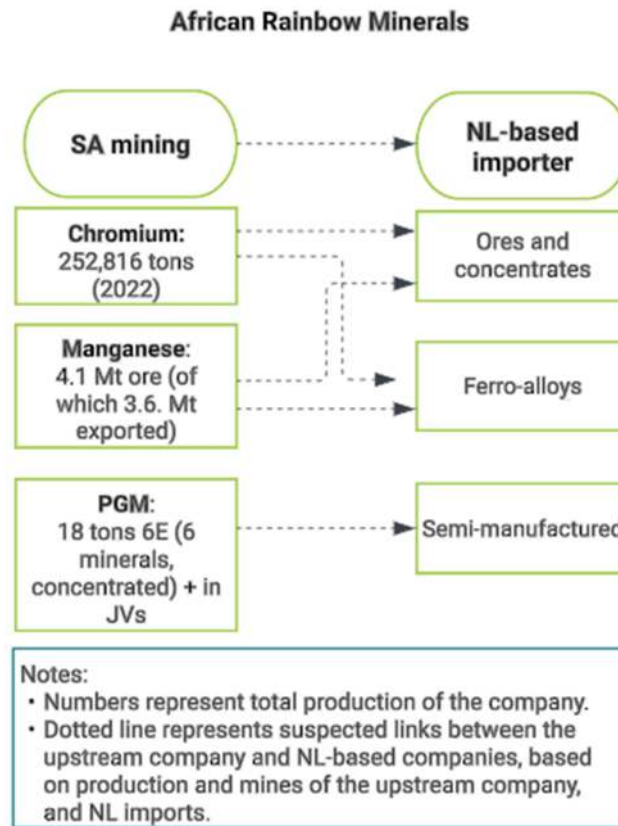
Glencore explicitly states in both its Responsible Sourcing Policy and on its website that it has: *"zero tolerance for retaliation against anyone who speaks openly about conduct they believe is unethical, illegal or not in line with the Glencore Code of Conduct and policies, even if the concern isn't substantiated, as long as they have not knowingly made a false report."*<sup>456</sup> Glencore's Whistleblowing Policy also outlines its approach to protecting whistleblowers and supporting individuals to report concerns.<sup>457</sup> There is no evidence that these protection mechanisms are gender-sensitive.

Despite the statements in their Supplier Code of Conduct and Responsible Sourcing Policy regarding their comprehensive risk assessment process, especially in their minerals and metals supply chains, their 2022 report reveals that only 61% of new suppliers were screened using social criteria (up for 53% in 2020).<sup>458</sup>

Glencore claims that in 2022: *"We do not have any recorded incidents, caused or contributed to, that resulted in severe human rights impacts."*<sup>459</sup> Yet Glencore received 1,077 community complaints in 2022, and also records one case of an ongoing land dispute (down from seven in 2020) related to an industrial asset in South Africa. It states that: *"The communities involved are engaged and the claim process is before the Land Claims Commission which is legally mandated to resolve the dispute."*<sup>460</sup>

### 4.1.3 African Rainbow Minerals

Figure 3 Overview links with African Rainbow Minerals



African Rainbow Minerals (ARM) has embedded responsible business conduct (RBC) into its policies and management systems, as evidenced by a range of publicly available documents. The company's commitment to RBC, particularly regarding human rights and labour conditions, is referenced across several key documents, notably the 2023 Environmental, Social, and Governance (ESG) Report<sup>461</sup> and the 2022 Code of Conduct.<sup>462</sup> Additionally, ARM aligns its governance practices with industry standards, such as the King IV application register.<sup>463</sup>

In terms of international standards, ARM explicitly commits to foundational frameworks such as the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>464</sup> and the ILO Declaration on Fundamental Principles and Rights at Work<sup>465</sup>. However, while the company states its adherence to these critical principles, there is a notable absence of explicit commitment to other global standards such as the OECD Guidelines or the eight fundamental ILO Conventions.<sup>466</sup>

ARM extends its commitment to responsible business conduct beyond its internal operations to encompass expectations for suppliers and other business relations. For instance, ARM requires valid Broad-Based Black Economic Empowerment (BEE) certificates from suppliers to support transformation in its supply chain.<sup>467</sup> Additionally, the company engages “with suppliers to ensure the availability of feasible decarbonisation technologies”<sup>468</sup> and actively promotes preferential procurement from qualifying black-owned enterprises into the supply chain.<sup>469</sup> Finally, “The code [of conduct] also applies to suppliers and contractors, requiring that they behave ethically and with respect for human rights”<sup>470</sup>.

ARM claims to conduct risk screening and scoping exercises to identify areas of business where RBC risks are most prevalent and significant. For this purpose, the company uses several policies and frameworks, including the Enterprise Risk Management Policy, Business Continuity Management Policy, Capital Allocation Framework, Project Risk Management Framework,

Whistleblower Policy, Risk Management Framework, ERM Standard, and Risk appetite and tolerance standard.<sup>471</sup> The risk assessment hierarchy followed by ARM includes multiple stages such as risk identification, analysis, evaluation, treatment, communication and consultation, monitoring and reviewing, and recording and reporting.<sup>472</sup> This approach aims to ensure that potential risks and adverse impacts are thoroughly evaluated and addressed throughout the company's operations. Moreover, ARM utilises a residual risk dashboard to monitor and manage residual risks. This dashboard provides a visual representation of the remaining risks after mitigation measures have been implemented.<sup>473</sup>

In terms of specific considerations related to labour rights, ARM states its commitment to conducting workplace hazard identification and risk assessment. Although the policy does not explicitly reference the precautionary principle, ARM claims it is embedded in its approach to responsible business practices, including its commitment to identify, prevent and mitigate adverse human rights impacts, conduct workplace hazard identification and risk assessment, inclusive approach to community consultation and impact assessments.<sup>474</sup> The company adheres to internationally recognised standards such as ISO 45001 for Health and Safety Management and claims to actively engage with industry initiatives such as the Mine Health and Safety Council's (MHSC) culture transformation framework and the Mining Industry Occupational Safety and Health (MOSH) initiatives, and Critical Control Management.<sup>475</sup>

Furthermore, ARM claims to place emphasis on fair remuneration practices. To do so, it periodically benchmarks its remuneration policies against industry standards to ensure alignment with national regulations and minimum wage requirements. ARM also acknowledges the importance of addressing wage disparities and periodically assesses the pay gap between executives and employees at the lower end of the pay scale: *"we regularly benchmark our remuneration practices against comparable South African mining companies to ensure alignment with national industry standards and legislative requirements, including minimum wages. An equal pay for work of equal value project was completed as per section 6(4) of the Employment Equity Act. We recognise the importance of addressing the wage gap between remunerating executives and employees at the lower end of the pay scale. We periodically assess the pay gap, and progress is monitored by the remuneration committee."*<sup>476</sup> However, this research did not find published records of these benchmarks.

The company's approach to consulting and engaging with impacted and potentially impacted rights holders, including workers, workers' representatives, and trade unions, is highlighted with the 2022 Whistleblower Policy, which safeguards non-management employees' rights to join or refrain from joining a labour union without fear of reprisal.<sup>477</sup> Additionally, *"The policy, read together with the code, protects the right of nonmanagement employees to form, join, or not to join a labour union without fear of reprisal, intimidation, or harassment. ARM is committed to bargaining in good faith with such representatives."*<sup>478</sup> However, while the company's gender unit and its efforts towards gender mainstreaming are commendable, there is a notable gap regarding gender-sensitive risk screening. Despite initiatives to integrate a gender perspective into planning cycles, policies, programmes, and projects, there is an absence of specific mention of gender-sensitive risk screening.

According to ARM, when adverse impacts are identified, the company takes a proactive approach to mitigation through a combination of engagement with stakeholders, action plans, and monitoring mechanisms. Despite these stated commitments, the company's policy does not explicitly reference the precautionary principle. Moreover, the company claims to conduct thorough workplace hazard identification and risk assessments, as well as employing an inclusive approach to community consultation and impact assessments.<sup>479</sup> Likewise, ARM claims to employ monitoring tools across various aspects of its operations, particularly within the social and environmental pillars.<sup>480</sup>



In terms of promoting and protecting workers' representation and trade unions, ARM claims to respect the rights of employees to engage and bargain collectively on labour-related matters.<sup>481</sup> This commitment is echoed in the company's policies and code, which aims to protect the rights of non-management employees to form, join, or refrain from joining a labour union without fear of reprisal, intimidation, or harassment.<sup>482</sup> Additionally, ARM emphasises its dedication to bargaining in good faith with employee representatives, underscoring its commitment to fostering a collaborative and respectful working environment. However, the 2023 ESG Report does not explicitly mention active promotion and protection of workers' rights by ARM.<sup>483</sup>

The company's engagement with external stakeholders is facilitated through policies and programmes such as a whistleblower facility operated by an independent service provider. This facility enables employees and other stakeholders to report confidentially and anonymously any unethical or risky behaviour, contributing to ARM's ethical foundation.<sup>484</sup> Regarding cross-sectoral approaches to addressing systemic labour issues such as child labour, ARM takes a firm stance against forced, compulsory, or child labour, prohibiting the use of all forms of forced labour, including modern forms of slavery and human trafficking. Notwithstanding, there is no active engagement mentioned in the 2023 ESG Report.<sup>485</sup>

In terms of tracking implementation and results, ARM reports on continuous monitoring of due diligence and mitigation activities, as well as engaging with stakeholders to track progress. Nevertheless, ARM monitoring of suppliers' activities are not as strong as expected, since they mainly "encourage suppliers to demonstrate a commitment to good governance and ethical conduct".<sup>486</sup> Moreover, there is a noticeable gap in detailed disclosure regarding specific remediation activities and engagement with impacted rights holders in the ESG Report.<sup>487</sup>

ARM demonstrates a commitment to transparency by publicly disclosing relevant information on its due diligence policies, processes, and activities aimed at identifying and addressing actual or potential adverse impacts. However, the level of detail provided in these disclosures may vary. For example, no specific Due Diligence Report was found at the time this policy analysis was written. Furthermore, although the Human Rights Policy is referenced multiple times in ARM's 2023 ESG Report, it was not readily available at the time of the policy analysis. This lack of accessibility may pose challenges for stakeholders seeking detailed information on ARM's human rights commitments and policies.<sup>488</sup>

Regarding the disclosure of audit or assessment results, ARM provides public disclosure, indicating a commitment to transparency. However, there is no specific mention of impacted or potentially impacted rightsholders in these disclosures. While ARM may share audit or assessment findings with relevant stakeholders internally or through engagement processes, it is essential for the company to ensure that impacted parties have access to relevant information while respecting confidentiality requirements. Furthermore, in terms of gender-disaggregated data disclosure, ARM primarily focuses on gender mainstreaming efforts rather than providing detailed gender-disaggregated data on impacts on workers. While the company acknowledges the importance of gender mainstreaming and outlines initiatives to promote gender equality within its operations,<sup>489</sup> there is room for improvement in disclosing specific data related to the gender impacts of its activities.

ARM commits to cooperating in or providing remedy when it has caused or contributed to actual adverse impacts, demonstrating a commitment to accountability and remediation. The company's approach includes "*performing human rights due diligence, continuously monitoring human rights impacts and providing for and cooperating in processes to enable the remediation of any adverse human rights impacts*".<sup>490</sup> Also, "*Where avoidance is not possible, ARM will apply the mitigation hierarchy and implement actions or remedies that address residual adverse effects to restore or improve the livelihoods and standards of living of displaced people*".<sup>491</sup>

Regarding grievance mechanisms, ARM ensures accessibility for various stakeholders, including direct employees, communities, and other external stakeholders. However, this does not seem to

be the case for subcontractors and indirect workers in the supply chain. Employees who feel that their human rights have been violated can report grievances through multiple channels, including their supervisors or managers, the human resources department, or anonymously through the whistleblower facility.<sup>492</sup> Similarly, other stakeholders, such as communities and external groups, can raise grievances through formal stakeholder engagement structures or by approaching ARM directly or through the externally managed whistleblower facility.<sup>493</sup>

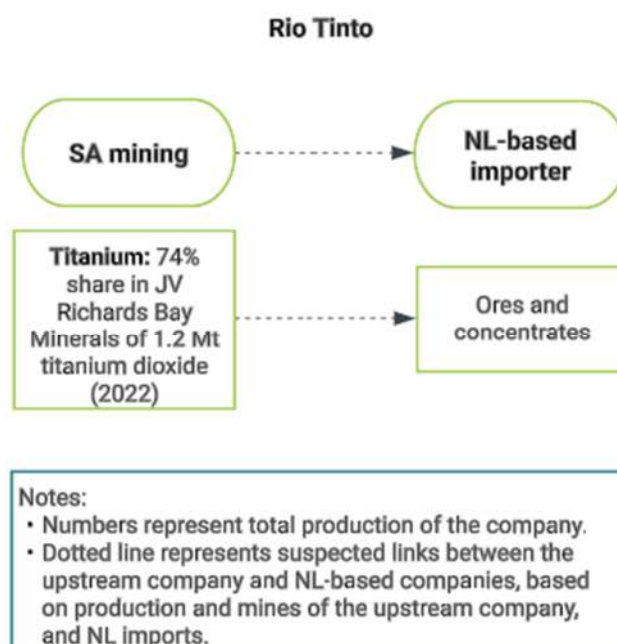
While ARM mentions its Grievance Policy and Procedure in the 2022 Whistleblower Policy, the detailed procedure, processing times, and remedial activities associated with the grievance mechanisms are not readily available. Enhancing transparency about these aspects of the grievance mechanisms would provide stakeholders with greater clarity and confidence in the effectiveness of ARM's remediation processes.<sup>494</sup>

In terms of non-retaliation to whistleblowers, ARM provides protection mechanisms to ensure anonymity and confidentiality for individuals reporting grievances. The 2022 Whistleblower Policy explicitly states that 'ARM will not tolerate any form of retaliation or Occupational Detriment against any Employee, Worker, or Stakeholder who submits a Complaint in accordance with this Policy'.<sup>495</sup> While the policy emphasises confidentiality and anonymity, there is no specific mention of gender sensitivity or gender-based violence-related information. Integrating gender-sensitive approaches into whistleblower protection mechanisms could further enhance ARM's commitment to promoting a safe and inclusive reporting environment for all stakeholders.<sup>496</sup>

ARM did not respond to our request for feedback on the analysis of its HRDD policies.

#### 4.1.4 Rio Tinto

**Figure 4 Overview links with Rio Tinto**



Rio Tinto has several documents outlining their sustainability expectations for their business entities and suppliers. The key policies relating to human rights are captured in:

- The Human Rights Policy which commits Rio Tinto to implementing the UNGPs, the OECD Guidelines, the IFC Performance Standards, the Voluntary Principles on Security and Human Rights (Voluntary Principles), the United Nations Global Compact's ten principles, and the International Council on Mining and Metals (ICMM) Mining Principles.<sup>497</sup> It also recognises that ILO Declaration on Fundamental Principles and Rights at Work.<sup>498</sup>

- The general Code of Conduct which applies to “[...] everyone who works for Rio Tinto, including our Board, Executive Committee, employees and third parties working under the direction of Rio Tinto”<sup>499</sup> and lays out their commitments on respecting human rights and indigenous peoples, as well as engaging with communities.
- The Supplier Code of Conduct which sets expectations of suppliers, subsidiaries and subcontractors to implement human rights due diligence according to the UNGPs.<sup>500</sup> It further states their commitment to respecting internationally recognised human rights, including those set out in the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.<sup>501</sup>
- Communities and Social Performance Standard which establishes the communities and social performance requirements against which Rio Tinto operates and measures the performance of all its assets. It is applicable to all Rio Tinto businesses and managed assets; and all phases of their lifecycle, from exploration through post-closure.<sup>502</sup>

There are some gendered considerations in the general Code of Conduct. This includes a commitment to improving the representation of under-represented people in their teams, including women,<sup>503</sup> and the commitment not to tolerate any form of sexual harassment or sex-based harassment, including from business partners, such as contractors and suppliers.<sup>504</sup> The Code of Conduct also explicitly states that Rio Tinto supports victims of domestic violence with a support programme which covers all employees.<sup>505</sup> These considerations are specific and sometimes limited in scope (e.g., a programme for employees only).

Rio Tinto state that they conduct human rights assessment to identify salient human rights impacts and prevent further risks and abuses at their operations and within their value chain. They state that these may include issues such as labour rights, modern slavery, the rights of Indigenous peoples, community health and wellbeing.<sup>506</sup> More specifically, they also conduct due diligence and apply risk-based monitoring of third parties (i.e., customers, suppliers, contractors, intermediaries, distributors, agents, advisers, joint venture partners, industry associations and other organisations) to ensure that they meet the requirements, including on human rights, worker welfare, communities and social performance.<sup>507</sup>

The process for identifying and assessing risk (how often, what scope, reporting requirements) are outlined in great detail in the Communities and Social Performance Standard which looks at adverse impacts on people, communities and other stakeholders potentially impacted by the business.<sup>508</sup> One of the requirements calls for consultation and engagements with stakeholders that is “*meaningful, rights-based, gender sensitive, culturally appropriate, and works to build relationships of trust and respect between host communities and the business.*”<sup>509</sup>

Moreover, Rio Tinto do state that: “*Wherever we operate, we engage with communities and other stakeholders, including civil society and workers’ organisations, to understand how we may impact on human rights. We prioritise consultation with potentially affected people and pay particular attention to impacts we could have on at-risk, marginalised or vulnerable groups.*”<sup>510</sup> Their general Code of Conduct also commits them to: “[...] *actively encourage feedback and meaningful engagement with communities so we can integrate local perspectives into decision-making. We honour and follow through on commitments made with communities.*”<sup>511</sup>

Finally, Rio Tinto commit to achieving the Free, Prior and Informed Consent (FPIC) of Indigenous communities with which they work.<sup>512</sup> In line with this commitment, they reported on their engagement process with indigenous peoples and local communities affected by their operations in the past, and how they have remedied certain wrongdoings in a 2022 disclosure document.<sup>513</sup>

Rio Tinto undertakes due diligence to “[...] *identify, prevent, mitigate and account for any involvement we may have in adverse human rights impacts through our own activities or through our business relationships across the asset lifecycle.*”<sup>514</sup> Mitigation strategies seem to include training and capacity building, complaints and grievance management and ‘social investment.’

Rio Tinto also state that they take steps to prevent sourcing minerals from conflict zones, though these steps are not shared.<sup>515</sup>

Rio Tinto reports on their due diligence and mitigation activities regarding human rights, though these cover specific issues like forced labour, and engagement with Indigenous communities.

The Modern Slavery Statement 2022<sup>516</sup> (which is now being included in the Annual Report instead of being reported separately) focuses on their due diligence process regarding forced labour risk in their supply chains. This reports on their risk assessment process (including findings of human rights reports on third-parties i.e., suppliers both direct and indirect, joint venture investments and customers), supplier engagement strategies and remediation management.

This report also includes a section on assessing the effectiveness of their responses to combatting modern slavery in their supply chains, including engaging with worker representatives at local and global levels. Examples for 2022 engagement that are highlighted in the report are working sessions with main union stakeholders, as well as meetings with IndustriALL in Pittsburgh and London.<sup>517</sup>

The Communities and Social Performance Commitments Disclosure 2022 outlines the commitments and progress Rio Tinto have made in respecting, remedying and rebuilding relationships with rights holders, particularly Indigenous people, in their operations.<sup>518</sup> Details of these engagements are provided for cases around the world both among employees and affected communities.

Impact on workers' rights and conditions are covered by certain metrics in the Annual Report, though these are standard indicators (health and safety, employee demographics) and do not include, for example, workers representation and collective bargaining efforts, adequate wages, etc.

Rio Tinto communicate the impacts of their due diligence policies, processes and impacts in various reports.

The 2023 Annual Report includes information on community engagement and remediation in five different countries,<sup>519</sup> as well as other metrics such as the total amounts of payments made to landowners as non-discretionary compensation under land access, mine development, native title, impact benefit and other legally binding compensation agreements.<sup>520</sup> The section on health safety and wellbeing includes gender and age-disaggregated data on their workforce and occupational health metrics like turnover, types of illness (including mental illness), injuries and fatalities.<sup>521</sup>

In line with their commitment to respect local community rights and the rights of Indigenous people (including FPIC), they reported on their engagement process with these rightsholders affected by their operations in the past, and how they have remedied certain wrongdoings in the Communities and Social Performance Commitments Disclosure 2022.<sup>522</sup> Rio Tinto also published a brief summary of the findings from an independent cultural heritage management audit conducted on the company's Australian assets following the destruction of the rock shelters at Juukan George in May 2020.<sup>523</sup>

Additionally, Rio Tinto published the results of an external expert review of their workplace culture in February 2022.<sup>524</sup> This revealed a number of salient issues in their operations related to working conditions, including widespread sexual harassment, common sexism and racism, and systemic bullying. Rio Tinto states on its website that it is currently working to implement the recommendations from the report.<sup>525</sup>

Rio Tinto state explicitly their role in providing remedy in the following statement: *"Where we identify we have caused or contributed to an adverse human rights impact, we are committed to providing for, or cooperating in, its remediation through legitimate processes. We may play a role in remediating harm that we are directly linked to through our products, services or operations."*<sup>526</sup> The

company reports on their remediation processes, including the number and nature of grievance reports each year.<sup>527</sup>

Rio Tinto captures grievances through myVoice, a confidential reporting programme which is available to all Rio Tinto employees, contractors, suppliers, service providers, trainees, joint venture partners, community members and other stakeholders. MyVoice is implemented through an online web platform, as well as via email and telephone numbers available in countries of operation, with the possibility of submitting anonymous reports. The full procedure for logging a grievance is outlined in myVoice Procedure document,<sup>528</sup> and the process for addressing a grievance is provided in the Communities and Social Performance Standard.<sup>529</sup>

The myVoice Procedure document lays out conditions of confidentiality (including anonymity if desired) and protection for those who make reports about the company and affiliate's operations. The document explicitly states that Rio Tinto prohibits retaliatory behaviour to people raising concerns, and that the company will provide protection mechanisms such as support service and engaging with human resources representatives in the event of concern. Gendered considerations are not explicitly stated in the documents dealing with the grievance mechanism.

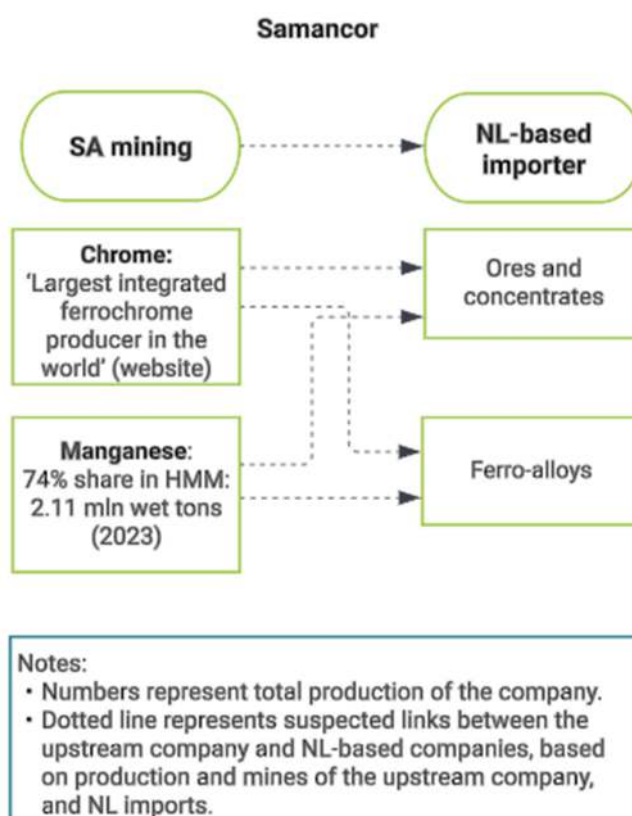
Rio Tinto communicate relatively transparently on a number of human rights issues in their value chains, as well as on the implementation of their due diligence process to deal with potential and real-time adverse impacts. The way these are reported in the Modern Slavery Statement, the Communities and Social Performance Commitments Disclosure show a great deal of the process undergone in the company and it's third parties to uphold its commitments to respecting and remedying human rights impacts. The reporting is heavily focused on the issues of forced labour and community (including specifically Indigenous peoples) rights.

Yet, most of the issues captured in their grievance process had to do with working conditions. Rio Tinto reported in 2022 receiving 1,459 reports through myVoice channels (up from 1,246 reports in 2021). Of these cases, 63% were substantiated, including 77 cases which were reports received in 2021. Issues raised through myVoice related to discrimination, bullying, harassment, sexual misconduct and sexual harassment, employee relations and benefits and compensation.<sup>530</sup> The prevalence of these issues is also captured in their published external review of workplace culture.<sup>531</sup>

Rio Tinto did not respond to Profundo's request to comment on our analysis of its policies.

#### 4.1.5 Samancor

**Figure 5 Overview links with Samancor**



Samancor Chrome's 'Guide to Business Conduct' claims to provide direction and an overall framework to measure its accountability. This document further claims to supplement guidelines developed across different themes:

- Safety, health, environment and risk, quality and community;
- Equity in employment;
- Information systems;
- Compliance with the law; and
- Relationships with governments and stakeholders.<sup>532</sup>

However, this guide is not publicly available on the company website.

The company indicates that the core principle behind its Safety, Health, Environment and Quality (SHEQ) policies is to strive for zero harm to people and the environment. The company commits to maintaining the health and safety of workers as well as protecting the local community from risks related to operations as far as reasonably practicable. The policy does not clarify what constitutes 'reasonably practicable'. The company also commits to actively protecting the environment from adverse impacts through its operations.<sup>533</sup>

The company's publicly disclosed policies do not clarify how it identifies the most significant risks in its operations and whether the due diligence oversight and responsibilities have been integrated into the management systems. The company indicates that it will monitor and measure the effectiveness of its SHEQ performance through regular audits, reviews, and policy implementation guidance.<sup>534</sup>

Other gaps in the company's public policies include grievance-redressal mechanisms and transparency over the mineral supply chain. The company also does not address some of the main labour rights, such as freedom of association and child labour, in its operations and supply chain.

The company's policy includes steps to help achieve the commitments towards workers, community and the environment. One of these steps includes the identification, management, and control of SHEQ risks and impacts. The company also claims to set objectives and targets for improvements in SHEQ performance, legal compliance, and initiatives for operational improvements. However, the company does not provide further details on how the risk assessment process is operationalised.<sup>535</sup>

Although the company does not disclose details about any risk-mapping exercise, the SHEQ policy does indicate a commitment to eliminate contemporary slavery and exploitation. The company also intends to demonstrate a commitment to apply the United Nations Guiding Principles on Business and Human Rights (UNGPs) in all its practices. However, it is unclear whether the company is assessing the risks of such human rights violations in its operations and also with its suppliers.<sup>536</sup>

In terms of occupational health and safety, the Fatal Risk Control Protocol (FRCP) provides the mandatory minimum requirements across ten areas, such as underground mobile equipment, hazardous materials management, and lifting equipment. The identification of the ten areas is based on previous severe or fatal incidents. For each category, the policy identifies safety requirements for the equipment, procedural requirements, and staff requirements. It is also important to note that this protocol was approved by the company in December 2015. It is unclear whether any updates have been made to the safety protocols since then.<sup>537</sup>

The company intends to protect the environment, biodiversity, and ecosystems by applying the best practical environmental options. The policy does not disclose any further information on implementing this.<sup>538</sup>

With regard to local communities, Samancor Chrome intends to contribute to the socio-economic well-being of the local communities. This contribution is largely driven by the Social and Labour Plans (SLPs). The process of developing the SLPs involves stakeholder engagement, namely meetings between elected community representatives and the Samancor Chrome Transformation Team. Apart from the elected community leaders, the company also identifies traditional authorities of each area as important players in the engagement process. In addition to the SLP meetings, the stakeholders also regularly meet the Samancor Chrome team to discuss relevant issues, such as immediate challenges in the community and progress on the projects (for more on SLPs, see section 3.2.7).<sup>539</sup>

Samancor Chrome does not publicly disclose its risk management plans. The public policies do not indicate whether the company suspends activities that may cause or contribute to adverse impacts on Responsible Business Conduct (RBC) issues. It is unclear whether the responsibility for preventing such activities has been assigned to senior members of the management team. Engagement with impacted stakeholders and rightsholders is a critical element for the prevention and mitigation of adverse impacts; however, the company policies do not make any reference to engagement with stakeholders and rightsholders to devise and implement action plans to address any impacts.

The company policies do not address labour rights issues, such as the promotion and protection of workers' representation and trade unions. The company also does not assess (potential) gender-specific adverse impacts.

Samancor Chrome does not disclose details on the implementation of the company's due diligence activities. The company does not identify gender-specific trends in (potential) adverse impacts. There is no indication that independent third-party audits of the mineral supply chain due diligence are carried out. No disclosures on engagement with workers, representatives, or trade unions are made.

Samancor Chrome does not disclose relevant information on due diligence policies, processes, or results thereof. The corporate website does not include reports on Corporate Social Responsibility



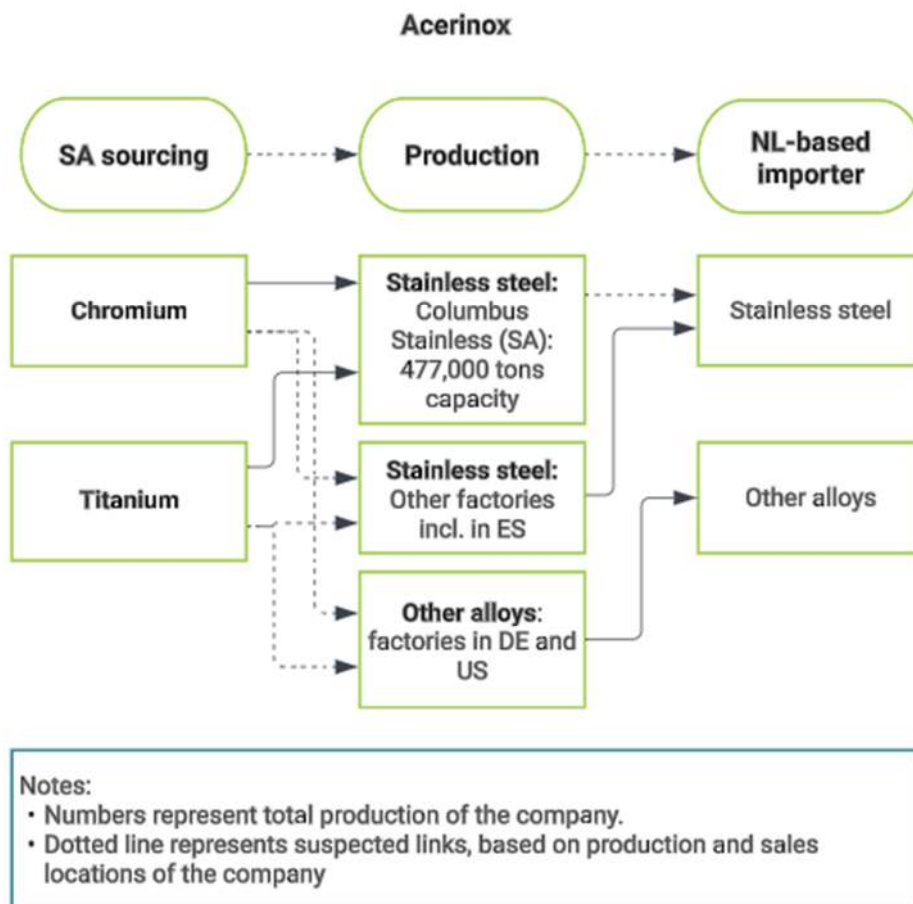
(CSR) or supply chain due diligence. There are no public disclosures on the audits or assessments of labour rights, human rights, or environmental impacts.

Samancor Chrome does not publicly disclose a policy on its grievance redressal mechanism. Moreover, the company did not respond to Profundo’s request to comment on our analysis of its policies.

## 4.2 Mid- and downstream companies

### 4.2.1 Acerinox

Figure 6 Overview links with Acerinox



In its 2016 Code of Conduct and Good Practices, of Acerinox, S.A. and its group of companies expresses its commitment to upholding human rights and freedoms as recognised on both national and international levels.<sup>540</sup> However, no more recent Code of Conduct was found, neither mentioned in any public document, at the time this policy analysis was written. In addition to this document, one can also access the 2021 General Equality, Diversity and Inclusion Policy,<sup>541</sup> the 2021 General Health and Safety at Work Policy,<sup>542</sup> the 2021 General Human Rights Policy,<sup>543</sup> the 2021 General Recruitment and Promotion Policy,<sup>544</sup> the 2023 Code of Conduct for Business Partners,<sup>545</sup> and the 2023 Integrated Annual Report.<sup>546</sup>

Acerinox's 2023 Integrated Annual Report offers a glimpse into the company's approach to human rights management. Notably, it references Acerinox's global human rights policy, accessible on the company website, which adheres to international frameworks such as the United Nations Universal Declaration of Human Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.<sup>547</sup>

The company also endorses the United Nations Global Compact's 10 Principles and its alignment with the principles and guarantees outlined in the 8 Conventions of ILO.<sup>548</sup> According to its 2023 Code of Conduct for Business Partners, Acerinox's commitment to human rights extends beyond its direct operations to encompass its supply chain and business partners. This document states Acerinox's expectation that suppliers uphold internationally recognised human rights and adhere to the principles delineated in the 8 Fundamental Conventions of the ILO.<sup>549</sup>

Identifying and assessing the adverse impacts of Acerinox's operations is presented as a meticulous process involving risk screening and assessment exercises. However, the 2023 Integrated Annual Report, which emphasises Acerinox's supposed proactive risk management, falls short of addressing the actual effectiveness and transparency of these measures. The implementation of the Enterprise Risk Management (ERM) programme, aligned with the COSO ERM framework and overseen by the Board of Directors, is portrayed as comprehensive, yet it remains unclear how well it truly identifies and manages the risks impacting both financial and non-financial outcomes. The ERM model categorises risks into six categories (External, ESG, Financial, Technological, Operational, Strategic), but this systematic approach seems more about ticking boxes than genuinely addressing the complexities and real-world implications of these risks.<sup>550</sup>

In considering labour rights within its risk assessment framework, Acerinox states its commitment to safeguarding the fundamental principles and rights of its workforce. The company's General Health and Safety at Work Policy emphasises the inclusion of health and safety indicators in its strategic plans, ensuring a systematic approach to risk identification and management in these critical areas.<sup>551</sup>

Furthermore, Acerinox's General Human Rights Policy underscores its dedication to implementing a due diligence system to identify and mitigate risks related to human rights impacts arising from its activities and value chain.<sup>552</sup> The company ensures compliance with labour and social security legislation, particularly concerning subcontracting practices, to prevent circumvention of employee obligations.<sup>553</sup> Acerinox also guarantees that its employees receive wages that are competitive within the industry and local market, meeting minimum wage standards to guarantee a decent living standard, while also regulating overtime and rest periods appropriately.<sup>554</sup>

Acerinox claims to engage with workers and their representatives through collective bargaining agreements (CBAs) at all production centers, holding regular meetings to discuss working conditions and health and safety issues. While this is portrayed as fostering open and cooperative dialogue, it is concerning that there is no mention of consulting with potentially impacted rights holders, trade unions, or women's groups specifically. This omission raises questions about the inclusivity and comprehensiveness of Acerinox's engagement practices.<sup>555</sup>

While Acerinox's risk screening process lacks explicit mention of gender sensitivity, the company's claimed commitment to inclusive development initiatives is questionable. Although it asserts special attention to groups such as women, the elderly, and disabled individuals, the effectiveness and sincerity of these efforts in promoting social and labour integration and addressing inequalities within its operations and communities remain unclear and unsubstantiated.<sup>556</sup>

Acerinox lacks an explicit mitigation plan, raising concerns about its actual commitment to addressing adverse impacts. While the company claims to implement a due diligence system to identify and mitigate risks and outlines mechanisms for preventing and mitigating occupational health and safety impacts in its General Human Rights Policy<sup>557</sup> and Integrated Annual Report,<sup>558</sup> the absence of a clear and detailed mitigation strategy casts doubt on the effectiveness and transparency of these efforts.

Although Acerinox does not actively promote workers' representation and trade unions, it claims to safeguard these rights through collective bargaining agreements (CBAs) and by respecting freedom of association and collective bargaining under relevant national legislation, as detailed in

its Integrated Annual Report and General Human Rights Policy. However, this passive stance raises questions about the company's genuine support for workers' rights. Similarly, while Acerinox does not engage in cross-sectoral approaches to address systemic labour issues such as child labour, it makes superficial declarations rejecting child and forced labour, echoing its stance on human rights and adherence to United Nations Global Compact principles. This approach appears more performative than substantive in addressing these critical issues.<sup>559</sup>

Acerinox reports progress on continuously tracking the implementation and effectiveness of due diligence and mitigation activities, including milestones achieved and challenges faced. It also emphasises the regular assessment of the due diligence system's effectiveness through monitoring indicators, utilising internal control systems, and establishing medium—and long-term sustainability objectives.<sup>560</sup>

Regarding human rights impacts, Acerinox claims a commitment to consult and engage with impacted or potentially impacted rights holders, such as workers and their representatives, to track progress. This is purportedly evidenced by the establishment of complaint and grievance mechanisms based on principles of fairness and the presumption of innocence, as well as the provision of an ethics hotline for stakeholders to voice concerns.<sup>561</sup> In its 2023 assessment of Acerinox's Communication on Progress, the UN Global Compact, the company received an overall good rating.<sup>562</sup>

In terms of communication, Acerinox demonstrates transparency by publicly disclosing relevant information on due diligence policies, processes, and activities aimed at addressing actual or potential adverse impacts, as evidenced through documents such as the 2016 Code of Conduct and Good Practices, 2021 General Equality, Diversity and Inclusion Policy, 2021 General Health and Safety at Work Policy, 2021 General Human Rights Policy, 2021 General Recruitment and Promotion Policy, 2023 Code of Conduct for Business Partners, and the 2023 Integrated Annual Report. Particularly, the 2023 Integrated Annual Report stands out as a comprehensive source of information, providing detailed insights into the company's practices and commitments.<sup>563</sup>

Moreover, Acerinox discloses labour, human rights, and environmental audit or assessment results, ensuring transparency while respecting confidentiality requirements. For instance, the Code of Conduct Monitoring Committee oversees compliance with internal policies, provides a whistleblowing channel, and supervises case processing and resolution.<sup>564</sup> In terms of gender-disaggregated data disclosure, Acerinox exhibits a commitment to transparency by providing extensive information on workforce composition, including details on employees by contract type, workday type, age range, professional category, new hires, layoffs, average remuneration, and base salary ratios by gender.<sup>565</sup> However, while gender-disaggregated data is provided, explicit disclosure of impacts on workers is not included, suggesting an area for potential enhancement in reporting practices.

Lastly, the Acerinox Group commits to investigating and remedying any allegations of human rights violations, as declared in its General Human Rights Policy, demonstrating a willingness to cooperate in or provide remedy for actual adverse impacts.<sup>566</sup> While the company has established complaint and grievance mechanisms, there is no specific mention of accessibility for various stakeholders, such as direct employees, subcontractors, indirect workers in the supply chain, communities, and other external stakeholders.<sup>567</sup> Transparent communication about grievance mechanisms, including procedural details, processing times, and remedial activities, lacks specificity beyond previously cited statements.

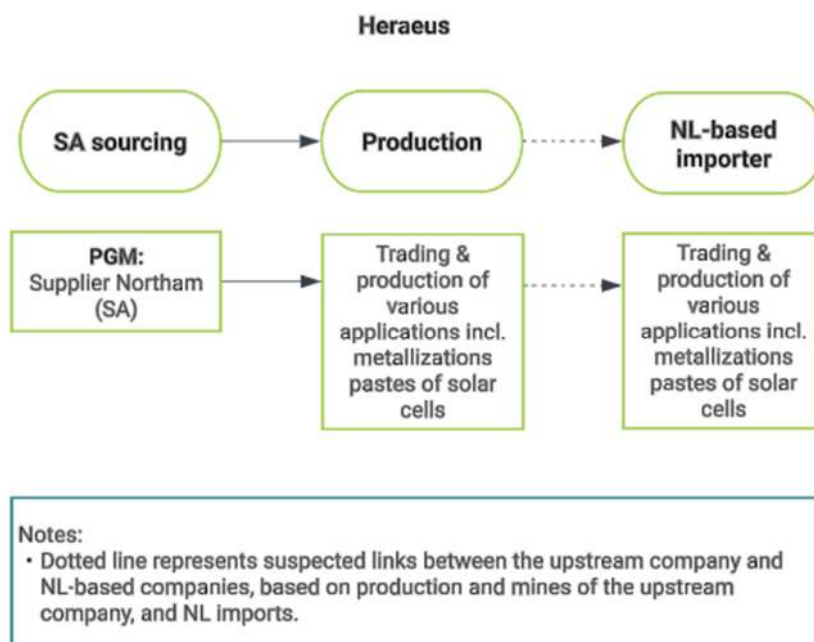
Regarding whistleblower protection, Acerinox maintains a whistleblowing channel accessible to all employees and stakeholders, aiming to encourage adherence to the Code of Conduct and responsible business practices.<sup>568</sup> Additionally, the company, through its Committee for the Code of Conduct, ensures confidentiality, non-retaliation against employees reporting breaches in good faith, and respect for the rights of individuals suspected of involvement in potential breaches.

However, there are no explicit mentions of gender sensitivity within these protection mechanisms.<sup>569</sup>

Acerinox did not respond to Profundo’s request for comment on our analysis of their policies.

#### 4.2.2 Heraeus

**Figure 7 Overview links with Heraeus**



Heraeus has a public Human Rights Policy which applies to all employees of the Group globally and is in line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the UNGPs, the ILO Declaration on Fundamental Principles and Rights at Work and the fundamental conventions.<sup>570</sup> In addition, the company’s Code of Conduct demonstrates its commitment to upholding human rights and labour standards.<sup>571</sup>

The company’s Supplier Code of Conduct and Supply Chain Due Diligence Policy concern all suppliers and service providers and is based on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Furthermore, the company expects suppliers to respect the human and labour rights of their employees and only select suppliers that do the same.<sup>572</sup> Suppliers in “critical areas” like 3TG (tin, tantalum, tungsten, and gold) and precious metal sourcing get an additional screening, in line with the LBMA’s Responsible Gold and Silver Guidance as well as by LPPM’s Platinum and Palladium Guidance.<sup>573</sup>

At Heraeus, the *Head of Group Sustainability*, reporting to the CEO, is tasked with defining the sustainability framework and supporting the group companies with its implementation.<sup>574</sup> To ensure group-wide compliance with CSR policies, the company assigned a Compliance Officer who is responsible for the management system that encompasses the processes and responsibilities for conducting supply chain due diligence. The managing directors of the group companies, supported by compliance officers, are responsible for implementing the policies, conducting risk assessments, and taking any measures based on these assessments.<sup>575</sup> The team of Precious Metals Compliance Experts is dedicated to the screening of precious metal sourcing.

The company has not finalised a materiality assessment to identify company-wide RBC risks yet but reports to be in the process of such an assessment and will report about it in the future.<sup>576</sup>

Human rights risks are periodically assessed for all suppliers in the precious metals trading and recycling business areas, in line with the German Supply Chain Due Diligence Act.<sup>577</sup> For other suppliers, the risk assessment is based on a screening per country and industry risks.<sup>578</sup> These assessments account for labour standards, and when considering the Supplier Code of Conduct and Supply Chain Due Diligence Policy together, they cover the Fundamental Principles and Rights. Yet, child labour is allowed at a minimum age of 14 if permitted by local law, and living wages and gender-sensitive risks are not considered.<sup>579</sup>

Heraeus does not have an explicit mitigation plan but shows commitment to mitigating adverse impacts by conducting supply chain due diligence and taking mitigation measures if required, such as engaging with suppliers and ending the relationship if they refuse to take corrective actions.<sup>580</sup> While the company does not actively promote and protect workers' representation and trade unions, employee representative bodies are established at all German sites in accordance with German law,<sup>581</sup> the company respects freedom of association and collective bargaining<sup>582</sup> and establishes, where possible, local CBAs.<sup>583</sup> Furthermore, Heraeus organises open dialogue with employee representative bodies and other stakeholders of which the insights gained are used to, for example, design the way the company deals with risk topic areas, but it remains unclear whether the company engages with these groups for mitigating adverse impacts.<sup>584</sup> Furthermore, the company indicates it may monitor the observance of human rights by interviewing employees.<sup>585</sup> Regarding cross-sectoral approaches to addressing systemic labour issues, such as child labour, Heraeus engages with responsible mining projects that uphold strict requirements for labour conditions, such as Fairtrade gold and Fairmined. Yet, no details on this engagement are disclosed.<sup>586</sup>

Regarding the monitoring of implementation and results of due diligence and mitigation activities, Heraeus indicates in its Sustainability Report that it monitors its suppliers and customers but does not report on tracking and results.<sup>587</sup> This study found no public progress reports by the company on its engagement with (potentially) impacted rightsholders.

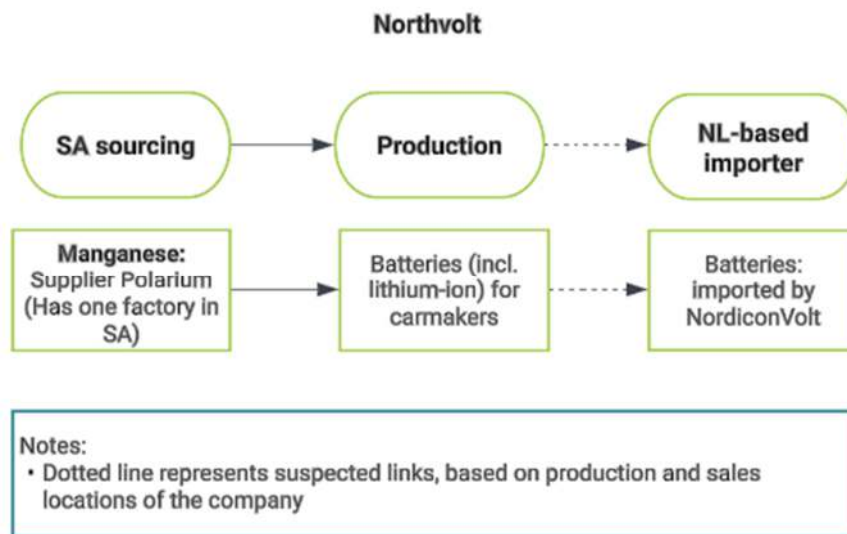
When it comes to communication, Heraeus demonstrates transparency by publicly disclosing relevant information on due diligence policies, processes, and activities conducted to identify and address actual or potential adverse impacts in its Human Rights Policy, Code of Conduct, Supplier Code of Conduct, and Sustainability report, among others. However, the findings and outcomes of those activities are not publicly communicated. While the company reports it has conducted site audits in 2021 and 2022, considering human rights and labour standards, the results are not disclosed. Moreover, Heraeus only discloses very basic gender-disaggregated data, such as the share of women at the executive level and in its talent advancement programme.<sup>588</sup> An explicit gender-disaggregated disclosure of impacts on workers is not included. These results on communication suggest an area for improvement in disclosure practices.

Heraeus commits to providing remedial measures when human rights risks are identified but without any further clarifications or details on the process.<sup>589</sup> The company does have a grievance mechanism that is accessible to both internal and external stakeholders<sup>590</sup> and communicates about its aspects, such as the channels, procedure, processing times, and some details on remedial activities. Furthermore, Heraeus protects whistleblowers by prohibiting retaliation, safeguarding anonymity, and informing them about data protection procedures. No reference is made to gender sensitivity in protecting whistleblowers.<sup>591</sup>

Heraeus did not respond to Profundo's request for comment on our analysis of their policies.

### 4.2.3 Northvolt

**Figure 8 Overview links with Northvolt**



Northvolt has a sustainability and compliance committee responsible for ensuring the effectiveness of the systems and processes intended to ensure sustainable development and management. The committee's responsibilities also cover due diligence and sustainable supply chain management. The company has a Head of Sustainability who is responsible for strategies, goals, and actions involving sustainable impact and reports to the Chief Environment Officer.<sup>592</sup>

Northvolt has disclosed policies, including its Code of Conduct and Supplier Code of Conduct, which outlines the principles and strategies adopted by the Board. The precautionary principle is integrated into policies and business processes and is monitored by an environmental management system. The Code of Conduct and Supplier Code is based on international standards such as the ILO Declaration on Fundamental Principles and Rights at Work, UN Guiding Principles for Business and Human Rights, the OECD Guidelines for Multinational Enterprises and Due Diligence Guidelines, and OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.<sup>593</sup>

The Supplier Code of Conduct covers different themes such as ethics, labour and human rights, environment, and health and safety. Apart from compliance with applicable national laws and regulations, the suppliers are also required to adhere to the international sustainability standards mentioned in the supplier code. In case of discrepancies between national laws and the supplier code, suppliers are expected to adhere to the higher standard. The policy also explains what the successful implementation of the code should entail. It requires an effective due diligence system, including policy commitments, embedding these commitments within the organisation through the assignment of roles and responsibilities, identification of risks, stakeholder engagement, risk assessments, performance tracking and communication, and access to remedy where negative impacts have occurred. The suppliers are also expected to respect the ILO fundamental labour standards covering forced labour, child labour, working hours, harassment, and discrimination.<sup>594</sup>

Suppliers are also expected to conduct due diligence on their own mineral supply chains, especially for conflict minerals (tin, tungsten, etc.) and battery minerals (cobalt, nickel, lithium, manganese, etc.). Suppliers are expected to act in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and provide reasonable assurance that their operations do not directly or indirectly harm human rights or contribute to conflict. Suppliers are also expected to establish an operational-level

grievance mechanism aligned with the UNGPs. In case of any human rights violations, suppliers should provide remediation in line with the UNGPs and the OECD Guidelines.<sup>595</sup>

The company has a whistleblowing policy that covers employees and other stakeholders and provides a platform to report on suspected misconduct. While there are detailed guidelines for employees to raise concerns, the external whistleblowing platform open to stakeholders does not clarify important details such as protection against retaliation. Further, access to this whistleblowing platform could be limited since it is only available online.<sup>596</sup>

Management conducts an annual top-down risk management process that helps generate a comprehensive list of risks to which the company could be exposed. Additionally, each individual business unit undertakes an ongoing bottom-up risk management process to identify, assess, analyse, mitigate, and manage risks.<sup>597</sup>

The company performs a materiality assessment to identify focus areas that cover various ESG themes. The topics are identified through engagement and dialogue with internal and external stakeholders and monitoring industry peers. This process results in a list of 20 focus topics. The stakeholder group includes representatives from the customer base, NGOs, academic institutions, authorities, and unions.<sup>598</sup>

Suppliers are expected to have a human rights policy that describes their commitment towards responsible business conduct in their own operations and value chain, in line with the UNGPs and OECD Guidelines.<sup>599</sup>

Northvolt identifies the potential social and environmental impacts that may occur while sourcing raw materials. The following measures to manage the potential impacts are also identified:

- Risk assessments of supply chains;
- Due diligence of suppliers;
- Mitigation and corrective actions included in supplier agreements;
- Ongoing monitoring of risks; and
- KYC and sanctions screening.<sup>600</sup>

Suppliers are expected to ensure compliance with the Supplier Code of Conduct and regularly report to Northvolt on their ongoing due diligence efforts. This could be complemented by audits initiated by Northvolt. In case of non-compliance with the code, Northvolt has the right to terminate the contract immediately.<sup>601</sup>

It is unclear whether the company engages with the potentially impacted stakeholders and rightsholders to devise appropriate actions to prevent and mitigate adverse impacts. There is no indication that the group actively promotes and protects trade unions and workers' representation or consults with them to prevent and mitigate risks.

Northvolt discloses the progress made towards certain sustainability goals. As of 2022, 84% of significant suppliers accepted the Supplier Code of Conduct. Around 60% of suppliers were screened for sustainability risks, with a goal of reaching 100%. Similarly, Northvolt has set a 100% traceability goal for raw materials, which is currently at 89%.<sup>602</sup>

The implementation reports published by Northvolt do not disclose details of its stakeholder engagements, including engagement with workers, workers' representatives, and trade unions. It is also unclear whether a gendered analysis of the actual or potential impacts has been conducted, which could help highlight any impacts missed during the due diligence process. There is also no indication of independent third-party audits of the supply chain.

The Northvolt sustainability report discloses the key risks identified across four major risk categories – strategic, operational, financial, and compliance risk. Along with a description of the risk and its potential impact, the report also provides examples of measures undertaken to address each risk.<sup>603</sup>



There are no detailed disclosures on the implementation of the supply chain due diligence policies and practices. It is also unclear whether the results of any social and environmental audits are communicated to the potentially affected stakeholders or rightsholders.

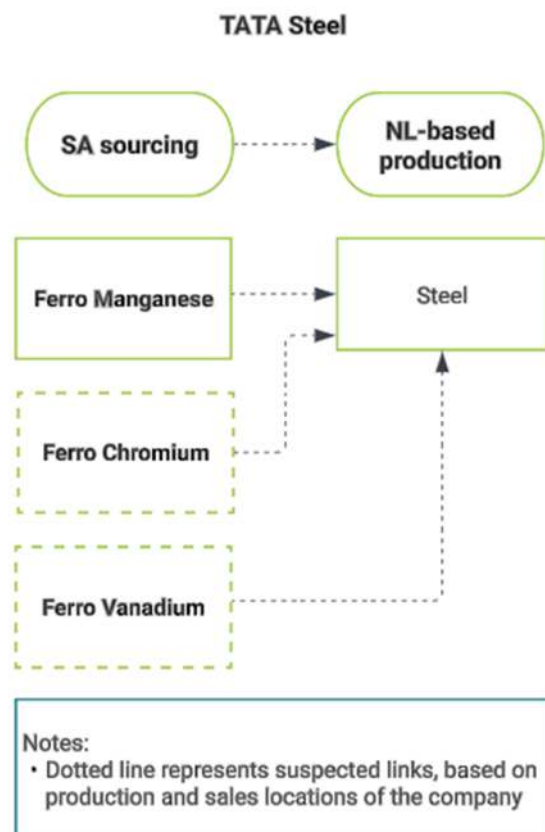
Northvolt recognises its responsibility to enable access to remedy, in line with the UNGPs and the OECD Guidelines, for risks and impacts throughout the value chain. The same expectation is also formulated for its suppliers in case they have caused or contributed to violating human rights or the environment.<sup>604</sup>

The company has a whistleblowing policy that covers employees, consultants, suppliers, customers, or other business partners, to report possible violations of the law, Northvolt’s Code of Conduct, Supplier Code of Conduct or policies and directives. The guidelines of the policy strictly forbid any retaliation against complainants reporting in good faith. The policy does not seem to consider factors that may cause women difficulties in accessing the grievance mechanism, thereby making it difficult to assess whether the whistleblowing policy is gender-sensitive.<sup>605</sup>

Northvolt did not respond to Profundo’s request to comment on our analysis of their policies.

#### 4.2.4 TATA Steel

Figure 9 Overview links with TATA Steel



Source: TATA Steel (2023), *Sustainability Report 2022/2023*, p.74-76.

ss TATA Steel Europe discloses policies aimed at embedding responsible business conduct in its operations. These include:

- TATA Group Code of Conduct;
- TATA Steel Europe (TSE) Responsible Procurement Policy;

- TSE Supplier Code of Conduct;
- TSE Confidential Reporting Policy; and
- Implement reports such as TATA Steel Nederland (TSN) sustainability report and TSN Roadmap Plus progress report.

Sustainable goals are embedded into the company policy, management systems and communications.<sup>606</sup> The code of conduct outlines the commitments that the Group makes towards different stakeholders – employees, customers, local communities including environment in which they operate, and value-chain partners.<sup>607</sup> The Group is committed to engage with the community to minimise any adverse impacts from their operations. The Group strives for environmental sustainability and optimum resource utilisation. The Group also expects its value-chain partners to demonstrate similar values and adopt comparable ethical standards.<sup>608</sup>

Sustainability considerations are identified as the final responsibility of the TSN Board of Directors. However, no further information is provided on how due diligence oversight and responsibility is assigned to senior management and/or the Board. Further, there is no clarity on the assignment of implementation responsibilities to departments or teams across the company.<sup>609</sup>

TSE has adopted the OECD Due Diligence Guidance for Responsible Business Conduct to focus on supply chain transparency, legal and regulatory compliance, and minimum ethical standards. The responsible procurement policy applies to all goods and services supplied to TATA Steel by immediate suppliers and their entire supply chains. The policy is based on five principles of responsible sourcing namely – Health and safety, Fair business practices, Environmental protection, Human rights and Local community development.<sup>610</sup>

The policy requires suppliers to adopt management practices that respect the health and safety of workers and maintain policies, processes, and procedures to manage their environmental impacts. Suppliers are also expected to implement policies to promote and protect human rights in their business and also assign these expectations to their own supply chains. The policy also expects suppliers to contribute to the socioeconomic development of the communities in which they operate.<sup>611</sup>

In the 2021-2022 TSN sustainability report, the company announced the intention to conduct its own materiality analysis; however, this was postponed due to a similar initiative by the parent group that included the consultation and involvement of TSN. The materiality analysis has identified four strategic priorities:

- Decarbonisation and Sustainability;
- Environment and Community;
- Customer and Value; and
- People and Society.

TSN has ongoing efforts to minimise impacts on the local environment and community. They are in contact with local residents, governments and other stakeholders about developments on their sites. TSN also prioritises the health and safety of its workers. TSN identifies NGOs, civil society and local communities as important stakeholder groups. Dialogues with local residents are meant to understand what is important to them and inform them about on-site developments at the earliest possible stage.<sup>612</sup>

TSE implements a due diligence management system to identify and mitigate potential adverse impacts. A prioritisation process based on severity and likelihood of potential risk is applied to arrange due diligence efforts among various supply chains. Due diligence is implemented across the entire values chain to determine whether the minimum Health and Safety, Human Rights, Ethical and Environmental standards are maintained. To ensure compliance, suppliers are required to submit documentary evidence and in some cases audits and site visits may be conducted. If there is a misalignment of expectations, suppliers will be provided with support to resolve the

same. However, the policy also indicates that in case of continuous non-compliance with the responsible procurement policy, the relationship with the supplier will be terminated.<sup>613</sup>

In areas with high risk of human rights abuses, the suppliers are expected to adopt robust human rights policies and procedures. The company also commits to not knowingly purchase 'conflict minerals' originating in conditions of armed conflict and human rights abuses.<sup>614</sup> Suppliers are also expected to conduct business in a fair and transparent manner, and make efforts to eliminate all forms of bribery, fraud, corruption, and money laundering. The supplier code of conduct clearly mentions a no tolerance policy towards any direct or indirect support to non-state armed groups through extraction, transport, trade, handling or export of minerals. The policy also expects suppliers to engage public or private security forces in accordance with the Voluntary Principles on Security and Human Rights.<sup>615</sup>

Suppliers operating in regions categorised as low or medium risk on the INFORM Index for Risk Management are deemed to satisfy the expectations on human rights.<sup>616</sup> The INFORM Index for Risk Management is an open-source risk assessment for humanitarian crises and disasters, developed by multiple organisations including the Joint Research Centre of European Commission, International Organization for Migration, and the United Nations High Commissioner for Refugees.<sup>617</sup> In case suppliers are operating or sourcing from regions with a higher risk rating, they are expected to adopt policies that align with the TSE requirements. Suppliers are expected to provide documentary evidence that their policies cover key elements, such as child labour, forced labour, health and safety, freedom of association and right to collective bargaining, and discrimination.<sup>618</sup>

On community development, TSE expects suppliers to engage with likely affected parties, at the earliest stage, to ensure appropriate management of potential impacts. The policy also requires adequate systems to ensure ongoing interaction with affected parties, particularly minorities and other marginalised groups. The policy also specifies that measures must be taken to avoid adverse impacts on local women and children, such as the prevention of sexual abuse and harassment near mines and processing plants. TSE also expects the suppliers to publicly disclose, where relevant, its respect for indigenous people as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.<sup>619</sup>

As part of its efforts towards responsible sourcing, TSN joined the International RBC Agreement for the Metals Sector in 2019.<sup>620</sup> The agreement is a way for companies and other signatories to improve their performance with respect to international responsible business conduct.<sup>621</sup> During 2022-2023, TSN mapped out the supply chain and was able to identify 15 raw materials that posed an increased risk. The company intends to further map out these supply chains to identify from which mines the materials originate.<sup>622</sup> In order to increase supply chain transparency, TSN encourages the use of tools such as the Rapid Mine assessment tool that buyers can use during their visits to the suppliers/miners and assess their performance on 11 points and gather more information if necessary.<sup>623</sup> Further clarity on these 11 points was not provided in the report.

For Ferro Manganese, Ferro Chromium, and Ferro Vanadium, 100% of tier I suppliers have recognised the Responsible Procurement Policy and the location of the smelter/processor is known for 100% of the materials, except for Ferro Chromium (~ 60%). The location of the mine that the material originates from, is known for 100% of Ferro Vanadium, ~ 60% of Ferro Chromium, and ~ 90% of Ferro Magnesium.<sup>624</sup>

In response to the 2021 ActionAid report on Manganese mining in South Africa, TSN began talks with producers and traders within their chain and visited two mines in South Africa. The TSN Sustainability Report indicates that the company does not directly purchase from these mines but obtains it from producers in the form of ferro-manganese. The report goes on to share findings of the visit against their five principles of responsible sourcing. Regarding human rights impacts, TSN reports that women work both on-site and in the office, and having spoken to female management and other employees, confirmed that men and women have equal opportunities in the mining

company. The report does not indicate that the field visit included interviews with workers or workers' representatives, which makes the findings unreliable.<sup>625</sup>

The TSE confidential reporting policy intends to encourage employees and third-parties, such as suppliers and contractors, to report suspected wrongdoings without fear of retaliation. The policy applies to a range of activities, including failure to comply with TSE policies, bribery, danger to health and safety or environment, and breach of the TATA code of conduct.<sup>626</sup>

The Responsible Procurement policy expects suppliers to have a grievance mechanism that is open to workers;<sup>627</sup> however, it does not mention other important stakeholders like local community members, indigenous peoples, and other vulnerable groups.

The Maturity Assessment Tool (MAT) of the Metals Agreement helps measure the progress made in implementing the OECD Guidelines. As of March 2023, TSN has embedded RBC into its policies and procedures, as evidenced by a MAT score of 63%.<sup>628</sup> The company does not disclose details of the implementation and effectiveness of its due diligence activities. For instance, the company does not report any indicators on its stakeholder engagement.

TSE claims to track the implementation of its grievance mechanism. The cases reported through the TSE confidential reporting system are tracked quarterly by the TSE Audit Committee.<sup>629</sup> However, no disclosures on the number of complaints, theme of complaint, or resolutions were found.

No evidence was found that the company carries out independent third-party audits of its supply chain or identifies gender-specific trends in (potential) adverse impacts. Further, the company does not make disclose measurable indicators to evaluate stakeholder engagement activities, including engagement with workers' representatives.

TSN published its first sustainability report covering the period from April 2022 to March 2023. While the reporting is based on the Global Reporting Initiatives (GRI) Guidelines where applicable, it does not disclose details on how the potential adverse impacts of its operations and supply chain are addressed.<sup>630</sup> TSN only reports on the progress made with regard to its environmental goals.<sup>631</sup>

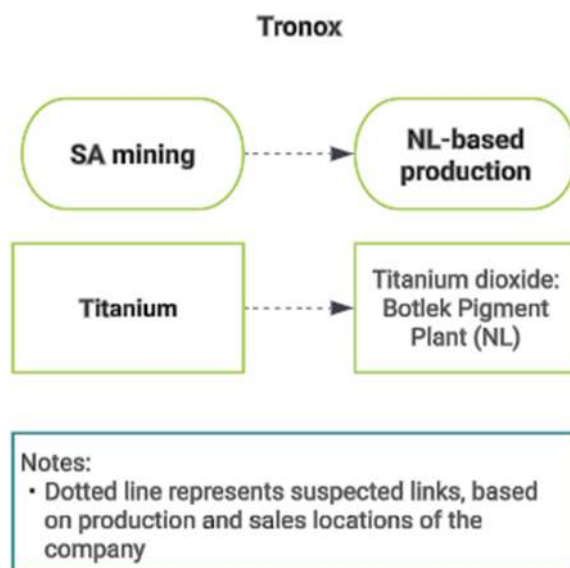
The TSE responsible procurement policy does formulate expectations from suppliers on engaging with potentially affected parties. The policy also includes an expectation of providing a grievance mechanism. However, it is not clear whether this mechanism is open to local community members, especially marginalised and vulnerable groups, who may be exposed to harm due to the company's operations or supply chain.<sup>632</sup>

The TSE Confidential Reporting Policy does provide an avenue to raise concerns on unethical behaviour by the company; however, it is also unclear whether local community members and human rights defenders are covered by this policy. Further, it is unclear how these individuals or groups could raise their concerns since the first point of contact is the line manager or a TSE manager.<sup>633</sup>

TATA Steel did not respond to Profundo's request to comment on our analysis of their policies.

## 4.2.5 Tronox

Figure 10 Overview links with Tronox



Tronox discloses its policies to embed responsible business conduct in all its activities. These include policies that cover its operations and standards for its suppliers.<sup>634</sup> The Tronox Board was reorganised in 2021 to create the Corporate Governance and Sustainability Committee. The Committee was assigned oversight responsibility for all ESG-related risks. This Committee, along with the Audit Committee, are also responsible for business ethics and compliance oversight.<sup>635</sup> Further details on the assignment of implementation responsibility to the relevant departments have not been disclosed.

In 2022, Tronox updated its sustainable procurement policy to formulate clear expectations for its suppliers. The policy applies to all suppliers identified as high-risk with regard to sustainability and environmental concerns. It intends to ensure that Tronox works with suppliers who align with its sustainability and environmental stewardship commitments.<sup>636</sup>

Tronox has also disclosed a conflict minerals policy detailing its commitment to responsible sourcing 3TGs using the OECD due diligence framework. While the policy explicitly mentions that Tronox does not wish to contribute to the human rights abuses in the Democratic Republic of the Congo, it applies worldwide to all its employees, vendors, and suppliers. Tronox suppliers are expected to adopt policies and due diligence management systems consistent with OECD Guidelines, and their own suppliers are required to adopt similar policies and procedures.<sup>637</sup>

All suppliers must adhere to the Supplier code of conduct and are expected to maintain management systems that ensure compliance with relevant laws.<sup>638</sup> The code of conduct expects suppliers to not engage in child labour or forced labour. This also includes activities such as confiscating identity or immigration documents and fraudulent recruiting tactics. The code of conduct also covers other fundamental labour rights, such as non-discrimination, fair treatment, and freedom of association. The code also stipulates that the provisions on working hours, wages, and benefits must align with local laws.<sup>639</sup> However, the code does not reference the ILO core conventions.

Tronox's commitment to sustainability includes efficient resource use, respect for the environment, and safe and healthy workplaces. Suppliers are also expected to showcase similar commitments. Suppliers are encouraged to improve disclosures and embed systems for better

natural resource management. This includes reduced energy consumption, responsible water usage, and improved waste management.<sup>640</sup>

The supplier code of conduct also formulates expectations from suppliers to act as good corporate citizens. They are expected to respect the rights of individuals and communities associated with their operations and also contribute to the socio-economic and educational well-being of those communities. This could include plans that support social transformation through skill development, reduced unemployment and increased participation of small or marginalised community businesses in supply chains. Although suppliers are expected to respect the rights of indigenous communities, the code does not mention any requirements to obtain free, prior, and informed consent (FPIC).<sup>641</sup>

The company policies do not clarify any expectation to set up a grievance redressal mechanism open to local communities or rightsholders that may be adversely impacted by the suppliers' operations. Further, the policy does not clarify any expectations on active engagement with community members or rightsholders. The policies only mention an ethics and compliance hotline through which violations of the code may be reported. It is unclear whether this hotline is open to rightsholders and other external stakeholders.<sup>642</sup>

The Tronox group does not provide details on scoping exercises that could help identify environmental and social risks. In the TCFD report, the group mentions some transition risks but only covers climate-related risks.<sup>643</sup> Limited information on the risk assessment process makes it difficult to assess whether critical steps to identify and evaluate potential adverse impacts are carried out. It is unclear whether they have identified all potentially impacted stakeholders and rightsholders who provide valuable perspectives on the views of their constituents. The same is true of consultations with workers and their representatives.

Risk assessments should also actively consider labour rights. However, the group policies need to be clarified on how labour rights risks are incorporated into this process. Occupational health and safety are covered by the supplier code of conduct, which requires suppliers to assess and manage these risks.<sup>644</sup> It is important to note that the conflict minerals policy has no stipulations on identifying or assessing risks in the mineral supply chain.

The group sustainability report identifies the measures taken to manage environmental impacts. It addresses both the water management and waste management approaches Tronox adopted. For instance, Tronox has received regulatory approval to change the classification of slag generated from smelting from hazardous waste to a byproduct. They are currently working to identify potential uses for the byproduct.<sup>645</sup> In terms of water management, the group measures its water usage at all operating sites. Tronox is working on reducing water consumption and using non-freshwater resources, when possible, especially in areas with high water stress. The group reports that their operations in high water-stress areas have been adjusted such that freshwater contributes to less than 65 per cent of water usage at those sites, compared to 80 per cent in areas with low water stress.

The Tronox supply chain team manages vendor or supplier risk by implementing and reporting on performance surveys. Vendors that supply high-carbon impact goods must complete an annual sustainability performance survey. The survey includes questions on their greenhouse gas emissions, energy consumption, waste management, adherence to UN Global Compact principles, and whether sustainability platforms like Ecovadis audit them. The survey results are used to engage with suppliers to improve their future performance.<sup>646</sup>

Suppliers found to be in violation of the code of conduct are required to fully comply within a reasonable time frame or demonstrate material progress towards aligning with the relevant requirements. In case of persistent non-compliance, the business relationship with the concerned supplier could be terminated.<sup>647</sup>

It is unclear whether the company engages with the potentially impacted stakeholders and rightsholders to devise appropriate actions to prevent and mitigate adverse impacts. It is also unclear whether Tronox actively promotes and protects trade unions and workers' representation or consults with them to address potential adverse consequences.

Tronox is focused on improving the socio-economic development of the Indigenous communities in South Africa. Host communities are supported through Local Economic Development (LED) projects and the Social and Labour Plans (SLPs). The planning of these projects follows a consultative process that includes public participation within the community. For instance, the community and stakeholder needs of the Matzikama Municipality, where the Tronox mineral sands (Namakwa Sands) operate, are considered when making decisions about LED projects.<sup>648</sup> The Namakwa Sands and KZN Sands, the main mining sites in South Africa, are annually assessed against the compliance targets mentioned in the Mining Charter Scorecard. This scorecard, developed by the South African Department of Mineral Resources (DMRE), is an assessment criteria that each mine operator must publicly disclose.<sup>649</sup>

As per the conflict minerals policy, suppliers are expected to provide reports from the Responsible Minerals Initiative demonstrating the latter's approval of the site from which Tronox is purchasing.<sup>650</sup> However, these reports are not publicly disclosed. It is also unclear whether a gendered analysis of the actual or potential impacts has been conducted, which could help highlight any impacts missed during the due diligence process. There is also no indication of independent third-party audits of the supply chain.

The Tronox sustainability report discloses information on activities undertaken across different thematic areas, such as energy consumption, water and waste management, occupational health and safety, and indigenous community engagement.<sup>651</sup> The reporting does not cover supply chain due diligence practices, particularly with regard to mineral supply chains. It is also unclear whether the results of any social and environmental audits are communicated to the potentially affected stakeholders or rightsholders.

The Tronox conflict minerals policy stipulates that suppliers are expected to remediate risks in line with the OECD Guidance.<sup>652</sup> However, no further details are furnished regarding the remediation process. More importantly, Tronox does not disclose any policy that requires suppliers to establish an operational-level grievance mechanism that is open to host communities and other rightsholders. The policies only mention an ethics and compliance hotline through which violations of the code may be reported. It is unclear whether this hotline is open to rightsholders and other external stakeholders.<sup>653</sup>

Tronox did not respond to Profundo's request for comment on our analysis of their policies.



# 5

## Conclusions and recommendations

**Based on the findings presented in the previous chapters, this chapter provides conclusions and recommendations for the South African mining sector, CNV Internationaal and its trade union partners.**

### 4.3 Conclusions

The findings of this research underscore the critical role of South Africa's mining sector in the global energy transition due to its substantial production of essential minerals such as chromium, manganese, platinum, titanium, and vanadium. Chromium is vital for manufacturing stainless steel used in solar, hydroelectric, and wind energy infrastructure, as well as in geothermal power plants. Manganese is crucial for steel production and electric vehicle batteries, with demand projected to rise significantly. Platinum is essential for fuel cells, and clean hydrogen technologies are key to reducing carbon emissions. Titanium is important for geothermal power and experimental energy storage technologies. Vanadium, essential for energy storage systems like Vanadium Redox Flow Batteries (VRFBs), meets the rising global demand.

Despite its importance, the conditions of workers employed in the South African sector remain harsh and dangerous, with frequent accidents and exposure to harmful substances like silicosis-causing dust and hazardous minerals. Despite some improvements in wages and safety over the past two decades, workers continue to face low real wages, inadequate and unaffordable housing, and a hostile environment towards unionisation. The widespread use of outsourcing, contract labour, and other precarious employment forms further exacerbates their plight, resulting in fragmented workplaces and limited access to benefits.

Adding to this, mining in South Africa has severe environmental consequences, including significant water usage and the risk of contamination. Communities near mining sites voice concerns over water depletion and home damages, with insufficient government intervention. Additionally, large-scale mines generate excessive waste, risking environmental hazards like tailings dam failures. Socially, mining exacerbates historical injustices against Black communities, leading to displacement and inadequate consultation. Gender disparities are evident, with women marginalised in decision-making and job opportunities.

While the South African government has made some efforts to mitigate the negative effects of mining on people and the environment (chiefly through requiring mining companies to publish Social Labour Plans (SLPs)), criticism from NGOs highlights widespread non-compliance and failure to fulfil promises within SLPs among South African mining companies. Reports indicate issues such as insufficient feasibility studies, inappropriate project choices, lack of transparency, and inadequate community involvement. Many companies are accused of environmental degradation and human rights violations, raising doubts about the effectiveness of legislation and voluntary sustainability programmes in ensuring labour rights and sustainable development. Overall, the industry seems to prioritise profits over the well-being and safety of its workers, leaving many trapped in poverty and substandard living conditions.

Further, the analysis of CSR policies by South African mining companies and their buyers downstream shows a mixed picture. On the one hand, all of the companies reviewed have

published human rights policies and ethical codes of conduct, many of which apply to their suppliers and are embedded in international human rights legislation. However, significant loopholes and gaps in implementation, gender sensitivity, and stakeholder engagement suggest that human and labour rights breaches could still occur. As such, the African mining sector, including buyers of minerals in downstream countries, still shows a passive stance on promoting workers' rights, and the vague nature of its mitigation strategies further exacerbates these risks.

## 4.4 Recommendations

Given South Africa's critical role in the global energy transition and the challenging conditions faced by workers and surrounding communities, specific recommendations and next steps can be outlined for both the South African mining sector and CNV Internationaal.

### 4.4.1 Minerals of interest

This study explores the importance of various minerals in the context of South Africa's mining sector, particularly focusing on their significance in the energy transition and their economic potential. Among the minerals assessed, manganese and chromium stand out as particularly important, yet they remain less well-known compared to platinum.

Platinum has garnered substantial attention, especially following the Marikana incident, which has somewhat diminished the potential added value of CNV Internationaal's involvement in this area. In contrast, manganese and chromium present significant opportunities for strategic focus. These minerals are crucial for various industrial applications and hold considerable promise in the context of global energy transitions, making them highly relevant for future developments.

While valuable, vanadium and titanium are relatively niche in comparison. Their smaller market size limits the scope for impactful engagement by CNV Internationaal. However, understanding the dynamics of these markets can still provide valuable insights into potential areas of growth and innovation.

Based on the opportunities identified within these minerals and the active companies operating in these sectors, it is recommended that CNV Internationaal focuses its efforts on manganese and chromium. These minerals not only offer significant economic potential but also align with global trends towards sustainable energy solutions, providing a robust foundation for impactful engagement and development.

### 4.4.2 Recommendations for the South African mining sector

- **Fostering collaboration with different stakeholders:** Given its role in supplying transition minerals and the growing demands in downstream markets for enhanced human rights and environmental due diligence, the South African mining sector has a unique opportunity to position itself as a champion of a just energy transition globally. Against this background, we recommend mining companies, and their downstream buyers work together to foster collaboration with different stakeholders, including representatives from trade unions, community organisations, environmental NGOs, and government agencies. This collaborative body will engage in social dialogue that is informed by the experience of frontline communities and workers, reviews of safety practices, environmental management, and adherence to labour rights.
- **Strengthen compliance and community engagement in the South African mining sector:** Linked to the point above, the South African mining industry and its downstream buyers should prioritise compliance with domestic laws related to community consultation, SLPs, and environmental regulations. Emphasis must be placed on transparently engaging with local communities throughout all phases of mining operations. This involves adhering to international standards such as the OECD Guidelines and the UNGPs, ensuring robust human rights and environmental due diligence. Companies should implement proactive measures to

prevent and mitigate adverse impacts, including pollution and resource depletion, with comprehensive monitoring and management systems. Establishing transparent grievance mechanisms at the operational level, in collaboration with stakeholders, will enhance accountability and resolve community concerns effectively. This holistic approach supports ethical mining practices that uphold human rights and environmental stewardship in South Africa.

- **Promote Gender Equality in the Workplace:** The mining sector should develop and enforce policies promoting gender equality and preventing discrimination. These policies should aim to increase women's participation in the mining workforce and ensure their inclusion in decision-making processes. Mentorship programmes for women in mining, gender sensitivity training, and policies supporting women in leadership roles should be launched. In this context, prioritising training and employment of women from the communities surrounding the mines should be prioritised. Partnerships with gender-focused NGOs and adherence to international frameworks and guidelines will support these initiatives.

#### 4.4.3 Recommendations for CNV Internationaal

- **Form partnerships with South African stakeholders:** CNV Internationaal should initiate partnerships with South African trade unions, civil society organisations, industry representatives, and governmental actors to collectively advocate for labour rights and foster a just energy transition in the mining sector. These partnerships should focus on advocating for improved working conditions, safety standards, and fair wages for mine workers, challenging practices like contract labour and outsourcing. Additionally, they should promote sustainable mining practices that prioritise environmental stewardship and equitable economic development, ensuring local communities benefit from mining activities. The agenda should include policy advocacy to enforce existing labour laws, uphold human rights, and integrate social and environmental standards into mining regulations, thereby promoting transparency and accountability in mining operations.
- **Extend CNV Internationaal's Fair Work Monitor to the South African mining sector:** CNV Internationaal has spearheaded the use of participatory digital tools to monitor the state of labour rights in key global supply chains. Given this unique position and with the idea to inform multistakeholder collaborations in the African mining sector (see 4.4.2), CNV Internationaal should conduct comprehensive research on working conditions, environmental impacts, and community effects of mining activities to inform policy and advocacy efforts. Publishing reports and case studies highlighting best practices and areas needing improvement will maintain public awareness and pressure. Partnerships with academic institutions and research organisations will ensure high-quality research outputs.
- **Support capacity building for trade unions:** CNV Internationaal should provide training and resources to local trade unions to enhance their ability to advocate for workers' rights and improve negotiation skills. Strengthening trade unions' influence will promote fair labor practices and improve working conditions. Educational materials, workshops, and legal support should be provided to trade unions, leveraging CNV Internationaal's existing network and resources for effective delivery.
- **Advocate internationally for improved standards:** CNV Internationaal should use international platforms to advocate for better conditions in South African mines and promote responsible sourcing by global companies. By influencing global supply chains and international policies, CNV Internationaal can support fair labour practices and environmental sustainability. Engaging in global fora, collaborating with international human rights and environmental organisations, and running awareness campaigns targeting international consumers will amplify advocacy efforts.

#### 4.4.4 Recommendations for CNV Internationaal's trade union partners

- **Strengthen collective bargaining:** Trade unions should enhance their collective bargaining strategies to negotiate better wages, working conditions, and benefits for workers. Improving the overall welfare of workers in the mining sector requires training in negotiation skills, sharing successful bargaining tactics from other contexts, and providing legal support during negotiations. Existing union structures and support from CNV Internationaal can be used to implement these activities effectively.
- **Address community and gender-related issues:** Trade unions should develop and implement outreach programs addressing the impacts of mining on local communities, focusing on health, education, and infrastructure. Mitigating the negative social impacts of mining and promoting gender equality involves conducting needs assessments, partnering with local NGOs, and launching awareness campaigns on gender equality. Community development projects based on identified needs should be implemented, collaborating with local and international partners to secure funding and expertise for these initiatives.

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## Appendix 1 **CSR policy analysis framework**

### **1. Embed responsible business conduct into policies and management systems**

- Is there a public responsible business conduct or human rights policy covering labour conditions?
- Does the company explicitly commit to the following international standards:
  - The OECD Guidelines
  - The UNGPs
  - The ILO Declaration on Fundamental Principles and Rights at Work
  - The 8 fundamental ILO Conventions:
    - Conventions 87 and 98 (freedom of association)
    - Conventions 29 and 105 (elimination of forced labour)
    - Conventions 100 and 111 (elimination of discrimination in the workplace)
    - Conventions 138 and 182 (abolition of child labour).
- Does the policy statement outline expectations/requirements that suppliers (direct and indirect) and other business relations also respect human rights (including women's rights) and labour rights?

### **2. Identify and assess actual and potential adverse impacts associated with the enterprise's operations, products or services**

- Does the company conduct a risk screening or scoping exercise to identify the areas of business where RBC risks are most present and significant?
- Does the risk assessment actively consider labour rights, particularly the Fundamental Principles and Rights, but also occupational health and safety, subcontracting practices, and living wages?
- Does the company consult and engage impacted and potentially impacted rightsholders, including workers, workers' representatives, and trade unions? Do companies seek to engage with women groups specifically? If consulting rightsholders is not possible, independent expert such as human rights (including women's rights) defenders, trade unions, and CSOs should be consulted.
- Is the risk screening gender-sensitive? E.g., is gender-disaggregated data selected, and is there specific attention to gendered impacts and risks?

### **3. Cease, prevent and mitigate adverse impacts**

- Does the company have a mitigation plan in place when adverse impacts are identified? I.e., engagement with suppliers, action plans, monitoring mechanisms etc.?
- Does the company actively promote and protect workers' representation and trade unions, and engage with workers, workers' representation and trade unions to prevent and mitigate risks?
- Does the company engage in cross-sectoral approaches in addressing systemic labour issues, such as child labour?

### **4. Track implementation and results**

- Does the company report on continuous tracking of the implementation and effectiveness of due diligence and mitigation activities? E.g. reporting on engagement with suppliers, reporting on whether risks have been mitigated etc.?
- For human rights impacts the enterprise has, or may, cause or contribute to, does the company seek to consult and engage impacted or potentially impacted rightsholders, including workers, workers' representatives and trade unions to track progress?

## **5. Communicate how impacts are addressed**

- Is the company transparent by publicly disclosing relevant information on due diligence policies, processes, activities conducted to identify and address actual or potential adverse impacts, including the findings and outcomes of those activities?
  - Check for example for: Human Rights / Due Diligence Policy, Codes of Conduct, Sustainability Reports.
- Does the company disclose labour, human rights, or environmental audit or assessment results with impacted or potentially impacted rightsholders, while respecting confidentiality requirements?
- Does the company disclose gender-disaggregated data where relevant, including on impacts on workers?

## **6. Provide for or cooperate in remediation where appropriate**

- Does the company commit to cooperating in or providing remedy when it has caused or contributed to actual adverse impacts?
- Does the company have a grievance mechanism that is accessible for:
  - Direct employees and subcontractors
  - Indirect workers in the supply chain
  - Communities and other external stakeholders
- Does the company communicate transparently about the grievance mechanisms, including aspects like procedure, processing times, remedial activities?
- Does the company guarantee non-retaliation to whistleblowers with protection mechanisms where relevant (e.g. guaranteeing anonymity, procedural safeguards, gender sensitivity e.g. in relation to gender-based violence (GBV))?

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