



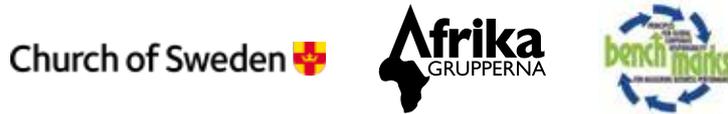
PROBLEMATIC PLATINUM

The responsibility of Swedish companies in South Africa

Report #64

**SWED
WATCH**

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Swedwatch is a religiously and politically independent organization that examines Swedish companies' business operations abroad. The organization's purpose is to reduce adverse social and environmental impacts, encourage best practice, share knowledge and hold an open dialogue with Swedish companies so that the business community pays greater attention to these issues. Swedwatch has six member organizations: the Church of Sweden, Diakonia, the Swedish Society for Nature Conservation, Fair Trade Center, Solidarity Sweden-Latin America and Africa Groups of Sweden.

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Summary

The mining sector in South Africa is one of the country's most important industries and contributes over five percent to the nation's Gross Domestic Product (GDP), and creates employment opportunities for 1.3 million people. The industry has experienced long-suffering unrest.

A large part of the population still lives in poverty and the effects of the laws that prevented black South Africans from owning land during apartheid still create conflicts around the issue of land ownership. The local communities surrounding the platinum mining city of Rustenburg lack, to a large extent, access to water and sanitation, or adequate housing. The mineworkers are exposed to continuous safety risks in their daily work, and there is also widespread dissatisfaction with the levels of wages paid to them.

Scania, Volvo, Atlas Copco and Sandvik are connected to this risk-filled industry through the sales of mining equipment and use of platinum in catalytic converters. In this report, Swedwatch aims to discuss what expectations can be had and demands made on the Swedish companies' business dealings with the platinum mining companies and what responsibilities they have to contributing to sustainable development in the industry.

With the endorsement of the UN Guiding Principles on Business and Human Rights in June 2011, a new international standard was adopted outlining what is expected of companies when it comes to respecting human rights. Companies are expected to take responsibility for human rights in their entire value chain, whether or not it concerns suppliers or customers.

The point of departure for the report is a case study of the three largest platinum mining companies with which the Swedish companies do business and their impact on the local communities in South Africa. The study shows that there is widespread dissatisfaction among the local communities where people, to a large extent, believe that the mining companies impact their lives in an adverse way. Basic human rights, such as the right to adequate housing, employment and clean water, are denied on a daily basis.

Scania and Volvo, which use platinum in automotive catalytic converters to filter exhausts, require their direct suppliers to live up to their companies' sustainability policies. The direct suppliers, however, are several steps away from the mining companies in the supply chain and it is not at this level that the main risks for the adverse impact of human rights can be found. In order to manage the risks connected with platinum extraction, Scania and Volvo need to work actively with all the actors in the supply chain. The automotive industry is the largest user of platinum and it is therefore important that the industry works to strengthen respect for human rights in the production.

Atlas Copco and Sandvik, which sell mining equipment to the mining companies, have made different levels of progress in their work with customer responsibility. In earlier investigations conducted by Swedwatch, both companies stated that they had no responsibility for the actions of their customers. Today, both Atlas Copco and Sandvik believe that an evaluation of the companies' relationships with customers, based on their impact on human rights and the environment, is important. However, they have reached different stages of progress in their work. While Atlas Copco has launched a system for customer evaluations in 2013, Sandvik is still evaluating how their existing systems can be improved. At this stage, it is too early to say how effective Atlas Copco's system will be, but the implementation demonstrates will and awareness at the company, which will hopefully spread throughout the industry.

The sustainability requirements of the state run Swedish Export Credits Guarantee Board (EKN), which provides guarantees in export business, are in many ways more far-reaching than the companies' evaluations of customer relations. EKN's leading position at the forefront in this regard can hopefully raise the awareness of the Swedish companies. The Swedish state, through the adoption of a new strategy on minerals, has also committed itself to contributing to sustainable development in the mining industry in developing countries through collaboration between actors. The Swedish state's engagement in these issues also raises expectations on Swedish companies.

This report highlights a number of areas of serious adverse impacts on human rights in the platinum industry in South Africa. All of investigated Swedish companies in this report have failed in their responsibility to implement continual human rights due diligence, in accordance with the UN Guiding Principles. All companies state that information is not communicated externally due to commercial confidentiality. This is also a failure, as the UN Guiding Principles require companies to communicate enough information to stakeholders so that they are able to evaluate results and further development.

A responsible company cannot passively stand on the sidelines; it must engage itself actively in the issue. In order to achieve change, cooperation is needed between all actors in the value chain. The Swedish companies should demonstrate how risks for the adverse impact on human rights in the mining industry can be managed and mitigated.

1. Introduction

South Africa is affected by deep injustices and major dissatisfaction among its people regarding living conditions, creating fertile ground for violence. In August 2012, 34 mine workers were shot and killed by police during a strike in Marikana outside the city of Rustenburg. The platinum industry in the country had already suffered unrest for a long time, prior to the events in Marikana.

South Africa is a relatively young democracy, the apartheid regime having been toppled in 1994. Gaps in equality are still large in the country and a small minority of the population owns the largest part of the land and capital, while a large part of the population lives in poverty. Communities close to the mines lack, in several instances, adequate housing or access to water and sanitation. In certain cases, they are not consulted when the mining companies exploit the land where they live.

As suppliers of mining equipment and users of platinum in their products, Swedish companies have long-standing connections with the South African mining industry. Swedish pension funds (AP-fonderna) own shares in several mining companies in the country. Using the newly-established UN Guiding Principles on Business and Human Rights, Swedwatch has examined to what extent the companies can be held accountable for possible adverse impacts and what type of measures they could take to contribute to better conditions.

The responsibility of companies to respect all human rights in the entire value chain was confirmed in June 2011 with the adoption of the UN Guiding Principles on Business and Human Rights. The methods for evaluating and developing requirements for customer relations are, however, not generally accepted among companies. Swedwatch has raised the issue of customer responsibility in a number of reports prior to the adoption of the UN Guiding Principles.¹

The point of departure for this report is a case study of the mining business in South Africa. An intense debate is being held in South Africa on the role and responsibility of the mining industry in South African society. Since 2009, civil society has arranged an alternative conference to the annual industry conference, *Mining Indaba*, in order to raise issues of the mining industry's responsibility for human rights and the environment.²

1 See: *Svensk inblandning i miljöskandal* www.swedwatch.org/sites/default/files/Svensk_inblandning_i_miljoskandal_i_Ghana_artikel_030218_o.pdf. *Atlas Copco och Sandvik friskriver sig från ansvar i Ghana*, www.swedwatch.org/sites/default/files/Atlas_Copco_och_Sandvik_friskriver_sig_fran_ansvar_i_Ghana_artikel_030429_o.pdf. *Sandvik och Freeport – Två företag i konflikt om Papua*, www.swedwatch.org/sites/default/files/Sandvik_och_Freeport._2006.pdf.

2 www.miningindaba.com/. The alternative conference is called “Alternative Mining Indaba” and is envisioned as a forum to specifically highlight the impact of the mining industry on humans and the environment. www.miningwatch.ca/article/alternative-mining-indaba-brings-community-perspective-south-african-mining-debates.

2. Methodology

Swedwatch has conducted research for this report between February and September 2013. An important part of the methodology has been the review of existing reports and research on the subject. Swedwatch contacted those responsible for Corporate Social Responsibility (CSR) at Atlas Copco, Sandvik, Volvo and Scania in March 2013 and requested interviews and the possibility to visit the companies in South Africa. Field research in South Africa was conducted in June 2013.

The sample of enterprises was determined based on the Swedish connections to the platinum companies. In order to present a picture of the entire value chain connected to the extraction of platinum, two Swedish companies providing mining equipment to the mining companies were selected – Atlas Copco and Sandvik, as well as two Swedish companies that use platinum in their products, Volvo and Scania. Volvo and Scania were selected given that the single largest area of application of platinum is in the automotive industry, in the manufacture of so-called catalytic converters.

Swedwatch requested a visit to the local offices of Atlas Copco and Sandvik in South Africa, in order to discuss in more detail how customer relations were managed locally. Atlas Copco did not want to provide an interview with company management in South Africa, referring to the main office in Stockholm. Sandvik, however, provided local contacts and Swedwatch interviewed those responsible for CSR and the Regional Commercial Manager in South Africa.

The focus of this report is on the issues concerning the impact of the mining companies on the local communities. Labor and employment conditions are raised in order to highlight that there are also problems facing these issues. As the focus of the report are the the Swedish companies, Swedwatch has not done any in-depth research concerning the sustainability work of the mining companies and the report therefore does not draw any conclusions on impacts related to specific mining companies. Rather, it looks at the platinum industry as a whole.

In its work, Swedwatch has used internationally accepted frameworks as a basis for the study, such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, as well as the International Covenant on Economic, Social and Cultural Rights.³

The field study and preparatory research in South Africa was conducted in cooperation with the organization Bench Marks Foundation.⁴ Bench Marks is a non-profit, faith-based organization owned by the South African churches. The organization focuses on the mining sector and monitors the sustainability activities of the mining companies, as well as their effects on the environment and local population. Since

3 UN Guiding Principles on Business and Human Rights, www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf. OECD Guidelines for Multinational Enterprises, www.oecd.org/corporate/mne/48004323.pdf. International Covenant on Economic, Social and Cultural Rights, www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

4 www.bench-marks.org.za/.

2007, the organization has carried out several studies and written a number of reports on the platinum industry in South Africa.

Prior to the field visit, Swedwatch developed two questionnaires, in part aimed at the local communities and in part aimed at the mine workers. The questionnaires were distributed in the villages by Bench Marks and approximately 20 people in each village answered them. During the field visit, Swedwatch conducted deeper interviews with approximately five people in each village. (For more information about the field study, see Appendix 1).

Interviews were also conducted with the three largest platinum mining companies; Anglo American Platinum, Impala Platinum and Lonmin, as well as local civil society organizations, mine workers and researchers specialized on the impacts of the mining companies on human rights.

In order to protect the identity of those interviewed the names of the mine workers and villagers in the report have been changed.

The report has been reviewed by Anna-Karin Bergman, Post.Doc in Law and Sustainability at the University of Lund, from the point of view of an independent expert reviewer. Anna-Karin Bergman has extensive experience in researching the mining business in South Africa.

The companies have read the report and have been given the opportunity to provide written comments, which have been published on Swedwatch's website alongside the report.

3. The UN Guiding Principles on Business and Human Rights

The most important set of regulations to determine what responsibility Swedish companies have in relation to the issues in the platinum industry in South Africa is the UN Guiding Principles on Business and Human Rights of 2011. These principles have been incorporated into a series of international frameworks and standards, among them ISO 26000 – a leading standard for corporate social responsibility - the OECD Guidelines for Multinational Enterprises, and portions of the IFC Performance Standards on Environmental and Social Responsibility.⁵

The work of developing the UN Guiding Principles began in 2005 when Professor John Ruggie was appointed by the then UN Secretary General, Kofi Annan, as Special Representative for Business and Human Rights. His mandate was to investigate and clarify

5 UN Guiding Principles on Business and Human Rights, www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf. OECD Guidelines for Multinational Enterprises, www.oecd.org/corporate/mne/48004323.pdf. IFC Performance Standards on Environmental and Social Sustainability: www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES.

what is to be expected from companies concerning human rights according to existing norms. In 2008, Ruggie presented the “Protect, Respect and Remedy” framework which is based on three pillars: the duty of the State to protect human rights, the responsibility of companies to respect human rights and access to remedy for those affected.⁶

The responsibility of companies in respecting human rights is a universal standard, existing over and above national laws, and applicable independently of states’ abilities or willingness to fulfil their own human rights obligations.⁷ The framework formulates the concept of “know and show”, meaning that companies have a responsibility to be aware of and report how their operations, at all stages, impact human rights.⁸

The next step in the process was the development of the UN Guiding Principles on Business and Human Rights which specify the responsibility of companies to respect human rights and aim to function as guidelines for implementing the framework. It is clear from Ruggie’s final report that the principles should not be seen as a new form of international law, but as a clarification of existing standards and guidance on how these should be used.⁹

According to the principles the responsibility of business enterprises should, at a minimum, cover the rights expressed in the International Bill of Human Rights (which comprises the Universal Declaration of Human Rights and the most important instruments through which it has been codified: The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), as well as the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work, including the Declaration’s follow-up mechanism. In addition, there are several standards for human rights that companies may need to take into account, such as protection of particularly vulnerable groups, or international humanitarian law applied in situations of armed conflict. Depending on the company’s operations, context, size, etc., different types of human rights can be at risk in different situations, but the framework makes it clear that all human rights should be safeguarded by all companies, irrespective of size or industry.¹⁰

According to the Guiding Principles, a company can be involved in an adverse human rights impact in three different ways:

- It may *cause* the impact through its own activities;
- It may *contribute* to the impact through its own activities or business relationships;
- It may be involved because the impact is caused by an entity with which it has a business relationship and is *linked* to its own operations.

6 Ruggie, John, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, Report of the SRSG on the issue of human rights and transnational corporations and other business enterprises, UN A/HRC/17/31, mars 2011, p. 3.

7 *Id.*, p. 3-5 and UN Guiding Principles on Business and Human Rights, commentary to Principle 11.

8 UN Guiding Principles on Business and Human Rights, commentary to Principle 15.

9 Ruggie, J., p. 3-5.

10 UN Guiding Principles on Business and Human Rights, commentary to Principle 12.

When it comes to *causing* or *contributing* to adverse impacts, companies are required to prevent and mitigate potential risks and engage actively in remediation in case an adverse impact has occurred. If the company, however, is involved in the adverse impact solely through *linkage* to a business partner (the third variant above), the company is required to try to influence its partner to prevent and mitigate future risks and stop ongoing adverse impacts. In this case, the company does not have to provide remediation.¹¹

Regarding the identification and management of risks in accordance with the UN Guiding Principles, it is important to point out that this involves risks for individuals whose human rights can be adversely impacted, not financial risks for the company. It is thus not a question of how companies should minimize business risks and injury to the company, but instead how companies live up to their obligations to respect human rights.¹²

The severity of the adverse impact on human rights determines the priority the company must give the issue, no matter what type of connection the company has to the impact. In other words, it is not the company's own risk assessment that should steer which priorities adverse impacts receive, but how serious it is for the person experiencing injury, i.e. the risk to the person and human rights. In assessing what constitutes a severe human rights impact, the scale (how serious the effects are), scope (number of individuals affected) and irremediable character (the possibility to reverse the situation and compensate those affected) should all be taken into account. In other words, an impact which is temporary, affects only a few, and can easily be reversed, is not as serious as an impact that permanently affects people, affects a large group of people or is not possible to reverse, e.g. death or permanent damage.¹³

The UN Principles distance themselves from the concept of 'sphere of influence', which was used earlier to describe the responsibility of companies. A determination of responsibility is not made on how much control or influence a company has on a business partner (that which 'sphere of influence' often refers to), which potentially contributes or causes damage, but instead the severity of the human rights impact should be in focus.

The *leverage* a certain company has in a specific business relationship is practically decisive for how the company acts and is expected to act in the issue. According to the guidelines, leverage means the possibility *to achieve change in the behavior of the party that causes or contributes to a violation*. Examples of factors that are considered in evaluating leverage are, among others:

11 United Nations Human Rights, office of the high commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights – An Interpretive Guide*, November 2011, p. 18.

12 UN Guiding Principles on Business and Human Rights, commentary to Principle 11.

13 United Nations Human Rights, office of the high commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights – An Interpretive Guide*, November 2011, p. 18-19.

- If the company maintains ownership or other control over the partner;
- How large a supplier or customer the company is in relationship to the partner;
- How decisive the products or services the company provides are for the activities of the partner;
- Advantages versus disadvantages for the partner to continue or suspend the business relationship with the company;
- The possibility for the company to engaged other interested parties, such as the State or industry organizations, with the aim of having the partner take action.¹⁴

In those cases in which the company lacks leverage in a business relationship, actions should be taken to *attempt to increase* leverage. The lack of leverage over a business partner, therefore, does not mean that a company avoids responsibility. In the event that the business partner does not take actions to change a situation where people are suffering harm, a company can be forced to evaluate ending the business relationship. In such a case, the company must consider what adverse impacts for human rights such an end can result in.¹⁵

In order to meet their responsibility to respect human rights, business enterprises should:

- Develop and maintain a public policy statement on meeting responsibilities for respecting human rights, realize and include this statement in internal policies and processes, as well as through relevant communications and training for staff.
- Continually conduct human rights due diligence in order to identify, prevent, mitigate and account for how they address their impacts on human rights.
- Provide processes for remediation of any adverse human rights impacts they cause or contribute to.¹⁶

Management of risks should be communicated externally in such a way that stakeholders, especially those that are affected by the operations, can make an assessment as to if the company has managed risks in a sufficient and adequate manner. It is especially important that companies which operate in high-risk contexts such as conflict areas publicly report on how they conduct their human rights due diligence.

According to the Guiding Principles, human rights due diligence is an ongoing process which a company should conduct, taking into account its specific circumstances (such as the industry, country of operations, size of the company, etc.), in order to meet its responsibilities in respecting human rights. A company should implement human rights due diligence in order to identify, prevent, mitigate and account for how it addresses adverse human rights impacts. The process should include an assessment of actual and potential impacts on human rights, incorporate learning

14 *Id.*, p. 46-49.

15 *Id.*, p. 49-51.

16 UN Guiding Principles on Business and Human Rights, Principle 15.

Examples of the three different forms of involvement in adverse human rights impacts

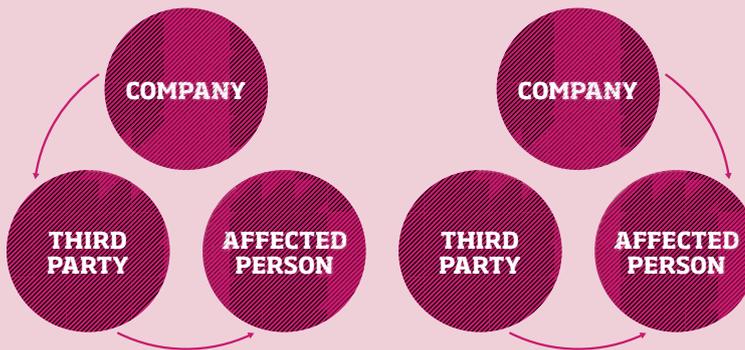


Examples of when companies can be seen to *cause* adverse human rights impacts:

- Routine racial discrimination by a restaurant in its treatment of customers;
- Exposure of factory workers to hazardous working conditions without adequate safety equipment;
- Being the sole or main source of pollution in a community's drinking water supply due to chemical effluents from production processes.

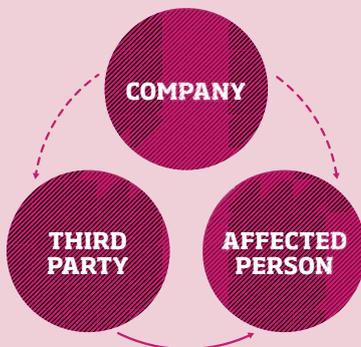
Examples of when a company can be seen to *contribute* to adverse human rights impacts:

- Changing product requirements for suppliers at the eleventh hour without adjusting production deadlines and prices, thus pushing suppliers to breach labor standards in order to deliver;
- A company which, together with other actors, contributes to air pollution as a result of emissions, even if the company, by itself, pollutes within a legally allowable limit;



- Providing data about Internet service users to a Government that uses the data to trace and prosecute political dissidents contrary to human right.

Examples of when adverse impacts on or the violation of human rights have *linkage* to the company's operations, products or services through the company's business relationships, but where the company itself has not contributed to the negative effect or violation:



- Providing financial loans to an enterprise for business activities that, in breach of agreed standards, result in the eviction of communities;
- A company supplies equipment, central to its activities, to a business partner that does not respect workers' rights.

Source: *The Corporate Responsibility to Respect Human Rights – An Interpretive Guide*

and act on the observations, follow-up on measures taken and communicate which measures have been taken.¹⁷

Human Rights Due Diligence:

- Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.¹⁸

For a presentation of relevant South African laws, industry initiatives and other relevant international conventions and frameworks, see Appendix 2.

4. Background

4.1 The Platinum Industry in South Africa

Platinum is a sought-after precious metal, with a wide variety of applications. Half of all platinum extracted is used in the manufacture of catalytic converters for the automotive industry.¹⁹ Catalytic converters are used to transform hazardous emissions from cars, buses and trucks into harmless bi-products. As a result of more stringent environmental legislation, today over 85 percent of all newly manufactured automobiles are equipped with catalytic converters.²⁰

Platinum is also used in the manufacture of jewelry, fertilizer, electronic products, medical technologies, implants, fuel cells, glass and in the production of oil.²¹

Over 80 percent of the world's platinum resources can be found in South Africa. The mining of platinum for industrial use began in the 1920s.²² The majority of the deposits are found in the so-called Bushveld Complex in the northeastern portion of the country.²³ This area is comprised of about 39,000 square kilometers.²⁴

17 United Nations Human Rights, office of the high commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights – An Interpretive Guide*, p. 4.

18 UN Guiding Principles on Business and Human Rights, Principle 17.

19 e Bullion Guide, www.ebullionguide.com/platinum-usep.aspx.

20 Johnson Matthey, www.platinum.matthey.com/applications/autocatalyst/.

21 Johnson Matthey, www.platinum.matthey.com/about-pgm/applications.

22 McDonald, Donald and Hunt, Leslie B., *A History of Platinum and its Allied Metals*, Johnson Matthey, 1982, p. 412.

23 McDonald, Donald and Hunt, Leslie B., *A History of Platinum and its Allied Metals*, Johnson Matthey, 1982, p. 412.

24 McDonald, D and Hunter, L, p. 412.

South Africa

South Africa has been a democracy since 1994 when the African National Congress (ANC) won the country's first democratic election and thus ended the apartheid regime that had ruled since 1948. After 20 years of democracy, the country is still struggling to resolve social and economic injustices.

Population: 48.6 million (2013).

GDP: \$592 billion (2012).

GDP per capita: \$11,600 (2012).

GDP growth: 2.5 % (2012).

Inflation: 5.7 % (2012).

Unemployment: 22.7 % (2012).

Youth unemployment: 50 %

31.3 % of the population lives below the poverty line (1.25 USD per day).

Literacy: 93 % (2012).

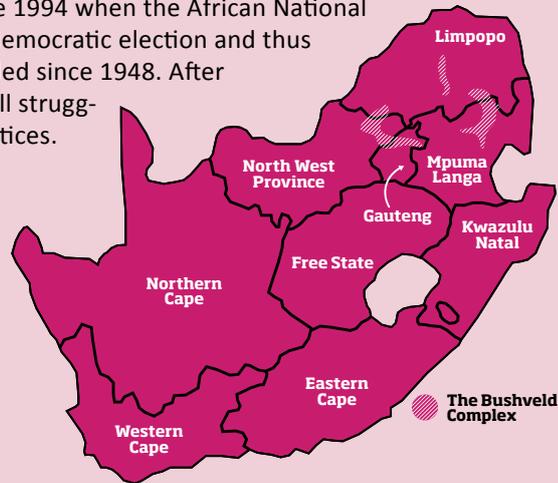
Infant mortality: 47 per 1,000 born (2013).

Average life expectancy: Men 57 years. Women 60 years (2012).

Number of HIV-infected: 5.2 million, approximately 11 % of the population (2013).

Exports: precious metals, machinery and equipment, agricultural products.

Imports: machinery and equipment, chemicals, petroleum products, scientific instruments, foodstuffs.



The Human Development Index of 2013 ranked South Africa number 121 of 189 countries. According to Transparency International's Corruption Perception Index, South Africa is ranked number 69 of 176 countries.

Sources: CIA World Factbook, UNDP home page, Human Development Report 2013, Transparency International Corruption Perception Index 2012.

During 2012, a large number of strikes took place in the platinum industry of South Africa. Production was reduced by 16 percent, which contributed to the retrenching of a number of mines. The supply of platinum was at its lowest in 12 years. Despite reduced supply, the price of platinum dropped by about 10 percent from 2011 to 2012. The main cause of this was a reduction in production in the European automotive industry as a result of the financial crisis.²⁵

4.1.1 The Impact of the Apartheid Regime on the Mining Sector

British colonial rule in South Africa applied, early on, laws which limited the right of black South Africans to own land and controlled where people could settle. One of these laws was the Land Act of 1913. When the apartheid system was introduced in 1948, several new regulations were applied which gave the white minority in the country further economic advantages over the rest of the population. The establishment of the mining industry in South Africa, which began with gold mining, was

²⁵ Johnson Matthey, *Platinum 2013*, p. 4.

The Mining Industry

The mining sector in South Africa is one of the country's most important industries and contributes over five percent to the nation's Gross Domestic Product (GDP).

- In 2012, more than 1.3 million jobs in South Africa were connected to the mining industry. This is equivalent to approximately 16 percent of the total labor force in the country outside of agriculture. 500,000 jobs are directly in mining itself and about 800,000 additional jobs are in sectors connected to the mining industry.
- On average, the wage of each miner sustains the lives of eight people. This means that approximately 13.5 million South Africans are directly dependent on the mining sector.
- South African law requires mining companies to contribute to development projects in the areas in which they operate. During 2011, the companies contributed approximately R1.3 billion (approximately US\$ 118 million) to various projects, equivalent to 1.4 percent of the mining companies' total profits.

Source: Chamber of Mines, Annual Report 2012.

a decisive factor in the formation of apartheid. Mining gold was very costly for the mining companies given that the deposits lie far below the Earth's surface. In addition, the price of gold was determined on an international market, which prevented the mining companies from passing on high production costs to consumers. In order to obtain as much profit as possible, other costs were lowered, wages, in particular. A series of regulations and taxes targeting only black South Africans had the aim of forcing the population to work in the mining industry.²⁶

One of the apartheid regime's regulations that had a major effect on the labor force in the country was the establishment of so-called "Bantustans" which, on paper, gave indigenous peoples independence. In reality, this led to nine million black South Africans losing their nationality when they were consigned to chosen poor rural areas lacking infrastructure. In addition, the apartheid regime appointed the leadership of each Bantustan, which, in turn, was controlled by the regime. Due to the widespread poverty in the Bantustans, large parts of the population migrated to other parts of South Africa in search of work. The Bantustan system was abolished along with the fall of the apartheid regime in 1994. The effects of these policies, however, can be still witnessed to a large extent, not the least in the Bushveld Complex, which has attracted migrant laborers from other parts of South Africa for a long time.²⁷

Following the introduction of democracy in 1994, the repressive laws preventing a large part of the population from owning land were repealed and the land was to go to the legitimate owners. In order to achieve this, the Communal Land Rights Act

²⁶ Apartheid Museum, *Understanding Apartheid – Learner's Book*, Oxford University Press Southern Africa (Pty) Ltd, Cape Town, 2008.

²⁷ *Ibid.*

The Platinum Mining Companies

The platinum industry in South Africa is dominated by three mining companies, which, together, supply over 75 percent of the world's newly-extracted platinum.

Anglo American Platinum

Anglo American Platinum (Amplats) is a South African subsidiary of the multinational mining corporation Anglo American. Amplats is the world's largest producer of platinum and supplies approximately 40 percent of the world's newly-extracted platinum resources. In addition to South Africa, Amplats also operates in Zimbabwe, Brazil and Russia. The company also owns smelters and refineries in South Africa. At the end of 2012, the company had over 56,000 employees.¹

Impala Platinum

Impala Platinum (Implats) is the world's second-largest producer of platinum and supplies approximately 25 percent of all newly-extracted platinum. The company operates in South Africa and Zimbabwe and has its own smelters and refineries. The company has approximately 63,000 employees.²

Lonmin

Lonmin supplies approximately 12 percent of newly-extracted platinum in the world, and is therefore considered the third largest mining company in the platinum industry. The company operates only in South Africa, with its own smelters and refineries. At the end of 2012, the company had approximately 36,500 employees.³

1 Anglo American Platinum, www.angloplatinum.com/about/about_sub/comp_profile.asp.

2 Impala Platinum, www.implatp.co.za/implats/Company-profile.asp.

3 Lonmin, www.lonmin.com/about_us/default.aspx.

was introduced, returning a large portion of the land to the traditional tribes in each area.²⁸ However, in 2010, the Constitutional Court ruled that the law violated the South African Constitution and it was repealed. The Court stated that, by only recognizing tribal leaders appointed by the apartheid regime as lawful land owners, the apartheid system was being made permanent and many black South Africans were still being denied the right to own their own land.²⁹

In many parts of South Africa, however, it is still common for tribal leaders to claim ownership of the land. This creates conflicts with the local communities. As a result of the Traditional and Leadership Governance Framework, which gives far-reaching powers to tribal leaders, local communities still experience difficulties in claiming

28 Information from interview with Bafokeng Land Buyers Association 22 June 2013 and Legal Resource Centre 28 June 2013.

29 The Law, Race and Gender Unit at the University of Cape Town, *Press Statement on the Constitutional Court judgment on the Communal Land Rights Act*, 11 maj 2010, www.clp.uct.ac.za/usr/lrg/docs/press/CLRA_Press_Statement.pdf.

their right to land.³⁰ In the Bojanala District, for example, where Swedwatch carried out its field study, there are several cases underway originating from conflicts between individuals and the Bafokeng tribe.³¹

4.2 The Social and Environmental Effects of Platinum Mining

The extraction of platinum in South Africa has serious consequences for both people and the environment. Several civil society organizations, including the international aid and campaign organization Actionaid, the Dutch research organization SOMO and the South African organization Bench Marks, have raised a number of recurring issues over a long period of time.³² A number of the most central issues in the Bushveld Complex are presented below.

4.2.1 Lack of Clarity on Land Rights

A central problem associated with land rights and platinum mining is the question of who owns the land on which the companies are operating, and thus, who is entitled to the royalty fees paid by the mining companies for operating on the land. As a result of the Bantustan policies, the local population was forced to buy land from the tribal leaders during the apartheid era, leading to conflicts today between the local communities and the tribal leaders over who is the rightful owner of the land.³³

Sayi Nindi, lawyer at the *pro bono* firm Legal Resource Centre in South Africa, is pursuing several cases where the local communities claim ownership rights to land. She says that South African law has created major difficulties for the local communities.

– The legislation (Communal Land Rights Act) was meant to realize the right to security of land tenure to millions of people who were dispossessed of their land and livelihood. This legislation gave wide-ranging powers to the tribal leaders (known as traditional councils) relating to the occupation, use and administration of communal land. What it failed to take into account was that these tribal leaders had been the same leaders appointed by the apartheid government. Many members of local communities and other forms and levels of local authorities do not consider themselves part of the same tribe as that of the tribal leaders or under their leadership. As a result, this legislation did not protect their right to security of land tenure but rather hampered the same right it was trying to protect.

30 Interview with Sayi Nindi, Legal Resource Centre, 28 June 2013.

31 Which today calls itself the Royal Bafokeng Nation.

32 See: SOMO, *Capacitating Electronics – The corrosive effects of platinum and palladium mining on labour rights and communities*, 2007, SOMO, *A Sputtering Process – An Overview of the Platinum Group Metals Supply Chain*, 2008, Actionaid, *Financing Economic Apartheid – How Danish investors finance land grabbing and indirectly force South Africa's black population of their land*, 2010, and Bench Marks Foundation, *Policy Gap 6 – A Review of Platinum Mining in the Bojanala District of the North West Province*, 2012.

33 Interview with Thusi Rapoo, Bafokeng Land Buyers Association, 22 June 2013, and Sayi Nindi, Legal Resource Centre, 28 June 2013.

Yet another problem relating to land rights is the resettlement of communities that takes place with the expansion of the mines. In 2008, Actionaid published the report “Precious Metal – The Impact of Anglo Platinum on Poor Communities in Limpopo, South Africa”. The report investigated the impact of Amplats on the local communities in the Limpopo Province in the Bushveld Complex. A large part of the population was shown to have lost their agricultural lands as a result of the expanding mining operations. Whole villages were resettled and the communities were not completely compensated. Additionally, those who protested against the resettlements were met with police brutality.³⁴

According to the UN Special Rapporteur for Adequate Housing, approximately 16,000 people have been resettled as a result of Anglo American Platinum’s operations alone in South Africa. In a report from 2008, the Rapporteur criticized, among other things, the fact that the resettlements were often implemented without consulting the local communities.³⁵

In addition to opposition to the resettlement itself, resettlement due to the expansion of mining can also lead to local communities becoming agitated about the management of resettlement. Cases of worsened living standards as a result of resettlement and lack of just compensation have been reported.³⁶

4.2.2 Adverse Effects on the Environment

The mining of platinum has significant effects on the environment in the areas surrounding the mines. Mining companies use large amounts of water and electricity, which reduces access for the local communities. In addition, the environment is affected by emissions into the air and water. In earlier studies, Bench Marks has shown how mining operations lead to the release of heavy metals into ground water and redirecting of water flow, leading to the destruction of local communities’ agricultural and grazing lands.

4.2.3 Substandard living conditions

Despite the presence of the mining industry, unemployment in local communities is widespread. In the Bojanala District, where Swedwatch conducted its field study, over 30 percent of the population is estimated as unemployed, and 49 percent of households earn less than R800 (US\$ 73) a month. The poverty line in South Africa is R524 a month.³⁷

As a result of the continual flow of people looking for work to the villages surrounding the platinum mines, informal settlements are increasing in size. A large part of the

34 Actionaid, *Precious Metal: The impact of Anglo Platinum on poor communities in Limpopo*, 2008.

35 Report of the Special Rapporteur on adequate housing 2008, p. 21, www.unhcr.org/refworld/country,,,MISSION,ZAF,456d621e2,47d55d3f2,o.html.

36 Information from local inhabitants in Mafenya and Ikemeleng, during Swedwatch’s field study June 2013.

37 The Local Government Handbook, www.localgovernment.co.za/districts/demographics/39. National Planning Commission, www.npconline.co.za/pebble.asp?reid=123. Bojanala Platinum District Municipality, www.bojanala.gov.za/sample-page/background-history/.

FPIC

Free Prior and Informed Consent (FPIC) is an internationally accepted standard and right based on concerned groups having the right to be consulted and giving, or refraining from giving, approval of activities that affect their access to land and natural resources. The UN Committee on Human Rights, the UN Committee for the Elimination of Ethnic Discrimination, the UN Permanent Forum for Indigenous Peoples and the International Finance Corporation (IFC), all describe FPIC as an internationally accepted right. The FPIC principle has been developed specifically for rights of indigenous peoples, but has also been used in other contexts broadly concerning consultations with local communities in the past few years.

FPIC is built on three components: “free”, “prior” and “informed” consent. For consent to be *free*, no form of force, threat or manipulation may be used to reach agreement. Those who are to provide consent should be able to participate in meetings and receive access to transparent and accurate information in a language that they understand. The criterion that consent should be *prior* means that the concerned parties are consulted enough in advance for them to understand the consequences of a project. *Informed* means that information provided to them, on which they should reach agreement, is correct, easily accessible and easily understandable to all those involved, as well as gives an objective picture of the effects for the local population.

Sources: UN-REDD Program, Guidelines on Free, Prior and Informed Consent, 2013, and Oxfam, Guide to Free, Prior and Informed Consent, 2010.

population in the Bojanala District lives in informal settlements. Proportions differ between the different municipalities in the district, with as many as 41 percent in one of the municipalities.³⁸ Informal settlements are areas where housing is erected by people who do not have legal ownership rights to the land or where housing does not live up to housing standards, e.g. shacks. Nearly 59 percent of the population living in informal settlements lack access to clean water. Access to clean water varies between the cities and the rural areas and it is in the informal settlements where the access is most limited.

In the Bojanala District, where all of the three largest mining companies conduct operations, a third of all inhabitants lack access to clean water. Local authorities have a major backlog dealing with this issue. The goal of providing clean water to the entire population will not be reached in the next five years.³⁹

HIV/AIDS is a widespread problem in the mining areas, as well as in South Africa as a whole. Approximately 40 percent of deaths in the Northwest Province are attributed to AIDS. The large proportion of migrant workers in the area, from both South Africa and neighboring countries, has led to extensive prostitution and to many workers starting parallel relationships. The increased sexual activity worsens the spread of HIV/AIDS.

³⁸ National Treasury, *3rd Generation IDP for Bojanala Platinum District Municipality*, mars 2013, p. 93.

³⁹ *Id.*, p. 86-87.



A typical house in the informal settlements.



Waste covering the streets – a common sight in the informal settlements.

Another continual source of frustration is the living conditions for the employees of the platinum mines. The mine workers can choose between living in worker hostels, where eight people share one room and 40 people share a few substandard toilets and showers, or receiving a living-out allowance paid by the company to use for paying for their own accommodations.⁴⁰

4.2.4 Insufficient Wages

There are a number of factors that have contributed to the recurring unrest and protests in the mining industry. Working conditions for the mine workers are physically demanding and hazardous, as platinum, for the most part, is mined by hand. The workers spend up to ten hours per day in narrow shafts several kilometers below the Earth's surface, where it is not possible to stand fully upright. Employment conditions are often uncertain with many mine workers employed using limited contracts and not knowing if they will be offered new positions at the end of their contract.⁴¹

Relatively speaking, mine workers in Africa have a higher level of wages in comparison with for example, workers in the agricultural sector. This is due to the difficult working environment. Despite this, wages do not always cover basic needs. An average mine worker in South Africa is a man in his 30s, who supports eight people. According to calculations from the think tank, Studies in Poverty and Inequality Institute (SPII),⁴² a mine worker usually spends just under R5,000 (US\$ 455) a month on food. An average base salary for a newly-employed worker is about R5,000. Other daily costs are thus not covered by a newly employed worker's wages.⁴³

40 Hargreaves, Samantha, *Women's unpaid labour, corporate profiteering and state neglect: More misery in Marikana*, Third World Resurgence Nr. 271/272, Mar/Apr 2013, p. 35-37.

41 P1 Konflikt, Malin Olofsson, *Gruvdrift eller roudrift?*, 9 februari 2013. sverigesradio.se/sida/avsnitt/151956?programid=1300.

42 SPII, www.spii.org.za/index.cfm?AgentsID=434.

43 *Ibid.*



Rock Drill Operator hard at work. PHOTO: THAPELO LEKGOWA

Mine workers in South Africa have therefore, through the trade unions, demanded a living wage of R12,000 (US\$ 1100), which, in certain cases, would involve doubling their salaries. Defining a living wage is difficult and varies between different countries, but the idea is that wages should cover the basic needs of the worker and his/her family. The Chamber of Mines, the industrial association of mine companies in South Africa, says that all the costs for the company associated with a worker must be taken into account when discussing the issue of wages, not only the basic wage. In addition to the average basic wage for full-time employees, which for a newly employed worker is about R5,000, there are additional costs for the company in the form of food, health care, bonuses, overtime compensation, as well as housing costs or living-out allowances. These total about R11,000 (US\$ 1000), according to the companies. This, together with the falling price of platinum, leads the mining companies to deny that there is any room for increases in basic wages.⁴⁴

Annual wage negotiations in the platinum industry are held separately in respect of each mining company and the trade unions. Traditionally, negotiations have taken place with the dominant trade union in each mine, which, to a certain extent, has contributed to conflicts among the unions, described below. There is nothing in the law, however, which states that other trade unions cannot participate in negotiations.⁴⁵ In the gold and coal industries, however, wage negotiations are conducted centrally with the Chamber of Mines and cover all workers, irrespective of which mining company employs them.

44 Reuters, *Africa Investment - South African miners demand leap to "living wage"*, www.reuters.com/article/2013/07/10/africa-investment-idUSL5NoF503O20130710.

45 Chinguno, Crispen, *Marikana Massacre and Strike Violence Post-Apartheid*, *Global Labour Journal*: Vol. 4: Isp. 2, 2013, p. 160-161.

For some time, frustration had been building up against the formerly dominant trade union, the National Union of Mineworkers (NUM). Leadership is not seen to be communicating with its membership, insight into the negotiations is poor and it is reported that members have been expelled for criticizing the leadership. Consequently, a new trade union was formed in 2012 - the Association of Mineworkers and Construction Union (AMCU). It has become the largest union at a number of mines.⁴⁶

4.2.5 Uncertain Conditions for Migrant Workers and Contract Laborers

The fact that the mining industry relies, to a large extent, on migrant workers and workers hired through subcontractors are issues that are often raised in research as a central obstacle to development. According to the ILO's Convention on Migrant Workers, companies are responsible for guaranteeing that migrant workers and non-migrant workers have the same working and employment conditions, something which is not lived up to in the mining industry in South Africa.⁴⁷

During 2011 and 2012, Asanda Benya, a researcher at the University of Witwatersrand in Johannesburg, conducted a study on the informal structures in the platinum industry in South Africa and worked herself as a mine worker for 11 months. It became apparent that the safety of workers contracted through subcontractors was significantly worse than that of those directly employed. It was primarily the contracted laborers who worked in the most dangerous parts of the mines, so that the company was not liable for compensation and health care related to potential accidents. Safety equipment was also not equally available for everyone. The contracted laborers said that they were forced to purchase safety equipment themselves if they wanted to have it, otherwise they would have to manage without.⁴⁸

4.2.6 The Marikana Massacre

Due to the often substandard housing, the high levels of unemployment and the difficult working conditions in the mines, there are long-standing tensions between local communities and mining companies in South Africa. During 2012, the platinum mining industry in South Africa suffered a series of wildcat strikes. The disturbances began at an Impala mine in the Bojanala District. The strike was initiated by the rock drill operators, who demanded a 200 percent wage increase, from R3,000 to R9,000 a month (US\$ 275 to 825). From the outset, these workers refused to be represented by the then only recognized trade union, NUM, which the workers considered corrupt, and they therefore organized themselves informally. As time passed, the new trade union AMCU received larger support from the mine workers.⁴⁹

In the spring of 2012, a series of protests followed in the mining industry, inspired by the strike at the Impala mine. In June, rock drill operators at a Lonmin mine in the

46 Twala, Chitja, *The Marikana Massacre: A Historical Overview of the Labour Unrest in the Mining Sector in South Africa*, Southern African Peace and Security Studies, Vol. 1, Nr. 2, 2013.

47 ILO, *C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*.

48 Benya, Asanda and Webster, Edward, *Dimensions of Informality: Changing workplace relations in South Africa's Platinum Belt*, 2013.

49 Twala, C, 2013.

village of Marikana organized a strike. Here too, the miners refused to be represented by NUM. The demand was for a wage increase to R12,500 (US\$ 1140) a month. The management dismissed the demand, saying that it was made outside the agreed period for wage negotiations and that negotiations were only conducted with representatives of the largest union, in this case NUM.⁵⁰

The protests were then also directed toward NUM at the same time as support for AMCU increased. During one of the protests outside NUM's local offices in Marikana, union representatives fired at the workers. Two workers were killed and several injured. The violence between the two trade unions increased following this, resulting in a number of deaths. During the summer of 2012, tens of trade union representatives, workers, security guards and police were killed in the confrontations.⁵¹

The workers were now prohibited from meeting at the local football stadium which had earlier served as a meeting place. They gathered instead on a hill outside the mining site. On August 16th, workers armed themselves with traditional weapons such as spears and clubs. The police were called in and, in the violence that followed, they shot and killed 34 workers and injured another 78. The Farlam Commission was appointed to investigate the events, determine responsibility and provide recommendations for possible indictments.⁵²

4.2.7 The Situation of Women in the Mining Industry

The mining industry in South Africa is and has long been dominated by men. Until 2003, it was prohibited for women to work in mining. Since 2004, the number of women working in the mining industry in South Africa has increased from 0 to 13 percent. Counting women who actually work in the mines themselves, the figure is closer to 7 to 8 percent. The government has set a target that this should be increased to at least 10 percent during 2014. Despite this, several of the categories of employment in mining are still seen as exclusively male positions, for example rock drill operators. In this labor group, no women are represented at all. Female workers are retained instead in less qualified labor groups, such as assistants, cleaners, installers of ventilation and water and other more supportive roles for the men who perform the core tasks themselves.⁵³

– The male-dominated culture in mining impacts women both at work and at home. The women who work in the mines are also forced to work an extra shift at home doing all the domestic tasks, something men are not expected to do. In areas where there is no water and sanitation, for example, it is up to the women to walk long distances to fetch water, or to wake up in the middle of the night to prepare the children for school before

50 *Id.*, p. 162.

51 *Ibid.*

52 Twala, Chitja, *The Marikana Massacre: A Historical Overview of the Labour Unrest in the Mining Sector in South Africa*, Southern African Peace and Security Studies, Vol. 1, Nr. 2, 2013.

53 Benya, A., *Absent from the Frontline but not Absent from the Struggle: Women in Mining*, *Femina Politica*, nr. 1/2013, p. 145.

they go to their shift in the mines. These can begin as early as 4 a.m., explains Asanda Benya, researcher specializing in the situation of women in the mining industry.⁵⁴

The bonus system in the mines is also related to production. Given that women do not directly participate in production itself, for example in drilling, they do not receive the same bonuses as their male colleagues. The bonus system also leads to men not wanting women in their teams, believing that they slow down the pace of work and thus negatively affect the team's bonus.⁵⁵

– To say that women cannot perform the same tasks as men in the mines is just an excuse to keep women away from this male dominated world. What is needed is education and training in order to strengthen the position of women both at the workplace and at home, says Asanda.

5. The Swedish Companies in the Value Chain

In this report, Swedwatch has chosen to investigate four Swedish companies with links to platinum mining in South Africa: Volvo and Scania, which use platinum in their products; and Atlas Copco and Sandvik, which supply mining equipment to the mining companies. A presentation is given below of the platinum value chain and the Swedish companies.

5.1. The Purchasing Companies

The sale of platinum takes place nearly exclusively through three primary channels. The mining companies on-sell the metal to either manufacturers or chemical companies, or directly to large multinational consumers, primarily in the automotive industry. A portion of sales also goes to special platinum markets in London and Zurich, for example. Scania and Volvo do not purchase platinum directly from the mining companies.⁵⁶

Although the value chain for platinum, from mine to final product, contains several tiers, it is possible to identify a number of places where a few global companies dominate the market: the mining companies during actual extraction, manufacturers and chemical companies which treat the metal based on how it will be finally put to use, and the automotive industry which accounts for the usage of over half of all newly mined platinum.

The mining companies, and the manufacture and chemical companies treating platinum for resale, are all members of the industry organization *International Platinum*

54 Interview with Asanda Benya, 28 June 2013.

55 Benya, A., and Webster, E., 2013.

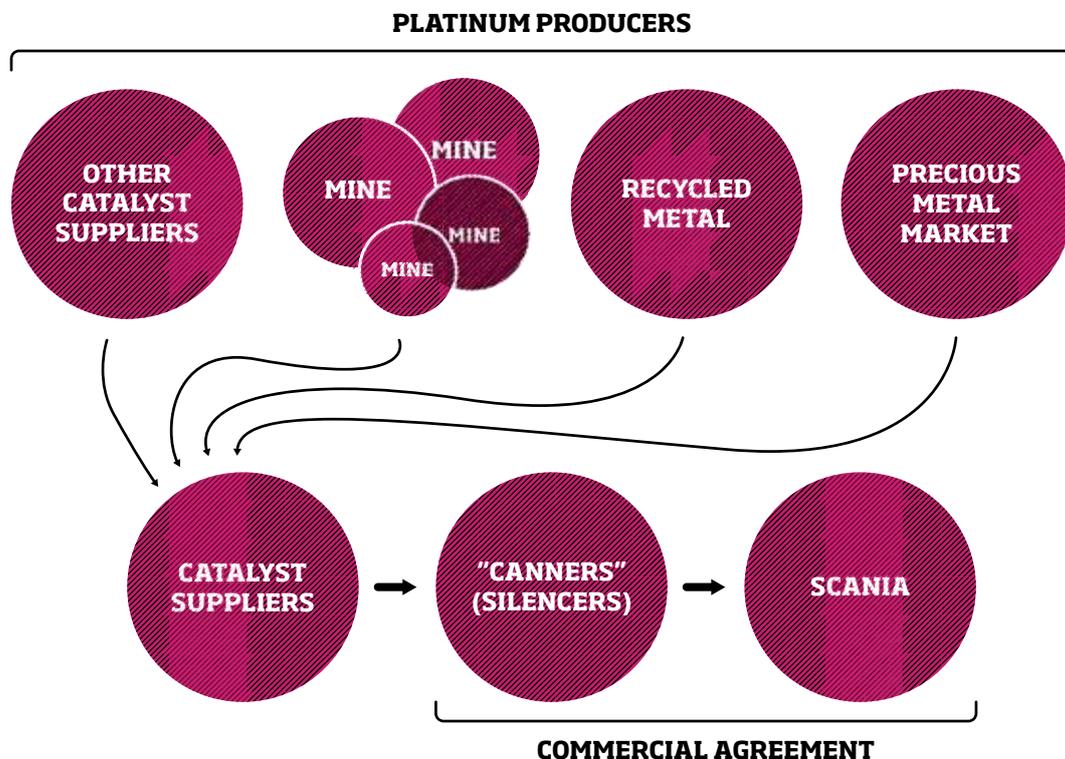
56 SOMO, *A Sputtering Process – An Overview of the Platinum Group Metals Supply Chain*, November 2008.

*Group Metals Association (IPA).*⁵⁷ In 2009, the IPA adopted principles for sustainability to which its members should adhere. The principles are somewhat generally formulated and do not go into detail, but one of them notes that members should work actively with suppliers, customers and other actors throughout the platinum value chain and contribute to sustainable development.⁵⁸

Scania

- Manufactures trucks, buses and industrial motors.
- Founded in 1891.
- Turnover: 79.6 billion SEK (2012) (US\$ 12.2 billion).
- Headquarters in Södertälje, Sweden.
- Number of employees globally: approximately 38,000.
- Production in: Sweden, France, the Netherlands, Poland, Argentina and Brazil.
- Sales and service in over 100 countries.
- Majority owner: German Volkswagen, owning 70 percent of the company's shares.

Scania describes its platinum supply chain thus:



⁵⁷ International Platinum Group Metals Association, www.ipa-news.com/en/68-o-Members.htm.

⁵⁸ International Platinum Group Metals Association, www.ipa-news.com/en/files/principles.pdf.

Scania's direct suppliers, as the diagram above illustrates, are companies which manufacture silencers, of which the catalytic converter is a part. Platinum is used in the manufacture of the catalytic converter in the stage prior to that of Scania's direct supplier. Scania has approximately 1,000 direct suppliers globally and requires, in its contracts, that all of them should comply with the company's sustainability policy, as well as place corresponding requirements on their own subcontractors.

Scania's sustainability policy is based on the UN Global Compact, which is a formal requirement, in supplier contracts, for direct suppliers to also respect. The company also uses the OECD Guidelines for Multinational Enterprises as internal guidance. Issues of sustainability are integrated into purchasing methods which, among other things, include that all those working in purchasing are trained in sustainability and should take into account sustainability aspects in their daily work.⁵⁹

According to Jens Schlyter, Head of Corporate Responsibility at Scania, the company focuses primarily on its direct suppliers in its sustainability efforts. It is in this relationship that Scania has the best opportunity to impact sustainability, through supplier contracts. Through contracts, Scania obligates direct suppliers to place the same requirements on subcontractors.⁶⁰

– We place our requirements in the first tier, but it is important to us, of course, to be aware of the risks in the entire supply chain. It is important that the materials in our products have been extracted in an acceptable way. That is why we require our suppliers to place the same requirements further down the supply chain, says Jens Schlyter.

The difficulty, according to Scania, is the issue of traceability: tracking the metal to a specific mine. At present, not all components can be traced to specific mines. The company has no information on exactly where the platinum used in Scania's catalytic converters is extracted.⁶¹

Scania invests in long-term relationships with suppliers and when possible, focuses on small and medium-sized suppliers. They do this in order to be able to influence the business relationship in the best way. Starting a new relationship with a supplier is a long process during which the potential new business partner undergoes a number of reviews, among others, to determine the capacity of the subcontractor to place requirements further down the supply chain – something of great importance to Scania. Most of Scania's direct suppliers are based in Sweden or Western Europe where, generally speaking, there is a lower risk of human rights being adversely impacted.⁶²

Scania says that the motivation for working with sustainability issues in the supply stage comes from spreading the values of the company. It is also based on the assurance that the company's products, and its components, are produced in accordance

59 Interview with Jens Schlyter, Head of CR, Scania and Klas Nilsson, Head of Strategy & Processes, Global Purchasing, Scania, 22 May 2013.

60 *Ibid.*

61 *Ibid.*

62 *Ibid.*

with internationally accepted norms for acceptable environmental and working conditions. Scania also wants to minimize risks to the company and secure Scania's good reputation, which is beneficial for future business relationships.⁶³

As a direct result of Swedwatch's investigation, Scania has initiated a dialogue with its supplier of catalytic converters. As a result a dialogue has been initiated with one of the mining companies to obtain information on how the company ensures that its operations comply with international norms regarding labor rights and do not adversely impact human rights. Scania's supplier will conduct an audit of the mining company to ensure compliance.⁶⁴

Volvo Group

- Manufactures trucks, buses, industrial motors and construction equipment.
- Founded in 1927.
- Turnover: 304 billion SEK (2012) (US\$ 46.7 billion).
- Headquartered in Gothenburg, Sweden.
- Total employees globally: 98,717.
- Production in 19 countries in Europe, North America, Asia and Latin America.
- Sales and Service: more than 190 markets.
- Majority owner: The Swedish investment company Industrivärden holds 19 percent of Volvo's shares.

Volvo uses platinum in its silencers in the same way as Scania and has a similar supply chain. Volvo has approximately 36,000 direct suppliers that have committed themselves to complying with the company's code of conduct and place the same requirements on its subcontractors. The code was last updated in 2012 and is based on the OECD guidelines and the UN Global Compact.⁶⁵

Potential suppliers are evaluated using the requirements in several different documents, including sustainability requirements. Existing suppliers are evaluated using the same requirements as potential suppliers. Volvo uses a self-assessment tool which suppliers complete. In this way they provide information to the company about their sustainability performance. For the most part Volvo does not use social audits.⁶⁶

Malin Ripa, Senior Vice President CSR at Volvo, said in an interview that Actionaid's 2008 report on adverse human rights impacts of the platinum industry led to Volvo staff visiting the Limpopo Province in order to better understand the situation. The trip was conducted together with Volvo's direct supplier, which is also a large

63 *Ibid.*

64 Information from Jens Schlyter via e-mail, 11 October 2013.

65 Interview med Malin Ripa, Senior Vice President CSR, Volvo, 5 June 2013.

66 *Ibid.*

customer of Amplats. A report back to management was delivered in 2008. Locally, Volvo communicated the results with everyone in the supply chain, the local communities and Actionaid. Since then, Volvo has monitored how their supplier is following up on issues that were identified.⁶⁷ Swedwatch has not received additional concrete information from Volvo regarding this matter, thus not allowing for any evaluation of the results.

Concerning the company's human rights due diligence, Ripa says that the mining sector is identified as a high risk industry. How this is specifically managed is not communicated externally, except in the company's annual sustainability report. Ripa points out that the UN Guiding Principles are voluntary and that it is up to each company to decide how all the risks should be externally communicated.⁶⁸

5.2. The Supplying Companies

While it is more or less a given norm among multinational corporations to take responsibility for, and place requirements on their suppliers, the ambitions and methods used to do the same thing in their customer relations are not as developed. In contrast to the companies using platinum in their final products, corporations selling mining equipment have direct contact with the mining companies and thus a closer business relationship with them. On the other hand, companies have, as a rule, a stronger position and therefore possibility to place requirements on their suppliers than their customers.

Swedwatch has in several previous reports dealt with the issue of customer responsibility. In 2003, Atlas Copco's and Sandvik's relations with the mining company Ashanti Goldfields, accused of both forced resettlements and environmental devastation in Ghana, were investigated. In 2006, Swedwatch investigated Sandvik's relations with the mining company Freeport Mining in the then conflict ridden Papua Province in Indonesia. Freeport was accused of environmental destruction and of contributing to the existing conflict through, among other things, employing the military as security.⁶⁹

In the case of Ashanti Goldfields in Ghana, both Atlas Copco and Sandvik stated that they did not work with customer evaluations, and the companies did not consider themselves to have any responsibility for investigating the conditions in which their customers operate. In their reaction to the investigation of Freeport Mining in Indonesia, Sandvik added that the company did not have any responsibility in relations with its customers.

67 Interview with Malin Ripa, via e-mail, 1 September 2013.

68 *Ibid.*

69 For more information see: *Svensk inblandning i miljöskandal* www.swedwatch.org/sites/default/files/Svensk_inblandning_i_miljoskandal_i_Ghana_artikel_030218_0.pdf. *Atlas Copco and Sandvik friskriver sig från ansvar i Ghana* www.swedwatch.org/sites/default/files/Atlas_Copco_and_Sandvik_friskriver_sig_fran_ansvar_i_Ghana_artikel_030429_0.pdf. *Sandvik and Freeport – Två företag i konflikt om Papua* www.swedwatch.org/sites/default/files/Sandvik_and_Freeport._2006.pdf.

Previously, the existing international norms and frameworks concerning companies and human rights gave little guidance in the issue of how they should position themselves in relationship to their customers. With the endorsement of the UN Guiding Principles, this has changed. It is evident from the principles that companies have a responsibility for adverse human rights impacts in their entire operations and in all business relationships, and that they should not differentiate between suppliers or customers.⁷⁰

Atlas Copco

- Business areas: compressor technology, industrial technology, mining and quarrying technology, construction technology.
- Founded in 1873.
- Subsidiary in South Africa since 1956.
- Global turnover: 91 billion SEK (2012) (US\$ 14 billion).
- Turnover in South Africa: 3.4 billion SEK (2012) (US\$ 523 million).
- Employees in South Africa: 1,200.
- Employees globally: 39,800.
- Production in over 20 countries globally.
- Sales and service in over 170 countries.
- Majority owner: Swedish investment company Investor holds approximately 22 percent of shares.

Atlas Copco supplies mining equipment to the three major platinum mining companies in South Africa. Since 2002, the company has had a special long-term service and supply agreement with Amplats, for sales of mechanized equipment. Atlas Copco states that the extraction of platinum takes place using handheld rock drills due to the thin layers in which the metal is found, but in more recent years, mechanized mining has grown in order to increase safety. Atlas Copco does not reveal how large its dealings are with each company, but has its own warehouse and service personnel on site at a number of mines.⁷¹

In 2013, Atlas Copco launched a customer evaluation system called the *Customer Sustainability Assessment Tool*. The system is based on seven parameters, which are then totaled, to grade the sustainability of a customer. The parameters are based on corruption risks, country-specific human rights risks, sector-specific human rights risks, the sustainability efforts of the customers and risks to health and safety. This

70 UN Guiding Principles on Business and Human Rights, commentary to Principle 13 and Principle 19.

71 Interview with Karin Holmquist, former Vice President Corporate Responsibility, Atlas Copco and Mattias Olsson, Vice President Investor Relations, Atlas Copco, 17 April 2013.

assessment is done so that the company does not need to rely exclusively on information from the customer about its sustainability efforts.⁷²

– It is important for us not just to look at the sustainability efforts of the customer. There are many companies that work a lot with sustainability issues, but in difficult environments, and this aspect has to be taken into account, explains Karin Holmquist, former Vice President Corporate Responsibility at Atlas Copco.⁷³

In addition to using the seven parameters, an internet search is also conducted in a system where the search criteria should show potential incidents or irregularities in which the customer has been involved. This gives a further indication of concrete risks. Those responsible at Atlas Copco for conducting the evaluation then provide comments and recommendations as to how the customer should be managed. If warning flags are raised about the customer in the system, Atlas Copco, in the first instance, will explain the problem to the customer and then attempt to correct the irregularities through dialogue. If there is no desire by the customer to change or improve, terminating the relationship may be considered.⁷⁴

– Just as we have always conducted a credit assessment of potential customers, we now complement with this additional information, says Mattias Olsson, Vice President Investor Relations at Atlas Copco.

The customer assessment tool has been tested in a number of countries, South Africa among them, and was launched more extensively during 2013. The local sales companies in each country themselves are responsible for conducting these assessments and deciding on how to manage the results.⁷⁵ As Swedwatch was not able to visit Atlas Copco in South Africa, no further information was available as to how the assessment has worked or what results it has yielded.

Besides the customer assessment tool, Atlas Copco has a whistleblowing mechanism that can be used by both internal and external parties to highlight irregularities. Atlas Copco says that their motivation for working with customer assessments comes, in part, from the requirements in the UN Guiding Principles; as a supplier acting and convincing the customer to correct irregularities if they arise, and in part, as a company that does not want to be associated with questionable customers. The requirements of the Swedish Export Credits Guarantee Board (EKN) used in granting guarantees have also inspired Atlas Copco to develop the system of customer assessments. See more information about EKN's requirements in Chapter 7.

During 2011, Atlas Copco conducted human rights due diligence in Ghana and Kazakhstan, in accordance with the UN Guiding Principles. This is mentioned in the company's annual report, but further details are not communicated externally. No human rights due diligence has been conducted for the company's South African operation.

72 *Ibid.*

73 Karin Holmquist was, at the time of the interview, Vice President Corporate Responsibility at Atlas Copco but has since summer of 2013 been replaced by Mala Chakraborti.

74 *Ibid.*

75 *Ibid.*

Sandvik

Sandvik supplies equipment to three of the largest platinum mining companies in South Africa. Since 2005, the company has had a specific service and supply agreement with Lonmin regarding the supply of machines for mechanized mining. Sandvik does not provide information on how much business they do with each respective company. Sandvik does, however, maintain its own warehouse and service personnel on-site at a number of mines.⁷⁶

- Areas of operations: mining and quarrying technology, construction technology, tools and tool systems for metalwork, material processing.
- Founded in 1862.
- Registered in South Africa since 1926.
- Global turnover: 99 billion SEK (2012) (US\$ 15.2 billion).
- Turnover in South Africa: 5.2 billion SEK (2012) (US\$ 800 million).
- Number of employees in South Africa: approximately 1,900.
- Number of employees globally: 49,000.
- Production: 180 production units globally.
- Sales and service in over 130 countries.
- Majority owner: The Swedish investment company Industrivärden owns approximately 11 percent of all shares.

Interviewed by Swedwatch, Christina Båge-Friborg, Head of CSR at Sandvik, said that Sandvik's new management prioritizes sustainability issues more highly in operations than previous management. Assessments of potential customers are carried out locally, and there has never been a central process for these in the company previously. However, efforts to develop such a process are taking place.⁷⁷

Båge-Friborg says that all local problems are symptoms of poverty. Combatting poverty in regions where Sandvik operates in is better for the company's business, she adds. Consequently, there is a lot of incentive to work with these issues and reduce poverty. In respect of conducting human rights due diligence in accordance with the UN Guiding Principles, Sandvik says that this is ongoing and that the company is not yet ready to make its findings public. Båge-Friborg refers to Sandvik as a large, global company, a fact that makes the issues complex. The process will take the time it deserves and be analyzed before the information is communicated externally.

76 Interview with Christina Båge-Friborg, Head of CSR, Sandvik and Bo Berglund, Manager Non-Financial Assurance, Sandvik, 3 June 2013.

77 *Ibid.*

In order to manage possible irregularities, the company has had an internal whistle-blowing mechanism since 2004. This also forms part of the code of conduct that is attached to each contract. Sandvik's employees can use this mechanism to point out wrongdoings, but it can also be used to draw Sandvik's attention to irregularities, e.g. the operations of a mining company. It is planned to expand the mechanism so that external stakeholders can also alert Sandvik to potential problems.⁷⁸

Concerning the possibility of placing requirements on customers, Bo Berglund, Manager Non-Financial Assurance at Sandvik, says that responsibility for customers is difficult to manage and that, as a supplier, the company can only engage in dialogue.

– We have continual discussions with our customers but we cannot influence how they act in the same way as in our relationships with suppliers. All suppliers must live up to Sandvik's standards. If we see that something is not right, we can put pressure on suppliers. Relationships with customers are different and require a different approach, says Berglund.

During 2012, platinum mines have been the second largest market after coal mines – the largest market for Sandvik in South Africa. Locally, Sandvik is engaged in a number of CSR projects in cooperation with its customers, the mining companies. The *Mining Charter* in South Africa states that Sandvik must use 0.5 percent of its income for various CSR projects. Miles Wakeford, Regional Head of CSR at Sandvik in South Africa, pointed out during an interview that these projects are important and that they have support from local communities. Sandvik only participates in projects in which local communities have been consulted.⁷⁹

In respect of conducting assessments of Sandvik's customers, John De Beer, Regional Commercial Manager, at Sandvik in South Africa, says that prior to establishing a new relationship with a customer, the company checks its credit rating and anti-corruption mechanisms. Sandvik obviously does not do business with UN embargoed countries. There is no review of the customer's sustainability policies or impacts on human rights or the environment. It does, however, remain a factor in continued cooperation with the customer.⁸⁰

– Given that we have long-term relationships with our customers and are present on-site, we well know what is happening at the mines. If irregularities occur during a project, we get to know about them and manage them. Most often, they have to do with an individual who has acted incorrectly, adds Wakeford.

Sandvik believes that the company can improve the situation locally by engaging themselves in projects that contribute to sustainable development, such as supporting local companies that can be future business partners for Sandvik, or creating conditions for better education so that the base of employable personnel is expanded.⁸¹

78 *Ibid.*

79 Interview with Miles Wakeford, Regional Head of CSR, Sandvik, and John De Beer, Regional Commercial Manager, Sandvik, 27 June 2013.

80 *Ibid.*

81 *Ibid.*

– What we cannot do is influence the mining companies’ relationships with the local communities; those are their relationships and we shouldn’t get involved, says Wakeford.

5.3 The Responsibility of Investors

In addition to the four Swedish companies that Swedwatch chose to review, it is also worth mentioning that the First and Fourth Swedish National Pension Funds own shares in the mining companies. The First Swedish National Pension Fund owns shares in Amplats totaling up to 17 million SEK (US\$ 2.6 million), and Impala totaling up to approximately 37.5 million SEK (US\$ 5.7 million).⁸² The Fourth Swedish National Pension Fund maintains shares in Lonmin, totaling up to approximately 6.5 million SEK (US\$ 1 million).⁸³ Together, they own funds totaling approximately 60 million SEK (US\$ 9.2 million) in the three mining companies.

Swedish law on public pension funds underlines the importance that the funds, as managers of state pension assets “maintain the confidence of the public”. In the preamble, it is stated that “consideration of the environment and ethics shall be taken in investment activities without sacrificing the over-reaching goal of high returns on investment.”⁸⁴ The regulations concerning ethics and the environment have sometimes been criticized for being too weak. A state sponsored review from 2008 of the ethical policies of the National Pension Funds, recommends, among others, that the ethics requirement is strengthened by moving the statement on ethics and the environment from the preamble into the law itself.⁸⁵

In the spring of 2011, when the Parliamentary Investigation Service reviewed the shareholdings of the National Pension Funds, a large number of companies were identified that caused or contributed to adverse human rights impacts, some of which had also been blacklisted by other institutional investors.⁸⁶ In the latest state sponsored review of the pension system in 2012, it is proposed that the statement on ethics and the environment should remain, but that efforts to improve ethics should be deepened through a developed value base. The reviewer writes that “consideration for ethics and the environment should be given a more advanced position in efforts at developing a common value base for the administration”.⁸⁷

Since 2007, the First, Second, Third and Fourth Swedish National Pension Funds coordinate their work on issues regarding ethics and the environment through the joint Ethical Council. The purpose of the Council is to work with foreign companies

82 First Swedish National Pension Fund, www.ap1.se/upload/Innehav/Innehavslista%20global%202.pdf.

83 Fourth Swedish National Pension Fund www.ap4.se/upload/FinansiellaRapporter/AktieAndAndelar_2012_06_30_FINAL.pdf.

84 Lagen (2000:192) om allmänna pensionsfonder and förarbetena prop. 1999/2000:46).

85 SOU 2008:107 Etiken, miljön and pensionerna.

86 Swedwatch, *Rena guldgruvan*, 2011.

87 SOU 2012:53 AP-fonderna i pensionssystemet – effektivare förvaltning av pensionsreserven.

that have been connected with adverse impacts on the environment and human rights. The Ethical Council comprises of regular representative from each pension fund and works only with listed foreign companies.⁸⁸

Since 2011, the Ethical Council runs a project aimed at getting an overview as to how companies in the mining industry work on sustainability issues. The reason is that the Council has identified the mining sector as a particular risk factor with a large impact on human rights and the environment. The project is conducted by reviewing the sustainability efforts of more than 30 mining companies from the perspective of the industry organization International Council of Metal and Mining's (ICMM) 10 principles of sustainability. The result of the project shows large variations between the companies reviewed on how far-reaching their work on sustainability has advanced. The goal is to follow up the program in 2014, following dialogue with all companies reviewed.⁸⁹ For a more comprehensive explanation of the ethics work of the National Pension Funds, see Swedwatch's earlier report "Rena Guldgruvan?" ("A Real Goldmine") from 2011.⁹⁰

6. Case Study: The Impact of the Platinum Mines on Local Communities

In its case study, Swedwatch has chosen to focus on the three largest platinum mining companies in South Africa, Anglo American Platinum, Impala Platinum and Lonmin. The case study is limited to the area surrounding the city of Rustenburg in the North-west Province, where most platinum mining occurs and all the companies investigated have extensive operations. Swedish companies are most involved here in the platinum industry, both through customer and supplier relations.

In terms of population, the Northwest Province is one of the smaller provinces in South Africa, with a population of 3.6 million. Some 6.8 percent of the country's population lives there.⁹¹ The province is divided into four districts. All the villages visited by Swedwatch are situated in the largest district - Bojanala - with the highest number of platinum mines.

Swedwatch visited six communities in the vicinity of the platinum mines in June 2013 to speak to the local population about how their lives are affected by the mining industry. The sample was chosen based on the presence of one or more of the largest platinum mining companies.

Many of those Swedwatch met were initially unwilling to speak openly, fearing that they could experience consequences for negative views about the mining companies or local tribal leaders. However, once they realized that Swedwatch did not work for

88 Etikrådet, www.ap4.se/etikradet/Etikradet.aspx?id=560.

89 Etikrådet, *Årsrapport 2012*, www.ap4.se/upload/Etikr%C3%A5det/Arssrapport_2012_Etikradet_web.pdf.

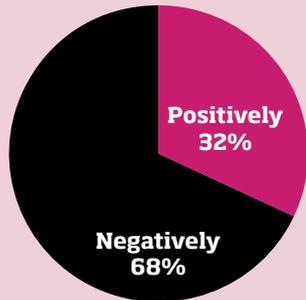
90 Swedwatch, *Rena guldgruvan*, 2011.

91 Statistics South Africa, *Census 2011 Statistical release – P0301.4*, October 2012.

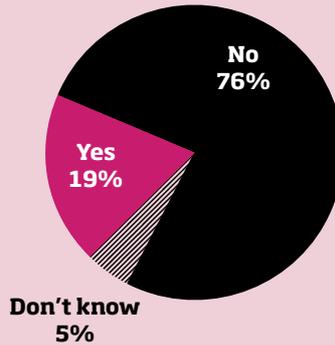
Results of Questionnaires

A selection of questions answered by local communities in the questionnaire is presented below. In all, 120 people in six communities participated.

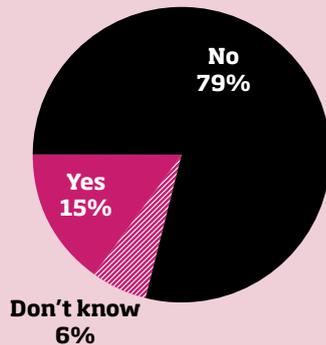
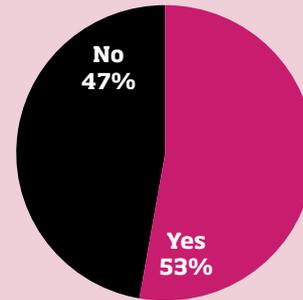
How has the presence of mining companies affected your life?



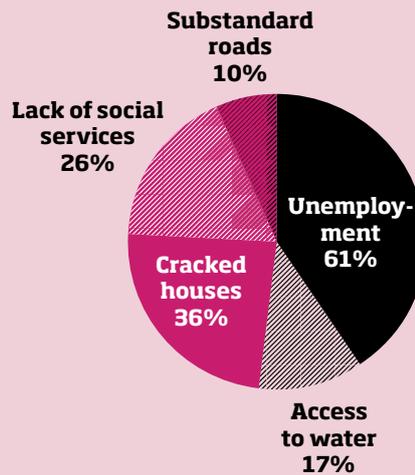
Is it possible for you to contact the mining companies with your comments and/or complaints?



Do the mining companies contribute to the creation of employment opportunities in your community?



Is there any collaboration between the mining companies and your community?



What are the main issues and needs in your community? (Respondents could mark several alternatives. A selection of the most common answers is presented here.)

the mining companies they became less skeptical. In this chapter, the stories of those interviewed are told alongside the comments of the mining companies.

Most employment opportunities in Bojanala are in the mining industry. Part of the population also works in agriculture, primarily the raising of livestock and on tobacco, citrus or wheat farms.⁹²

⁹² National Treasury, *3rd Generation IDP for Bojanala Platinum District Municipality*, mars 2013.

6.1 The Local Communities

6.1.1 Conflicts over Land Rights

Article 17 in the Universal Declaration of Human Rights states that *(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.*

Several of those among the local population in the Bojanala District, which officially belong to the Bafokeng tribe, have laid claim to ownership of the land which today, according to the law, belongs to the traditional councils. In order for them to better pursue their claims, an organization called the Bafokeng Land Buyers' Association has been formed. Thusi Rapoo, one of the organizers in the association, said in an interview with Swedwatch that when only tribal leaders were allowed to own land, the local population was forced to buy the land via the tribal leaders. On paper, it was the tribal leader who owned the property, but there was an agreement with the local inhabitants who, in practice, used the land according to their own needs. Since the fall of apartheid, however, the traditional councils have often refused to recognize this agreement.⁹³

Swedwatch conducted several interviews during the field visit. During these the issue of land ownership and the relationship between the local communities and the tribal leadership in the region was raised as an important problem.

– We who live here are not Bafokeng, but it is the traditional council which decides and receives all the fees from the mining companies because they are mining on “their” land. The money does not benefit us. The tribal leaders live in luxury while we in the villages have bad roads, collapsing houses and insufficient healthcare, says Thembi Sephai in Chaneng.

This was confirmed when Swedwatch was allowed to see the area where the Bafokeng tribal leaders live, not far from one of the villages visited during the study. In this area, roads are made of asphalt, the houses are modern, fenced and with large gardens and garages, and there is a private hospital.

Many with whom Swedwatch spoke explained with frustration how they are never involved in any decisions; everything is decided during contacts between the mining companies and tribal leaders.

– The mining companies say that they consult the local communities, but actually, it is only the tribal leaders with whom they have contact and they do not represent us. You are the first one to come here and ask us what we think, says Anmari Ngobeni in Mafenya.

93 Interview with Thusi Rapoo, Bafokeng Land Buyers Association, 22 June 2013, and Interview with Sayi Nindi, Legal Resource Center, 28 June 2013.

6.1.2 Lack of Access to Adequate Housing

Article 11 of the International Covenant on Economic, Social and Cultural Rights states: *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.*⁹⁴

The commentary to Article 11 (1), clarifies that the right to adequate housing is central to fulfillment of all economic, social and cultural rights. Adequate housing is not only having a roof over one's head, but also the right to live somewhere in security, peace and dignity. This right shall apply despite income or financial means and applies also, among others, to clean drinking water, heat and light, sanitation, waste disposal and sewage as well as the possibility to prepare and preserve food. In addition, housing should be habitable, which includes protection from damp, cold, heat, rain, wind and other threats to health.⁹⁵

Housing standards varied between the local communities which Swedwatch visited. While a number of the communities - Mafenya, Chaneng, Luka and Segwaelane – comprise mostly of houses of various sizes and quality, the situation in Marikana (Wonderkop) and Ikemeleng is completely different. The informal settlements consist mainly of shacks. Wonderkop and Ikemeleng began as informal settlements as a result of the large wave of migrant workers and other people moving to the area in hope of employment. Increasingly workers choose to receive the living out allowance paid by the mining companies, rather than living in the hostels, leading to the growth of informal settlements. A large part of the population in Bojanala lives in informal settlements, up to 41 percent in certain parts of the district.⁹⁶

In all villages where there are proper houses, one of the most common complaints is that the houses are cracked. According to local inhabitants, this is a result of blasting in the nearby mines. All of those with whom Swedwatch spoke said that they could feel, on a daily basis, how the ground shook when blasting took place in the mines. During Swedwatch's field visit, a number of buildings with cracks in them could be seen in the communities visited.

The mining companies which Swedwatch interviewed confirmed that complaints about the cracked houses are common and that they have tried to manage this problem for a long time. That the cracks are the result of explosions in the mines is dismissed, however.

– There is no scientific evidence that has been brought to our attention to prove that blasting at our Rustenburg mines affects the houses in the communities. Scientific studies, commissioned by the Company as part of our impact assessments, show that cracks are not primarily attributed to our operations, explains a senior manager at Amplats.⁹⁷

94 International Covenant on Economic, Social and Cultural Rights, www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

95 UN High Commission for Human Rights, *The right to adequate housing (Art. 11 (1)): 1991-12-13. CESCR General comment 4.* www.unhcr.ch/tbs/doc.nsf/o/469f4d91a9378221c12563edo053547e

96 National Treasury, *3rd Generation IDP for Bojanala Platinum District Municipality*, march 2013.

97 Interview with Anglo American Platinum, 28 June 2013. Person interviewed did not wish to be cited by name.



Mine workers at the exit gates underground after shift, waiting for the lift [catch] to take them to the surface. PHOTO: THAPELO LEKGOWA



Wonderkop, Marikana.



Typical house in Ikemeleng.



Wonderkop, Marikana.



One of the mining sites in the vicinity of Ikemeleng.



Cracked houses in Mafenya and Ikemeleng

Amplats has provided Swedwatch with one of these studies which was conducted as a part of an expansion in the area surrounding Rustenburg. The study was conducted by a consultant, hired by Amplats, and shows that the vibrations that occur during explosions in the mines do not reach the magnitude necessary to achieve any damages to the houses in the nearby villages.⁹⁸

According to the mining companies, it is rather the ground on which the houses are built, in combination with substandard building practices, that are the cause of the cracks. The soil in the area surrounding Rustenburg consists mainly of clay. In order to build stable houses, a cement foundation must first be laid, preventing the houses from shifting, and resulting in cracks.

– Our own houses and office buildings have not developed structural cracks as a result of our own mining activities over many years. All of these structures are erected according to generally accepted building standards using appropriate building material also available to the broader community. Our evaluation of cracked structures in the communities, almost without exception, show that reported structural cracks are directly associated with substandard building practices and would have developed these cracks regardless of any mining activity in the area. Where reported structural damage is shown to be linked to our activities in any way, we have assisted affected families, says Johan Theron, Group Executive: People at Impala.

The people in the villages do not accept this explanation and it is obvious that there is a lot of frustration surrounding this issue.

⁹⁸ Rorke, A J., *Blasting Risk Assessment – Intermediate Shaft Project*, 21 January 2004.



One of the portable toilets in Ikemeleng, shared by four families. In the background the families' houses can be seen.

Housing standards in the informal settlements are considerably worse than in other villages in Bojanala. The shacks in which people live leak when it rains, become very hot in the summer and retain no heat during the winter. The shacks often comprise a single room where the whole family lives. Some of the inhabitants of the informal settlements are unemployed, but to a large extent are also mine workers who choose not to live in the worker hostels. On the whole, these hostels are of a very low standard. In addition, miners prefer not to live in the hostels so that they can send home more money to their families left behind in their home country or in other parts of South Africa.

– The mining companies have a responsibility for the situation in the informal settlements. They contribute to increasing the population and do not provide adequate housing for their employees, says David van Wyk of Bench Marks.

6.1.3 Lack of Access to Water and Sanitation

The UN General Assembly has established that access to clean water and sanitation is a human right and a precondition for the enjoyment of other human rights.⁹⁹ The right to health, for example, cannot be guaranteed without access to clean water and sanitation.

It is above all in the informal settlements where there is no such access to clean water and sanitation. But even in the other villages that Swedwatch visited, local inhabitants complained about the quality of the water which they believe has worsened since the mines opened. In several of the villages, local inhabitants explained that they had previously worked their own boreholes and wells, but that their water had been con-

⁹⁹ UN News center, *General Assembly declares access to clean water and sanitation is a human right*, 28 July 2010 www.un.org/apps/news/story.asp?NewsID=35456&Cr=SANITATION.

taminated by the mines. They now had to pay for water which is said to be clean, but is in fact sometimes discolored when the tap is opened. Swedwatch has not had the possibility to take any samples of the water to verify the water quality in the villages and can therefore not confirm this information. The mining companies told Swedwatch, however, that the water has been tested and the results show that it is clean and drinkable.

In the informal settlements, local inhabitants live without running water in the shacks and must walk long distances to fetch water from communal wells. Several of those whom Swedwatch interviewed in the informal settlements said that the mining company which supplies water sometimes switches off the supply, in some cases leaving the community without access to water for a few days. This also impacts on the standard of hygiene and cleanliness in the settlements.

One of the biggest problems in the informal settlements is the lack of sanitation. Access to toilets is very limited and the toilets available are not always usable.

– We have at least four families sharing one toilet which needs to be emptied every other week, but sometimes it takes a month or more before the truck comes, says Lebohang Mono in Ikemeleng.

The lack of toilets also impacts on safety, above all, the safety of women.

– When the toilets are full, we have to go out into the bush. It happens that women who go alone get raped, adds Thabo Lewisa in Ikemeleng.

This is a widespread problem for women in informal settlements in several parts of the world, as shown in reports by Amnesty International and Wateraid, highlighting the vulnerable living conditions of women in, among other places, Nairobi, Delhi and Kampala.¹⁰⁰

Yet another problem highlighted by the local population, and one which was obvious when Swedwatch visited the settlements, is the lack of functioning waste disposal. In both Wonderkop and Ikemeleng, garbage lies in the streets and one can see children playing on the piles of trash.

– We have no waste disposal. We throw our rubbish in a dump here and burn it, says Mpo Jawuza in Ikemeleng.

In the village of Bokamoso, in the vicinity of Marikana, there is the same problem with a lack of waste disposal. A few meters from the houses, on the edge of the village, is a dump site.

100 Amnesty International, *Risking Rape to Reach a Toilet – Women’s experiences in the slums of Nairobi, Kenya*, 2010. Wateraid, *Nowhere to go – How a lack of safe toilets threatens to increase violence against women in slums*, 2011.

– The school that our children go to is on the other side and we have to walk through the mountain of rubbish to get to it. When it rains, it is even more difficult to get through the trash, explains Naledi Rapoo.

6.1.4 Investments in Schools and Healthcare

Article 12 of the International Covenant on Economic, Social and Cultural Rights determines that: *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.* This will be achieved through, among other measures, the creation of conditions which would ensure to all medical service and medical attention in the event of sickness.

In respect of the right to education, Article 13 of the International Covenant on Economic, Social and Cultural Rights states: *The States Parties to the present Convention recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.*

All three major mining companies make large investments in projects relating to education and healthcare. Several of the local inhabitants interviewed by Swedwatch also mention improved education as a positive factor resulting from the presence of the mining companies. In several of the villages Swedwatch visited there are newly built schools and projects for equipping laboratories, sports halls, and computer labs for the students, financed by the mining companies. As an example, in 2012 Amplats equipped a school in the area surrounding Rustenburg with computers and began the construction of two new schools to be completed during 2013.¹⁰¹

Natascha Viljoen, Executive Vice President: Processing at Lonmin, points out, however, that it is important to engage the local communities in the projects.

– What we often hear from the local communities is, “Do not build us a school, teach us how and we will build our own schools”. It is therefore important for us to create opportunities for the people in the local communities. Our approach is a hand-up, as opposed to a hand-out.

Local inhabitants complain more often about the lack of healthcare. Although the three mining companies provide healthcare for their employees and their families, the existing municipal hospitals on which the local inhabitants are dependent are often overwhelmed due to the growth in the population in the informal settlements surrounding the villages.¹⁰² In Chaneng, there is one clinic which must provide healthcare for four nearby villages. All those with whom Swedwatch spoke about the service at the local clinic say the waiting times are too long.

– If you want to get help at the clinic, you have to wake up at 3 a.m. to walk there and get a place in the queue, and despite that, you won't be finished until sometime in the afternoon, says Norman Padi, a resident of Chaneng.

101 Anglo American Platinum, *Hardwiring Sustainability – With the Future in Mind*, Sustainable Development Report 2012.

102 Bench Marks Foundation, *Policy Gap 6*.

In the informal settlements, access to healthcare is even worse. The nearest hospital is often far away and those not working in the mines are not serviced by the health clinics belonging to the companies. Instead, the government provides mobile clinics.

– The mobile clinics only come here once a month, otherwise we have to rent a car to get into town, says Nokuthula Rangabu in Ikemeleng.

6.1.5 The Mining Companies' Relations with the Local Communities

It is clear that the picture of how much the mining companies contribute to the local communities varies depending on whether one speaks to local inhabitants or the companies. There is widespread dissatisfaction with the mining companies among the local communities. An overwhelming majority of people interviewed by Swedwatch- approximately five people in each village - have a negative opinion of the presence of mining companies. Some exceptions are mentioned as good examples, such as job creation and certain local development projects, like the building of schools or the renovation of specific roads. Widespread dissatisfaction exists, however, despite the fact that the companies implement a wide range of projects aimed at improving the situation of the workers and local communities, spending large amounts of money on local development projects.

– There is such a huge developmental backlog in the communities around our operations that communities will, for many years to come, expect us to do more development. There may well be a gap between community expectations and our ability to be a developmental partner in the short term, says a senior manager at Implats.

When Swedwatch asked people in the villages about the various projects the mining companies had implemented or which were underway, most of them answered that they were not aware of the projects.

– We are not consulted in finding out what is actually needed. Lonmin, for example, built toilets in our village, but we already have them and the new ones are worse, says Julius Malope in Segwaelane.

The companies say that they consult the local communities by speaking with the local authorities and the traditional councils that own the land.¹⁰³ This has its origins in the laws from the apartheid era which entrenched tribal structures. Not all local inhabitants identify themselves with these structures, leading to feelings of not being represented nor consulted.

The recent disturbances and dissatisfaction, which escalated into the Marikana massacre in August 2012, have impacted the companies' social responsibility work in any case.

– Marikana has highlighted a number of learnings for all of us and one of these is in the way we engage with our communities, and we have changed the approach

103 Interview with Johan Theron, Implats.

to engaging with the local communities and consulting them in an effective way, explains Natascha Viljoen.

David van Wyk, Head of Research at Bench Marks, said in an interview with Swedwatch that, since Marikana, Lonmin has taken the initiative to have several meetings with, among others, Bench Marks, to discuss the impact of the company's activities on local communities, as well as to explore and identify how local communities can be engaged and be consulted more effectively. This demonstrates a certain willingness by the company, but David van Wyk says that concrete results have still not been achieved.¹⁰⁴

6.2 The Mine Workers

6.2.1 "We just want to have a good life."

In the village of Mafenya, a few kilometers north of Rustenburg, Swedwatch interviewed two workers from the local mine, which is run by Royal Bafokeng Platinum.¹⁰⁵ Both of them have worked in the mining industry throughout their entire careers. They rent a house in the village together with two other workers as the mine does not provide hostels. Both have moved to the Rustenburg area from the KwaZulu-Natal province on South Africa's east coast to find work.

– I have a wife and seven children at home, but almost never meet them. I earn R3,800 ZAR (US\$ 348) a month and a one-way trip home costs R700 (US\$ 64). I simply cannot afford to visit them, says Kagiso Thobeli.

Several of the workers say that the wages they receive are not enough to live on.

– We would need at least R7,000 (US\$ 641) a month. I don't think we're asking for much, we just want to have a good life. I will have worked for 30 years, but won't have anything to show for it, says Noah Molefi.

The house in which the workers live has access to both electricity and water and both Kagiso and Noah are grateful that they do not need to live in a shack as so many of their colleagues do. But given that they are forced to live together in the house, their families cannot come to visit.

– Even if the company were to build more houses for the workers so that they can live with their families, the rent for a small house is at least R2,600 (US\$ 238) a month. We receive R1,300 (US\$ 119) in addition to our monthly living allowance, so it's not enough, adds Kasigo Thobeli.

¹⁰⁴ Interview with David van Wyk via e-mail, 4 September 2013.

¹⁰⁵ Royal Bafokeng Platinum is partly owned by Amplats, www.bafokengplatinum.co.za/a/structure.php.



Mine workers safety hats after shift inside a lift [catch] going up. PHOTO: THAPELO LEKGOWA

6.2.2 Poor Safety

When the workers interviewed by Swedwatch are asked to speak about their work day, all of them raise the fact that safety regulations in the mines are often not respected, in order to maximize production. The mine has a bonus system based on reaching a certain depth every month. Even if there are clear safety regulations at the mines, workers say that management often ignores them.

– We are pressured to reach the targeted depth and receive a bonus if we succeed. Safety comes in second place until we've almost reached the targeted depth, then the management comes and says that we can't continue for safety reasons and because of that we rarely receive a bonus, says Kasigo Thobeli.

This is a recurring story among many of the workers with whom Swedwatch spoke. Mine worker Olebogeng Mataboge, in the village of Segwaelan says:

– Safety is important for the company, but production always comes first.

Yet another worker in the village of Chaneng, neighboring Mafenya, raises the issue of poor safety in the mines.

– The management's goal is that at least 60 days should go by without any accidents. We usually do not even reach 15 days, says Joseph Molotsi.

The mining industry is one of the most dangerous in the world when it comes to safety and injury. In addition, the standards in South Africa are considerably lower compared to countries such as Australia and Canada – also large mining nations. In

2011, 123 deaths occurred in the mining industry in South Africa; 38 of these were in platinum mines. During the same period, five deaths occurred in the mining industry in Australia.¹⁰⁶ The mining industry in South Africa is not mechanized to the same extent as in Australia, increasing the risk of injury and death. The Chamber of Mines says that a transition to more mechanized mining would reduce the number of employment opportunities.¹⁰⁷

Of the three platinum companies investigated in South Africa, only Lonmin marginally reduced the injury frequency rate in 2012, when compared to earlier years. Impala's injury rate is unchanged, while Amplats' injury rate increased in 2012, compared to 2011.¹⁰⁸

6.2.3 Increased Contracted Labor

The workers with which Swedwatch spoke believe that a major problem in the industry is that so many of the workers are not directly employed by the mining companies. Instead, they are employed through subcontractors which pay lower wages and charge fees for their services. Those employed by the employment agencies are also not covered by the mining companies' healthcare programs or insurance schemes in the event of an accident.

The number of workers directly employed and the number employed through subcontractors varies between different mines. According to the three largest mining companies' annual sustainability reports, however, this figure is approximately half of the labor force.

6.2.4 Increased Investments in Housing Needed

Living out allowances were introduced after the fall of apartheid. The aim was to gradually reduce the number of worker hostels by offering workers the opportunity to finance their own housing and to phase out the use of migrant workers. This has been unsuccessful and there are insufficient housing options to meet demand. As an example, Lonmin has built only 1,149 houses and converted 60 worker hostels into family housing. This is obviously insufficient to meet the needs of 27,000 full-time employees.¹⁰⁹

When Swedwatch met Lonmin for an interview during its visit to South Africa, Natascha Viljoen said that the company currently provided housing alternatives for approximately 3,000 of its employees. In 2004, Lonmin began a project which was to result in 5,000 family housing units, but the project was never completed because of the financial crisis in 2008.

106 Chamber of Mines South Africa, *Facts and Figures 2012*, www.bullion.org.za/documents/F_F_2012_Final_Web.pdf. Safe Work Australia, www.safeworkaustralia.gov.au/sites/swa/statistics/work-related-fatalities/pages/worker-fatalities.

107 P1 Konflikt, Malin Olofsson, *Gruvdrift eller rovdrift?*, 9 February 2013. sverigesradio.se/sida/avsnitt/151956?programid=1300.

108 PwC, *SA Mine – Highlighting trends in the South African mining industry*, 2012. www.pwc.co.za/en_ZA/za/assets/pdf/sa-mine-nov-2012.pdf.

109 *Ibid.*

– When the economic crisis came we were forced to prioritize. We chose not to lay off any workers, and we therefore had to put our housing project on hold. It remains a priority however, explained Viljoen.¹¹⁰

Lonmin is currently engaged in converting the worker hostels in Marikana to individual units and family housing.¹¹¹

Even if this is a step in the right direction - converting worker hostels into individual units and family housing – the project has been criticized by Bench Marks Foundation for being insufficient. David van Wyk says that there will be too few houses to cope with those who formerly lived in the worker hostels. Of the 6,000 workers who lived in the complex prior to the conversion, approximately 1,300 will be left homeless. This would have cost implications for the community as such people move out into informal settlements. Access to water, electricity and sanitation would become even more limited.¹¹²

Samantha Hargreaves from the organization International Alliance on Natural Resources in Africa (IANRA) compares the situation in South Africa today with the requirements placed on the same mining companies in neighboring Zimbabwe, where there are laws that regulate living standards for mine workers and require companies to provide adequate housing alternatives. For example, at the Mimosa mine in Zimbabwe, where Implats operates, all workers have their own family housing. But in South Africa, where there are no comparable legal requirements, the same company provides far fewer houses for its workers.¹¹³

Certain housing projects implemented by the mining companies are criticized by Bench Marks, among others, because workers must apply for loans to purchase housing. The debt, in turn, makes the workers even more dependent on their being employed. If they are retrenched, it becomes impossible for them to pay off the loans and remain in the houses. For this reason, many chose instead to take the living out allowance and live in informal settlements.¹¹⁴

110 Interview with Lonmin 25 June 2013, Natascha Viljoen, Executive Vice President: Processing and Dr. Mel Mentz, Executive Manager: Sustainability.

111 Information obtained by e-mail from Victor Song, Senior Manager: Housing, Lonmin, 14 August 2013.

112 Telephone interview with David van Wyk, 12 August 2013.

113 Hargreaves, P., 2013.

114 Bench Marks Foundation, *Policy Gap 6*.

6.3 The Situation on Women in the Mining Industry

According to Article 1 of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): *The term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms.* In Articles 5 and 11, the Convention determines that: *States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes.* And that: *States Parties shall take all appropriate measures to see to it that women are not discriminated against in regards to employment, wage levels, working conditions, benefits and social security. Discrimination against women due to marriage, pregnancy or motherhood shall be forbidden. States Parties shall also support child care in order to allow for parents to combine family life with professional responsibilities.*

In Wonderkop, Swedwatch interviewed Siba Phatashoane, a female worker at one of the mines. She works as a cleaner and is 32 years old. She has just finished her shift and is still wearing her blue overalls when we meet at one of the houses at the edge of the settlement. She takes us to the back of the house and says that this is her friend's house and it is better if we speak here as she does not want anyone to see that she is speaking to outsiders.

– The men at work treat us women badly; we are often subject to discrimination. In order to get a more qualified job or be promoted, you have to bribe someone above you, or provide them with sexual favors. I refuse to do it and because of that have worked as a cleaner for more than three years now, says Phatashoane.

Asanda Benya at Wits University confirms that bribes and sexual favors are common. She had heard from many women that the only way to work with more qualified tasks was to have a close relationship with one of the managers.¹¹⁵

When Swedwatch raised these issues with Lonmin, where the woman interviewed is employed, the vulnerable situation of the female workers is confirmed.

– Working in the mines is physically demanding. Not every woman can lift a 25 kg backpack with explosives in tight spaces. On the other hand, we have sent people to the moon, we should also manage to adjust working conditions in order for both men and women to be able to carry out the same tasks, says Natascha Viljoen.

Viljoen added that Lonmin trains all of its employees on issues of discrimination and has anonymous whistleblower channels open for all to use.

– We have a goal to increase the female workforce in our mines and have incentive programs for the team leaders and HR personnel. If you have one or more women in your work team you will be ranked higher as a team leader in our internal reviews, says Dr. Mel Mentz, Executive Manager: Sustainability at Lonmin.

115 Asanda, B., *Gendered Labour: A Challenge to Labour as a Democratizing Force*, Rethink Development and Inequality, nr. 2/2013.

Benya says that it is difficult, however, for women to complain to other men who often have the same approach to the issue of sexual harassment as that of other workers, namely that it is something that women must accept when they are working in a mine. Trade unions are also not particularly active regarding the vulnerable position of women. Issues concerning discrimination and adjusted working conditions to meet the capabilities of women are seldom taken seriously by representatives of the trade unions.¹¹⁶

– The unions do nothing for us. We thought that AMCU would be different, but they just wanted to recruit members, they don't care about us women, says Siba Phatashoane in Wonderkop.

An additional problem for female workers is their housing situation. Worker hostels provided by the mining companies are only available to men, as those housed there share rooms. Because of this, the female workers often live far away from the mines and must get to work on their own.

– It is dangerous for women to be outside by themselves after dark, so I always have to see to it that I am home before then. When my two children aren't in school, I must also leave them at home alone while I am at work, explains Siba Phatashoane.

After the deaths in Marikana in August 2012, the women's organization "Sikhala Sonke" was founded, meaning, "We cry together". Before and during the protests in Marikana, the role of women was relegated to the background. While the strikes and the protests focused on the workers' wage levels, Sikhala Sonke was started in order to raise the issues of living conditions for those living in Marikana and Wonderkop, as well as protect women in vulnerable situations.

In Wonderkop, Swedwatch met Primrose, one of the women who started Sikhala Sonke.

– Before the massacre in Marikana, there was no way for us women to organize ourselves. The only alternative was the ANC's women's organization, which was dysfunctional and corrupt, says Primrose.

Now the organization is working to become officially registered in order to apply for public funding and increase its activities. At present, the organization is working to build a daycare center for children and start a communal vegetable garden for local inhabitants. Lonmin has donated materials for the construction of the daycare center.

6.4 Analysis of the Case Study

Overall, Swedwatch's case study of the platinum industry in South Africa shows that it is an industry where risks for adverse human rights impacts are severe. Several of the problems that have been discussed in this report are the result of a lack of capacity by the State, including dysfunctional legislation. The traditional councils also play an important role where they have a responsibility for local communities living in their jurisdiction. It is important to point out that the South African state has been

¹¹⁶ *Ibid.*

criticized in several cases for high-ranking members of the ruling party, the ANC, owning considerable stock or holding board positions in the mining companies. This can lead to conflicts of interest.¹¹⁷

Despite this, it is the responsibility of the companies to be aware of the context in which they are operating and of how their operations affect human rights. They should focus their sustainability efforts on the most severe risks and in areas that are connected to the core business of the company. Given that the Swedish companies investigated in this case are one or more steps down the chain from the actual activities of the mining companies, an analysis of the impact of the mining companies on human rights and the environment is what is needed. Through their business relationships with the mining companies, the Swedish companies are directly connected to the effects that the mining industry has on the local communities.

The case study confirms that there are failures in communication between the mining companies and the local communities, underpinning to a large extent the local communities' frustration with their situation. Finding a more effective and constructive way of consulting and involving local communities in efforts that the companies are actually taking should therefore be prioritized. Even the introduction of effective grievance mechanisms is important in improving relations between the companies and local communities. Several of those interviewed by Swedwatch, as well as those who replied to the questionnaire, were not aware of the possibility of raising complaints or providing comments to the mining companies. Even when the company has grievance mechanisms, these cannot be regarded as effective if local communities are unaware of them or have no confidence in them.

The understanding of the need for communication with local communities differs to a certain extent between the companies investigated. Lonmin is the company that has most openly admitted that its earlier ways of working have not worked and says that a closer relationship with local communities is a priority for the future. One explanation for this can be that Lonmin is the company that has been most closely investigated internationally as a result of the Marikana massacre.

Safety in the mines is obviously lacking. Even if hand-held mining in South Africa creates more employment opportunities compared to the more mechanized mining procedures in other countries, this cannot take place at the expense of the mine workers' safety. The large number of deaths in the South African mining industry is not acceptable and is something that should be in the interest of all parties to combat.

One additional central problem is the exclusion and discrimination of women. Given that the mining industry is such a central part of the economy in the Northwest Province, the fact that half of the population is excluded from the labor market should be taken seriously. The engagement of both the companies and the trade unions to spread awareness and make the vulnerable position of women a prioritized issue is required so that structures that have been in place for so long in the mining sector are dismantled

117 Business Day Live, *State must get tough on mining companies, says union*, 11 September 2013, www.bdlive.co.za/business/mining/2013/09/11/state-must-get-tough-on-mining-companies-says-union.

7. Good Examples of Working with Social Responsibility

7.1. International Industry Initiatives

A number of international initiatives have been taken in industry organizations and among individual companies, on how principles should be implemented. Some of these initiatives are presented below and provide guidance for the Swedish companies concerned.

One problem that the companies themselves have raised regarding the possibility of impact is that a lone company is considered a minor actor in the global market and therefore cannot make demands on the mining companies. This problem has been managed in other industries through industry-wide initiatives that gather the companies and provide them with a common voice. In this respect, Electronics Industry Citizenship Coalition (EICC)¹¹⁸ can be mentioned, a coalition of the leading global electronics companies aiming to work with sustainability issues in the entire value chain – something which, to a large extent, concerns the extraction of minerals used in electronics products. The EICC looks beyond its own direct suppliers, as they are often several links away from the suppliers that operate where the most severe risks to human rights exist. The EICC has focused its work primarily on the prevention of trade with conflict minerals from DR Congo.¹¹⁹

Another example of how an industry has got together to achieve changes is the Accord on Fire and Building Safety for textile factories in Bangladesh, which has over 80 companies as signatories. The agreement was developed following the collapse of several textile factories and the occurrence of several fires in 2012 and 2013, and aims to improve safety for employees at the workplace. The initiative has also been supported by trade unions, civil society organizations and the Bangladeshi government. The introduction of the agreement shows how an industry can work together to meet challenges which are difficult for individual actors alone to grapple with.¹²⁰

The International Council on Mining and Metals (ICMM) raised the issue of customer responsibility in one of its reports on human rights connected to the mining industry. The organization concluded that even if companies, as a rule, have less influence over their customers than over their suppliers, this did not mean that requirements could not be put in place or that companies do not have a responsibility for their relationships with customers. As an example, the Brazilian mining company Vale is mentioned, which in 2007 decided not to sell iron ore to companies accused of using slave labor or which have violated environmental laws.¹²¹

118 Electronics Industry Citizen Coalition, www.eicc.info/index.shtml.

119 Electronics Industry Citizen Coalition, www.eicc.info/initiatives02.shtml.

120 Shift, *From Audit to Innovation: Advancing Human Rights in Global Supply Chains*, 2013.

121 ICMM, *Human Rights in the Mining & Metals Industry – Overview, Management Approach and Issues*, 2009.

7.2. Initiatives by the Swedish State

7.2.1. The Export Credits Guarantee Board

The Swedish Export Credits Guarantee Board (EKN) has been tasked with supporting Swedish exports and the internationalization of Swedish companies through providing guarantees to export companies and banks against the risk of not being paid in export transactions. Both Atlas Copco and Sandvik stated in interviews that business guaranteed by EKN is more highly regulated in terms of customer evaluations than that which the companies themselves usually regulate. EKN works with a number of companies, regardless of size, and has to date supplied guarantees for business dealings in 140 countries. In 2013, there was a huge demand for EKN's services by Swedish companies. In the first quarter of 2013, the provision of guarantees went up to a total of 10.6 billion SEK (US\$ 1.6 billion). Of the total volume of guarantees, approximately half went to business dealings in the construction sector and the remainder went primarily to transactions in the telecom, mining, and building and transport sectors.¹²²

In order for a company to be granted guarantees by EKN, the export company and its business partners have to comply with EKN's sustainability requirements. These requirements are based on the OECD Recommendation Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, which was updated in 2012 with clearer references to human rights due diligence.¹²³ EKN's requirements have previously focused completely on impacts on the environment, but in recent years have increasingly integrated human rights impacts.

– We continually develop our requirements regarding impacts on the environment and human rights. We do this in collaboration with the companies, which are the ones responsible for making sure that the export agreements are conducted responsibly. Moreover, business agreements which have an adverse impact on the environment and human rights are also a financial risk, says Beatrice Arnesson, Head of Communications at EKN.

All of the business dealings in which EKN participates are screened in order to be classified from the perspective of environmental and social risks, and to be able to identify the dealings which contain the highest risk for adverse impacts on human rights and the environment. The information in the application from the export company is evaluated against risk prone industries and other risk factors such as vulnerable natural environments, resettlements and working conditions. In the event that the application concerns a risk prone industry, which the mining industry is always classified as, or if some other risk factors are discovered, the application continues for further review. In the event that none of the established risk factors are identified, the deal is compared with an external risk analysis performed by Maplecroft¹²⁴ to

122 Exportkreditnämnden, www.ekn.se/sv/.

123 OECD, *Recommendations of the council on common approaches for officially supported export credits and environmental and social due diligence*, search.oecd.org/officialdocuments/displaydocumentpdf/?cote=TAD/ECG%282012%295&doclanguage=en.

124 Maplecroft is a risks analysis company which reviews and classifies countries from the point of view of non-financial risks, maplecroft.com/.

determine a general level of risk in the country and industry concerned. If Maplecroft determines that it is high risk, the deal continues for further review.¹²⁵

Further review by EKN is dependent on what type of operation the export is destined for. New projects undergo a more rigorous review than existing activities. Review of existing activities is based in part on an internet search of the export company's business partners or the activities that the export company is involved in, partly through a search in the RepRisk service, which collects negative environmental and social information on projects and businesses. RepRisk produces information in five different languages. EKN also uses the IFC's Performance Standards to evaluate activities and projects.¹²⁶

In the event that irregularities are uncovered, EKN tries to initiate dialogue with the business partner, through the export company, to see if the problems have been solved and to determine if risks are being managed in a correct way. If they find that the partner is not willing to cooperate, the application is not processed further.¹²⁷

7.2.2. Sweden's Mineral Strategy

According to the new strategy on minerals which was adopted in February, Sweden will take efforts to contribute to the sustainable development of the mining industry on a global scale. In order to achieve this, Geological Survey of Sweden (SGU)¹²⁸ will, in consultation with Sida, present proposals as to how Sweden and Swedish companies can contribute to the development of a sustainable mining industry and the good administration of mineral resources in developing countries through, among others, collaboration between different actors.¹²⁹

The mineral strategy also includes the mapping and analysis of countries in which it could be important to develop contacts in the mining and mineral areas at government level. Mapping is recommended to include how Swedish experiences of sustainable mining and mineral production can contribute to strengthening the implementation of administration in a goal-oriented way. In consultation with identified countries, an action plan will be developed on the basis of the mapping exercise, including which issues should be addressed.¹³⁰

125 EKN, Manual – Miljö- and socialt ansvarstagande i garantigivningen.

126 *Ibid.*

127 Interview with Beatrice Arnesson and Maria Mattsson EKN, 7 augusti 2013.

128 Geological Survey of Sweden, www.sgu.se/sgu/eng/index.html.

129 Näringsdepartementet, *Sveriges mineralstrategi – För ett hållbart nyttjande av Sveriges mineraltillgångar som skapar tillväxt för hela landet*, February 2013.

130 *Ibid.*

8. How Can Swedish Companies Implement the UN Framework with Regards to Platinum Mining in South Africa?

The UN Guiding Principles on Business and Human Rights is an internationally-accepted standard, unanimously endorsed by the UN Human Rights Council. Swed-watch expects, therefore, that companies that seriously aim to manage the challenges and risks connected with their operations implement the Principles and disclose to their stakeholders that this is being done in a correct and effective manner.

The process of implementation includes a number of challenges for companies. Examples include identifying and prioritizing risks, using and increasing influence on business partners, as well as balancing information regarding confidentiality with information that should be communicated externally to other interested parties. Despite these challenges, there exists help and guidance. There are also several examples of multinational corporations which work actively to implement the principles.

Extractive industries always experience risks for adverse human rights impacts. Industry organizations and leading companies are relatively well aware of which risks to human rights are typical for various phases of activity and country contexts. South Africa is no exception, and the country has a dynamic civil society which draws attention to the risks for adverse impacts from the mining industry. Many of the problems are also known to the companies and other interested parties. The risks for violations of human rights increase with widespread poverty and unemployment given that people, in these situations, are more vulnerable. The Guiding Principles maintain that companies should take vulnerable groups, such as children, women and migrant workers, into special consideration. Companies connected to the mining industry in South Africa should be aware of challenges and risks in the value chain and have effective human rights due diligence processes in place to deal with these.

As has been shown in this report, there are three types of involvement in adverse human rights impacts. Nothing in the study indicates that the four Swedish companies which have been reviewed directly *cause* adverse impacts or *contribute* to them through their business operations. However, all four companies are a part of the third category, i.e. they are *linked* to the adverse impacts through their business relationships. The companies thus have a responsibility to try to influence their business partners to prevent and address adverse impacts.

Several adverse human rights impacts resulting from the South African mining industry have not been extensively covered in this report, for example, failed safety in the mines leading to physical injuries, death at times, and long-term effects on the health of workers. However, this report does draw attention to a number of areas of severe adverse human rights impacts in the platinum industry. These include, among others, substandard housing for workers, lack of consultation and compensation in mine expansion, as well as the exclusion and discrimination of women.

In order to fulfill their responsibilities, it is important that Swedish companies are aware of the problems in platinum mining in South Africa and have a strategy as to how risks should be managed, in accordance with the responsibility that they have for their business partners. For this reason, it is imperative that Swedish companies continually perform human rights due diligence in accordance with the UN Guiding Principles.

– Companies are expected to be able to identify, prioritize and mitigate the specific risks to human rights that are connected with their activities. It is important that companies understand how their operations and business partners affect human rights, in other words, that they understand and manage risks to human rights that occur as a result of their specific activities, says Sandra Adler, human rights lawyer and expert on corporate responsibility and human rights.¹³¹

None of the companies reviewed in this report have indicated that they conduct human rights due diligence in accordance with the Guiding Principles for their operations connected to platinum extraction in South Africa. As previously stated, platinum extraction in South Africa is an industry with risks for adverse impacts on humans and the environment and, in all cases, an important industry for the Swedish companies. The companies should therefore prioritize this market for the implementation of human rights due diligence.

For human rights due diligence to be performed correctly, according to the Guiding Principles, it is imperative that results be communicated externally. Atlas Copco and Sandvik have stated that they have begun the process of implementing the Guiding Principles but that they are not yet ready to communicate the results of any completed human rights due diligence. Volvo has identified the mining industry as a risk, but there is no public information as to how these risks are managed. Scania has undertaken an initiative, via its supplier, to evaluate the compliance of one of the mining companies with international norms and its impact on human rights. The results from this process are still not available.

All the companies reviewed stated that information forthcoming from the assessments of suppliers or customers is not communicated externally due to confidentiality. Balancing confidential information with information that should be communicated to stakeholders is decisive for the effective implementation of the Guiding Principles. Due diligence is nothing new for businesses, having been used for a long time to show that potential risks have been identified and managed in different commercial areas and to show that reasonable measures have been taken to prevent injury from occurring. If a company can demonstrate that everything necessary has been done to prevent an injury from occurring, it can say that it is acting responsibly. Human rights due diligence, to this extent, aims to be able to show that the company has taken reasonable measures expected from it. It must be possible, to a greater extent than at present, to find a balance between commercial confidentiality and the information which, according to the Guiding Principles, should be communicated externally. The Principles do not require a company to reveal trade secrets. The occurrence of risks and problems is a fact, whether the company chooses to acknow-

¹³¹ Interview with Sandra Adler, 15 August 2013.

ledge them openly or not. What is important for stakeholders is to be able to analyze how the company manages risk. It should be in the interests of the company for this to be communicated externally.

If the company finds that there are difficulties in establishing a balance between commercial confidentiality and information that should be communicated externally, then the Swedish government has a responsibility to provide guidance for companies on how the principles should be followed.

Scania and Volvo work mostly with their own direct suppliers and include provisions in their agreements that the same requirements be placed on subcontractors. Keeping in mind that the companies have a direct business relationship with the direct suppliers, this is understandable from a legal point of view and is the primary way in which multinational corporations manage the issue. At the same time, in respect of in the supply chain for platinum, it is not in the organizations of the direct suppliers that the most severe risks for adverse human rights impacts exist. The fact that Volvo acted on information from a report released by Actionaid in 2008 was a welcome initiative. It was a good example of how several parties in a supply chain attempted together to correct issues that arose, in this case Volvo, Volvo's direct supplier and Amplats. The initiative also showed how a company can engage actively in the management of the foremost risks in the supply chain, even though risk did not involve their direct supplier. Unfortunately, Swedwatch has received too little information from Volvo and Amplats of the result of Volvo's visit to the Limpopo Province, or how the visit was followed up. Swedwatch has thus not been able to evaluate the results. Scania has shown that the platinum industry is a prioritized issue by initiating in dialogue with its supplier of catalytic converters and, in such a way, initiating efforts to evaluate the impacts of the mining companies on human rights.

Even though Scania and Volvo have initiated investigations of the platinum industry in South Africa, the companies should together engage more actively to ensure improvements. As described earlier, the value chain for platinum has a few decisive stages where multinational corporations have a powerful influence. Even if the Swedish companies, on their own, are small actors in the global market, the collective automotive industry is the single largest end-user of platinum. As a whole, the automotive industry thus has a powerful voice. Just as the electronics industry has realized that it must manage risks in the entire supply chain through industry initiatives such as the EICC, the automotive industry should also act together to increase its influence. The European industry organization ACEA could function as a starting point. The automotive industry, together with the manufacturing and chemical companies – the other major points of focus in the supply chain – should set joint requirements for the mining companies to bring about change.

The issue of customer responsibility is a more complicated issue than that of supplier responsibility in the case of Atlas Copco and Sandvik, as discussed earlier. Companies still do not generally review and impose requirements on customers from the perspective of human rights and the environment, despite the fact that the Guiding Principles do not differentiate between relationships with suppliers and those with customers. Instead, the *severity* of the adverse human rights impact should direct priorities, as has been described above.

The EKN has taken a clear position on the need to evaluate potential business partners for Swedish export companies and this should guide what is expected from a responsible company. Conducting an evaluation of a potential customer's credit rating is obvious for businesses today; evaluating a potential or existing customer's sustainability rating should be just as obvious for a responsible company. Atlas Copco has shown that a company can implement a system for evaluating sustainability as well as creditworthiness, an initiative which will hopefully spread through the industry.

At the moment, it is too early to say how effective Atlas Copco's customer assessment system is, but the initiative shows that the company is aware of the need to take responsibility for its customer relationships and is willing to accept that responsibility.

Sandvik is still in a process of developing an improved method of working with customer assessments. The company says it conducts customer assessments, but there are difficulties with imposing requirements on its customers as suppliers do not maintain a position in the business relationship which allows such demands to be imposed on it. However, this is not what the Guiding Principles advocate; companies should try to affect change. If leverage to do so is missing, then they should try to increase it.

Both Atlas Copco and Sandvik are world leaders in their industry. They are very important suppliers for the mining companies and provide services and products which are necessary for their core operations. In addition, both companies have had long-term, business relationships with the mining companies. The Swedish companies should have many opportunities to bring about leverage in their business relationships. In the case of Sandvik, however, where the company believes that it has little leverage on customers, opportunities to strengthen its leverage should be explored, for example, by making joint demands with Atlas Copco.

A decisive factor as to whether or not companies can influence their business relationships is their relationship to other actors, particularly the State. Both Atlas Copco and Sandvik have a strong presence in South Africa, and are important business partners for the mining industry, which in turn, is critical for the South African economy. The two companies therefore contribute to the South African economy. Together, they have even greater possibilities to exercise influence. Jointly contacting the government in South Africa to encourage a dialogue between all concerned parties on the problems facing the mining industry is another approach. An example of this approach was H&M, which, among others, initiated a dialogue with the government in Bangladesh in 2012 in order to discuss minimum wages for textile workers in the country.

As shareholders, the Swedish National Pension Funds also have a responsibility to impose requirements on and control companies in which they own shares. Shareholders have significant influence over the company and the National Pension Funds should continue to actively engage in dialogue with the companies about human rights, in order to achieve improvements in the platinum industry in South Africa.

9. Final Analysis

The position of local communities and mine workers in South Africa cannot be separated from the operations of the mining companies, the laws and policies of the South African government and the historical background of the industry. Companies operating in a society in which human rights are not always upheld must be aware of such conditions and of how their operations impact directly or indirectly on human rights. It is not simply about being aware of which issues exist in a country in which they operate, or with which there are business relationships, but of analyzing which specific human rights are at direct risk of being adversely impacted by the company's business operations and acting to minimize and mitigate these risks. It is difficult to identify the impact of the operations of the Swedish companies on specific human rights, as they are several steps away in the value chain from the mining companies. This is the case with Scania and Volvo. In these cases, the mining companies should be analyzed to understand with which risks they are associated.

This case study indicates that the mining industry in South Africa adversely impacts on human rights. The report focuses mainly on the right to adequate housing and the right to water and sanitation. The violations are also serious, given that they affect a large number of people with at least certain irremediable consequences, such as resettlements due to mine expansions or deaths in the mines. Vulnerable groups such as women and children are especially affected. If the Swedish companies had disclosed how they understand risks to human rights in South Africa, a discussion of their risk management would have been possible, as well as a discussion of the specific actions that they have hopefully taken to achieve change with their business partners. As this information has not been provided by the companies, an obvious conclusion is that the companies should initially consider all human rights in a human rights due diligence, in order to then identify the specific risks of the most severe human rights impacts. The companies' human rights due diligence should at least show that the risks that have been identified by Swedwatch are prioritized. Scania, Volvo, Atlas Copco and Sandvik should, based on such an analysis, seek to influence the mining companies to minimize and meet the human rights risks in and around the mines.

All the companies reviewed in this report fail to meet their responsibilities to continually conduct human rights due diligence in accordance with the Guiding Principles. As has been shown above, the companies state that the information from possible due diligence processes is not communicated externally due to commercial confidentiality. This makes it impossible for stakeholders such as Swedwatch to investigate if risks to human rights are being managed correctly. This does not require companies to reveal trade secrets, but there is a path between not communicating any information at all and openly sharing confidential information. It is this path that the companies must find in order to make efforts at sustainability believable. Companies cannot avoid taking responsibility by saying that they are not aware of what is required.

The Swedish state has an obligation to protect human rights, according to the Guiding Principles, and with this responsibility comes the responsibility to comply Swedish companies to fulfill their obligations. The State has a responsibility, according to the Guiding Principles, to advise companies on difficult issues regarding how the

principles should be adhered to. In the event that there are contradictions between Swedish law and the requirement to communicate the results of a company's human rights due diligence externally, the Swedish state should review possible obstacles in commercial legislation to determine if it is in line with what the Guiding Principles expect of companies to communicate externally.

The new strategy on minerals is also an example of how the Swedish state can counteract adverse impacts in the platinum industry in South Africa. In order to achieve the goals of the mineral strategy, Swedish companies need to be more directly involved in local efforts. It is in the interest of companies to improve their understanding of local communities through more direct contact with stakeholders in order to ensure that efforts at sustainability achieve their desired effects. Initiating a dialogue with the South African government is also in line with the strategy on minerals. South Africa is a country with large mineral resources and is an important market for Swedish companies. Active cooperation between the governments of Sweden and South Africa for sustainable development could lead to increased demands on all parties involved to take their responsibility seriously and facilitate the efforts of Swedish companies to achieve change.

Expectations of companies change over time. A decade ago, it was not taken for granted that a company's suppliers should live up to international sustainability standards. Today this is generally accepted. In the same way, views of customer responsibility evolve, and more companies see the need for and usefulness of taking an active role in customer relationships. It is important to point out that it is not enough simply to work with direct suppliers and customers; it is the responsibility of the company to identify where in the value chain the most severe risks for adverse human rights impacts take place and to prioritize efforts accordingly.

In conclusion, widespread dissatisfaction among local communities and mine workers in the platinum industry with existing conditions has led to violent protests and deaths. The current situation is not sustainable and improvements in several areas are urgently required. All stakeholders in the value chain must actively contribute to improvements and mitigate against continued adverse impacts. Through business connections, both customer and supplier relationships, the operations of Swedish companies are linked to the situation of the local communities and mine workers in the platinum industry in South Africa. If companies implement the Guiding Principles correctly in their business operations, increased respect for human rights can be created. Two years have passed since the endorsement of the principles, and it is high time that Swedish companies live up to them.

10. Recommendations

10.1. To the companies:

- Implement the UN Guiding Principles on Business and Human Rights in their sustainability efforts. Conduct ongoing human rights due diligence in order to identify, mitigate and prioritize the most severe risks to human rights in the entire supply chain. The results of these processes should also be communicated externally to stakeholders in a verifiable and understandable way.
- In order to comply with their obligations to respect human rights in accordance with the Guiding Principles, the companies should:
 - a) develop a public policy commitment to meet their responsibilities for respecting human rights, implement this commitment in internal policies and processes as well as in relevant communication to and training for personnel.
 - b) continually carry out due diligence in order to identify, address and account for how risks for adverse human rights impacts are managed.
 - c) make available processes that remedy adverse human rights impacts to which they contribute to, or which they have caused.

In addition, Scania and Volvo should:

- Work to increase traceability in the entire supply chain for platinum and to be better equipped to identify all parties involved.
- Expand sustainability efforts to focus not only on direct suppliers, through for example initiating cooperation with other actors in the platinum supply chain, such as other companies in the same industry or other important stakeholders in the value chain.
- Work internationally for increased responsibility in the automotive industry, for example through the industry organization ACEA. Through ACEA, contacts can be made and cooperation can be established with other important industry organizations such as ICMM and IPA.

In addition, Atlas Copco and Sandvik should:

- Atlas Copco should follow up and evaluate the results of the customer assessment tool and communicate this externally. If the assessment system is to be effective, it is important that the risks identified are associated with Atlas Copco's core operations and that they relate to risks for adverse impacts on human rights and the environment.

- Sandvik should implement a customer assessment tool similar to Atlas Copco's or the system used by EKN. In the case of Sandvik, the risks identified should be those associated with Sandvik's core operations and should relate to risks for adverse impacts on human rights and the environment.
- As important suppliers to one of South Africa's largest industries, both Atlas Copco and Sandvik should take advantage of the influence they have and initiate discussions with the South African government in order to achieve change in the industry.

10.2. To the Swedish National Pension Funds:

- Use the influence of ownership to continually engage in dialogue and insist on improvements from the South African mining companies.
- Follow up on the project of reviewing the sustainability efforts of the mining companies using ICMM's sustainability principles and require all companies in which the Funds hold shares to comply with all of the sustainability principles of ICMM.

10.3. To the Swedish state and relevant authorities:

- Review the UN Guiding Principles on Business and Human Rights and implement all the requirements pertaining to States, and in particular, ensure the provision of adequate legislation, regulation and guidelines for the operations of Swedish companies, both in and outside Sweden's borders. The State's responsibility includes providing proper guidance as to how human rights are respected.
- Implement legislation which requires Swedish multinational corporations to live up to the UN Guiding Principles on Business and Human Rights, both in Sweden and abroad. It should also be possible for Swedish courts to try cases concerning adverse impacts of Swedish companies on human rights abroad.
- In accordance with Sweden's strategy on minerals, initiate contacts with the South African government to strengthen management practice and entities operating in the mineral industry. South Africa is a country with large mineral resources in addition to platinum and should therefore be a priority of the Swedish state in mapping activities.

10.4. The responsibility of the South African state

- The South African state is a key actor that needs to implement a number of measures. The laws which regulate land ownership in the country, and which have resulted in a number of conflicts between local communities and traditional tribal leaders, should be reviewed. The State also has the ultimate responsibility for

protection of human rights, and for ensuring that human rights of all people are respected. In particular, the right to adequate housing, water and sanitation are relevant in this context. Stronger requirements should also be imposed on mining companies, through regulations and other measures, to take responsibility for the impact of their operations on local communities.

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Appendix 1: Detailed Description of Methodology

The Bench Marks Foundation works with local communities to encourage mining companies to take social and environmental responsibility and is thus biased in the issue of the responsibility of the mining companies. In order to balance this, Swedwatch has obtained commentary from the mining companies during its investigation. Swedwatch has guided the investigation and has ensured that qualified research has been conducted in accordance with Swedwatch's methodology. The work with Bench Mark's reports has been led by David van Wyk, researcher at North West University in South Africa, who also compiled the preliminary study for Swedwatch. Swedwatch has cooperated with Bench Marks on this study due to the Foundation's extensive experience of sustainability issues in the mining industry in South Africa.

Since 2012, Bench Marks Foundation has also worked with the Stockholm School of Economics, Diakonia and North West University in South Africa in a research center called Bench Marks Centre for Corporate Social Responsibility, based at North West University. This work is financed by Sida and aims to support the exchange of research between the institutions, focusing on issues of sustainability in Africa with international links.¹³²

The questionnaires for the local communities were distributed by Bench Marks Foundation to approximately 20 people in each of six villages in the area surrounding Rustenburg. The questionnaire for mine workers was also distributed by Bench Marks Foundation to 20 mine workers in the villages. The questionnaires asked inhabitants and workers in the villages about their views on the impact of the mining industry on their lives and communities, as well as the mine workers' views on their working conditions. Among the local inhabitants that responded to the questionnaire, 55 percent were men and 45 percent were women. Among the mine workers, 90 percent were men and 10 percent women. The reason that the majority of those responding among mine workers were men is that a very small proportion of mine workers are women.

During Swedwatch's field research, an interpreter was present when respondents did not speak English. A balanced number of women, men, youth and the elderly were selected for interviews. A number of the interviewees were contacted in advance by Bench Marks Foundation on behalf of Swedwatch, to ensure that they were willing to participate in an interview. A portion of the interviews were arranged on the spot depending on who was available.

Swedwatch has focused the study on the North West Province in South Africa for several reasons. Given that three of the largest mining companies operate in the area, there are clear connections here to the Swedish companies. The unrest that has affected the industry during the last year has mostly occurred in this province and the largest portion of platinum extraction in South Africa is found in this province. The

¹³² Network for Business Sustainability, nbs.net/sustainability-centres-directory/bench-marks-centre-for-corporate-social-responsibility/.

sample of communities was made according to where the three largest mining companies have their operations, to ensure that the communities visited were in proximity to one or more of the three largest mining companies.

Appendix 2: Laws, Frameworks and Industry Initiatives

The mining sector in South Africa is regulated by law. In this chapter, the most central laws, relevant international frameworks and industry initiatives concerning business and human rights are presented.

National Law in South Africa

The South African Constitution

The South African Constitution is the basis of all statutory regulation. The constitution was adopted in 1996 and was developed by Parliament after the abolition of apartheid in 1994.

The Constitution guarantees a number of human rights that are highlighted in this report as not being respected, for example the right to adequate housing (Section 26), right to water and health (Section 27), right to property (Section 25), as well as the right to an environment which is not hazardous to health or well-being (Section 24). According to the Constitution, the South African state has the responsibility for ensuring these rights.¹³³

Mineral and Petroleum Resources Development Act (MPRDA)

The Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) is the central piece of legislation regulating the mining industry in South Africa. The Act regulates prospecting, quarrying and production of minerals in South Africa. In terms of the Act, the South African government is responsible for the mineral resources of the country and decides who has the right to exploit these resources.¹³⁴

In order for a company to be awarded mineral rights, a “social and labor plan” must be developed in which the company describes how it will contribute to community development in the region in which mining will take place. These plans have been criticized by several sources, however, due to lack of transparency – the companies often do not disclose the content – making it impossible for concerned stakeholders to determine whether or not the company complies with its commitments.¹³⁵

133 Constitution of the Republic of South Africa, 1996, www.info.gov.za/documents/constitution/1996/a108-96.pdf.

134 MPRDA, www.info.gov.za/view/DownloadFileAction?id=196612.

135 See: Legal Resource Centre, *Submission on the Draft Minerals Petroleum Resources Development Amendment Bill 2012*, 8 februari 2013.

Mining Charter

In accordance with the MPRDA, the Mining Charter has been developed to ensure that historically disadvantaged South Africans benefit from the exploitation of mineral resources. The Mining Charter, adopted in 2002 and updated in 2010, regulates a number of areas connected to sustainable development in the mining industry. One example is that all multinational corporations which supply products to the mining companies must budget 0.5 percent of their annual income from the mining companies for development projects for the local communities. The mining companies should also consult local communities and analyze their needs prior to initiating development projects. Regarding workers' housing, the goal is that worker hostels should be converted to family housing by 2014 at the latest and that all employees should be given the option to purchase their own homes.¹³⁶

International Frameworks

International Bill of Rights

Human Rights, as they are described in the International Bill of Human Rights (which is comprised of the Universal Declaration of Human Rights and the most important instruments through which these have been codified: The International Covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) are universal, undividable and equal.

The Economic, Social and Cultural (ESC) rights include, among others, the right to food, water, health, housing, education and livelihood through employment. The UN ESC Covenant is a legally-binding treaty between states. Although the Covenant concerns the responsibilities of states as part of international law, companies and other non-state actors are also responsible for following the Covenant as a part of its internationally accepted standard as a universal norm. 160 countries have signed the Covenant, obliging them to work towards the realization of all rights included in the Covenant. 70 countries have ratified the Covenant.¹³⁷ Companies are concerned with the ESC rights in several ways; in part, through for example paying reasonable wages to their employees and ensuring that their operations do not limit access to food, water or adequate housing in a negative way.

UN Global Compact

The Global Compact was introduced in 1999 by the former UN Secretary General Kofi Annan and is today the largest international initiative for corporate responsibility and sustainability issues, with over 6,000 corporate members from 135 countries. Corporate members commit themselves to adhere to ten principles on human rights, the environment, labor conditions and anti-corruption, and to respect these principles in the entire value chain. The Global Compact is not a legally-binding frame-

¹³⁶ The Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (Mining Charter) www.bullion.org.za/WithiaReleases/Downloads/Amended_of_BBSEE_Charter.pdf.

¹³⁷ UN, treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en.

work, but companies that have voluntarily committed themselves to participating in the initiative must report on how they adhere to the principles and can be expelled if it becomes apparent that they do not report. All Swedish companies and mining companies reviewed in this report are members of the Global Compact. In respect of Amplats, the parent company Anglo America is a member.¹³⁸

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises are recommendations to multinational corporations based or operating in one of the OECD countries. They include, among other areas, the relationships between business and human rights, the environment and labor conditions. The Guidelines were revised in 2011 following the endorsement of the UN Guiding Principles on Business and Human Rights. The Guidelines prescribe, for example, that companies should work in close cooperation with local communities in order to advance sustainable development in connection with their activities. In each OECD country there is a so-called “National Contact Point” tasked with reviewing how the Guidelines are being followed. The National Contact Points have a mandate only to mediate between concerned parties and provide recommendations; they are not legally-binding courts.¹³⁹

IFC Performance Standards on Environmental and Social Sustainability

The International Finance Corporation (IFC) is a part of the World Bank and a development organization focusing on the financing of business projects in developing countries. The sustainability standards of the IFC are built on eight principles that aim to identify and manage risks for negative impacts on human rights and the environment. The IFC requires its clients to use the principles in projects in which the organization participates. The eight principles deal with the implementation of risk management systems, management of specific human rights, labor, legal and environmental risks, as well as specific issues such as forced relocations connected with projects.¹⁴⁰

Industry Initiatives

International Council on Mining and Minerals (ICMM)

The global mining industry organization, ICMM, works for the active contribution of companies in the mining industry to sustainable development. The organization has existed since 2001 and is a voluntary association. Of the three mining companies covered in this report, Lonmin is a member, as well as Anglo American (parent company of Amplats). The companies participating in ICMM have committed themselves to adhering to ten sustainability principles and regularly report on them. The principles confirm that all human rights of all stakeholders must be respected, emphasize the importance of creating good contacts with groups affected by the operations of the

138 UN Global Compact, www.unglobalcompact.org/AboutTheGC/index.html.

139 OECD, *Guidelines for Multinational Enterprises*.

140 IFC Performance Standards on Environmental and Social Sustainability, www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES.

companies for effectively contributing to the development of society, and confirm the need to regularly and openly consult stakeholders.¹⁴¹

Extractive Industries Transparency Initiative (EITI)

EITI is an initiative for increased transparency in extractive industries and has been in place since 2002. States, companies and organizations support the EITI and companies that become members bind themselves to clearly reporting income and taxes in the countries in which they operate. Neither South Africa nor Sweden is a member of EITI, although all three of the largest platinum mining companies are.¹⁴²

141 ICMM, www.icmm.com/.

142 EITI, eti.org/.

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