THE STATE OF IMPLEMENTATION OF BUSINESS & HUMAN RIGHTS PRINCIPLES IN THE CRITICAL MINERALS VALUE CHAIN IN SOUTHERN AFRICA

prepared by Manson Gwanyanya

SARW
Southern Africa Resource Watch

Email: info@sarwatch.org
Phone: +27(0) 10 157 0194
www.sarwatch.org

THE STATE OF IMPLEMENTATION OF BUSINESS & HUMAN RIGHTS PRINCIPLES IN THE CRITICAL MINERALS[1] VALUE CHAIN[2] IN SOUTHERN AFRICA

INTRODUCTION & BACKGROUND

This issue paper presents findings from an expert-led webinar on the state of business and human rights principles in the critical minerals value chain in Southern Africa hosted by Southern Africa Resource Watch (SARW) on 9th May 2024 and further literature review on the same question. The paper engages with the current state of implementing business and human rights principles within the critical minerals value chain in Southern Africa. It also assesses whether these principles are upheld throughout the value chain stages, including extraction, processing, and distribution of critical minerals. The paper also identifies any potential challenges and success factors in implementing these principles to provide recommendations for improvement.

The world faces an intricate and challenging problem at the intersection of the urgent need for climate action and the promotion of accessible, affordable, and reliable energy, particularly for those experiencing energy poverty for decades. At this convergence, the global community is grappling with the question of a just transition to a low-carbon economy supported by renewable energy. This energy transition implies a sustainable phase-out of fossil fuels, the primary source of greenhouse gas emissions (GHGs) leading to climate change. To deal with this complex global challenge, states agreed to the Sustainable Development Goals

(SDGs), among which are Goals 7, Goal 12, and Goal 13. These three SDGs represent the complex convergence the just transition concept aims to navigate. The first Global Stock Take (GST) from the United Nations Framework Convention on Climate Change (UNFCCC) COP28 emphasised the urgent need for a just energy transition. In addition, the UN Guiding Principles on Business and Human Rights, provide guidelines for States and companies to prevent and address human rights abuses in business operations.

At the centre of all this is the African continent and Southern Africa in particular, which holds vast quantities of the critical energy minerals – such as cobalt, lithium and nickel – which are used to help produce, transport, store and use electricity generated from cleaner sources such as wind and sun – and which are a prerequisite for a clean energy future. However, evidence, so far indicates that these opportunities are accompanied by severe threats to rights and livelihoods. The current approach to critical minerals extraction and deploying renewable energy installations is unviable. It harms local communities, is unsustainable and, in turn, generates conflict and resistance, which slows the transition and increases its costs. Examples of these harms include in Zimbabwe, where experts cited issues such as discriminatory and unethical labour practices, environmental degradation, lack of contract transparency, and information on beneficial ownership,

---

[1] There are defined as minerals – such as copper, lithium, nickel, cobalt – that are essential components in many of today's rapidly growing clean energy technologies, from wind turbines and solar panels to electric vehicles.

[2] Value chain generally speaking means the full lifecycle of a product or process, including material sourcing, production, consumption, and disposal/recycling processes.

SARW
Southern Africa Resource Watch

among many in the lithium mining sector. There have also been reports of family displacements in Zimbabwe and poor working conditions for mine workers.

Mozambique, believed to be the world's second-ranked graphite producer, accounting for more than 13% of the world's production, was no different. Experts cited examples of land dispossession because of the graphite industry. In particular, the expert noted that:

"More than 600 households have been displaced from their agricultural land' while exploration [was being] done in the open, and the explosions [were] heard by families, causing dust and negatively impacting the environment and the health of the population.'

Namibia is another example; the mining of zinc in the country has also caused lead exposure among children. Recent data by the Business & Human Rights Resource Centre ('BHRRC') indicated that Africa is second in the world in the number of allegations of human rights abuse by critical minerals companies. These include, among others, impacts on local communities of large-scale copper and cobalt mining operations in the Katanga region of the DRC that have continued to

emerge, involving, in the case of two projects, egregious abuses perpetrated by State armed forces.

The risks associated with mining these critical minerals have thus led to increasing scrutiny of the mining industry. As mentioned earlier, Southern Africa possesses vast reserves of critical minerals essential for the global energy transition. Data shows that demand for these critical minerals will grow by three and a half times by 2030 as the world transitions from fossil fuels to renewable energy. All this is to reduce global carbon dioxide emissions to net zero by 2050, which is crucial to ensure that the rights of those affected by these mining-affected communities are protected. Where harm is done, there should be access to effective remedies. The holistic approach to assessing the mining sector's business and human rights practices necessitates a comprehensive consideration of the entire value chain. This entails focusing on mining companies and the critical aspects of financing mining projects, the transportation of resources, the value-added manufacturing process, and the marketing of mined products. Furthermore, it is essential to delve into the various dimensions of employment policies, governance, regulatory compliance, and national and international work relations complexities. These considerations must address crucial issues such as equitable access to energy, free prior and informed consent, and the protection of land rights.

THE STATE OF IMPLEMENTATION OF BUSINESS & HUMAN RIGHTS PRINCIPLES IN THE CRITICAL MINERALS VALUE CHAIN IN SOUTHERN AFRICA.

Despite the harmful activities of corporate actors in the critical minerals sector and value chain in Southern Africa, there has been no robust response regarding policy frameworks and regulatory capacity to compel corporations to respect human rights at the regional level. Based on the expert-led discussions and submissions on the state of implementation of business and human rights principles in the Southern Africa webinar, there can be no doubt that Africa, in general, and Southern Africa in particular, lags in the implementation of business and human rights standards in the critical minerals value chains. The literature review also points to the same conclusion. There has also been very little movement on developing National Action Plans ('NAP') on business and human rights within the region. Except for Mozambique, no other country in the region has made any meaningful strides towards developing a NAP. Discussions revealed that Mozambique is now at an advanced stage in developing a national action plan on business and human rights, as it has recently concluded a draft baseline study. Through the Mozambique League of Human Rights, Mozambique has also published a Human Rights and Business Country Guide, which guides companies in their approach to business and human rights compliance.

The lack of any development on this from other countries is concerning mainly because, as highlighted above, Southern Africa suffers most from egregious business conduct in the mining sector. As the BHRRC's transition minerals tracker demonstrates, the mining of critical minerals has been a dangerous sector since 2015.

While there have been some commitments to the business and human rights agenda in Southern Africa, many gaps exist in policy and institutional alignments and the implementation of the UNGPs. There is also a minimal, if any, policy framework that pays particular attention to the critical minerals sector. At the regional or continental level, the Africa Mining Vision (AMV) was developed in 2009 to ensure that Africa utilises its mineral resources for development. It calls for the "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development". It remains unclear, however, the extent to which Southern African states have implemented the provisions of the AMV. In 2000, the Southern African Development Community Protocol on Mining came into force; one of its core principles is to 'harmonise national and regional policies, strategies and programmes related to the development and exploitation of mineral resources.' Sadly, limited reviews of the policy frameworks have been developed by member states to ensure harmonisation of regional policies in the exploration of minerals in SADC.

The African Green Minerals Strategy is intended to augment the existing body of mineral development policies. Its focus is on the opportunities created by these new conditions to formulate a strategy grounded in the prevailing circumstances of African countries and informed by local, regional, and global conditions. Although this presents an excellent opportunity for states to pursue the agenda of human-centric mining policies, there is also very little evidence of how states have implemented some of their policies. In the Southern Africa region, only Zambia has developed a Critical Minerals Strategy. Although it is not comprehensive, it is a step in the right direction towards defining how the country should manage its critical minerals. This strategy is an important document that addresses the rights of communities in critical minerals mining areas.

There have also been very few developments in the judicial sectors in Southern Africa. No national judicial and justice systems have effectively prevented, investigated, or prosecuted business and human rights violations, let alone in the critical minerals sector. If anything, it is left to the local communities to legally challenge violations in civil courts, mainly by supporting civil society organisations (CSOs) such as the Centre of Environmental Rights (CER) in South Africa. Below are some proposed pathways to improved practices identified in the webinar.

SARW
Southern Africa Resource Watch

RECOMMENDATIONS

States must adopt and integrate the principles into their policy frameworks and laws, particularly the Constitution, corporate, banking, and security laws, policies, and regulations. States should also recognise that developing a National Baseline Assessment and National Action Plans (NAPs) is instrumental in ratifying the policy frameworks. Consequently, developing NAPs is critical in ensuring the implementation of business and human rights principles in the critical minerals value chain. The NAPs must set out the expectations of governments, its agencies, and businesses while outlining key priorities and commitment towards implementing business and human rights norms.

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (the Guidance) clarifies how companies can identify and better manage risks throughout the entire mineral supply chain, from miners, local exporters, mineral processors and the manufacturing and brand name companies that use these minerals in their products. It applies to all minerals and is global in scope. This tool is essential for African states to replicate in ensuring that the critical minerals value chains implement human rights principles. In other jurisdictions, the certification of minerals has also aided in avoiding minerals tainted with human rights violations. It may be crucial for the region to develop a certification mechanism that will certify mineral exports under industry from responsible sourcing programs.

Due diligence is an ongoing, proactive, and reactive process through which companies can identify and address actual or potential risks to prevent or mitigate risks of contributing to adverse impacts associated with

their activities or sourcing decisions. Critical minerals companies should thus have mandatory due diligence mechanisms that assess risks by identifying the factual circumstances of their activities and relationships and evaluating those facts against relevant standards provided under national and international law. Further, a survey by the UNDP in 2020 uncovered challenges to implementing the UNGPs, such as a lack of awareness of them, the perceived dichotomy between economics, and the failure to make human rights due diligence mandatory. It will, therefore, be crucial for states to make human rights due diligence mandatory in the operations of corporations with specific attention to critical minerals.

There is also an urgent need to ensure all companies in the critical minerals value chains assume responsibility for their work's human rights impacts. This will ensure that their chain of suppliers and subcontractors does not violate human rights. It is also crucial for communities to understand and be aware of the corporation's duty to respect human rights. This will aid in building a culture of trust and integrity among local communities, investors, and shareholders. Technology should also play a crucial role in the protection of human rights, innovative tools like the Corporate Accountability App, currently being developed by SARW will no doubt aid in the protection of human rights. CSOs should continue to create other monitoring tools to improve human rights practices and protections. Companies should also support capacity building and fair workers' treatment: promote knowledge transfer, local employment, workers' health and safety, fair living wage and zero tolerance to abuses and attacks. Promote equity models to build community trust, including benefit-sharing and co-ownership practices.

SARW
Southern Africa Resource Watch

CONCLUSION

To conclude, it is clear from the deliberations in the webinar and literature review that the state of implementation of business and human rights principles in the critical minerals value chain in Southern Africa is currently delicate. There is an urgent need to foster a human rights-centric approach in the critical minerals value chain. This cannot be achieved unless respect for human rights is embedded into business models. As proposed by one expert from Oxfam SA, the transition must include:

'a systemic decolonial and feminist transformation that addresses the root causes of ecological and economic breakdown and inequality, in particular the colonial, neoliberal and patriarchal extraction of labour (including reproductive labour), land, and resources.'

Regional collaboration is the key to ensuring that Africa gains its rightful place in the new power map drawn by the energy transition. The African Union, the Southern African Development Community and other regional blocs could play a pivotal role in this process, promoting intra-regional trade and economic cohesion. African civil society, too, needs to work across borders to ensure that deals signed by African governments with consumer regions reflect the continent's collective interests. The claim that it is urgent to acquire critical minerals should give African governments greater power to make mining deals that will benefit people, the environment, and further development.