CONTROLLING THE RICH AND POWERFUL:
THE ROLE OF HUMAN RIGHTS NORMS IN MINING

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Abstract

After a long history of worldwide negative experiences in the process of resource extraction, one of the important challenges that remains is the (un-)ethical behaviour of the rich and powerful actors. The issue of power and its malicious use prevails in the basis of the problem. This paper considers the issue of ethics in contemporary mining operations and its direct impact on the respect and abuse of human rights. Although the last decades have experienced the rise of hard and soft law regulating mining operations, practice shows that there are still cases of abuse of basic human rights, especially by multinational companies. This research aims to: (1) emphasise that, despite the development of democracy, legal provisions and other instruments of control, the negative legacy of mining impacts on populations and environment still occurs around the globe, especially in developing countries; (2) be a reminder of the most important instruments that can support ethical behaviour during mining operations; and (3) propose future steps for a more successful mitigation of negative effects.

Key words: mining, human rights, legislation, ethics, social responsibility.

КОНТРОЛИСАЊЕ БОГАТИХ И МОЋНИХ: УЛОГА НОРМАТИВА О ЉУДСКИМ ПРАВИМА У РУДАРСТВУ

Апстракт

Након дуге историје негативних искустава у процесу експлоатације природних ресурса широм света, један од значајних изазова који преостаје јесте (не-)етичко понашање богатих и моћних актера. У основи проблема преовлађује питање моћи и њене злонамерне употребе. Рад разматра питање етике у савременим рударским активностима и њен директан утицај на поштовање и кршење људских права. Иако је последњих деценија дошло до развоја чврстог и меког законодавства које регулише рударске активности, пракса показује да и даље има случајева злоупотребе основних људских права, посебно од стране мултинационалних компанија. Основни циљ истраживања је: (1) да нагласи да се упркос развоју демократије, законских одредби и других инструмената контроле негативно наслеђе утицаја рударства на становништво и животну средину и даље јавља широм света, по-

себно у земљама у развоју; (2) да подсети на најважније инструменте који могу да подрже етичко понашање током одвијања рударских радова; и (3) да предложи неке будуће кораке за успешније ублажавање негативних ефеката.

Кључне речи: рударство, људска права, законодавство, етика,
                    друштвена одговорност.

INTRODUCTION:
THE HUMAN RIGHTS CHALLENGE TO MINING

Human rights can be used as "ethical yardstick" for measuring government's treatment of its people (Heard, 1997:3). In that sense, it seems that many governments often behave 'immorally' and this 'dark side', according to Mitchell and McCormick (1988:476), knows no boundaries – weather geographical, political or economic. It appears that in the era of globalisation governments are even more unable to protect human rights, particularly economic and social ones (Gill, 1996 in Evans, 2005:107). The abstract right of an individual brought provisions for equality and upholds the belief that humans are the ultimate and sole purpose of the legal system (Dimovski, 2021). However, as Amnesty international (2024) reported, during the 2023 in at least 19 countries there have been serious human rights violations connected with mining - including killings, forced evictions, excessive use of force, child labour, forced labour, arresting, environmental degradation, lawsuits for environmental criticism, SLAPPs (Strategic lawsuit against public participation), and especially related to vulnerable indigenous peoples by malnutrition, health risk due to contamination, shootings, arresting, violence and sexual violence. In the last two decades, the most shocking was when a wave of violent wildcat miners' strikes in South Africa that started in platinum mine in August 2012, spread to coal and other sectors, and culminated with the Marikana massacre when state police killed 34 workers (Chinguno, 2012). By implying that South African society has not made such a long step forward since the Apartheid time – as mine workers are still being underpaid, living in poor housing conditions and segregated (Chinguno, 2012; Idemudia et. al., 2022), this reminds us how history of capital accumulation based on violence repeats. But spread of neoliberal approach to economic management (in this case 'Afro-neoliberalism') is not the only reason for the lack of improvement in human right conditions around the globe; though it changes over the time in different areas. Selya (2012) sums up the other reasons to: simplistic definition of democracy and doubts if it can ensure human rights, emergence of authoritarian capitalism, globalisation and efficiency, non adherence/abuse of signed human rights conventions and treaties, corruption and institutional constraints in newly established democracies, and use of paramilitary forces in civil conflicts.

The enrichment of mining companies at the expense of local residents continues, and the trend of 'the rich get richer, the poor get poorer' is becoming even more evident in the period of the global crisis in vast majority of countries (Koechlin, 2012; Torres, 2012). It seems those companies gladly tend to follow M. Friedman's much criticized idea (from 1950s) that "there is one and only one social responsibility of business – … to increase its profits", who argues that corporate social responsibility is "a fundamentally subversive doctrine" (1982:133 [1962]). Many international mining corporations, as well as government or nationally owned mining companies, often follow Friedman's pattern - they behave selfishly and arrogantly with regard to the needs and aspirations of domicile population by plundering the area's mineral reserves, operating without licences and leaving only devastation and misery in their wake. Especially in less-developed countries overwhelmed with problems of corruption, human rights violations, legislation disrespect etc., these "profit-oriented giants" tend to ignore or bypass laws, human rights and any other obstacle that gets in their way. And though human rights legal provisions have been developed to "empower to the powerless", they inevitably ended up supporting the powerful, as Moyn (2010: 227) points out.

Though we, according to historian Samuel Moyn (2010:1), associate the phrase 'human rights' with "a familiar set of indispensable liberal freedoms, and sometimes more expansive principles of social protection", it is an *utopian* program, almost "a form of religion" as Heard (1997:3) sees it. That "implies an agenda for improving the world, and bringing about a new one in which the dignity of each individual will enjoy secure international protection" (Moyn, 2010:1). Understanding of the sanctity of human life and scope of the basic rights and freedoms to which all humans are entitled has significantly changed throughout history. While development of modern sense of human rights goes back to the era of renaissance humanism in the Early Modern period in Europe, the greatest development in this field occurred during the 20th century. However, apart from significant development of national and international human rights legislation especially after World War II (according to Moyn, 2010, both legislation frame, scope and awareness of human rights issues have grown steadily since the 1970s), as well as in scientific and expert communities widely acknowledged viewpoint on necessity of good cooperation of mining companies with (especially local) population (in order to gain "social licence to operate" - SLO), many companies today still tend to ignore or undermine human rights issues and problems of weak institutions.

Human rights protection is posing a huge challenge to mining industry, both in the past and today. Abuse of some of the basic human rights during mining activities mainly happens when enterprises tend to save money and time, so they deliberately avoid implementation of binding international and national provisions. That is made possible by a number of factors, viz.

weak national/regional public institutions, weak measures for law implementation and law enforcement, high level of corruption, political instability, etc. Especially the disregard of local circumstances and needs of local/regional community has been widely practiced, paralleling poor public participation, manipulation, political corruption, neglecting of stakeholders and shareholders, etc. The intention of this contribution is to present a brief review of some key aspects by focusing on more recent trends and still open issues regarding mining and human rights protection.

ADOPTING A HUMAN RIGHTS APPROACH TO MINING

Rapid development in the field of human rights (HR) at international level refers especially to the adoption of the United Nations (UN) Universal Declaration of Human Rights (UDHR) in 1948 that was signed and ratified by overwhelming majority of countries. Although UDHR has never been legally binding, it is considered as the most important document in the area of human rights in the last century and it has inspired creation of a rich body of legally binding international human rights treaties and conventions - both global (as International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) and regional (African Charter on Human and Peoples' Rights, American Convention on Human Rights; European Convention on Human Rights, etc.). As for the non-binding declarations, which have usually been understood a *soft laws*, here the most important are: Declaration on the Right to Development, Universal Declaration on Cultural Diversity, Declaration on the Rights of Indigenous Peoples, etc. The majority of UN member states have incorporated initial principles from UDHR in their national legislations. Subsequently, the scope of human rights has been extended to other rights, viz. women's and children's rights, cultural, environmental, indigenous peoples rights, etc.

The international reception of UDHR and other HR treaties has varied across the global regions. The countries of Asia-Pacific region have ratified only some of the core international HR documents, making this region the only global macro-region without any regional human rights mechanism introduced so far. The USA represents a specific case in this respect, as it has been insisting on the promotion of human rights around the world, on the one hand, but at the same time has not ratified many *soft* and *hard* international human rights documents (relating to civil and political rights, children, women, workers, people with disabilities, torture, forced evictions, etc.), on the other (Maričić and Oranje, 2025).

In the debates, the issue of direct versus indirect implementability of international norms has been especially disputed. Many researches (Keith, 1999; Cole, 2012) concluded that being a party to international HR convention or treaty does not imply there will be an observable direct

impact. Some explanations would be that impacts are indirect and hard to measure (Keith, 1999), or that good human rights practice was a cause for treaty ratification, and sometimes countries ratify HR treaties without will or capacity to implement them (Cole, 2012). The evaluation conducted by Cole (2012) for the period 1981-2007 concludes that in the long run there are certain positive effects, but they do not always depend on ratification.

Empirical evidence revealed that in the so called "first" development phase – "minerals-dominant phase" (Spooner, 1981) profit (for sovereign, state, region or company) was the only imperative, while all negative impacts of mining activities as land devastation, population relocation, forest cutting or river pollution were considered as irrelevant (minor) consequences of development aimed at the higher productivity (i.e. earnings) in the shortest possible time. After the exhaustion of resources and mine closure, what was left was degraded landscape (with destructed agricultural and forest areas) and hordes of poor and unemployed that often migrated to the suburbia of large cities or to new mines. Positive effects of mining are mostly local and regional, but sometimes short-term (only during mining operations), and can include: employment of local workforce, development of support services and complementary industry, boost of local food production, construction of support infrastructure, etc. Another momentum is also of interest here, especially when referring to the Third World countries, as the division on rich North and poor South in this case can be better expressed trough the metaphor of "Legal North-West *versus* Corrupted South–East". Namely, powerful multinational enterprises (MNEs) in mining sector attempted mere use of developing nations and their conflicts between the workers and management (Pring, 2009), and some of the worst conflicts were supported by national security forces (MMSD, 2002). Majority of positive effects were reduced: all profit went to foreign capital, infrastructure was specialised and oriented outward, connection with other activities was reduced and a minor part of produced resources was used in domestic industry (Grunwald, 1964; in Spooner, 1981:17), which gave small contribution to local development and prosperity. Resentment with this dependency, neo-colonialism and external control sometimes escalated to violent riots (Spooner, 1981)[1], as in the mentioned Marikana case.

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[1] Riots sometimes represented much more – miners' rebellion in 1854 (the Eureka Rebellion) against the British colonial government in Australia grew into "the beginning of democracy" on the continent. More recently, protest in Estonia in 1987 against new phosphate mines (the Phosphate War) led to dissolution of the Soviet Union.

Typically, in many developing countries the MNEs try to make deals in the first place with local elites, often corrupted, along with the widespread jobbery in the public sector. Extensive mineral extraction can be the most profitable economic sector, so these companies represent the only option for many developing nations. This fits well with the widely practiced attitude of the MNEs whose headquarters are based in the most developed countries: they spread their operations over multiple jurisdictions and create legal separation between the group headquarter and "daughter" companies to avoid possible lawsuits in case of violating local social, technical and environmental norms, which are in most cases inferior to those in developed countries. That has been made possible by a mere fact that under-investment in environmental and societal protection in developing countries has rarely been severely sanctioned. However, several developed countries provide extraterritorial application of their national laws allowing foreign citizens to bring enterprises or individuals to court for human rights abuses committed abroad. The most well-known instrument is the U.S. Alien Tort Statute (ATS) which allows foreign nationals to bring the U.S. and foreign corporations to U.S. courts for human rights abuses committed, aided or abetted in a foreign country (Bellinger, 2009). Its scope has been narrowed in recent years, when in the 2013 case *Kiobel v. Royal Dutch Petroleum* the Court ruled that the ATS generally does not apply to actions that occur outside of the U.S. unless there is a significant connection to the U.S. (Ku, 2013). Similarly, the Dutch Civil Code in Netherlands created landmark in corporate environmental responsibility by recently (in 2021, after 15 years) enabling victory for Niger Delta farmers who sued Shell Niger and its parent company Royal Dutch Shell for environmental damage (Ngwakwe, 2021). Enabled by the English Common Law rules, human rights litigation against multinationals whose parent companies were domiciled in England started in 1994/95 (Meeran, 2021). The key sectors involved are mining and oil, located mainly in African continent and followed with Latin America (for analysis of UK cases see Meeran, 2021). One of the first cases was Lubbe & Ors v Cape plc [2000] when 7,500 South African asbestos miners and local residents who suffered from asbestos-related diseases sued the parent company as the South African subsidiary had no money left. Nearly 1,000 of them died during the protracted dispute (1994-2000) (Meeran, 2021). In the European Union, the *Brussels I Regulation (recast)* provides a general mandatory rule that defendants must be sued in the country in which they are domiciled (Aristova, 2021). Canada stands out as home to over 50% of mining MNEs that operate in countries with a weak rule of law. According to Siggelkow (2023), although many Canadian mining companies apply voluntary CSR, they have accounted for one-third of all CSR violations in the mining sector in the first decade of 21st century. Since then, the country adopted national CSR guidelines, and from 2014

allows the hearings of human rights abuse cases in Canadian courts if the host country cannot provide a fair trial. The cases as *Choc v. Hudbay Minerals* (2010) which included allegations for gang rape of 11 women during a forced eviction, shooting of a local activist and murder of community leader (Felix mine, Guatemala); and *Araya v. Nevsun resources* (2014, 2020) when MNE used forced labor at the Bisha mine, operated in partnership with the Eritrean government; affirmed that Canadian courts can have jurisdiction over human rights abuse claims committed abroad by Canadian corporations. Despite all efforts, the recent research (e.g. Coumans, 2024; Siggelkow, 2023) highlights that there are still ongoing widespread violence and human rights violations linked to the activities of Canadian mining companies abroad.

Until recently, this malpractice of disrespecting legislation of the host country has been supported (or at least overlooked) by some of the international financial organisations. For example, it was only in 1994 when the World Bank introduced analysis of environmental aspects in its own approval policy[2]. This played a significant role in helping governments reform their mining legislation (MMSD, 2012).

As one of competing land-use alternatives, mineral development has often induced problems and disagreements on compensation, resettlement, protected areas, tribal lands etc. (MMSD, 2002). In many parts of the world, development of industry caused transformation in settlement patterns. Mining entrepreneurs leased land, opened mines and built communities in the existing suburbs or company towns, having a wide range of quality: some were filthy and decrepit while others offered better living conditions than some independent communities; some were opened and others roughly repressive[3] (with attempts to regulate the conduct of its residents), but all have been dominantly populated with mining workers and their family members. At their peak, there were more than 2,500 single-enterprise towns in USA. Up to 1920s more than 50% of miners in USA lived in company towns (E&MJ, 2004). Over time period, some mine towns became regular public cities as they grew, while others lost all their economic potential with termination of mining operations and transformed to 'ghost towns'. Since development of fast transportation forms, the specific local circumstances determine options for accommodating workers by mining companies, which try to avoid costs where possible (cf. E&MJ, 2004:28-30): 1) Expanding the already existing settlement is perhaps the cheapest option, economic linkages are maintained but it raises a problem of "who pays the infrastructure needs?"; 2) Build-

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[2] From 1947-94 the World Bank received about 6,000 loan applications from all over the world, and not a single was refused (Roy, 2002).
[3] Some mining companies owned homes, shops and boarding houses; for gaining more profit they required employees to live and shop there (Emmons, 1990).

ing a new 'open' public community, attract employees with families and create strong economic connections, thus wondering "what will be once mining ceases?"; 3) Building a 'closed' company town with housing for single male workers, providing only some short-term economic linkages with existing communities; and 4) Operate on a DIDO ("drive in, drive out"), FIFO ("fly in, fly out") or more recent "fly over" camp arrangements, all with minimal economic linkages. The latter alternative can be very cost-effective for mining company - especially in isolated areas for short-term projects (Storey, 2001), but induces several negative effects on individuals and their families (Fruhen et al., 2023), and may stifle regional development by destructing local communities (cf. Morris, 2012).

Developed countries started and developing nations followed implementation of diverse provisions and instruments for limiting negative effects of mining on environment, heritage, population health and wellbeing. This includes different types of impact analysis and plans: environment impact assessment - EIA, social impact assessment - SIA; conflict impact assessment; strategic environmental assessment; environmental management plan, community sustainable development plan, social impact management plan, mine closure plan, etc. Governments of many developing countries do not insist on their implementation due to corruption, bureaucracy, lack of time or resources and other reasons. Several factors, including the development of international law, spread of democratic principles and local pressures - protests of threatened and neglected population, contributed to more widespread application of regulations on protection of population and environment in countries with weak regulatory systems.

Only from the 1990s there have occurred some major changes in the policies of mining industry, national governments and civil society (Pring, 2009). Among the factors which influenced this shift, the most important include: raised awareness of stakeholders, development of mass media and communication technologies, development of international *soft* and *hard* human rights laws, pressures from civil society organisations, promotion of voluntary activities (like corporate social responsibility - CSR, code of conduct – CoC or social licence to operate - SLO), 'greening' of international financial organisations, etc. World leading mining companies started to support trend of strengthening national regulations for protection of human rights, environment and heritage, finally understanding that actually helps them in the long term in increasing the value for shareholders, attractiveness of host-country for investments and business sustainability. This seems to have happened for the two main reasons: first, at the international scene the interest for environment and human rights protection came to the fore, and second, previous mall practices of MNEs regarding environmental aspects and human rights abuse resonated dysfunctionally for business itself and a number of mitigation measures have been introduced subsequently.

Some successful cases in recent decades reflect a growing trend of holding multinational corporations accountable for human rights abuses and environmental harm, even when these actions take place overseas. However, their scope and application vary.

MINING AND HUMAN RIGHTS VIOLATIONS: THE ONGOING PROBLEMS

There is no a comprehensive international human rights (HR) law which directly regulates mining operations. As Pring (2009) points out, HR laws indirectly support development of mining regulation by promoting more strict national legislation or encouraging voluntary responsibilities. According to UN Declaration on the Right to Development (1986) "every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised." For a long period, a prevailing perception by governments and politicians was that people affected by mining and other development projects are a "necessary sacrifice" for the common good, as the positive aspects outweigh the negative ones. Change in the recent years, initiated by international organisations, governments and public, puts more emphasis on human rights and social justice. Increasing number of MNEs attempts to act in accordance to stricter regulations, realising that positive *image* and local community support are important in the long run. There are still mining companies that continue to violate human rights and legal provisions for quick profit, but it often leads to protests, negative image and temporary or long-term blocking of mining operations. Socio-economic and political human rights violation are still happening even in developed democratic societies with the rule of law, committed by MNEs with headquarters in the most developed countries.

Potential human rights violations can be: direct - when directly associated with mining activities, indirect – when generated by association with mine operations, induced – when generated by the third parties due to the mines operation, and cumulative - in case of many small mining sites. In general, human rights could be violated in various phases of resource exploitation, and in different ways, so the key stages (Handelsman, 2002, modified and expended) where mining companies run up against human rights issues include:

1. Exploration – involving restriction of access to land to local population, expropriation with inadequate compensation;
2. Preparation – distortion of local economy, changes of property prices, forced or involuntary resettlement, indigenous land right, etc.

Table 1. Possibilities of human rights violation due to mining operations

Human rights	Mining-caused violation
Right to life, liberty and security of person; ban on torture	Security forces or police move people forcibly, or quell civil dissent against development projects (harassments and threats, imprisoning and torture, killings at mining protests, murders of activists).
Right to livelihood (and continuous improvement of living conditions)	Can be threatened by the loss of home and the means to make a living (e.g. farming, hunting, trading) when people are displaced or their environment has changed.
Right to work	Difficulties to find a proper job due to restrictive mono-functional economy; hard working conditions, low/unequal wages, low-level health protection, dismissing trade-union members; loss of job when mining operations end.
Right to own property (and not to be arbitrarily deprived of this property)	Forced resettlement, homelessness, landlessness, deagrarisation of countryside, land occupation.
Right to have an adequate standard of living	Low wages, pauperisation, food insecurity, homelessness.
Right to clean and healthy environment ('intergenerational equity')	Severe air/water/land pollution, noise, vibrations, resource overuse, landscape degradation.
Right to freedom of opinion and expression; the right of peaceful assembly and association	Violent destruction of protest camps, harassments of activists against project by security forces or police.
Right to get education; the right of equal access to public services	Developing solely infrastructure and suprastructure that serves mining.
Right to remedy	Project-affected peoples need a quick and efficient remedy that can halt on-going violations and prevent future ones.
Right to participation	Disinforming or exclusion of stakeholders in all levels and phases of decision making; disregard of indigenous and tribal population; media control; intimidation.
Rights of vulnerable groups	Particularly indigenous peoples, elderly and women are more affected through impoverishment, lack of benefit sharing, under-compensation for damages, spiritual uncertainty, their culture and heritage degradation.
Rights of protection against discrimination	Based on race, caste, national origin, age, gender – lower wage, employment discrimination, etc.
Labour rights, ban on slavery	Control of trade unions, forced labour, child labour, discrimination in employment, unsafe and unhealthy working conditions, etc.
Right to fair compensation	Inadequate remuneration, expropriation and resettlement problems.

3. Operation – workers' rights, local population increase, share of economic rent, use of security forces, right on the clean environment (land, air, water, landscape degradation, noise and vibrations, flora and fauna), health problems, non-resident workforce pressure on local communities, etc.; and

4. Closure – distortion of local economy, employment problems, social exclusion, spatial disintegration, environment degradation, health problems, population decline (or even 'ghost towns').

The land right (especially for indigenous people who often lack legal title to their lands, and thus are usually purposely not properly informed) is one of crucial problems in all phases of mining operations, accompanied by numerous negative socio-economic impacts on local population. Involuntary resettlement is a big issue that poses new challenges to mining company and local government. It requires careful approach as, according to Barrow (2000), relocatees will likely face unexpected challenges and most likely suffer from psychical trauma and a sense of lost. Integrated land-use planning frameworks are important in balancing competing interests of different levels (national *vs.* local) and different sectors (mining *vs.* agriculture/tourism/nature protection/cultural heritage). There must be a proper legislation framework to disable research and exploitation in areas of special natural beauty, cultural and historical value, etc.

The term 'human rights' covers a wide range of topics. As mining induces large changes in land use patterns and has diverse effects on daily life of population on the local and regional level, area of human rights violations during mining activities is rather interdisciplinary. It spreads from threatening the basic right to life, liberty and security; over rights to have a proper standard of living (which includes right to work and to own property), to freely express opinion, to get education; up to the vague concept of right to clean and healthy environment (Table 1). Those violations may be direct, but can take forms of: assisting in violations, failing to prevent them, remain silent about violations or operate in a state that violates human rights (Deva, 2003).

HOW TO PROTECT HUMAN RIGHTS? THE ROLE OF STATE AND A CRITICAL REFLECTION ON CORPORATE HUMAN RIGHTS RESPONSIBILITY

There is a large number of implementation and enforcement mechanisms by UN (cf. charter-based; convention or treaty-based; contained in UN specialised agencies) which tend to secure that governments are fulfilling both negative and positive obligations. Task of establishing and codifying human rights norms for companies has been partly taken over by civil society organisations. They became an important force in moni-

toring and promotion of human rights, having increasingly prominent role in global governance (Krut, 1997). Multinational companies are especially under the focus of civil organisations as Human Rights Watch, Amnesty International or Green Peace. Small local associations can become very active and persuasive, but there is a need for more mechanisms for holding MNEs to account. There are important instruments as planning tools (regional or local plans, mining projects), assessment tools (EIA, SIA etc.), management tools, monitoring and evaluation ("control") tools which are mainly organised or implemented by governmental bodies and supported by the national legislation. But development planners and other experts sometimes tend to succumb under elitist tendencies, they "forget" the significance of considering all human rights and putting them ahead to short-term economic interests. That is why public information, consultation and participation in decision-making process is of crucial importance, but not in traditionally understood way – as a narrowly defined formal requirement to be fulfilled (Joyce & MacFarlane, 2001).

As there exists a legacy of mistrust in companies' decision-making processes, many companies tend to rebuild a good reputation, after ample evidence that irresponsible behaviour can lead to conflict, delays or cost for the project proponents. The gap between their rhetoric and reality is rather big (cf. Handelsman, 2009:199), but many MNEs try to decrease it by providing greater transparency and accountability, mainly by application of voluntary measures as CoC, best practices and CSR, and thus trying to earn a SLO – by convincing public and stakeholders that corporation will operate according to mutually accepted norms and values. And when there is increasing competition for access to capital and resources, companies get more responsive to pressures by public and shareholders (in addition to instrumental threats and moral obligations). Attempts to increase transparency of government revenues from resource extraction and spend them to support economic and social goals were enabled trough Extractive Industries Transparency Initiative (EITI). There are many international initiatives and guidelines, as Global Reporting Initiative (providing standards for CSR reporting), OECD MNE Guidelines for responsible business conduct (2011), Voluntary Principles on Security and Human Rights (initiative with representatives from three pillars: governments, extractive companies and NGOs), World Bank Operational Guidelines, International Labour Organisation Conventions and Guidelines, UN Global Compact, UNs Guiding Principles on Business and Human Rights (1976, 2023 update; refer to duty of the state, corporations responsibility and remedy), International Finance Corporation's Performance Standards, and others, that tend to further encourage MNEs to support socio-economic and environmental progress and minimise adverse impacts. Some are legally binding, but their implementation is costly and it is not always clear how much are they translated into the on-site improvements.

The expression of moral and ethical behaviour of a company to the whole society in line with legal and regulatory norms has a long history. Along with publication of Howard R. Bowen's seminal book *Social Responsibilities of the Businessman* (1953) - the first comprehensive discussion of business ethics and social responsibility, the idea of CSR gained momentum with the expansion of large corporations. It was further developed especially by Edward Freeman's *Strategic Management: A Stakeholder Approach* and Archie B. Carroll's *pyramid of CSR* (1991, 2016). Carroll (1991) considers that „Corporate social responsibility encompasses the economic, legal, ethical, and discretionary (philanthropic) expectations that society has of organizations at a given point in time". There are slightly different understandings of what a CSR concept should encompass. One of the commonly cited is a definition by European Commission (2001), that considers it "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis". Dahlsrud (2006) has, for example, identified and analysed 37 different definitions of CSR, only to conclude that they are to a large extent congruent while confusion arises from the social construction of CSR in a specific context. According to Kurowski and Huk (2021) some developed countries (as U.K., the EU countries, U.S.A.) stand out in promoting CSR in mining industry. On the other side, especially countries of the Global South lag behind significantly, owing to the absence of good governance and transparency, with high corruption (Dobers & Halme, 2009; Wirba, 2024). Clearly, mining companies do not carry out CSR programs out of altruism, but their main driver is market demand (Jansen et al., 2024). It is also not fully resolved to whom the company has responsibility: to shareholders, to stakeholders or to the whole society (see Marrewijik, 2003 for further discussion). Some researchers (Alcadipani & Oliveira Medeiros, 2020; Kemp and Owen, 2022) consider that a concept of corporate social irresponsibility (CSiR/CSI) is much appropriate for analysing MNEs "unethical and morally distasteful behaviour" (Ferry, 1962:6 in Alcadipani, & Oliveira Medeiros, 2020) that results in harm to stakeholders and the society. Kemp and Owen (2022) insist that predominantly normative analytic lens (i.e. CSR) are not suitable for examining the mining corporations' propensity to act irresponsibly.

Many researchers have been trying to understand the relationship between CSR and profitability (Falkenberg, Brunsæl, 2011), but it is hard to estimate when the CSR activity does not add value, as notion like reputation is hard to measure. A question by Falkenberg and Brunsæl (2011) if CSR is "a strategic advantage or a strategic necessity" was probably best explained by Gunningham et al. (2006) as "the interplay between social pressures and economic constraints". It is hard to translate corporation policy to operation (Handelsman, 2009), and research by Prakash and

Emelianova (2006) points out that, despite large financial investments in using voluntary CoCs, mining industry has failed in gaining public credibility. Compared to many existing tools for companies, there is still a lack of tools and guidance for communities that could help them understand their rights (Buxton, 2012).

It is important to stress the significance of good and meaningful cooperation between all actors involved in or affected by mining activities, i.e. corporations, companies, government (national elites), local community, civil society organisations, labour (local and regional), trade unions and non-traditional investors (e.g. sovereign wealth funds, private capital, hedge funds and real estate holdings, commodity traders, equipment/infrastructure providers, institutional funds - pension, assurance, etc.), where consultants and local institutions can play an important (mediating) role (Figure 1).
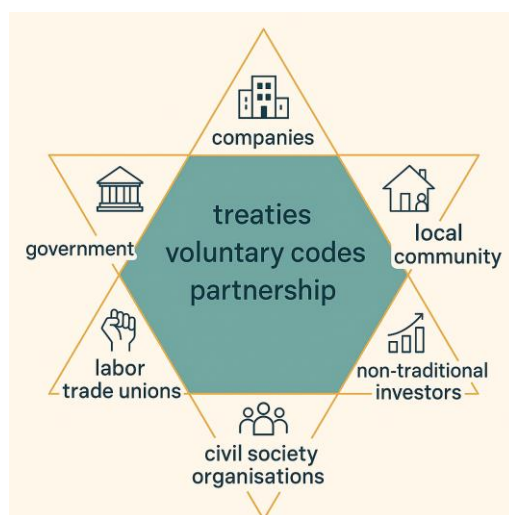

Figure 1. Cooperation of all actors involved or impacted by resource extraction (source: author, redesigned using ChatGPT-4o by OpenAI)

MINING AND HUMAN RIGHTS: BREAKING GROUND OR BREAKING BONES?

The long history of mining activities around the world is not very bright regarding the human rights respect, as the state-owned, private or multinational mining corporations (with connivance of relevant authorities) were mainly profit oriented, while local populations suffering or "sacrifice of a few for a common good" was a standard practice. The main issue here is how to make MNEs follow the HR norms? Especially in the case of overseas extractive practices in countries of the Global South.

We have pointed at recent changes in understanding the importance of respect for human rights during mining operations. Companies today are expected not just to respect, but to promote human rights. There are considerable positive implications of newer, comprehensive understanding of human rights for regional and local planning (and land policy) and realisation of strategic mining projects in developed and developing nations. Power-issue is here of big relevance, and there is a need to coordinate various other regulatory and control instruments and power-actors as: legislation (from international to local level, including initiatives and guidelines), governing authorities on national, regional and local level, experts, international organisations (as UN, OECD, IIED, etc.), civil society organisations (as Amnesty International, but also local *watchdogs*). Close cooperation with mining companies is essential, and the positive perception (*image*) of corporate social responsibility should be used in the best way to ensure just treatment of affected peoples/communities and to prevent or at least minimise possible conflicts (if codes of conduct are not meaningful and effective, they will be just a waste of money).

However, a pile of problems regarding resources overuse, poverty, unemployment, homelessness, social exclusion, involuntary resettlement, expropriation, corruption, local or national power politics, and bypassing of stakeholder interests still remains, regardless of existing efforts on the international and national scale. One may hardly fail to notice that development of 'human rights language' has not been followed with corresponding progress in 'human rights practice' in resource extraction industry. There has been some progress in the last decades, mainly regarding standards and best practice guidance but, according to Buxton (2012), the major challenges are terms of reporting, capacity to implement and ensuring consequences of non-compliance. The opinions on which approach is better - CSR or CSI, i.e. supportive or critical, are different. Idemudia et al. (2022) emphasize that literature on human rights abuses in Africa concentrates on incidents (CSI approach), while showing how MNEs address their human rights obligations in practice would be better.

When severe human rights abuses still continue happen, including murders of mining opponents organised by powerful MNEs from the most developed countries, many times without being timely and properly sanctioned (cf. Amnesty International, 2024; Human Rights Watch, 2024), we must go beyond the rhetoric and glib language of some companies' reports and reassess their claims that last decade has brought a huge progress. Long legacy of human rights violations shows that moral and ethical norms are not on the agenda of majority MNEs. We miss broad policy discussions and regulatory focus by governments in the Global North on human rights abuses associated with large-scale industrial projects run by mining MNEs whose operations induce environmental and social disruption, and whose security arrangements create armed conflict

around their mines. In recent decades, there have been several successful cases that demonstrate an increasing effort to hold MNEs accountable for human rights violations and environmental damage abroad. Regrettably, the extent and implementation of these efforts differ. We can agree with Deva (2003) who claims that the main problem with existing international mechanism is in its efficacy as it works only when companies want to implement it, so therefore proposes inclusion of UN, World Trade Organisation and International Criminal Court as main partners to enforce human rights obligations against MNEs. An international legally binding instrument to hold multinational companies from Global North accountable for their social and environmental policies overseas would also be useful.

Instead of expecting positive change from mining companies, affected communities and wider society should be proactive and decide what they want to get from mining – while government has to assure those wishes and needs are being met. The main question: "How to put human rights ahead to short-term economic interests?" can be partly solved with 'less talk and more action' approach which can be provided by transformation of the forementioned voluntary initiatives to mandatory with strong sanctioning mechanism for failing in compliance or implementation.

REFERENCES

Alcadipani, R., & Oliveira Medeiros, C. R. (2020). When corporations cause harm: A critical view of corporate social irresponsibility and corporate crimes. Journal of Business Ethics, 167(2), 285–297.

Amnesty international (2024). *Amnesty international Report. The state of the World's human rights*. London: Amnesty international.

Aristova, E. (2021). The future of tort litigation against transnational corporations in the English courts: Is forum [non] conveniens back?. *Business and Human Rights Journal*, 6(3), 399-422.

Barrow, CJ. (2000). *Social Impact Assessment–An Introduction*. London: Arnold.

Bellinger, JB. (2009). Enforcing Human Rights in US Courts and Abroad: The Alien Tort Statute and Other Approaches. *Vanderbilt Journal of Transnational Law* 42(1), 1-14.

Bowen, H. R. (1953). *Social responsibilities of the businessman*. New York: Harper & Row.

Buxton, A. (2012). *MMSD+10: Reflecting on a decade.* IIED Discussion Paper. London: International Institute for Environment and Development.

Carroll, A. B. (1991). The pyramid of corporate social responsibility: toward the moral management of organizational stakeholders. *Business Horizons*, 34(4), 39-48.

Carroll, A. B. (2016). Carroll's pyramid of CSR: Taking another look. *International Journal of Corporate Social Responsibility*, 1, 3.

Chinguno, C. (2013). Marikana Massacre and Strike Violence Post-Apartheid. *Global Labour Journal,* 4(2), 160-166.

Cole, W. (2012). A Civil Religion for World Society: The Direct and Diffuse Effects of Human Rights Treaties, 1981–2007. *Sociological Forum,* 27(4), 937-960.

Coumans, C. (2024). Conflict Minerals, Conflict Mines and Critical Minerals for War: Mining, Human Rights and Canadian Foreign Policy. In *Hand in Hand? Canada at the Human Rights and Peacebuilding Nexus* (pp. 247-272). Palgrave Macmillan, Cham.

Dahlsrud, A. (2006). How corporate social responsibility is defined: an analysis of 37 definitions. *Corporate Social Responsibility and Environmental Management*, 15(1), 1-13.

Deva, S. (2003). Human Rights Violations by Multinational Corporations and International Law: Where from Here?. *Connecticut Journal of International Law,* 19, 1-57.

Dimovski, D. (2021). Restriction of human rights and state of emergency. Teme-Časopis za Društvene Nauke, 45(4), 1057-1079.

Dobers, P., & Halme, M. (2009). Corporate social responsibility and developing countries. *Corporate social responsibility and environmental management*, 16(5), 237-249.

Emmons, D. (1990). *The Butte Irish: Class and Ethnicity in American Mining Town, 1875-1925*. Illinois: University of Illinois Press.

Evans, T. (2005). *The politics of human rights: a global perspective*. London: Pluto Press.

E&MJ (2004). Company Town Fading to History. *Engineering and Mining Journal (E&MJ)*. September. 26-32.

European Commission (2001). Promoting a European framework for corporate social responsibility, Green Paper, Luxembourg: Office for Official Publications of the European Communities.

Falkenberg, J., & Brunsæl, P. (2011). Corporate social responsibility: a strategic advantage or a strategic necessity?. *Journal of business ethics*, 99, 9-16.

Freeman, E. (1984). *Strategic Management a Stakeholder Approach*. Boston: Pitman.

Friedman, M. (1982 [1962]). *Capitalism and Freedom*. London: The University of Chicago Press.

Fruhen, L. S., Gilbert, J., & Parker, S. K. (2023). Fly-in-fly-out work: A review of the impact of an extreme form of work-related travel on mental health. *Organizational Psychology Review*, 13(2), 177-204.

Gunningham, N., Kagan, RA., & Thornton, D. (2004). Social License and Environmental Protection: Why Businesses Go Beyond Compliance. *Law & Social Inquiry,* 29, 307–341.

Handelsman, S. (2002). *Human Rights in the Minerals Industry.* Working paper No 9. London: International Institute for Environment and Development.

Handelsman, S. (2009). *Realities and Perceptions of Human Rights and the Mining Industry – a Case Study*. The Faculty of Graduate Studies, University of British Colombia.

Heard, A. (1997). *Human Rights*: *Chimeras in Sheep's Clothing*? Simon Fraser University online. Retrieved from www.sfu.ca/~aheard/intro.html

Human Rights Watch (2024). *World Report 2012*. *Events of 2023.* New York: Seven Stories Press.

Idemudia, U., Tuokuu, F.X.D., & Essah, M. (2022). The extractive industry and human rights in Africa: Lessons from the past and future directions. Resources Policy, 78, 102838.

Jansen, L., Cunningham, P., Diehl, S., & Terlutter, R. (2024). Corporate social responsibility in controversial industries: A literature review and research agenda. Corporate Social Responsibility and Environmental Management, 31(5), 4398-4427.

Joyce, S., & MacFarlane, M. (2001). *Social impact assessment in the mining industry: current situation and future directions*. WBSCD Mining Minerals and

Sustainable Development Project, International Institute for Environment and Development no. 46.

Keith, L.C. (1999). The United Nations International Covenant on Civil and Political Rights: Does it make a difference in human rights behavior? *Journal of Peace Research,* 36(1), 95–118.

Kemp, D., & Owen, J. R. (2022). Corporate social irresponsibility, hostile organisations and global resource extraction. *Corporate Social Responsibility and Environmental Management*, 29(5), 1816-1824.

Koechlin, T. (2012). *The Rich Get Richer: Neo-liberalism and Soaring Inequality in the United States*. Working paper series, no 302. Political Economy research institute, University of Massachusetts at Amherst.

Krut, R. (1997). *Globalization and Civil Society: NGO Influence in International Decision-Making*. Discussion Paper No. 83, Geneva: United Nations Research Institute for Social Development.

Ku, J. G. (2013). Kiobel and the surprising death of universal jurisdiction under the Alien Tort Statute. American Journal of International Law, 107(4), 835-841.

Kurowski, M., & Huk, K. (2021). Corporate social responsibility and the mining industry: Areas of use and opportunities to reduce the negative effects of activity. *European Research Studies Journal*, 24(3), 1129-1141.

Maričić, T., & Oranje, M. (2025). The legal framework for social impacts in spatial planning of mining regions. *Facta Universitatis, Series: Architecture and civil engineering*, Vol.23, No. 1, pp. 101-118.

Marrewijk, M. v. (2003). Concepts and definitions of CSR and corporate sustainability: between agency and communion. *Journal of Business Ethics*, 44(2), 95-103.

Meeran, R. (2021). Multinational human rights litigation in the UK: A retrospective. Business and Human Rights Journal, 6(2), 255-269.

Mitchell, N., & McCormick, J. (1988). Economic and political explanations of human rights violations. *World Politics*, 40(4), 476-498.

MMSD (2002). *Breaking New Ground. Mining, Minerals and Sustainable Development.* Project of the International Institute for Environment and Development. London: Earthscan. Retrieved from http://www.iied.org/mmsd-final-report

Morris, R. (2012). *Scoping Study: Impact of Fly-in Fly-out/Drive-in Drive-out Work Practices on Local Government*. Sydney: Australian Centre of Excellence for Local Government, University of Technology.

Moyn, S. (2010). *The Last Utopia. Human Rights in History*. Cambridge and London: The Belknap Press of Harvard University Press.

Ngwakwe, C. C. (2021). Niger delta oil spill case against the shell company at the Hague: the future of corporate environmental responsibility. Acta Universitatis Danubius. Juridica, 17(2), 27-39.

OECD (2011). *Guidelines on Multinational Enterprises.* Retrieved from http://www.oecd.org/daf/inv/mne/48004323.pdf

Prakash, S.S, & Emelianova O. (2006). A failed strategy of using voluntary codes of conduct by the global mining industry. *Corporate Governance*, 6(3), 226 – 238.

Pring, G. (2009). *International Environmental and Human Rights Law Affecting Mining Law Reform*. Krishna C.S (ed.), Mining: Environment and Health Concerns, Hyderabad: Amicus Books, Icfai University Press, 42-59.

Roy, A. (1999). *The cost of living*. New York: Modern Library.

Selya, RM. (2012). A geography of human rights abuses. *Human Rights Quarterly,* 34,1045-1083.

Siggelkow, V. (2023). Preventing human rights abuses at Canadian mining projects abroad. Masters Thesys, Simon Fraser University, Canada https://summit.sfu.ca/_flysystem/fedora/2023-07/etd22451.pdf

Spooner, DJ. (1981). *Mining and regional development*. Theory and Practice in Geography. Oxford: Oxford University Press.

Storey K. (2001). Fly-in/Fly-out and Fly-over: mining and regional development in Western Australia. *Australian Geographer, 32*(2), 133-148.

Torres, R. (2012). *Shared Societies and the Global Crisis: Evidence and Policy*. No. 2012/42.

United Nations. (1986). *Declaration on the Right to Development*. Retrieved from http://www.un.org/en/events/righttodevelopment/declaration.shtml

United Nations. (1948). *Universal Declaration of Human Rights.* Retrieved from http://www.un.org/en/documents/udhr/

Wirba, A.V. (2024). Corporate Social Responsibility (CSR): The Role of Government in promoting CSR. Journal of the Knowledge Economy, 15, 7428-7454.

КОНТРОЛИСАЊЕ БОГАТИХ И МОЋНИХ: УЛОГА НОРМАТИВА О ЉУДСКИМ ПРАВИМА У РУДАРСТВУ

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Резиме

Историјски посматрано, утицај рударства на локалне заједнице често је био посматран као "потребна жртва" за општи развој, али је у последњих година појачан фокус на људским правима и социјалној правди. Осврт на процес експлоатације природних ресурса указује на мноштво негативних искустава широм света, када је реч о угрожавању људских права. Један од значајних изазова са којима се и даље суочавамо јесте (не)етичко понашање богатих и моћних актера, чије понашање национално законодавство често не успева да контролише у потпуности. У том смислу истиче се недостатак међународно обавезујућег законодавног оквира који би директно регулисао људска права при експлоатацији природних ресурса. У основи овог проблема доминира питање моћи и њене злонамерне употребе.

Рад је посвећен разматрању питања етике у процесу савремених рударских активности, и њеног директног утицаја на поштовање и кршење људских права. Последњих деценија дошло до знатног пораста како чврстог, тако и меког законодавства које регулише рударске радове на националном и међународном нивоу. Међутим, пракса показује да су и даље присутни случајеви злоупотребе основних људских права, посебно од стране мултинационалних компанија.

Основни циљ истраживања је да: 1) нагласи да се, упркос развоју демократије, законских одредби и других инструмената контроле, негативно наслеђе утицаја рударства на становништво и животну средину и даље јавља широм света, посебно у земљама у развоју; 2) подсети на најважније инструменте који могу да подрже етичко понашање током одвијања рударских радова; и 3) предложе неки будући кораци за успешније ублажавање негативних ефеката.

Након кратког историјског осврта на однос рударских компанија према људским правима, и најважније сродно међународно право, рад се бави основним постојећим проблемима кршења људских права у различитим фазама развоја рудника.

Људска права могу бити угрожена у различитим фазама рударских активности — од истраживања, припреме, рада, до затварања рудника — кроз ограничења приступа земљишту, принудне иселења, загађења животне средине, кршења

радничких права и социјалних последица. Права староседелачког становништва на земљиште и проблеми насилних пресељења издвајају се као посебно осетљива питања.

Преиспитује се позитивна пракса екстериторијалне примене националног права неких развијених држава (попут САД, Холандије, Велике Британије, чланице Европске Уније), која омогућава страним држављанима да туже предузећа или појединце због кршења људских права почињених у иностранству. Ово је нарочито значајно у случајевима када рударске мултинационалне компаније, односно њихове ћерке фирме у земљама са слабом владавином права одбијају да сносе одговорност.

На крају, рад се бави улогом државе и међународних инструмената у процесу заштите људских права у рударству и развоју друштвено одговорног пословања. Државе имају главну одговорност у заштити људских права, али је улога цивилног сектора и међународних организација све важнија у праћењу и промоцији одговорног понашања компанија. Мултинационалне компаније све чешће усвајају добровољне кодексе понашања и спроводе принципе корпоративне друштвене одговорности (КДО) како би повећале транспарентност и добиле „друштвену дозволу за пословање“.

Ипак, разлика између речи и стварних поступака компанија је често велика, а у неким земљама, посебно Глобалног Југа, изазови као корупција и лоше управљање уз низак ниво владавине права отежавају примену добрих пракси. Постоји потреба за јачим механизмима контроле и заштите права локалних заједница, као и за бољом сарадњом свих актера — државе, компанија, цивилног друштва и локалног становништва.