

Research Insight

February 18, 2021

Time to normalise respect and remedy for Human Rights in mining

Human Rights crosscut a wide range of issues, and mining activities by their nature can impinge on many of them. Ten years after the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs), data from the [RMI Report 2020](#) shows that the large mining companies assessed score on average a low 19% on human rights-related issues. It is more than time for mining companies to fully embrace both the precepts of ‘respect’ and ‘remedy’ on all aspects of Human Rights.

Implementation of the UNGPs

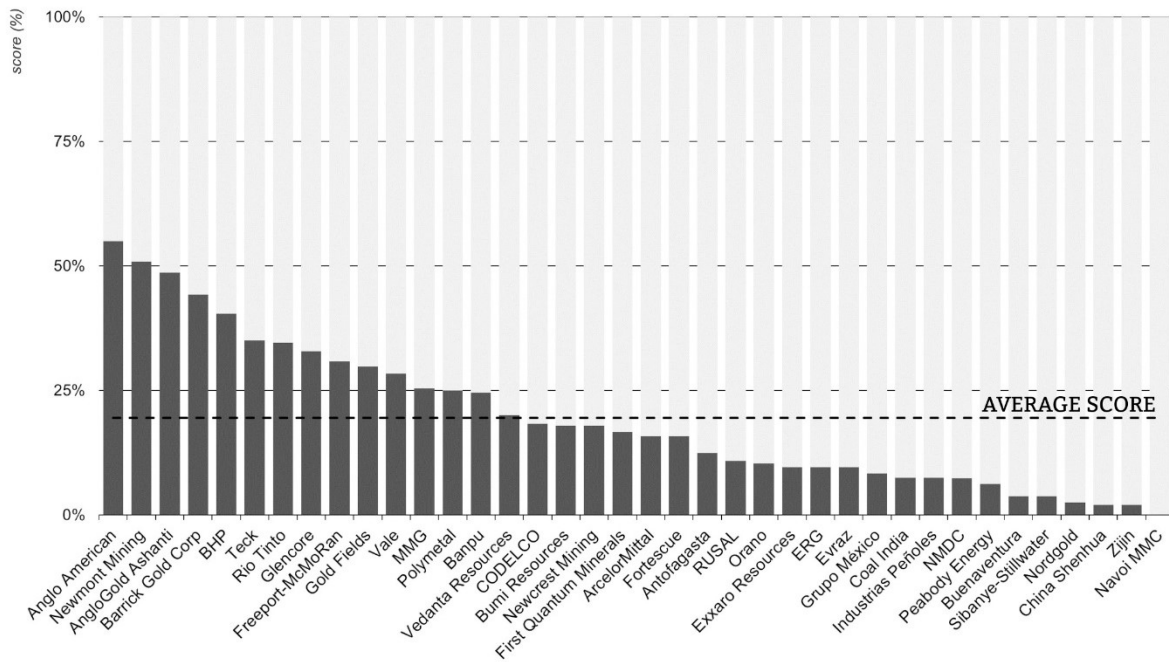
The UN Guiding Principles on Business and Human Rights (UNGPs) is the authoritative global standard on business and human rights. All businesses – not only mining companies – have a responsibility to respect human rights and provide for remedy in the case of violation. Moreover human rights are at the heart of the universally supported UN Sustainable Development Goals (SDG) – according to the Danish Institute for Human Rights, 90% of the SDG targets have direct linkages with human rights.¹

So what is the current status of human rights in the mining sector?

Evidence shows that more companies are integrating human rights issues in their public reporting. And it is encouraging to see that human rights are often identified as a “material” issue by mining companies, regulators, shareholders and financiers. However, the vast majority of companies assessed in the [RMI Report 2020](#) show no evidence of translating their corporate commitments into action plans, thorough due diligence processes, and tracking the effectiveness of implementation.²

On average the set of large mining companies assessed in the RMI Report 2020 achieve a low 19% score on human rights-related issues (See Figure 1 below).

Figure 1 Average company scores on human rights
(Results from RMI Report 2020 – 59 human rights-related metrics)



Commenting on the results, Phil Bloomer, Executive Director of the Business and Human Rights Resource Centre, said:

“This report highlights better performance of a small cluster of leading companies, and exposes the negligence of the large majority. This not only leaves workers and communities more vulnerable to abuse, but also heightens the risks to the companies and investors, especially when governments’ appetite for regulation to prevent abuse is growing.”

Some progress but lack of comprehensive approach

According to RMI Report 2020 data it is encouraging to see a few companies scoring 75% or above on their management strategies and action plans to assess and address specific risks related to issues such as water rights, Indigenous Peoples’ rights, land rights, resettlement, workers’ rights, security forces, or child labour.

What is concerning though is the lack of consistency across all human rights issues demonstrated by these mining companies. When the 59 human rights-related metrics are averaged, the highest score achieved is only 55%; with only two companies (Anglo American and Newmont) scoring higher than 50%.

Commitment to respect Human Rights
Human Rights Defenders
Human Rights Due Diligence (HRDD) at all mines
HRDD across Suppliers and Contractors
HRDD on Mergers, Acquisitions & Disposals
Forced & Child Labour
Security and Human Rights
Conflict-affected and high-risk areas
Indigenous Peoples
Free, Prior, and Informed Consent (FPIC)
Water rights
Land rights
Resettlement
Community Grievances
Living Wage
Workers' fundamental rights
Worker Grievances

Human rights-related topics covered in the RMI Report 2020

Moreover there is hardly any evidence of companies acting on a number of key human rights issues, such as ensuring a living wage for mine workers, tracking the effectiveness of grievance mechanisms, or assessing mining-induced risks for communities in high-risk and conflict-affected areas.

This further emphasises the need for a more systematic and comprehensive approach to the full spectrum of human rights in corporate practices.

Commenting on this lack of consistency, Dante Pesce, Chair of the UN Working Group on Business and Human Rights, said:

“Leadership means acting with integrity and translating principles into real action everywhere you operate. These contrasting results confirm that it is critical for mining companies to scale up and replicate leading practices across all aspects of human rights, at all their mine sites. The call for a decade of global implementation of the UNGPs offers a unique opportunity to normalise and mainstream respect and remedy for Human Rights in the sector.”

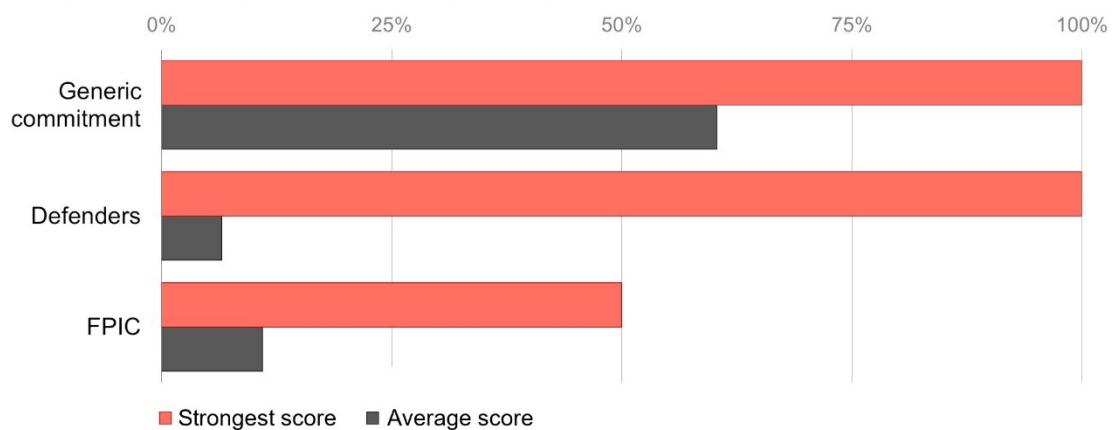
Over-simplification raises the question of window-dressing

Human rights encompass a comprehensive range of civil, political, economic, social, cultural, and environmental rights. Yet research by RMF shows that many mining companies reduce human rights to a very limited set of issues, thereby shielding themselves from the real implications and liabilities that a full recognition of human rights would entail. And by doing so, they miss the opportunity to play their part in advancing the normalisation of human rights and to fully address the impacts on and the concerns of all stakeholders.

Some companies have argued that there is no need for specific policies, e.g. on rights defenders or Free, Prior, and Informed Consent (FPIC), when an overarching human rights

commitment is in place (see Figure 2). But given the prevalence of threats and killings faced by human rights, land and environmental defenders, it is clear that companies need to be more explicit about the scope of human rights they commit to respect and remedy. And over-simplified commitments to respect for human rights easily raise the question of window-dressing.

Figure 2 Comparison generic commitments and issue-specific human rights commitments
(Results from RMI Report 2020 – D.01.1, D.01.4, and D.09.1)



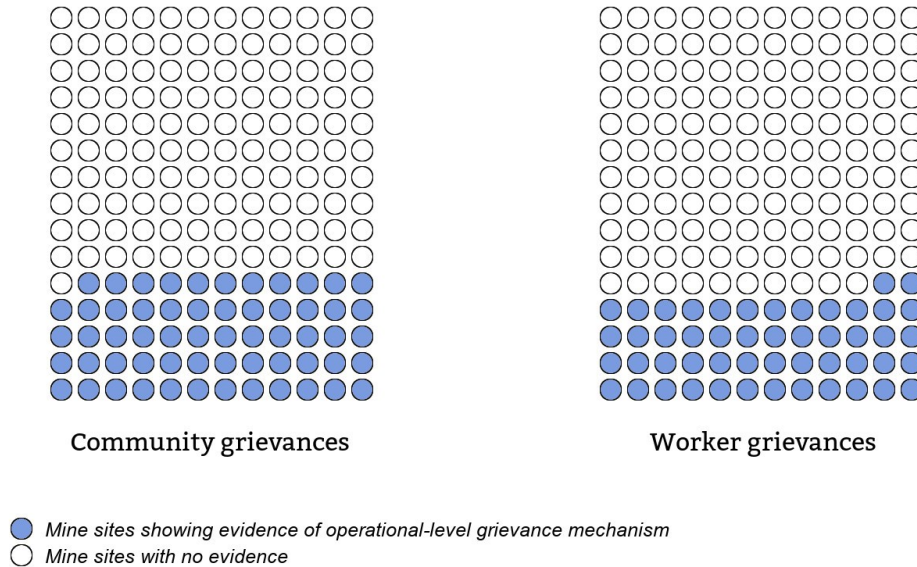
Delivering on the basics of remedy

Access to remedy is one of the three pillars of the UNGPs, in recognition of “the need for rights and obligations to be matched to appropriate and effective remedies when breached”.³ Operational-level grievance mechanisms are an important entry point to providing remedy to affected communities and workers.

When operating effectively such mechanisms enable companies to identify minor concerns before they escalate into unmanageable conflicts; help avoid protests or opposition to mining projects and costly legal battles; and increase access to project finance. Information generated through the operational-level grievance mechanisms can also facilitate learning that can support better management of relations with communities and with workers over the long term.

The results on grievance mechanisms in the RMI Report 2020 are not encouraging. At the mine-site level, where 180 mine sites across 49 producing countries were assessed against the most basic indicators, only about one-third of the mine sites disclose any information about operational-level grievance mechanisms for communities and for workers (See Fig 3.).

Figure 3 Evidence of operational-level grievance mechanisms at 180 mine sites
(Results from RMI Report 2020 – MS.04 and MS.05)



This lack of evidence casts doubts on the ability of companies to know about and respond to grievances.

At the corporate level the results are similarly weak. Less than half of the companies show any evidence of tracking the functioning and uptake of their community grievance mechanisms, and no company provides details on the actions taken or remedies applied in response to the grievances raised. A similar pattern is seen regarding worker grievances.

A few companies demonstrate they have undertaken recent reviews or audits on the effectiveness of their community grievance mechanisms, but there is barely any evidence of companies acting on the results of these reviews or audits to improve the effectiveness of these mechanisms. Here mine workers seem even more overlooked, as no company shows evidence of having recently reviewed or audited its worker grievance mechanism.

This generalised lack of attention to grievance mechanisms and their effectiveness does not show a serious commitment to the UNGP precepts of respect and remedy.

Investors help set the norms

Leaders from the investment community realise that strong ESG performance and a robust record on human rights contribute to a stable business environment and lower levels of risk. According to the Investor Alliance on Human Rights, “investors are increasingly aware of and concerned about the significant operational, financial, legal, and reputational risks portfolio companies might face when they fail to manage human rights risks”.⁴ So while companies are facing growing concerns, conflicts and even disruption on the ground, their investors, lenders, financiers and capital providers also get more exposed to human rights risks.

Investors can help foster higher standards and performance on human rights across their mining portfolio in a number of ways. They can engage with companies, the finance community and multi-stakeholder initiatives to promote learning and capacity-building. Lenders can incentivise loan conditions based on agreed ESG performance targets, and shareholders can directly file and vote in favour of proposals that definitively integrate human rights in business strategy. Together with regulators, investors and banks are clearly in a strong position to accelerate the transition to a meaningful normalisation of human rights.⁵

Regulators enable wider action in the value chain

Recent examples of legislation with binding due diligence requirements for corporations (such as France’s 2017 Corporate Duty of Vigilance Law⁶ and UK’s 2015 Modern Slavery Act⁷) have already shown the potential for large multinational companies to raise the general human rights standards among their business partners, suppliers and contractors. With the adoption of the Japanese Corporate Governance Code in 2015⁸, the US Securities and Exchange Commission that recently mandated human capital disclosures to be included in regulatory filings⁹, the EU Non-Financial Reporting Directive (NFRD) currently under review, and growing concerns for sustainability within the Chinese private sector,¹⁰ major regulators are making a stronger case for human rights.

And with the growing interest for more responsible and ethical supply of raw materials also coming from downstream consumers, there is good momentum to realise respect for human rights along the entire value chain.

However, mining companies show mixed results on responsible sourcing and contracting in the RMI Report 2020. While the vast majority of companies mention the existence of a responsible sourcing approach, only a few companies demonstrate they have formal systems in place to assess any human rights issues associated with their suppliers and contractors. Where companies have set human rights requirements for their current and potential suppliers and contractors, they provide little evidence of pro-active due diligence on all such business partners, based on these requirements.

Given the regulatory momentum, companies have an opportunity to demonstrate leadership by proactive implementation across all their operations, regardless of jurisdiction, rather than waiting to act only when forced to do so by legal requirements.

Respecting Human Rights across ownership and time

Frequently overlooked and more difficult to track is the issue of human rights due diligence on Mergers, Acquisitions, and Disposals – often off the radar of investors and regulators. Only a few companies in the RMI Report 2020 show evidence of having systems in place to ensure that due diligence on mergers, acquisitions and disposals cover salient human rights issues.

Mergers and acquisitions have the potential to catapult companies into markets where human rights are threatened by weak legal regimes and enforcement or by poor relationships between the mining industry and communities. These situations can translate into high costs for companies in the form of legal actions, operational delays, staff time spent on mitigating unanticipated issues, reputational damage from conflicts with communities, and loss of confidence from investors.

Similarly, disposal of mining assets creates potential long-term liabilities for buyers, but also for sellers, governments and communities if purchasers do not have the technical expertise or financial wherewithal to adequately manage and remediate human rights risks during the operational and post closure life of a site. Combined with the lack of evidence that any socio-economic financial arrangements and closure agreements are actually put in place when selling mines to juniors, smaller and/or less resourced companies,¹¹ these results should trigger increased attention from companies, investors and regulators.

Conclusion

Although the RMI Report 2020 encourages improvement in responsible mining by emphasising responsible leading practices and positive contributions where they can be found, it is essential to also acknowledge the persistence of severe adverse impacts that are caused or contributed to by companies' mining activities.

17% of all the cases treated by the National Contact Points for the OECD Guidelines for Multinational Enterprises (NCP) since 2000 for alleged misconduct were linked to mining and quarrying (86 out of 496 for all industries). And mining remains the deadliest sector globally for human rights and land defenders.¹² The scale and persistence of severe adverse impacts greatly undermine progress made by companies towards more effective management of human rights and ESG issues.

With the momentum created by the call for a Decade of Global Implementation of the UNGPs, normalisation of respect and remedy for human rights in the mining industry will also reinforce the aims of the UN Decade of Action to deliver on the SDGs.

¹ The Danish Institute for Human Rights, "The Human Rights Guide to the Sustainable Development Goals". <https://sdg.humanrights.dk/>

² RMF (2020), "RMI Report 2020". <https://2020.responsibleminingindex.org/>

³ United Nations (2011), "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework". https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁴ Investor Alliance for Human Rights (ICCR) (2020), "Investor Toolkit on Human Rights". <https://investorsforhumanrights.org/sites/default/files/attachments/2020-05/Full%20Report-%20Investor%20Toolkit%20on%20Human%20Rights%20May%202020c.pdf>

⁵ "This has been a crucial driver for the integration of human rights within enterprises and has secured a place for human-rights considerations at the top of the business agenda." in IOE (International Organisation of Employers) (2021), "#UNGPsPlus10: Achievements, challenges, and the way forward in the uptake and implementation of the UNGPs". <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=148306&token=a389abc4b2b87d173023a7140bb103087b4b609b>

⁶ Légifrance (2017), "LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre". <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>

⁷ Legislation.gov.uk (2015), "Modern Slavery Act 2015" <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

⁸ JPX (2015), "Japan's Corporate Governance Code (Provisional translation)". <https://www.jpjx.co.jp/english/equities/listing/cg/tvdivq0000008jdy-att/b7gje60000029qfh.pdf>

⁹ SEC (2020), "SEC Adopts Rule Amendments to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K". <https://www.sec.gov/news/press-release/2020-192>

¹⁰ China Briefing (2020), "Sustainability Reporting in China: The Rise of CSR and ESG Reporting by Businesses" <https://www.china-briefing.com/news/sustainability-reporting-china-csr-esg-reporting-business-accountability/>

¹¹ RMF (2020), "It takes money to leave positive mining legacies: Where is it?" https://www.responsibleminingfoundation.org/app/uploads/RMFxTheLawyersDaily_FinancingPostClosure_December2020.pdf

¹² Global Witness (2020), "Defending Tomorrow". https://www.globalwitness.org/documents/19939/Defending_Tomorrow_EN_low_res_-_July_2020.pdf

Responsible Mining Foundation

The Responsible Mining Foundation (RMF) is an independent research organisation that encourages continuous improvement in responsible extractives across the industry by developing tools and frameworks, sharing public-interest data and enabling informed and constructive engagement between extractive companies and other stakeholders.

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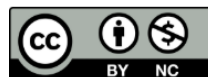
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