

Responsible Resettlement:
Implementing the Corporate Responsibility
to Respect Human Rights in the context of
Mining Induced Displacement and
Resettlement

WILLIAM ROOK

A thesis submitted in partial fulfilment of the
requirements of the University of Greenwich for the
Degree of Master of Philosophy

September 2017

DECLARATION

I certify that the work contained in this thesis, or any part of it, has not been accepted in substance for any previous degree awarded to me, and is not concurrently being submitted for any degree other than that of Master of Philosophy being studied at the University of Greenwich. I also declare that this work is the result of my own investigations, except where otherwise identified by references and that the contents are not the outcome of any form of research misconduct.

William Rook

Date submitted: 5 September 2017

ACKNOWLEDGEMENTS

Mining-induced displacement and resettlement poses an on-going contemporary challenge, with serious implications for people affected. The intention with this research has been to make a small contribution to the way that mining companies approach the issue.

I would like to record my thanks to the University of Greenwich for its generous support in allowing me to develop this research, and for the personal opportunity to learn in depth about the topics addressed in this thesis.

I am particularly grateful to my supervisors Dr Olga Martin-Ortega and Dr Opi Outhwaite for their expertise, guidance, and encouragement, and for their trust in this project. I owe them many thanks.

From first thinking about the idea of this thesis, right through to its submission, my work on this (and much besides) has been supported by Monika Belcik's motivation, interest, patience and enthusiasm. My biggest thanks to you.

ABSTRACT

Mining-induced displacement and resettlement is a high-risk activity that has an inherent potential to impact the human rights of those affected. However, current models of international best practice in resettlement, based on guidelines developed by International Financial Institutions, do not adequately frame resettlement as a human rights issue.

In operating contexts where the human rights protections offered to people by host states can be limited, the importance of companies implementing their responsibilities to respect human rights becomes crucial. To date, the gaps in protections available to people affected by resettlement have been largely filled by company-led corporate social responsibility activities, which can be poorly aligned with societal needs and lack a normative framework with sufficient onus on the responsibilities of corporate actors.

The UN Guiding Principles for Business and Human Rights provide the basis for a rights-based approach, and by implementing a responsibility to respect human rights throughout the lifecycle of conducting resettlement activities, mining companies can reduce the risk that they might cause, contribute to, or be linked with human rights abuses.

This thesis proposes practical steps that companies can take to fulfil their responsibly to respect human rights in the context of a mining-induced displacement and resettlement.

CONTENTS

DECLARATION	ii
ACKNOWLEDGEMENTS	iii
ABSTRACT	iv
CONTENTS	v
ABBREVIATIONS	vi
Introduction	1
1. Mining Induced Displacement and Resettlement as a Human Rights Issue	6
1.1 The social impact of MIDR	6
1.2 Situating Mining Induced Displacement and Resettlement within the literature.....	10
1.3 Human Rights Affected by MIDR.....	16
2: Situating Responsibility and the limits of the State Duty to Protect	28
2.1 Mapping the actors.....	29
2.2 The State Duty to Protect	32
2.3 Multinational Corporations.....	35
3. Failing to fill the gap: the limits of Corporate Social Responsibility	42
3.1 CSR	43
3.2 Non-binding frameworks.....	48
4. Bridging the Gap: A “responsibility to respect” Human Rights	53
4.1 The UN Guiding Principles on Business and Human Rights.....	55
4.2 Human Rights and Responsible Business Conduct.....	57
4.3 IFC Performance Standards and World Bank Guidelines.....	58
5. Implementing the Corporate Responsibility to Respect in the context of Resettlement	64
5.1 Step One: Policy commitment	65
5.2 Step Two: Human Rights Due Diligence.....	67
5.3 Step Three: Integrate and Act on Due Diligence.....	69
5.4 Step Four: Track Progress.....	70
5.5 Step Five: Communicate Effectiveness.....	71
5.6 Step Six: Remedy.....	72
Conclusion	74
BIBLIOGRAPHY	76

ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
CESCR	UN Committee on Economic, Social and Cultural Rights
CSR	Corporate Social Responsibility
DIDR	Development Induced Displacement and Resettlement
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMM	International Council on Mining and Metals
IDP	Internally Displaced Person
IFC	International Finance Corporation
IFI	International Financial Institution
MIDR	Mining Induced Displacement and Resettlement
MNC	Multinational corporation
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the UN High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGP	UN Guiding Principles for Business and Human Rights

Introduction

'On the outskirts of the northern Tanzanian town of Geita sits a cluster of makeshift tents. The area - which resembles a refugee camp and is known [colloquially] by residents as Darfur - is inhabited by farming families who were displaced in 2007 to make way for one of the country's largest gold mines. 'They arrested three people and beat them, and then they dumped us here' [said Hussein]. Hussein is one of an estimated 250 people displaced from the village. This camp has been her home for the past six years.' (IRIN Africa, 2013)¹.

'... scholarly literature on resettlement, to which sociologists and social anthropologists have made the main contributions, has by and large overlooked such legal aspects' (Shihata, 1993)².

Businesses in every sector and every supply chain have the potential to cause, contribute to, or be linked with human rights abuses, which frequently occur through failure to identify and proactively engage with risks to those affected by their activities. In some sectors particularly, the risk of impacting on human rights may be heightened. Mining is one of those sectors, and the industry has long been aware that managing company-community relations and securing a social licence to operate are critical to operations.³

Globally, a typical feature of the mining sector is that multinational companies operate alongside existing communities, situating their works on land traditionally used by those communities, intensively mining resources that have long been extracted on a very small scale for subsistence. Precisely because of its

¹ IRIN Africa, 2013. Tanzanian farmers displaced by mining live like refugees. *IRIN Africa*, (April 2013).

² Shihata, I., 1993. Legal Aspects of Involuntary Population Resettlement. In M. Cernea and S. Guggenheim, eds., *Anthropological Approaches to Resettlement: Policy, Practice and Theory*. Boulder: Westview Press. Also see: Shihata cited in Barutciski, M., 2006. International Law and Development-induced Displacement and Resettlement. In C. de Wet, ed., *Development-induced displacement: Problems, policies and people*. New York: Berghahn Books.

³ A 'social licence to operate' refers to the level of acceptance or approval by local communities and stakeholders of mining companies and their operations. For further information see: Morrison, J., 2014. *The Social License. How to keep your organization legitimate*. Basingstoke: Palgrave Macmillan. See also: Owen, J. and D. Kemp, 2013. Social licence and mining: A critical perspective. *Resources Policy*. Volume 38, Issue 1, March 2013 pp. 29-35.

exposure to significant societal risk, the mining sector has engaged seriously with social responsibility agendas and environmental, social and governance reporting for some time, and in a sophisticated way.⁴ There remain however significant aspects of mining that are subject to weak regulation and little guidance. A high-risk area where mining companies have little guidance on mitigating human rights impacts is mining-induced displacement and resettlement (MIDR). As a result, MIDR poses an on-going contemporary challenge, with serious implications for people affected.

Applying the UN Guiding Principles for Business and Human Rights (UNGPs), this thesis considers what the corporate responsibility to respect human rights, as expressed therein, entails in the context of MIDR. This includes setting out implementable steps that companies can take to respond to their responsibilities under the UNGPs.

The corporate responsibility to respect human rights is a particularly important concept in the mining sector as a significant proportion of mining occurs in areas of weak governance where the state duty to protect human rights is often not practically realised (a point explored in greater depth in Chapter 2).

The lack of guidance relating to MIDR is emphasised when considering other high-risk mining activities where guidance does exist to help companies navigate their operations in a way that minimises human rights impacts. The ‘OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’ (the “OECD Due Diligence Guidance”) is one example.⁵ However, the OECD Due Diligence Guidance focuses (with limited geographical scope) on supply chain issues including “extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing or selling of products that contain minerals originating from conflict-affected and

⁴ Jenkins, H. and N. Yakovleva, 2006. Corporate social responsibility in the mining industry: exploring trends in social and environmental disclosure. *Journal of Cleaner Production*. Volume 13, Issue 3, 2006, pp. 271-284.

⁵ OECD, 2013. *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*. Paris: OECD Publishing.

high-risk areas.”⁶ For issues beyond the scope of the OECD Due Diligence Guidance, such as MIDR, there is a substantial risk and insufficient guidance.

These risks are compounded, as MIDR is always complex. Very often, communities are relocated and resettled and great disruption incurred to give way to large extractive projects. Existing livelihoods of small-scale and artisanal mining are curtailed and forcibly prevented; environmental damage and pollution widely encountered; compensation often perceived to be inadequate; and communities imbalanced by the inequality of opportunity afforded by the extent and availability of employment and compensation available. These impacts of mining clearly have the potential to infringe on the human rights of local communities.

However, while social impacts are well known, a human rights lens is not typically applied to MIDR. Indeed, it is clear that the human rights impacts of MIDR are underexplored and the rights of those affected are poorly upheld. Most critically, there is very little understanding of the rights of affected communities and the responsibilities of mining companies. For the most part, the regulatory framework that influences the outcomes of MIDR is light, with limited scope for enforceability, and insufficient in determining the human rights responsibilities of mining companies.

To the extent there is a normative framework that applies to MIDR, it is comprised of:

- the World Bank Policy on Involuntary Resettlement;⁷ and
- IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.⁸

Neither of these standards are enforceable by affected communities, and, in the few cases where resettlement plans are published by mining companies, the legal framework referenced does not tend to extend beyond a statement of compliance

⁶ *Ibid*, p. 14

⁷ World Bank, 2001. *Operational Policy 4.12 – Involuntary Resettlement*. December 2001, Revised April 2013.

⁸ IFC, 2012a. *Performance Standard 5. Land Acquisition and Involuntary Resettlement*. 1 January 2012.

with the guidelines such as the World Bank's or IFC's. Guidance for how companies should oversee a human rights compliant resettlement programme would minimise the inherent serious risks to local communities of having their human rights impacted by a resettlement.

That the World Bank has admitted in 2015 that their Policy on Involuntary Resettlement⁹ is totally inadequate raises many questions.¹⁰ In the first instance it seems abundantly clear that this is an especially light regulatory environment that seems to provide little protection for displaced and resettled communities. That being the case, this thesis asks: what steps should companies take in order to minimise the risk of impacting negatively on the human rights of those affected by MIDR?

While the regulatory framework may be light, mining companies conducting resettlements have long had to contend with wide-ranging social impacts. Over many years, the social impacts of resettlement have been viewed through the lens of complying with "international best practices" (such as World Bank and IFC Guidelines) alongside local legal regimes, corporate social responsibility standards, and corporate risk management processes. Now, the business and human rights discourse, and in particular the framework of the UNGPs,¹¹ have become the pre-eminent framework for assessing human rights risks, which has brought consideration of the rights of affected people much more clearly into view.

The UNGPs provide authoritative guidance for businesses on how to prevent and address business-related human rights harms. The approach of the UNGPs has also been adopted by other frameworks informing responsible business conduct,

⁹ World Bank, 2001, *op. cit.*

¹⁰ World Bank, 2015. *World Bank Acknowledges Shortcomings in Resettlement Projects, Announces Action Plan to Fix Problems*. Press release, 4 March 2015.

¹¹ United Nations, 2011. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. United Nations Human Rights Council. 17th Session. March 2011. Office of the High Commissioner for Human Rights, New York and Geneva.

including the OECD Guidelines for Multinational Enterprises,¹² the ISO 26000 social sustainability standard, and, crucially in the mining sector, the IFC Performance Standards as revised in 2012.

The structure of this thesis builds towards the application of the UNGPs in Chapter 5. Chapter 1 establishes MIDR as human rights issue with significant impacts on those affected. Chapter 2 maps the relationships between the actors responsible for a resettlement project, demonstrating that while a complex web of actors influence outcomes, human rights duties remain with the State, and there is little scope for legal obligations to exist between companies and communities. Asserting that this leaves a gap in the protections available to those affected by MIDR, Chapter 3 goes on to demonstrate the limitations inherent in corporate social responsibility approaches that fail to fill the gap left by weak legal protections, building the case for a human-rights centred approach to corporate responsibility. Chapter 4 then argues for the application of the UNGPs as the appropriate framework through which to view mining company responsibilities, and as a practical basis to guide companies towards fulfilling a responsibility to respect human rights. Finally, Chapter 5 uses the framework of the UNGPs to propose a series of practical steps that constitute guidance for conducting a resettlement responsibly in line with the corporate responsibility to respect human rights.

¹² OECD, 2011, *OECD Guidelines for Multinational Enterprises. 2011 Edition*. Paris: OEDC Publishing.

1. Mining Induced Displacement and Resettlement as a Human Rights Issue

Awareness of the broader impacts of mining on communities is important to understand the context in which MIDR takes place. For communities, the presence of mining operations in their immediate environment creates a substantial impact and a disruptive social force. As an industry, mining takes up a significant amount of physical space, uses heavy machinery, and takes place in enclave areas, usually behind tall fences. It is noisy, it is often polluting, and there are many examples of conflict between mining companies and local communities. While the extraction of oil and gas often takes place offshore, the extraction of minerals and metals largely takes place on land, often in fairly remote and rural locations in the immediate vicinity of traditional communities, and frequently in regions of weak governance.

In simple terms, MIDR is a process by which communities are displaced and resettled to make way for mining activities. This is typically considered to be a case of development-induced displacement and resettlement (DIDR), but can be differentiated on the basis that the principal actor is usually a private sector multinational mining company, the lifecycle of mineral extraction is only ever for a limited period, and prevailing questions as to whether mining can be considered a form of development at all. Where MIDR fits squarely within DIDR is that it tends to be planned (unlike other forms of displacement due to conflict, persecution, environmental disaster etc.), and as such there is the potential for human rights impacts to be minimised, mitigated and remediated.

1.1 The social impact of MIDR

Mining operations have many social impacts on adjacent communities, and some of these impacts will be profound and carry a high risk of affecting human rights. MIDR is one of the riskier potential impacts of mining on a community, and one with a significant degree of human rights risk attached. Indeed, the relationship between a mining company and community is perhaps most disruptive in the context of displacement and resettlement. Terminski considers that 'one of the

most negative effects of mining today is the forcing of thousands of people to abandon their current places of residence. Today, mining-induced displacement constitutes a major social problem and a challenge for human rights'.¹³

The typography of mining impacts on communities commonly distinguishes such impacts as either positive or negative. To illustrate, the presence of mining works frequently provides opportunities; for example in employment, professional development, infrastructure, and education. There can also be opportunities for local businesses to enter multinational supply chains, and all manner of ancillary functions that expand the local economy. Mining can provide a major source of employment to a local community, and contribute to the development of key socio-economic infrastructure such as roads, hospitals, schools and housing.¹⁴ Any positive impacts for local communities though are likely to be in mitigation to the inevitable negative impacts that come with mining. However, whether these 'positive' impacts are ultimately beneficial to local livelihoods and the communities affected is disputed, especially with regard to the scale and scope of any benefits, and the opportunity cost to communities of accepting any of these positive impacts.

Realistically, an overall 'positive' outcome for a local community is unlikely to ever be a consideration in developing industrial-scale mining - the case for mining in a particular community is far more likely to be utilitarian and based on the potential for wider regional and national benefits, such that they outweigh the potential harm of impacts to local communities. This utilitarian justification is an expression of favouring the public interest over the consent of people displaced and resettled. That it is considered to be in the public interest for there to be displacement and resettlement to make way for industrial mining projects is itself a consequence of a particular view of development. Courtland Robinson notes:

¹³ Terminski, B., 2012. *Mining-Induced Displacement and Resettlement: Social Problem and Human Rights Issue (A Global Perspective)*. Warsaw: University of Warsaw. p. 6.

¹⁴ Hilson, G., 2002. An overview of land use conflicts in mining communities. *Land Use Policy*. Volume 19(1), pp.65–73.

In decades past, the dominant view of those involved in the 'development' of traditional, simple, Third World societies was that they should be transformed into modern, complex Westernized countries. Seen in this light, large-scale, capital-intensive development projects accelerated the pace toward a brighter and better future. If people were uprooted along the way, that was deemed a necessary evil or even an actual good, since it made them more susceptible to change.¹⁵

Garvin et al summarise cogently that 'the mining sector, while sometimes strengthening the economy at the national scale, may present an entirely new set of problems at the scale of the local community.'¹⁶ The scope of mining operations to generate positive outcomes is limited by the challenges companies face to ensure that any community development that is generated is sustainable, given the life-cycles of commercial mining operations are limited and the average period of open-pit exploitation is ten to forty years.¹⁷ Modern intensive mining operations are also highly technical and increasingly mechanised; allowing ever fewer opportunities for local employment.¹⁸

Some of the negative impacts of mining to a local community are widely known. Issues such as MIDR are often deemed acceptable within the overall development of a mining project.¹⁹ Other negative impacts include where existing livelihoods of small-scale and artisanal mining are curtailed or forcibly prevented and when compensation is deemed inadequate by local communities. In addition, there are many instances of environmental damage and pollution; the interruption of sustainable livelihoods; forcible displacement; and communities imbalanced by the extent and availability of employment and compensation. Where the extent of

¹⁵ Courtland Robinson, W., 2003. *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*. Occasional Paper, The Brookings Institution. See also: Courtland Robinson, W., 2004. Minimizing Development Induced Displacement. *Migration Information Source*. 1 January 2004.

¹⁶ Garvin, T. et al., 2009. Community-company relations in gold mining in Ghana. *Journal of Environmental Management*. Volume 90(1), pp.571–86.

¹⁷ Terminski, 2012, *op cit.*, p. 12.

¹⁸ Terminski, 2012, *op cit.*, p. 9.

¹⁹ Downing, T., 2002. Avoiding New Poverty: Mining-Induced Displacement and Resettlement. *Mining, Minerals and Sustainable Development*. No. 58, April 2002.

these negative impacts is not sufficiently mitigated, then the outcome is frequently tension.²⁰

While a local community can impact positively on a mining project, for example in situations where it provides a skilled local workforce, for the most part, a community is major risk factor for mining industries, the negative impacts of which need to be mitigated by the company. The most negative impacts that a community can have on a company relate to security issues, theft, reputational damage, work disruption, and community-induced project delays. Franks et al²¹ have shown that conflict with local communities can have significant business costs, which can result in projects being abandoned and substantial financial losses incurred. From a mining perspective, the relationship with local communities must be sufficiently sustainable so as to reduce these business risks, and preserve the long-term viability of the project.

Negative impacts of mining frequently lead to company-community conflict. For communities, there have been several reported instances of violence directed at them by staff employed by or for a mine, including, in particular cases, instances of rape and murder.²² Local communities also represent a security risk to mines; for example in cases of mine invasions, property damage and attacks on mining personnel.²³

Resettlement is a factor in a minority of mining operations, as most mines do not require community resettlement; but, where a resettlement is conducted, it is inevitably the major source of conflict. In their studies into the causes of company-

²⁰ Calvano, L., 2008. Multinational Corporations and Local Communities: A Critical Analysis of Conflict. *Journal of Business Ethics*, 82(4), pp.793–805.

²¹ Franks, D., et al., 2014. Conflict translates environmental and social risk into business cost. *Proc. Natl. Acad. Sci.* Volume 111 (21), pp.1-6.

²² Mugini, J., 2012. Tanzanian police shoot dead two civilians at conflict-torn gold mine. *Tanzania Daily News*. 1 September 2012. See also: Leigh Day, 2013. *Tanzanian villagers sue London-based African Barrick Gold for deaths and injuries*. Press release, May 2013.

²³ Makene, M., J. Emel, & J. Murphy, 2012. Calling for Justice in the Goldfields of Tanzania. *Resources*. Volume 1(1), pp.3–22.

community conflict in extractive industries, Davis and Franks²⁴ identified proximate and underlying causes of dispute at 50 mining sites around the world. Globally, the principal causes of dispute identified were pollution, distribution of economic benefits, access to resources, and consultation and communication. Each of these identified causes of conflict was present in over 70% of company-community conflicts globally.²⁵ Other major causes of conflict identified included consent, participation in decision-making, resettlement, changes to population demographics (principally caused by the arrival of migrant workers) and security issues. The most relevant finding for this research is that while there is often a mixture of proximate causes of dispute, where resettlement is an issue, it is only ever found to be a major underlying issue of dispute, rather than a proximate cause. From this it is possible to consider that where resettlement takes place, it is the resettlement that is the most important and most conflicted area of interaction between companies and communities.

In managing the impacts of mining, and the potential for conflict (which is high where a resettlement takes place), there is a significant and documented risk of human rights violations. The risk of human rights violations is exacerbated as the rights and responsibilities of mining companies vis-à-vis local communities (and vice versa) remain largely unclear, especially the extent to which any rights and responsibilities might be enforceable. Local people do not necessarily know what they can expect from an interaction with a multinational mining company, and mining companies do not necessarily know what their role is either, uncertain of their responsibilities and obligations.

1.2 Situating Mining Induced Displacement and Resettlement within the literature

²⁴ Davis, R. & D. Franks, 2011. The costs of conflict with local communities in the extractive industry. In: D. Brereton, D. Pesce & X. Abogabir, eds., *Proceedings of the First International Seminar on Social Responsibility in Mining*. Santiago, Chile, 19–21 October, 2011. See also: Davis, R. & D. Franks, 2014. *Costs of Company-Community Conflict in the Extractive Sector*. Corporate Social Responsibility Initiative Report No. 66. Cambridge, MA: Harvard Kennedy School.

²⁵ *Ibid.*

Displacement is its own phenomena with many causes, including armed conflict, natural disasters, and (increasingly) environmental change. According to Cernea approximately fifteen million people are displaced as a consequence of development every year,²⁶ making DIDR probably the second largest category of displacement worldwide. De Wet states that despite a recent generation of new resettlement guidelines and policies, “in the overwhelming majority of cases, most people displaced or resettled by development projects are still left worse off than before and suffer socio-economic impoverishment”.²⁷

While identified in the mining literature as a significant issue and major social impact of mining, MIDR does not have an extensive context-specific body of work dedicated to it, but rather is typically situated as a sub-field of development induced displacement and resettlement (DIDR). Indeed, more generally, the study of DIDR is far more advanced in other contexts than in a mining-specific context. With regard to the rights of people displaced by mining projects, one of the most published scholars working explicitly in this field is Terminski,²⁸ who has investigated the rights of those displaced, but without a focus on the responsibilities of companies. More broadly researching the legal context for displacement occurring in the context of development, Barutciski²⁹ and Morel³⁰ provide a platform and have been considered amongst a range of interdisciplinary literatures on mining and resettlement which have guided the background and

²⁶ Cernea, M., 2006. Development-induced and conflict-induced IDPs: bridging the research divide. *Forced Migration Review*. Special Issue (December 2006), pp.25–27. Also cited in Cao, Y., S. Hwang and X. Juan, 2012. Project Induced Displacement, Secondary Stressors and Health. *Social science and medicine*. Volume 74(7), pp. 1130-1138.

²⁷ De Wet, C., 2006. Introducing the Issues. In C. de Wet, ed. *Development-induced displacement: Problems, policies and people*. New York: Berghahn Books.

²⁸ Terminski, 2012, *op. cit.* See also: Terminski, B., 2011. Towards Recognition and Protection of Forced Environmental Migrants in the Public International Law: Refugee or IDPs Umbrella?. *Political Studies Organisation Summit*. December 2011. See also: Terminski, B., 2013. Public International Law and Development-Induced Displacement and Resettlement: A Socio-Legal analysis. *Mediterranean Journal of Human Rights*. Volume 17, 2013. See also: Terminski, B., 2015. *Development-Induced Displacement and Resettlement: Causes, Consequences and Socio-Legal Context*. Stuttgart: Ibidem-Verlag.

²⁹ Barutciski, 2006, *op. cit.*

³⁰ Morel, M., 2013. *The Right not to be Displaced in International Law*. Unpublished PhD thesis. Ghent University. See also: Morel, M., 2014. *The Right not to be Displaced in International Law*. Cambridge: Intersentia.

context of this thesis. On the topic of MIDR generally, Owen & Kemp³¹ survey the field, Downing³² and Cernea³³ approach the topic from a displacement perspective, locating MIDR as a category of DIDR. The mining specific literature focussing on company-community relations such as Davis & Franks,³⁴ and Hilson,³⁵ approach resettlement as an ‘issue example’ rather than as a main concern.

According to Terminski,³⁶ the cause of DIDR is a ‘difficult to solve conflict of interests between local administration and the private sector on the one side and socio-economic needs of communities living the neighbourhoods of the projects on the other.’ While displacement caused by disasters and conflicts is often sudden and dynamic, DIDR is generally seen as more planned and less likely to be associated with security and human rights infringements for affected people.³⁷

In general, ‘outside of the minerals sector, the knowledge base on displacement and resettlement has continually expanded for over fifty years’.³⁸ One of the main reasons that it has not done so in the context of mining is that much of the

³¹ Owen, J. & D. Kemp, 2015. Mining-induced displacement and resettlement: a critical appraisal. *Journal of Cleaner Production*. Volume 87, pp.478–488. See also: Owen & Kemp, 2013, *op. cit.*

³² Downing 2002, *op. cit.* See also: Downing, T. and C. Garcia-Downing, 2009. Routine and Dissonant Culture: A theory about the psycho-social-cultural disruptions of involuntary displacement and ways to mitigate them without inflicting even more damage. In A. Oliver-Smith, ed., *In Development and Dispossession: The Anthropology of Displacement and Resettlement*. Santa Fe: School for Advanced Research Press.

³³ Cernea, M., 1995. Understanding and Preventing Impoverishment from Displacement: Reflections on the State of Knowledge. Keynote Address, International Conference on Development Induced Displacement. *Journal of Refugee Studies*. Volume 8(3), pp. 245-264. See also Cernea, M., 1996. Public Policy Responses to Development-Induced Population Displacements. *Economic and Political Weekly*. Volume 31(24), pp.1515–1523. See also: Cernea, M., 2000. Risks, Safeguards and Reconstruction: A Model for Population Displacement and Resettlement. *Economic and Political Weekly*. Volume 35(41), pp.3659–3678. See also: Cernea, 2006, *op. cit.* See also: Cernea & Guggenheim, 1993, *op. cit.*

³⁴ Davis & Franks, 2011, *op. cit.* See also: Davis & Franks, 2014, *op. cit.* See also: Franks, D., et al, 2014, *op. cit.*

³⁵ Hilson, G., 2012. Corporate Social Responsibility in the extractive industries: Experiences from developing countries. *Resources Policy* Volume 37(2), pp.131–137. See also: Hilson, 2002, *op. cit.* See also: Hilson, G., & N. Yakovleva, 2007. Strained relations: A critical analysis of the mining conflict in Prestea, Ghana. *Political Geography*. Volume 26, pp. 98-119.

³⁶ Terminski, 2013, *op. cit.*

³⁷ *Ibid.* p.2

³⁸ Adam, A., J. Owen & D. Kemp, 2015. Households, livelihoods and mining-induced displacement and resettlement. *The Extractive Industries and Society*. Volume 2(3), pp. 581-589.

resettlement work done by mining companies is undocumented, remote, and in regions of weak governance.

However, locating MIDR as a category of DIDR is not without limitations. In particular, Owen and Kemp consider that the situating of MIDR within the broader study of DIDR produces a detrimental effect on contemporary resettlement in practice, and, without an industry specific debate, 'knowledge building on MIDR will remain generalised, diluted and unfocused' with a 'disconnection' between DIDR literature and MIDR practice and an 'absence of dedicated mining scholarship within the DIDR literature.'³⁹

Focussing specifically on mining, MIDR is distinct from DIDR for a number of reasons. As opposed to infrastructural development projects such as dams, roads and urban redevelopments, what distinguishes mining as a particular category of development to focus on is that the principal agent of development is often a subsidiary or partial venture of a multinational company, rather than the state. This is important, because a parent company based in a more economically developed country, such as the UK, Canada or Australia, is legally linked to, but separate from, the entity that engages with the local community.

Another significant difference between MIDR and DIDR is the project lifecycles associated with mining; with different phases of a mining project introducing separate challenges for land use and resettlement planning⁴⁰ and MIDR being something that can occur at any stage within a project lifecycle.⁴¹ In addition, mining projects are directly tied to international commodity markets, with market volatility having an 'immediate effect on how companies plan (or fail to plan) their MIDR activities.'⁴²

³⁹ Owen & Kemp, 2015, *op. cit.*

⁴⁰ Sonter, L., et al, 2014. The process of land use change in mining regions. *Journal of Cleaner Production*. 2014, pp. 1-8.

⁴¹ Owen & Kemp, 2015, *op. cit.*

⁴² *Ibid.*, p.479.

Within the wider context of DIDR, mining is a relatively minor cause of displacement globally, especially when contrasted with displacements attributable to major infrastructure developments such as dam construction or urban renewal projects. However, it is difficult to be sure of the scale of MIDR, and there is notable concern that the problem is much bigger than existing data evidences. Sonnenberg and Münster state that mining operations resettled 35,000 people in Southern Africa during the nineties; however this is a figure that reflects only resettlements for which formal resettlement plans were compiled.⁴³ On figures available, mining accounts proportionally for about one in ten of development induced displacements, but, according to Terminski, 'the whole body of literature on this subject is exceptionally small'.⁴⁴ While other types of development induced displacement are widely studied; this is not the case in a mining context.

It is also important to be aware of the planned nature of DIDR, and MIDR particularly. While displacement is typically taken to mean the forcible removal from one's land, resettlement connotes both the act of displaced people settling in another place and, importantly, the process (often consensual) by which communities are induced to move from their land. The terms are frequently used together and considered part of the same connected process of displacement and resettlement. Chambers points out in Terminski that 'resettlement is characterised by two main features: A movement of population; and an element of planning and control'.⁴⁵ The key words here are *process*, *planning* and *control*. MIDR is a pre-emptive process, largely planned and controlled by multinational corporations. As such, the element of planning *should* negate the risk of human rights violations occurring. Indeed, not only should planning be a major safeguard against human rights violations occurring, that MIDR is typically carried out by multinational corporations subject to the oversight of regulated markets and

⁴³ Sonnenberg, D. & F. Münster, 2002. Mining, Minerals and Sustainable Development in southern Africa. The Report of the Regional MMSD Process. *Mining, Minerals and Sustainable Development*, 1. p. 24.

⁴⁴ Terminski, 2012, *op. cit.*, p. 8.

⁴⁵ Terminski, 2013, *op. cit.* p. 3. For original source see: Chambers, R., 1969, *Settlement schemes in Tropical Africa: A study of organisations and development*. London: Praeger.

shareholder scrutiny is also something that could lessen the risk of human rights violations occurring. However, human rights violations do continue in practice.

Among the many consequences of DIDR, Cernea,⁴⁶ Courtland Robinson⁴⁷ and Downing (specifically on MIDR),⁴⁸ identify landlessness, joblessness, homelessness, risk of marginalisation, health risks and disruption of formal educational activities as potential impacts of a resettlement programme. Each of these outcomes creates a situation where human rights may be at risk. According to Downing,⁴⁹ DIDR unleashes widespread social, economic and environmental changes that follow well-established patterns', and failure to mitigate these risks may result in a 'new poverty' caused by displacement (as opposed to the 'old poverty' many affected persons already suffer). Downing goes on to state that MIDR 'significantly truncates social and individual changes for sustainable development'. Going further, Downing considers that related impoverishment from landlessness may take four forms:

- 1) the initial loss of land to mining;
- 2) damages to the land's productive potential in the surrounding, non-appropriate area;
- 3) subsequent losses in productive value of land on account of environmental problems and;
- 4) loss of land occurring because landless people are unable to gain access to alternative lands.

Underlying these risks, Downing also notes that vulnerable groups are especially at risk from resettlement; particularly indigenous peoples, the elderly and women.

MIDR is therefore an issue that in itself is almost an inevitable source of conflict between mining companies, local communities and host states, a particularly high-risk interaction between companies and communities, and an activity that creates the potential for many negative impacts and human rights risks. From a human

⁴⁶ Cernea, 1996, *op. cit.* See also: Cernea, 2000, *op. cit.*

⁴⁷ Courtland Robinson, 2003, *op. cit.*

⁴⁸ Downing, 2002, *op. cit.*

⁴⁹ *Ibid.* p.8.

rights perspective then, a company seeking to conduct an MIDR is engaging in an extremely high-risk activity. This risk to affected people is exacerbated due to the fact that there is very little in the way of obligations on mining companies as to how a resettlement should be conducted.

1.3 Human Rights Affected by MIDR

'The rights to adequate housing and security of the person and home are basic tenets of human rights law, and serve to protect individuals and communities from being forcibly displaced from their homes, lands and livelihoods. Despite these guarantees in international law, every year approximately 15 million people are forcibly displaced to make way for development projects such as mines, oil and gas pipelines, urban renewal schemes, mega-dams, ports and transportation infrastructure.' (Bugalski & Pred, 2013).⁵⁰

It follows that where there are potentially harmful social consequences from an interaction between companies and communities, and those interactions are inadequately regulated, that there is a real risk of human rights being affected. It might seem self-evident that the complex task of resettling communities is inseparable from serious human rights concerns. However, a rights-based approach of mapping and managing the social impacts of mining companies and considering affected groups to be 'rights holders' is only a relatively recent development. Indeed, developing a rights-based framework to guide corporate engagement with resettlement risks not only refocuses MIDR on the rights of those affected, but also provides guidance for companies that is sorely lacking.

In basic terms, human rights are internationally agreed standards aimed at securing dignity and equality for all people. These rights theoretically apply to every human being without discrimination. At the international level, they include the rights contained in the "International Bill of Human Rights", which is comprised of the Universal Declaration of Human Rights (1948) ("UDHR"), the International Covenant on Civil and Political Rights (1966) ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR"). These

⁵⁰ Bugalski, N. and D. Pred, 2013. *Reforming the World Bank Policy on Involuntary Resettlement*. Submission to the World Bank Safeguards Review, April 2013.

instruments, beginning with the Universal Declaration adopted by the United Nations in 1948 in the aftermath of the second World War, set out a range of rights and freedoms including the rights to life, to freedom of expression, to privacy, to education, and to favourable conditions of work.

Under international human rights law, it is States that have the legal obligation to protect, respect and fulfil the rights contained in specific treaties that those states ratify. The State duty to protect human rights includes the obligation to protect individuals and groups from abuses caused by or involving third parties, including companies.

Levels of human rights protection vary across state jurisdictions, and mining resettlements often take place in areas of weak governance. With reference to the above discussion on the potential consequences of DIDR, Courtland Robinson,⁵¹ cites and expands on Cernea⁵² and borrows from Downing⁵³ to add the violation of human rights as an intrinsic risk of resettlement, stating:

“displacement from one’s habitual residence and the loss of property without fair compensation can, in itself, constitute a violation of human rights. In addition to violating economic and social rights, [...], arbitrary displacement can also lead to violations of civil and political rights, including: arbitrary arrest, degrading treatment or punishment, temporary or permanent disenfranchisement and the loss of one’s political voice. Finally, displacement carries not only the risk of human rights violations at the hands of state authorities and security forces but also the risk of communal violence when new settlers move in amongst existing populations.”⁵⁴

More generally, mining activities in developing areas have the potential to create a range of human rights impacts for local communities. Environmental impacts can certainly affect human rights to life, health and an adequate standard of living. Security issues and conflicts between companies and communities have led to well documented and serious human rights issues, and the security functions of mining companies can be impactful on the rights of local people to assemble, their rights

⁵¹ Courtland Robinson, 2003, *op. cit.*

⁵² Cernea, 2000, *op. cit.*

⁵³ Downing, 2002, *op. cit.*

⁵⁴ Courtland Robinson, 2003, *op. cit.*, p.13.

to life, liberty and security of person; to freedom from arbitrary arrest and exile, to humane treatment in detention, and to a fair trial.

The rights of people displaced by MIDR comprise a patchwork of various human rights norms and mechanisms largely designed with other forms of displacement in mind. Generally speaking, DIDR remains an underdeveloped area of international law. However some legal tools are currently available to protect the rights of people displaced by DIDR.

Barutciski states that: “The areas of international law that specifically address the plight of forced migrants do not really provide legally binding rules that guarantee distinct protection for people who have been displaced by development projects.”⁵⁵ However, while there is no single specific right “to not be displaced”, international law already accommodates a number of rights that offer a degree of protection to human rights impacts incurred in a MIDR. Whether these rights are sufficient depends upon the extent to which they are enforceable. Addressing the right not to be displaced, Morel states that:

‘While a large number of human rights indeed implicitly offer, to a greater or lesser extent, legal protection from being internally or externally displaced in an arbitrary, unjustified manner, the most significant rights in this regard are the freedom of movement and residence, the right to respect for private life, the right to property and the right to housing.’⁵⁶

Specifically on the basis of the risks of MIDR, the International Council on Mining and Metals (ICMM), an industry trade body, has disclosed what it considers to be the main human rights issues relevant to the mining industry, and the potentially relevant human rights applicable. In their 2012 report⁵⁷ on human rights in the mining industry, the ICMM identify five potentially relevant human rights affected by the issue of resettlement:

⁵⁵ Barutciski, 2006, *op. cit.*, p. 72

⁵⁶ Morel, 2013, *op. cit.*, p. 142

⁵⁷ International Council on Mining & Metals, 2012. *Human rights in the mining and metals industry: Integrating human rights due diligence into corporate risk management processes,*

the right to life, liberty and security of person; the right to freedom of movement; the right to own property; the right to an adequate standard of living; and the right to effective remedy. This thesis proceeds to consider those as salient human rights risks to a MIDR, along with the two additional considerations posed by Morel, above. As such, the remainder of this chapter considers the applicability of certain universal human rights to the protection of communities displaced by mining, namely:

- i. The Right to Life
- ii. The Right to Property;
- iii. The Right to Housing;
- iv. The Right to Respect for private life;
- v. The Right to Free Movement and Residence;
- vi. The Right to an Adequate Standard of Living
- vii. The Right to Effective Remedy

The focus on these seven human rights is due specifically to the impact of MIDR and the principal risks therein, but is clearly not exhaustive. Each of these human rights will be discussed in turn to consider the extent to which they offer protection to communities displaced by mining projects and demonstrate the extent to which MIDR is a multi-faceted human rights issue. Clearly, given the overlap between human rights, it is clear that where serious harm has occurred that amounts to a violation of human rights, multiple rights will be affected. Which rights to focus on is a question of the enforceability of those rights and the chances of such rights offering adequate protection.

In addition to the more established human rights that may be violated by a displacement, there is also the potential for displacement itself to be considered a human rights violation, where the duty bearer is responsible because of the occurrence of displacement rather than the consequences of the displacement. While there may be not consensus (yet) that there is a right not to be displaced in

international law, Stavropoulou⁵⁸ and Morel⁵⁹ have argued that the potential exists for displacement itself to be considered a human rights violation.

(i) Right to Life

The right to life is the inalienable core of international human rights, and is set out in the Article 3 of UDHR as “Everyone has the right to life, liberty and security of person”. In the ICCPR the right to life is set out in Article 6.1 as “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

While displacement and resettlement is not characterised by fatalities, deaths connected to resettlement programmes are not uncommon, and, where they occur, can be linked to issues such as use of excessive force by police or private security contractors during confrontations exacerbated by a resettlement. Across all the activities of a mining company, the minimum baseline expectation is that all actors respect the right to life.

(ii) Right to Property

The right to property is particularly problematic in the context of resettlement because many people resettled for mining operations in developing countries have limited legal rights to the land on which they live. The right to property is set out in Article 17 of the UDHR which 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.*

The resettlement of communities as part of a mining development clearly brings into question the extent to which communities can rely on a right to property. The

⁵⁸ Stavropoulou, M., 1994. The Right Not to be Displaced. *American University International Law Review*. Volume 9(3), pp. 689-749.

⁵⁹ Morel, 2014, *op. cit.*

right to property is principally enacted in three regional human rights instruments: the European Convention on Human Rights (ECHR); the American Convention on Human Rights (ACHR); and the African Charter on Human and Peoples' Rights (ACHPR). The right to property is *not* included in either the ICCPR or the ICESCR, due to a lack of consensus as to the formulation of the rights and the possible limitations.⁶⁰

Article 1 of Protocol 1 to the European Convention on Human Rights (ECHR) reads:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 21 of the American Convention on Human Rights (ACHR) states:

- 1. Everyone has the rights to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.*
- 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.*

Article 14 of the African Charter on Human and Peoples' Rights (ACHPR) states:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

As clearly shown, there are differences in how a Right to Property is conceived by the different regional human rights instruments. Across all, a Right to Property is understood to protect the continued possession and peaceful enjoyment of one's property, rather than any freedom to acquire property. Interestingly, the ACHR subordinates the enjoyment of private property to the interests of society, and

⁶⁰ Morel, 2013, *op. cit.*, p. 223

also includes a stipulation for just compensation in the case of deprivation. The ECHR explicitly states that the Right to Property applies to both ‘natural and legal persons’, and again states that the Right is qualified by the ‘public interest’. Whether the right to property is infringed upon by a resettlement would depend to a great extent on how property rights are recognised in a particular jurisdiction, especially where customary land rights are at issue. A key determinant in whether a right to property is infringed is likely to relate to fair compensation.

(iii) Right to Housing

While the right to housing does not prohibit development projects that could displace people,⁶¹ it does though impose conditions and procedural limits on displacement. The right to housing can be found in Article 25(1) of the UDHR, and Article 11(1) of the ICESCR.

Article 25(1) of the UDHR states:

Everyone has the right to a standard of living adequate for health and well-being or himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 11(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living from himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The right to property and the right to housing should be considered together as the right to housing is broader than the right to property as it ‘addresses rights not related to ownership and is intended to ensure that everyone has a safe and secure place to live in peace and dignity, including non-owners of property’.⁶²

⁶¹ UN Habitat and OHCHR, 2009. *The right to adequate housing*. Fact sheet No. 21 (Rev. 1), p. 7-8.

⁶² *Ibid.*

Morel cautions that a sole focus on protecting the right to either property or housing could result in the violation of the other right; for example where owners and tenants have different interests.⁶³

The right to housing is of central importance to the enjoyment of all other economic, social and cultural rights and applies to each individual regardless of age, economic status, group or other affiliation. It should be understood broadly as a right to live somewhere in security, peace and dignity.⁶⁴ The Committee on Economic, Social and Cultural Rights (CESCR) has identified several aspects of adequate housing, which include: security of tenure, availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location and cultural adequacy.⁶⁵

A state's duty to respect the right to housing means that the state should not interfere with the enjoyment of that right. As such, unlawful or forced evictions constitute a violation of the right to housing. Legislative measures must be taken to control the circumstances under which state agents may carry out evictions. The duty to protect the right to housing obliges states to adopt laws that ensure protection against private parties and ensure that dwellings meet certain quality standards.

Morel notes that economic, social and cultural rights are not absolute.⁶⁶ As per Article 4 ICESCR, limitations on the right to housing are permissible if proportionate to the promotion of general welfare.⁶⁷

A key aspect of the right to housing is security of tenure, and is of particular relevance to protecting people from displacement. Legal security of tenure is the

⁶³ Morel, 2013, *op. cit.*, p253

⁶⁴ CESCR, 1997. *General Comment No. 7. The Right to Adequate Housing: Forced Evictions*. 20 May 1997, E/1998/22. See paragraph 7.

⁶⁵ CESCR, 1991. *General Comment No. 4. The Right to Adequate Housing*. 13 December 1991, E/1992/23. See paragraph 8.

⁶⁶ Morel, 2013, *op. cit.*, p. 253

⁶⁷ CESCR, 1997, *op. cit.*, see paragraph 8.

legal right to protection from arbitrary eviction or displacement from one's home or land. As such, the right to housing includes protection from arbitrary displacement.

The African Charter of Human and Peoples' Rights (ACHPR) does not explicitly recognize the right to adequate housing, nor does it include any explicit provision on the protection against displacement or eviction.

As the right to housing is an economic, social and cultural right, rather than a civil or political right, 'a number of the constituent elements of the right to housing are adjudicated in the courts of law, tribunals and other legal and quasi-legal forums on a daily basis.'⁶⁸ The CESCR has identified six specific areas within the right to adequate housing that are capable of judicial scrutiny: legal appeals aimed at preventing planned evictions through the issuance of injunctions; legal procedures seeking compensation following an illegal eviction; complaints against illegal actions carried out or supported by landlords in relations to rent levels, dwelling maintenance, and racial or other forms of discrimination.⁶⁹ The risk of affected people having their right to housing violated will depend to a great deal on the jurisdiction of the resettlement and the protections that the state offers to those resettled. Where there is weak regulation and enforcement, the risks increases that a MIDR could cause or contribute to a violation of rights.

(iv) Right to respect for private life

The right to respect for private life addresses the concern for a 'right to be left alone', and 'ranks high among the traditional civil liberties'⁷⁰. There are several components to the right for private life, including of most relevance to MIDR the rights to respect for home and the right to respect for family life. Indeed, in a 2014

⁶⁸ Centre on Housing Rights and Evictions, European Roma Rights Centre & Milan Simecka Foundation, 2004. *Defending Roma housing rights in Slovakia: A training manual on international law and the right to adequate housing.*

⁶⁹ CESCR, 1991, *op. cit.*

⁷⁰ Kälin, W. & J. Künzli, 2009. *The law of international human rights protection.* Oxford: OUP. See p381.

relevancy ranking of human rights relevant to the mining sector, the right to privacy was ranked as the human right linked most closely to the mining industry.⁷¹

Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which is based on Article 12 of the Universal Declaration of Human Rights (UDHR), reads:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation.*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

The state has the duty both to respect and protect the right to privacy through the adoption of legislative and other measures. However, Article 17 clearly only protects against 'arbitrary' or 'unlawful' interferences. The African Charter on Human and Peoples' Rights (ACHPR) does not guarantee the right to privacy, but does protect the right to family in Article 18(1). There is clearly a risk that MIDR interferes with privacy, family, and home. Where such interferences stray into the arbitrary or unlawful, then there is the corresponding risk that mining companies are contributing to negative human rights impacts on those affected by MIDR.

(v) Right to freedom of movement and residence

The right to freedom of movement is set out in Article 13 of the UDHR, which reads:

1. *Everyone has the right to freedom of movement and residence within the borders of each State.*
2. *Everyone has the right to leave any country, including his own, and to return to his country.*

⁷¹ Wright, J., 2014. All Human Rights are interdependent – but which are the most likely source of risk to Business in the mining sector? *GOXI*. 16 February 2014.

Further, Article 12 of the ICCPR incorporates freedom of movement into treaty law, stating:

1. *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
2. *Everyone shall be free to leave any country, including his own.*
3. *The above-mentioned rights shall not be subject to any restrictions except those provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
4. *No one shall be arbitrarily deprived of the right to enter his own country.*

There are a number of circumstances feasible that would impact on an affected persons' freedom of movement. One example might be where properties adjacent to the mining works lose such value that those who live there are unable to sell them or move elsewhere. Where an MIDR takes place, issues such as access roads and accessibility of resettled communities must also take place with cognisance of the right to freedom of movement and residence.

(vi) Right to an adequate standard of living

The right to an adequate standard of living is closely linked to, and depends upon a number of other economic, social and cultural rights, including the right to property, the right to work, and the right to education. The right to an adequate standard of living is enshrined in Article 25 of the UDHR and Article 11 of the ICESCR, paragraph 1 of which 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. The States Parties will take appropriate steps to ensure the realization of this right recognizing to this effect the essential importance of international co-operation based on free consent.”

Resettling traditional communities clearly has the scope to have a significant impact on the standard of living enjoyed by those affected. Frequently, MIDR can improve the standard of living for a majority of those resettled. However, it is frequently observed that while there can be winners from a resettlement

processes, there are inevitably losers. Access to farming land can be made difficult, lifestyles can be transformed by urbanisation of communities, and access to traditional forms of employment can be curtailed.

(vii) Right to effective remedy

The right to an effective remedy is inherently tied to the fulfilment of all other human rights and providing access to remedy is explicitly emphasised within the UNGPs as key component of a company's human rights responsibilities. A right to remedy for victims of violations of human rights is established included in Article 8 of the UDHR, which states: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law", and in Article 2 of the ICCPR which states:

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Access to state-based grievance systems can be extremely limited for those affected by MIDR. As such, a company taking seriously its responsibility to respect human rights must ensure that remedy is available through alternative means. This might include an operational level grievance mechanism, an approach considered further below in Chapter 5.

This Chapter has established MIDR as a human rights issue. By identifying the serious and wide ranging social impacts of mining, surveying the related literature and specifying the particular rights at risk from MIDR, the extent to which affected people can be impacted has been shown. But who is responsible where rights are denied? Chapter 2 will explore where responsibility is situated.

2: Situating Responsibility and the limits of the State Duty to Protect

The range of potential human rights impacts is thus broad, but where in practice should companies take action? This chapter seeks to map the duties and responsibilities for upholding the human rights of people affected by MIDR and locate the relationship between the rights of affected people and the role of the company.

'There is no international law governing mining projects. Instead, there are more than a dozen codes, covenants, and standards, all voluntary and self-enforced. Every new framework attempts to trump the preceding ones by defining the essential principles of corporate engagement in mining projects.' (Siegel, 2013)⁷²

In practice, the community relations functions of mining companies operate, as Siegel contends, without a clear framework.⁷³ Similarly, the capacity for local communities to engage with mining companies also operates without a clear framework. Although it might be argued that this allows for a certain flexibility and situation specificity in how companies approach their community relations it also naturally allows the better informed, or better resourced party to dictate the relationship. As a result, local communities have very few opportunities to raise grievances against multinational mining companies, and those companies owe very few legal responsibilities towards the people amongst whom they operate.

From a corporate perspective Zandvliet and Anderson⁷⁴ point out: (i) that a lack of legal certainty is a risk factor, because if legal redress is beyond the reach of a community this might precipitate the community feeling that 'they have no option but to use force to support their claims'; (ii) that most mining managers find community relations challenging because 'there are few legal requirements'; and (iii) 'in community relations, where there are no legislative stipulations' budgets

⁷² Siegel, S., 2013. The Missing Ethics of Mining. *Ethics and International Affairs*. Issue 27.1, February 2013.

⁷³ *Ibid.*

⁷⁴ Zandvliet, L. & M. Anderson, 2009. *Getting in Right: making Corporate-Community Relations Work*. Sheffield: Greenleaf.

may come under extra scrutiny due to the 'lack of international guidelines and legal requirements for working with communities'. A lack of certainty can also be a cause for greater legal expenses (in resolving disputes), greater scope for misunderstandings and conflicts, and a failure to bring community relations issues to the highest level of the company. There is a pressing need to find a level of certainty in this area, not only to reduce potential costs, but to avoid potential disputes further down the line. This means establishing what contractual obligations the company has towards the state and towards local communities, and the extent to which such obligations manifest any responsibility to respect the human rights of people affected by resettlement.

From a community perspective, clarity as to the relationship between themselves and the mining company allows for the community to have greater certainty as to what is to be expected from a mining company in their community. Mària and Devuyt note that communities can have unrealistic expectations of multinational mining companies, which in itself creates misunderstanding and tension.⁷⁵

2.1 Mapping the actors

In situating responsibility it is helpful to identify and map those actors involved in an MIDR. Ballard and Banks comment that the 'previously binary relationship between states and corporations' now includes local communities as stakeholders, leading to a 'widespread adoption by industry analysts of a three-legged or triad stakeholder model'.⁷⁶ While this model has 'served usefully as a provisional analytical device allowing for some flexibility in the identification of key agents and their interests' it is limited in that 'it has not generally served to capture much of the complexity of the relationships that form around mining as a site', such that there is now 'an increasing awareness of the internal complexity of what had previously been considered the monolithic entities of community, state, and corporation.'

⁷⁵ Mària, J. & E. Devuyt, 2011. CSR and development: a mining company in Africa. *Journal of Management Development*. Volume 30(10), pp. 955-957.

⁷⁶ Ballard, C. & G. Banks, 2003. Resource Wars: The Anthropology of Mining. *Annual Review of Anthropology*. Volume 32, pp.287-313.

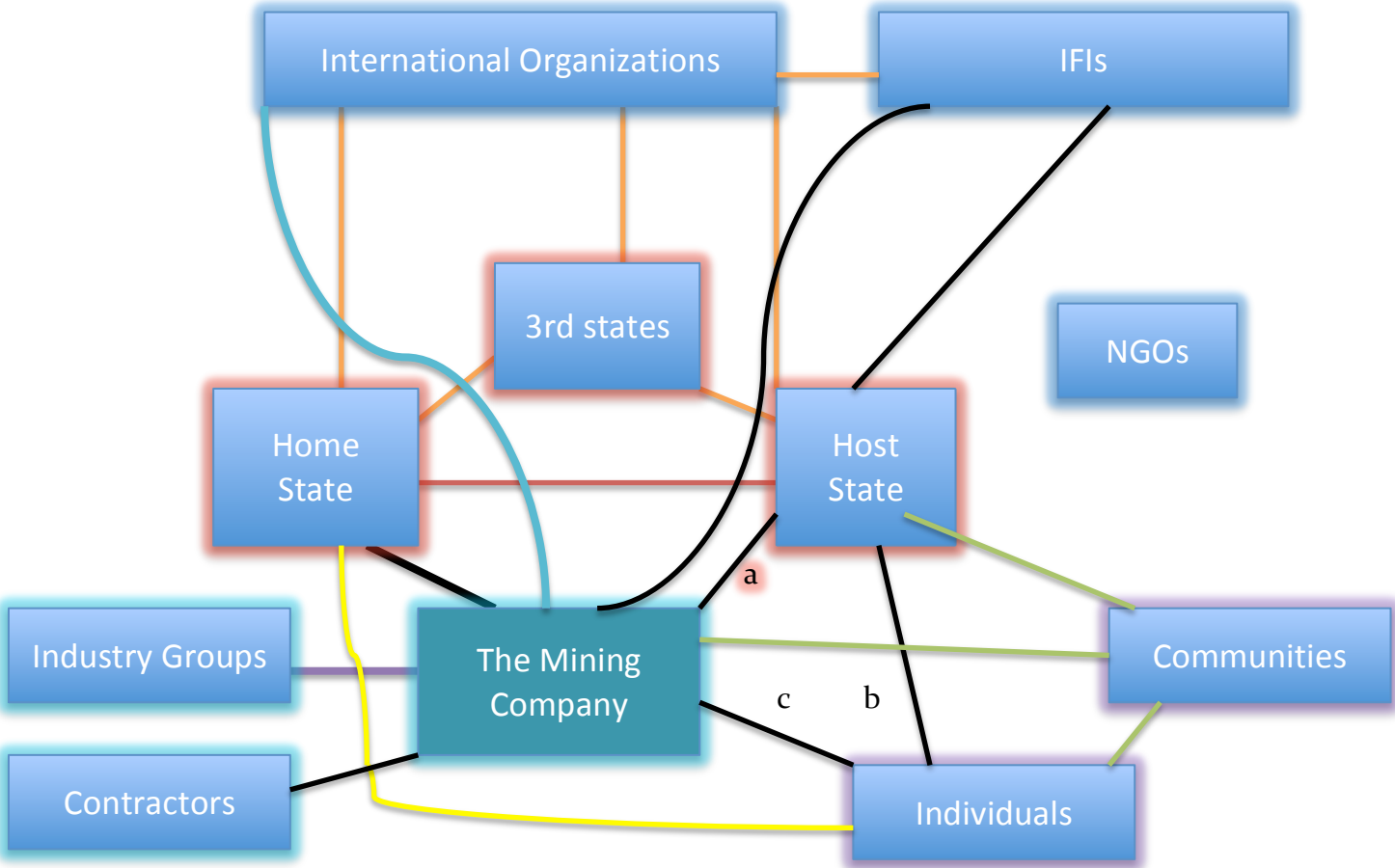
When looking at a MIDR there is a nexus of legal relationships that lies between four principal actors: (i) the multinational corporation, (ii) the local community, (iii) the host state and (iv) the home state. Beyond that, the regulatory environment of community resettlements is influenced by a range of other stakeholders, namely: (v) third states; (vi) international organisations; (vii) international financial institutions; (viii) industry groups; (ix) non-governmental organisations and civil society actors; and (x) contractors and other companies.

To understand this more fully and to better characterise the forces that influence how mining companies and local communities interact in practice, this section visually maps and explains further the actors and relationships identified above. The map below (Figure 1) presents how all the actors fit together and exert influence on the relationship between companies and communities.

With reference to Figure 1, the centre of the map shows the domestic legal framework in the host state. These are the lines between the host State, the company, the community and the individual; with the black lines representing formal legal relationships and the green lines representing 'soft' or unofficial relationships. The line marked (a) is the official national legal system regulating the mining company as a corporate entity; (b) is the relationship between individuals and the state; including the human rights obligations of the state to its citizens – this is the state duty to protect human rights; and (c) is the relationship between companies and individuals, which is governed by the state (for example employment law obligations). The relationship between the company and individuals does not include any legal human rights duties. The green lines may represent legal relationships in some circumstances, but for the most part would likely be unofficial relationships. The state can engage legally with certain communities (where definable), for example where indigenous peoples are concerned, but this tends to be on the basis of a state responsibility to an individual based on their membership of a class, rather than a direct engagement with a community. The relationship between communities and individuals is almost always based on unofficial laws or customary practice. The line between

the community and the mining company represents legally what would be the use of community benefit agreements, and also the unenforceable codes of conduct developed by corporate social responsibility strategies.

Figure 1



The red line between the home state and the host state represents the likely existence of bilateral investment treaties, with the home state agreeing to certain conditions under which a company operating in the host state can expect to operate. The yellow line from State 1 to individuals in State 2 is the possible extraterritorial application of human rights laws.

The orange lines represent multilateral treaties, with states agreeing to treaty obligations (including their international human rights obligations) and membership to regional and international organizations, and in turn, to international financial institutions. In return for investment, both states and mining companies agree to comply with the conditions of financial institutions; for example a state de-regulating its mining industry, or a company complying with IFC policies.

The purple lines show the non-binding instruments and codes of conduct generated by industry groups, which may be (voluntarily) binding. The light blue line represents global corporate social responsibility standards generated by international and intergovernmental organisations (the UN, the OECD) applicable (without force of law) to multinational businesses. Finally, NGO's act throughout this governance web consulting on and monitoring the effect and impact of each of these interconnections.

This mapping exercise demonstrates that there is a complex web of legal relationships that pertain to a MIDR, although only States have the duty to protect people from human rights harms. Given that such protection is often inadequate, navigating this web is a challenge for companies, and generally insurmountable for people affected by MIDR.

2.2 The State Duty to Protect

One of the main reasons that companies have not historically operated in a way that responds to the human rights of affected groups is that the duty to protect from human rights harms lies with the State – it is the duty of States to protect people from violations of human rights caused by companies. Such protections are exercised by regulation (including formal legislative interventions) and enforcement. Clearly, mining companies and local communities do not interrelate in a vacuum. In principle (and practice) they exist under the jurisdiction of a state, which (in positivist terms) makes the laws that govern how each party can act. It is States that are party to international human rights conventions, and States that must exercise a duty to protect human rights under international law. The onus is

therefore clearly on the State to ensure that any MIDR does not violate the human rights of those being resettled. In reality however, the capacity of states to uphold their human rights duties and to protect rights holders from harm is often limited, particularly in the typically remote locations where mining works are situated.⁷⁷

In this context however, it is important to note that it is not only the state where the mining resettlement takes place that has relevant duties. One of the main debates about regulating multinational businesses, with footprints in many jurisdictions, are the respective roles of the host state and the home state. A host state is the state within which the extractive works of the multinational mining company is performed, typically a lower-income country, and is the location of the people directly affected by those operations. Most of the hard legal obligations of a mining company vis-à-vis a local community, and the rights of a local community vis-à-vis a mining company come from national laws, particularly regarding land rights and property laws. As mapped above, what should be clear is that the company and the community are unlikely to have duties or responsibilities owed to each other, and if they do, then those will relate to particular engagements of the company in the local area and will not pertain to any human rights duties owed by the company or enforceable by any affected person.

As the nexus of the legal relationship between companies and communities is the host state, and it is typically the role of the host state to enact and enforce a legal framework capable of governing companies and communities, and providing recourse and means to redress grievances between parties. On the simplest level, the relationship between mining companies and local communities is governed by the state; its laws set the obligations and responsibilities of each party to the other. Rights and responsibilities in domestic law may be informed by or required as part of the state's international treaty obligations, and agreements between mining companies and the state likely have to comply with conditions of international financial institutions.

De Schutter, O., A. Ramasastry, M.B. Taylor & R.C. Thompson, 2012. *Human Rights Due Diligence: The Role of States*. International Corporate Accountability Roundtable.

As Ballard and Banks explain,⁷⁸ ‘mineral resources pose particular challenges to states in terms of their relationships with local communities in the vicinity of a project largely because of the multiple and often conflicting interests being pursued by elements of the state’. It is also important to note that, in the context of regulating multinational corporations, the domestic legal system in an extracting county is very much in the role of being a ‘host state’.

The emergence of the ‘host state’ as an international actor is a post-colonial development. Prior to independence, overseas territories hosting extractive projects would be typically under the direct control of the colonial power, with multinational corporations active in the host state almost universally originating from the respective colonial home state.⁷⁹ The position of the host state was drastically altered with decolonisation and the expansion of state sovereignty,⁸⁰ in the first instance by greatly limiting the role of multinational corporations through processes of nationalisation. The reality now in the host-state / home-state dichotomy is that while colonial legacy still has an influence, multinational corporations operating in host states now emanate from a range of home states, primarily in the global north, but increasingly also from emerging powers such as China, India and Brazil.

However, it is far from the case that the entire legal framework that applies to company-community relations is the host-states’ legal framework. While the host state is the source of most domestic law, the content and scope of domestic laws are heavily influenced by international developments and global norms. Ultimately, the domestic legal system is restricted in the scope by which it can affect the relationship between MNCs and local communities.

⁷⁸ *Ibid.*

⁷⁹ Ratner, S., 2001. Corporations and Human Rights: A Theory of Legal Responsibility. *The Yale Law Journal*, 111(May), pp.443–545. At p. 452.

⁸⁰ *Ibid.* p. 454.

While ‘host’ states represent the jurisdictions within which extraction takes place, mining companies are likely to be incorporated, or part of a group or companies controlled in a different state to the host state and therefore subject to the laws of a different jurisdiction. The terms under which a company governed in an overseas jurisdiction operates in a host country are likely to be agreed in a bilateral investment treaty between States. The ‘home state’ of the company may also confer extraterritorial rights on individuals in the host country, providing recourse in that jurisdiction.

The key point to consider when thinking about state obligations to protect human rights is that in practice this is very often lacking. Even where an adequate legal framework is in place, enforcement on companies is weak, protections poorly realised and access to remedy extremely challenging. But while that may be the case, the principal duty to protect the rights of people affected by MIDR is with the often limited power of host state, which is why the dominant framework for companies approaching these issues is very much grounded in softer notions of CSR. Such CSR approaches have been dominant for some time, but as this thesis will go on to show, these too are frequently inadequate and lack the necessary frameworks to improve outcomes for affected people.

2.3 Multinational Corporations

‘Human rights issues have the capacity to entirely reconfigure the operating environment for the minerals sector in particular. Definitions of the scope of human rights that are engaged in the minerals sector, and of a corporation’s sphere of influence (and thus of corporate social responsibility), are constantly evolving.’ (Ballard, 2001)⁸¹

While, as discussed, it is States who have the duty to protect people from human rights harms occurring through MIDR such protection is often inadequate. This is compounded by the fact that the principal actor in an MIDR is a non-state actor. Companies do not have obligations in international law, which means that their conduct is typically guided by a soft-law framework of corporate social

⁸¹ Ballard, C., 2001. Human Rights and the Mining Sector in Indonesia: A Baseline Study. *Mining, Minerals and Sustainable Development*. Volume 182. At page 9.

responsibility standards and practice. This goes to the heart of this thesis – that where States offer insufficient protection, companies must respect human rights systematically.

Large-scale mining in developing countries has always been multinational, with extraction managed to meet overseas demand. For example, the colonial enterprises that first exploited Africa’s mineral potential were private companies originating from the respective colonial power of the host territory, and it was these colonial companies principally that conducted industrial mining operations. In that era, the host state was a colonial administration, leaving the home state to dictate the agenda.⁸² In this period, where ‘European companies became the principal agents for the economic exploitation of the colonial territory’,⁸³ multinational companies were ‘creatures of domestic law, and could generally count on the support of the home state’.⁸⁴ In the post-colonial era, most mining operations in Africa were nationalised and run by state controlled mining companies. Economically, this resulted in underproduction.⁸⁵

The principal mining companies now operating in post-colonial states tend to be joint-ventures led by western multinational mining companies. The largest international mining companies originate in countries with their own large-scale mining industries, such as Canada and Australia. There are dozens of MNCs operating in different counties across Africa, Asia and Latin America that are based in different (or several) home states, operating in host states through joint-ventures or subsidiaries. For example, the most significant mining companies operating in Africa are British, Canadian and American. In the Africa Report’s 2013 list of the Top 500 companies in Africa, the mining sector is noted as one of the largest, with 16 companies listed as having annual turnovers greater than one billion US dollars.⁸⁶

⁸² Ratner, 2001, *op. cit.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Campbell, B., 2009. Introduction. In B. Campbell, ed. *Mining in Africa: Regulation and Development*. London: Pluto Press, pp. 1–24.

⁸⁶ Africa Report, 2013. *Top 500 Companies in Africa 2013*.

The governance of multinational corporations (MNCs) presents a unique challenge for domestic and international law and, in the main, reported instances of conflict between mining companies and local communities usually involve multinationals, which is particularly relevant to this study as often the principal actors behind MIDR are multinational mining companies.

MNC's are defined variously by Muchlinski as those companies that 'have their home in one country but which live and operate under the laws and customs of other countries as well', as 'any corporation that owns, controls and manages income generating assets in more than one country', and as companies able to "locate productive facilities across borders, to exploit local factor inputs thereby, to trade across frontiers in factor inputs between affiliates, to exploit their know-how in foreign markets without losing control over it, and to organise their managerial structure globally according to the most suitable mix of divisional lines of authority".⁸⁷

The application of international law to the relationship between MNCs and communities is primarily an indirect application, because international law does not confer rights on individuals that are capable of being enforced against corporations. Likewise, corporations are not typically understood to derive any rights or responsibilities directly from international law. The most notable instance of international law affecting the relationship between mining companies and communities is indirectly through host state obligations to protect the rights of their citizens from corporations, which was discussed above when considering domestic legal systems. On this point, Ratner considers 'business relations with individuals' to be a 'missing link' in international law, stating that:

"The contemporary situation is thus defined as follows in terms of international law: host states and home states enjoying juridical equality, with economic forces and international economic law now promoting free trade and investment as a recipe for progress; host states (as well as home

⁸⁷ Muchlinski, P., 2007. *Multinational Enterprises & the Law*, Oxford: OUP.

*states) having obligations to their populations under human rights law and host states having significant obligations to TNEs [Trans-National Enterprises] and individual investors pursuant to various international legal instruments. But something is clearly missing from this description: Has this evolution created any role for international law in the relationship between business enterprises and the citizens of the states in which they operate? Is such a relationship solely a function of the employment contract between the worker and the TNE, or do the corporations have any duties under international law?"*⁸⁸

The position of multinational corporations within international law has been much discussed, with Sassòli commenting summatively that ‘the growing importance and independence of non-state actors in international reality probably constitutes the greatest contemporary conceptual challenge to public international law’⁸⁹ and ‘the boundaries of what is expected from business, and what a state is obliged to do under international law, cannot be neatly drawn.’⁹⁰ The extent to which multinational corporations can be considered to have responsibilities in international law is dependent, to some authors, on the extent to which they can be construed as subjects of international law; that is, that they are recognised or accepted as being capable of possessing and exercising rights and duties under international law.⁹¹

Weissbrodt accepts that while ‘most of the development of international law has focused on state actors’ there have been efforts to ‘establish international standards for corporate actions’, but ‘those efforts have been less than productive, however, because they have largely been without strong implementation methods.’⁹² There is therefore a danger that a discussion about MNCs having international obligations is too theoretical and lacking teeth. Indeed, according to Kinley and Tadaki, while MNCs are “uniquely positioned to affect, positively and negatively, the level of enjoyment of human rights” attempts to regulate on an

⁸⁸ Ratner, 2001, *op. cit.*, p. 460.

⁸⁹ Sassòli, M., 2013. Foreword. In L. Cameron & V. Chetail, eds. *Privatizing War: Private Military and Security Companies under International Law*. Cambridge: CUP.

⁹⁰ Clapham, A. & S. Jerbi, 2001. Categories of Corporate Complicity in Human Rights Abuses. *Hastings International and Comparative Law Review*. Volume 24, p.339.

⁹¹ Dixon, M., 2013. *Textbook on International*, Oxford: OUP.

⁹² Weissbrodt, D., 2006. Business and Human Rights. *University of Cincinnati Law Review*. Volume 74, pp.55–74.

international law level are limited by the reality that “international law generally, and human rights law in particular, is still undergoing the conceptual and structural evolution required to address their accountability”.⁹³

While it may be the case that construing MNCs to have international legal personality is indeed lacking teeth, Clapham has stated that despite international law being ‘mainly addressed to states and developed by states’, non-state actors have a degree of de-facto international legal personality; writing that:

*‘The burden would now seem to be on those who claim that states are the sole bearers of human rights obligations under international law to explain away the obvious emergence onto the international scene of a variety of actors with sufficient international personality to be the bearers of rights and duties under international law. If The Sunday Times has sufficient personality and the capacity to enjoy rights under the European Convention on Human Rights, it might surely have enough personality and capacity to be subject to duties under international human rights law.’*⁹⁴

A more practical way of thinking about MNCs in international law is to think of MNCs as ‘participants’ in international law, avoiding the circular debate about legal personality. Alvarez criticises the traditional “subject / object dichotomy” as being “insensitive to real world practice”,⁹⁵ with Higgins’ classification of corporations, non-governmental organisations, and individuals as all “participants” in international law⁹⁶ “strikingly sensible and accurate” according to Alvarez. Muchlinski also considers the role of MNCs in international law as active participants; influencing the development of international law as special interest group.⁹⁷ In the context of increased calls for the extension of legally binding international standards of corporate social responsibility, Muchlinski comments that ‘multinational Enterprises may become subject to new duties under international instruments, which reflect standards already accepted in

⁹³ Kinley, D. & J. Tadaki, 2004. From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law. *Virginia Journal of International Law*. Volume 44(4), pp.931–1024. At p 935.

⁹⁴ Clapham, A., 2006. *Human Rights Obligations of Non-State Actors*. Oxford: OUP. At p. 76.

⁹⁵ Alvarez, J., 2011. Are Corporations “Subjects” of International Law? *Santa Clara Journal of International Law*. Volume 9, pp.1–36.

⁹⁶ Higgins, R., 1994. *Problems & Process. International Law and How We Use it*, Oxford: OUP. p49

⁹⁷ Muchlinski, 2007, *op. cit.*

many national laws'.⁹⁸ While this may be useful in holding MNCs to account, a move to confer personality on MNCs would also be problematic as “from a political and arguably systematic perspective, acknowledging transnational corporations as subjects of international law would substantially reduce the power of states and thus their traditionally dominant position in international law”.⁹⁹

This debate around and process towards incorporating MNCs within international law continue, an immediately practical approach has been promoted by Professor Ruggie in his role as the UN Secretary-General’s Special Representative for Business and Human Rights in the UNGPs which stipulate that corporations have a *responsibility to respect* human rights rather than the obligation to protect human rights that states have.¹⁰⁰ The UNGPs, which were endorsed by the UN Human Rights Council on 16 June 2011, are most significant recent development in governing the impact of multinational corporations on human rights.

The UNGPs are not a binding instrument of international law but they have had an influential impact on domestic law policy developments in many countries, with member states developing their own implementation plans to ensure that their domestic legal systems support the principles set out in the UNGPs. As an important step in implementing the UNGPs, countries have been encouraged to develop a “national action plan” on business and human rights, which provide the opportunity for states to assess actions taken to address business and human rights and to set expectations for, support and regulate business and provide access to remedy for victims of human rights abuses. The UNGPs are discussed in greater detail below in Chapter 4.

Having shown that a range of human rights may be applicable to people affected by MIDR, it has been established in this chapter that availing affected community members of those rights is a major challenge given that MNCs are not duty bearers in international law, and states frequently lack capacity to exercise their duties.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ United Nations, 2011, *op. cit.*

Moreover, the particular characteristics of the mining industry, and the multinational nature of the enterprises responsible in that sector make effective regulation difficult for states to achieve.

To reduce the risk of harms occurring, and to enhance the likelihood that both companies and communities can effectively navigate this complex space of governance and regulation (or lack thereof) and the multiple actors involved, a coherent roadmap is necessary that makes clear to companies how they should pre-empt, manage, mitigate and remedy their potential and actual impacts on human rights. Before going on to consider what that roadmap could look like, Chapter 3 examines the main non-legal approach to this picture, specifically, corporate social responsibility, before Chapter 4 hones in on the real potential of the UNGPs to provide a framework for practical guidance for companies.

3. Failing to fill the gap: the limits of Corporate Social Responsibility

As noted, the governance of MNCs presents a unique challenge for domestic and international law and, in the main, reported instances of conflict between mining companies and local communities usually involve MNCs. As discussed above, the limits of the state duty to protect human rights, the lack of legal relationships between companies and communities, and the complex web of actors influencing the practices that apply to resettlement results in a governance gap. As part of managing their risks, reputations, and business operations, companies have long sought to fill this gap with corporate social responsibility approaches and unenforceable industry standards. These have had mixed results, but have largely failed to root company responsibilities in internationally recognised standards and failed to embed responsible business practice within day to day business operations and relationships.

As this thesis now addresses corporate social responsibility, it should be reiterated why MNCs are the key actor in MIDR. There is a reason that the majority of industrial-scale mining operations are carried out by MNCs: mines produce raw materials demanded internationally, provide the inputs into long and complex global supply chains, and are an expensive long-term investment. The nature of the industry rewards the economies of scale and access to capital that only very large MNCs are able to finance.

A gap in the governance of MNCs with regard to their conduct in MIDR becomes problematic if this lack of legal obligations results in a lack of protection for communities affected by the impacts of mining operations. Considering further regulation becomes important if local communities do not have sufficient protection or access to remedy. To put this in context, it is important to consider the wide range of soft law and extra-legal norms, codes, principles and best practice in this area that fill the gap left vacant by the limited capacity of states to protect, and the challenge of regulating MNCs.

3.1 CSR

The relationship between mining companies and local communities is largely defined by a number of non-binding responsibilities that mining companies self-define as having towards local communities, largely captured by the term Corporate Social Responsibility (“CSR”). It is especially important to consider the limits of CSR as it is exactly the comprehensiveness and adequacy of these largely unenforceable responsibilities that is used by the industry to argue against further legal obligations on their part. Despite significant failings, many of the piecemeal or siloed CSR work that companies and industries have developed over the years does demonstrate good practices, particularly with respect to stakeholder engagement. Where good practice does exist, it is amplified by incorporating it (and reframing it) within a broader “responsible business conduct” approach, discussed below in Chapter 4.

In the CSR realm, most international policies, principles and aspirations are formulated as soft law.¹⁰¹ The term ‘soft law’ has no accepted definition, but it describes the unenforceable international instruments that contain ‘norms, principles, commitments or standards expected to be complied with by states, and increasingly non-state actors’ and has become ‘an increasingly important element of contemporary international law’.¹⁰² Amongst a mesh of varied rules and guidelines, it is frequently the CSR policies of the mining companies that determine their approach to community relations and MIDR. This means that generally, the principal source of guidance for mining companies towards local communities is comprised of voluntary initiatives with little accountability or enforceability.

At this point it is worth taking a step back and considering some of the recent trajectory of the corporate social responsibility agenda; both to see how far we’ve

¹⁰¹ Zerk, J., 2006. *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law*, Cambridge: CUP. See p. 70

¹⁰² Wallace, R. & O. Martin-Ortega, 2013. *International Law* (7th ed.). London: Sweet & Maxwell. See p. 30.

come, but yet how much further we need to go. Indeed, the historical roots of CSR, and early ideas around the ‘socially responsible corporation’¹⁰³ are not so far removed from the goal of those who currently seek to reform CSR, and even to move beyond it towards a discourse of embedding responsible practices throughout all aspects of an organisation’s activities.¹⁰⁴

In the more recent history of CSR, the extent to which corporations should have social responsibilities has moved on a great deal from Friedman’s¹⁰⁵ view that “few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible” and his 1970¹⁰⁶ assertion that “the social responsibility of business is to increase its profits” Today, CSR is typically defined as the voluntary actions that a company takes ‘over and above compliance with minimum legal requirements, to address both its own competitive interests and the interests of wider society.’¹⁰⁷ This is clearly defined in relation to shareholder capitalism, and the idea of the corporation as a private enterprise whose directors owe enforceable duties only to shareholders.¹⁰⁸

In some cases CSR is defined more broadly, for example Carroll’s¹⁰⁹ early conceptual model of CSR defines it as a range of obligations that business has to society, encompassing economic responsibilities, legal responsibilities, ethical responsibilities and discretionary responsibilities. The European Commission considers CSR to include compliance with the law, and voluntary measures beyond that.¹¹⁰ Zerk makes the point that making a distinction between CSR and

¹⁰³ Pillay, R., 2015. *The Changing Nature of Corporate Social Responsibility. CSR and Development in Context – The Case of Mauritius*. Oxford: Routledge.

¹⁰⁴ Morrison, 2015, *op. cit.*

¹⁰⁵ Friedman, M., 1962. *Capitalism and Freedom*, Chicago: University of Chicago Press. See p. 133.

¹⁰⁶ Friedman, M., 1970. The Social Responsibility of Business is to Increase its Profits. *The New York Times Magazine*. 13 September 1970.

¹⁰⁷ Department for Business, Enterprise and Regulatory Reform, 2009. *HM Government Corporate Responsibility Report*. See p. 5.

¹⁰⁸ Pillay, 2015, *op. cit.*

¹⁰⁹ Carroll, A., 1979. Three-Dimensional Conceptual Model of Corporate Performance. *The Academy of Management Review*. Volume 4(4), pp.497–505.

European Commission, 2011. *A renewed EU strategy 2011-14 for Corporate Social Responsibility*. Communication from the Commission to the European Parliament, The Council,

law is unhelpful because there are degrees of compliance with law, and so proposes CSR for a company as its 'responsibility to operate ethically and in accordance with its legal obligations and to strive to minimise any adverse effects of its operations and activities on the environment, society and human health.'¹¹¹

Clearly there is a great deal of overlap in legal and social responsibilities, and the extent to which standards are met by companies. According to Zerk, CSR has 'special significance for multinationals investing in countries where legal requirements are unclear or ambiguous, or are not consistently enforced. But, even in the most sophisticated legal systems, few (if any) regulatory regimes are bullet-proof. There will still be grey areas as to how laws may be interpreted.'¹¹² In any case, what is clear is that however defined, CSR is substantially (if not wholly) comprised of voluntary behaviours, (which is not to say of course that large parts of legal compliance are not voluntary for MNCs).

In focusing on the large part of CSR that is voluntary, it is important to consider that CSR has historically been understood by corporations as a top-down approach with the company setting the agenda for the issues and stakeholders it engages with.¹¹³ This 'top-down' understanding of CSR is perhaps indicative of the nature of the relationship between mining companies and local communities, and hence reflective of mining company approaches to MIDR.

As a voluntary behaviour for companies, CSR activities have developed markedly in the last twenty years as a business case for CSR has grown. The forces that compel companies to be responsible include: consumer demand for responsibly produced goods, actual or threatened consumer boycotts, challenges to a firm's reputation, pressure from socially responsibly investors and the values held by

The European Economic and Social Committee and the Committee of the Regions. COM(2011) 681.

¹¹¹ Zerk, 2006, *op. cit.*, p. 32.

¹¹² *Ibid.*, p. 34.

¹¹³ Avery, C., 2006. The difference between CSR and human rights. *Corporate Citizenship Briefing*. Volume 89. 1 August 2006.

managers and other employees.¹¹⁴ In the context of mining, all of these factors influence the growth of mining CSR, especially reputational management.¹¹⁵

In the context of mining, company-community relations and MIDR are primarily conducted within the auspices of CSR and 'multinational corporations are increasingly adopting CSR and sustainable development as the cornerstones of community-based activities'.¹¹⁶ This move towards CSR in itself represents a shift for mining companies, which historically had little regard for their impact on local communities.¹¹⁷

Focusing on the move towards more socially responsible attitudes in mining, Dashwood¹¹⁸ explores in detail the process by which mining companies came to be key proponents of the global CSR agenda by the late 1990s, having so recently treated environmental and social sustainability as unwelcome externalities. Kapelus¹¹⁹ and Aguirre¹²⁰ attribute this shift predominantly to a 'globalised civil society' increasing its ability to influence corporate policy. Aguirre particularly considers developments to be indicative of the international community 'rapidly moving towards the allocation of legal duties to multinational corporations',¹²¹ such that 'African nations are to develop within a system that affords them little control of economic policy making', with this 'shift to voluntary regulation of global trade a direct result of the rise of corporate power in the 1980s.'¹²²

¹¹⁴ Vogel, D., 2005. *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility*. Washington DC: Brookings Institution Press.

¹¹⁵ Richard Morgan, Head of Government Relations for AngloAmerican commented that 'reputation management is the main thing' for mining companies in developing their CSR agenda, speaking at 'The Governance Gap: Extractive Industries and Human Rights' at the British Institute of International and Comparative Law, 4 November 2014.

¹¹⁶ Garvin, T. et al., 2009, *op. cit.*

¹¹⁷ Jenkins, H. & L. Obara, 2006. *Corporate Social Responsibility (CSR) in the mining industry - the risk of community dependency*. Corporate Responsibility Research Conference 2006.

¹¹⁸ Dashwood, H., 2012. *The Rise of Global Corporate Social Responsibility. Mining and the Spread of Global Norms*, Cambridge: CUP.

¹¹⁹ Kapelus, P., 2002. Mining, Corporate Social Responsibility and the "Community": The Case of Rio Tinto, Richards Bay Minerals and the Mbonambi. *Journal of Business Ethics*. Volume 39(3), pp.275–296.

¹²⁰ Aguirre, D., 2005. Corporate social responsibility and human rights law in Africa. *African Human Rights Law Journal*. Volume: 5, pp.239–265. See p. 244.

¹²¹ *Ibid.*, p. 241

¹²² *Ibid.*, p. 243

The impetus behind companies taking on greater social responsibilities, and recognising that they have responsibilities to the communities in which they are based is certainly essential, however, the danger is that the responsibilities remain solely with the company, reducing the role of the state and potentially increasing the risk of community dependency on the corporation.¹²³ Indeed, Hilson considers that “for CSR to be effective in any location there must be a foundation of robust regulations and enforcement in place for it to complement”.¹²⁴ Owen and Kemp note that ‘for resettlement, the [mining] industry has yet to develop a position representing its approach.’¹²⁵

Ultimately, the CSR “era” that coincided with a legislative approach favouring “self regulation” in the 1980s and 1990s has now been shown to be largely inadequate,¹²⁶ particularly for the reasons identified above – that it is predominantly ‘top down’ and concerned with managing the social risks to business, rather than the risks that companies pose communities. The contemporary CSR approach, as described, has also seen companies express their responsibilities in voluntary terms, frequently overlapping with philanthropy and volunteering, and very often siloed into “CSR departments” that are seen as an optional add-on to regular business conduct. It is these characteristics of contemporary CSR that have led for calls to drop the term entirely from advocated best practice,¹²⁷ a move which corresponds with an increasing business and human rights agenda, as discussed below. The move towards companies accepting, to some extent, that they have human rights responsibilities has been paved by a series of non-binding instruments in the field of responsible business conduct, and a greater realisation of the need for companies to proactively conduct due diligence that includes consideration of human rights risks.

¹²³ Jenkins & Obara, 2006, *op. cit.*

¹²⁴ Hilson, 2012, *op. cit.*

¹²⁵ Owen & Kemp, 2015, *op. cit.*

¹²⁶ Nieuwenkamp, R., 2016. CSR is Dead! What’s next?. *OECD Insights*. January 2016.

¹²⁷ Nieuwenkamp, 2016, *op. cit.*

3.2 Non-binding frameworks

The intersection of CSR and international law is complex one, with (i) an obligations agenda and (ii) a responsibility agenda (my terms) that run alongside each other with slightly different emphasis, reflecting the different positions as to whether CSR should be mandatory or voluntary. As different schools of the corporate accountability movement, the obligations agenda seeks to increase the legal obligations of companies, regulating and formalising their social and human rights responsibilities. The responsibility agenda increases the social responsibilities of multinational companies, without increasing legal obligations. In both approaches companies are compelled to act responsibly. While these two agendas persist, Zerk is amongst those who criticise this distinction, stating that ‘the “voluntary versus mandatory” debate is based on the mistaken impression that CSR and the law are somehow separate, whereas in reality they are intertwined.’¹²⁸

While it may be a limited distinction, it does represent the two main agendas as exist today. While large brand name companies operating in the consumer goods sector in some cases advocate for greater regulation, often to seek a level playing field with less responsible operators, it is clear that of the two approaches, most industries would prefer for responsibilities to be voluntarily defined by them and expressed through non-binding CSR policies.

There are an important series of non-binding instruments that have relevant applicability to the relationship between mining companies and local communities. Indeed, the largest body of standards that attempt to define and clarify the responsibilities of mining companies towards local communities are voluntary non-binding instruments that codify social responsibilities to assist the industry in designing effective programmes. Some are voluntary and some are required with membership to an industry association, such as the ICMM.

¹²⁸ Zerk, 2006, *op. cit.*

In general, one can distinguish between three broad types of non-binding instrument. In order of enforceability (from soft to hard), these are (i) Principles (which are non-binding and offer little guidance); (ii) Guidelines (which are usually a set of procedures that direct the user through necessary practical steps) and (iii) Standards (which represent a more authoritative model, usually with some form of performance measurement or compliance procedure built in). As the CSR agenda matured it spawned a notable growth in non-binding instruments, which coincided with an 'era of self regulation' in national mining legislation in the early part of this century.

The UN Global Compact (2000) ("UNGC") was designed as a broad set of principles that apply to all industries, designed to encourage all businesses to align at a strategic level with ten universal principles. The purpose of the UNGC is to mainstream the ten principles around the world and catalyse actions in support of broader UN goals, including the then millennium development goals. As relates to human rights, the UNGC principles are that: 'businesses should support and respect the protection of internationally proclaimed human rights' and 'make sure they are not complicit in human rights abuses'. Signatories also commit to eliminating forced labour, child labour and discrimination, and upholding rights to free association and collective bargaining, as well as promoting environmental responsibility and working against corruption.

These are very broad principles that offer little guidance to community relations and MIDR, and the UNGC is not enforceable in any way. To join the UNGC, companies must provide one report per year on one project within the parameters of the principles. Indeed, the UNGC has been criticised by civil society actors as it allows businesses to align themselves with UN principles and therefore be seen as 'blue-washing' their reputations. While this may be the case, the UNGC was never intended to be a normative instrument, and Ruggie argues that it should not be analysed in those parameters. Instead, Ruggie sees the UNGC as an important step

to 'catalyse actors in support of goals'.¹²⁹ The UNGC is widely endorsed by the mining industry. As applied to mining companies, its relevance is mostly as a commitment to human rights principles, but without offering much in the way of practical guidance or processes to direct community relations or resettlement. For a mining companies' community relations programme, compliance with the Global Compact can be achieved by demonstrating that the company is not complicit in Human Rights abuses. If a company is complicit, then there is no grievance mechanism process or sanction applied.

Other instruments relevant to the industry include ISO 26000, the Extractive Industries Transparency Initiative (EITI), the Global Reporting Initiative, the ICMM Sustainable Development Framework and the Equator Principles.

ISO 26000 is an international CSR Standard developed by the ISO, and designed to be in alignment with international treaties and conventions. It is primarily designed as a policy and management guidance on CSR concepts. The ISO includes 8 principles of social responsibility, including community involvement and development. ISO Standard 26000 is entirely voluntary as it has not been designed for third party certification.

The goal of the EITI is to strengthen governance by improving transparency and accountability in the extractives sector. It is a process by which government revenues generated by extractive industries are published in independently verified reports. It is countries that implement the EITI, not companies. The EITI is very limited in scope to financial transparency and anti-corruption, and is relatively inconsequential to local-level stakeholders and compliance has little relevance to community relations directly.

The Global Reporting Initiative Reporting Framework is a framework for reporting on an organisation's economic, environmental and social performance. A

¹²⁹ As commented by Professor John Ruggie in a lecture at University College London on 25 February 2015.

Mining and Metals Sector Supplement was developed in 2005 in coordination with the ICMM.

The ICMM Sustainable Development Framework is an industry-led standard developed by the International Council on Mining and Metals, and industry group established by multinational mining companies. The ICMM develops best practice and guidelines for mining companies to follow, and is an important part of the industries' continued assertion that it should be permitted a broad scope for self-regulation.

The Equator Principles (the 'EP') are another international source of principles affecting how companies interact with communities. The EP are a risk management framework used by banks and financial institutions to determine the social risk of projects. They effectively operate as a minimum standard of due-diligence, and are influential on mining companies as compliance with the EP is often a relevant part of securing necessary financing. The EP require an independent review by an independent environmental and social consultant for projects with potential high risk impacts such as adverse impacts on indigenous peoples or a large scale resettlement.

The growth of unenforceable CSR responsibilities has the potential to create a situation where companies in some ways adopt the role of the state, with corporate responsibilities and grievance mechanisms, for example, giving companies a great deal of power in their interaction with communities. Clearly, this needs to be managed by common principles, and a balance needs to be struck between the role of the corporation, and the role of the state. Expecting companies to do disproportionately more than the state in terms of providing services to local people, especially on a company's own terms, might undermine the role of public authorities in that their functions can conceivably be replaced by those privately offered by corporations.¹³⁰ That said, many MNCs operate in jurisdictions where the state has limited reach, and obtaining access to justice is problematic. As such,

¹³⁰ Mária and Devuyst, 2011, *op. cit.*

advocating for greater responsibilities or for greater obligations on companies is ultimately a reformist agenda and is certainly not radical. These are positions that recognise the place and the significance of private corporations, and the limitations of the state.

While it is tempting to use hindsight to paint an overly critical picture of company led CSR initiatives and standards of the past twenty years, industry collaboration and a move towards more all-encompassing principles such as responsible business conduct have been waypoints towards the UNGPs framework defined as a corporate “responsibility to respect human rights”. It is this responsibility that should be embedded systematically into the way companies conduct resettlements. Chapter 4, below, will make the case for a business and human rights approach rooted in the UNGPs as the normative framework upon which to build practical guidance for companies to help them deliver MIDR projects without impacting the rights of those affected.

4. Bridging the Gap: A “responsibility to respect” Human Rights

Chapter 3 has established that existing CSR models that typify company approaches to MIDR leave much to be desired. A more normative and systematic approach is to build on frameworks developed over recent years that seek to embed responsible business conduct and mainstream the corporate responsibility to respect human rights. This Chapter will make the case that the framework to apply to MIDR when seeking to prevent harms is that created by the UN Guiding Principles on Business and Human Rights (UNGPs),¹³¹ and those principles that align with the UNGPs that are of specific relevance to the mining sector, namely the OECD Guidelines for Multinational Enterprises and the IFC Performance Standards.¹³²

Writing in 2008, Ruggie noted that ‘the root cause of the business and human rights predicament today lies in the governance gaps created by globalization – between the scope and impact of economic forces and actors, and in the capacity of societies to manage their adverse impacts’.¹³³ Attempting to bridge these governance gaps is the “Protect, Respect and Remedy” framework reflected in the UN Framework on Business and Human Rights¹³⁴ and the UNGPs¹³⁵ developed by Professor Ruggie, in his role as UN Special Representative of the Secretary-General on Business and Human Rights. The UNGPs three pillar approach comprising (i) the state duty to protect; (ii) the corporate responsibility to respect; and (iii) the right to effective remedy; provide a clear international standard for business and human rights that articulates a corporate responsibility to respect human rights that although not a binding duty, provides a roadmap for companies to comply with.¹³⁶

¹³¹ United Nations, 2011, *op. cit.*

¹³² OECD, 2013 *op. cit.* and IFC, 2012a, *op. cit.*

¹³³ United Nations, 2008. *Protect, Respect and Remedy: a Framework for Business and Human Rights*. United Nations Human Rights Council. 8th Session. April 2008. Office of the High Commissioner for Human Rights, New York and Geneva.

¹³⁴ *Ibid.*

¹³⁵ United Nations, 2011, *op. cit.*

¹³⁶ United Nations, 2008, *op. cit.*

In bridging the governance gap by focussing on human rights responsibilities of companies, the UNGPs have created the basis for conceiving of corporate social impacts in a way that puts the rights-holder at the centre. This has not made the conversation about corporate *obligations* for human rights go away, and while the extent of any hard legal human rights obligations owed by companies remains a matter of debate (as discussed above in Chapter 2) there has been a growing focus on reflecting responsibilities of companies to communities affected by MIDR through a human rights lens.¹³⁷ This has resulted in the business and human rights discourse diverging from CSR, with a marked difference in how CSR emphasises good corporate behaviour, while business and human rights on the other hand emphasise access to remedy as a measure of corporate accountability and ‘the role of companies as voluntary and affirmative contributors to human rights realization.’¹³⁸

The growth of the business and human rights agenda has been catalysed by research, academia, civil society and intergovernmental organisations. To an extent, corporate acceptance of the business and human rights discourse, especially by larger multinational or consumer-facing companies has been driven by this wide multi-lateral acceptance of the UNGPs. It is also worth bearing in mind though that in increasingly engaging with human rights, companies have hitched their wagons to a discourse that ultimately has very little teeth in the way of enforceability.

In addition, the UNGPs have framed the way the civil society expects companies to communicate their social impacts, and the ways that companies increasingly do report on such impacts. This feeds into investment decisions,¹³⁹ reporting standards,¹⁴⁰ and corporate human rights benchmarking,¹⁴¹ which all add

¹³⁷ van der Ploeg, L. & F. Vanclay, 2017. A human rights based approach to project induced displacement and resettlement. *Impact Assessment and Project Appraisal*. Volume 35(1), pp. 34-52.

¹³⁸ Ramasastry, A., 2015. Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability. *Journal of Human Rights*. Volume 14(2), pp. 237-259.

¹³⁹ See, for example, the Interfaith Center for Corporate Responsibility (www.iccr.org)

¹⁴⁰ See, for example, the UN Guiding Principles Reporting Framework (www.ungpreporting.org)

momentum to the UNGPs lens of thinking about the impacts the companies have on communities, and makes respect for human rights a central part of a company's "social licence to operate".¹⁴²

4.1 The UN Guiding Principles on Business and Human Rights

The UNGPs were unanimously endorsed by the UN Human Rights Council in 2011 and demonstrate that a company's responsibilities and the law are very closely intertwined, especially with regard to establishing that companies have a responsibility to respect the international human rights laws that states are obliged to offer protection under. For now, this places the onus more on the voluntary, rather than the mandatory, but the blurring of the distinction creates a greater expectation that companies will be voluntarily responsible.¹⁴³

Comprising a total of 31 Principles, the UNGPs are particularly helpful in sidestepping the ongoing substantive debates around the personality of MNCs in international law, as discussed above. By avoiding making substantive statements as to which human rights apply to companies, the onus is placed on processes that set out what businesses must do to respect human rights in practice. This practical approach has permitted the UNGPs to be widely supported by companies that would be hostile to the development of any binding human rights laws that might one day apply to them.¹⁴⁴ Also – being grounded in substantive internationally recognised human rights law – there is a foundation and universality to the UNGPs that takes them beyond the typically voluntary CSR model.¹⁴⁵

Pillar 1 of the UNGPs, the State Duty to Protect articulates that states must protect against human rights abuses within their territory and jurisdiction. Of most

¹⁴¹ See, for example, the Corporate Human Rights Benchmark (www.corporatebenchmark.org)

¹⁴² Morrison, 2014, *op. cit.*

¹⁴³ Pitts, C., 2016. The United Nations "Protect, Respect, Remedy" Framework and Guiding Principles. In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

¹⁴⁴ Ruggie, J., 2013. *Just Business: Multinational Corporations and Human Rights*. New York: Norton.

¹⁴⁵ Wettstein, F., 2016. From side show to main act: can business and human rights save corporate responsibility? In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

relevance to this thesis, Pillar 2 of the UNGPs, the ‘Corporate Responsibility to Respect Human Rights’ applies to all companies and is expressed as a ‘baseline expectation’ rather than as a mandatory or voluntary code. This concept of responsibility infers a great deal more accountability than voluntary principles would. It also puts the expectation on companies to respond positively to this responsibility, rather than trying to off-set human rights abuses through philanthropic acts,¹⁴⁶ as was typical during 20th century corporate social responsibility approaches discussed above.¹⁴⁷

This expectation in practice means that companies must avoid infringing on the human rights of others, and address adverse impacts on human rights that they are connected to. The UNGPs also make clear that they apply to all internationally recognised human rights, taken to include the UDHR, ICCPR, ICESCR and the ILO Declaration on Fundamental Rights at Work.

There are three ways in which a company’s responsibility may be engaged: (i) causing an adverse impact; (ii) contributing to an adverse impact; and (iii) where an adverse impact is directly linked to a company’s operations, products and services.¹⁴⁸ Depending on how a company is connected to an actual or potential human rights violation, the appropriate response may differ.¹⁴⁹ For example, where a company is linked to a human rights impact they cannot prevent, mitigate or remediate, then their responsibility is to use their leverage in order to contribute to redress. In the case of MIDR, then a multinational mining company carrying out a pre-planned resettlement project has the extremely likely risk of directly causing an adverse impact. In which case, in complying the UNGPs, the expectation is very much on the company to prevent human rights impacts occurring, to mitigate effectively where adverse consequences arise, and to

¹⁴⁶ Nieuwenkamp, 2016, *op. cit.*

¹⁴⁷ Pillay, 2015, *op. cit.*

¹⁴⁸ United Nations, 2011, *op. cit.*

¹⁴⁹ Rees, C. & R. Davis, 2016. Salient human rights issues: when severe risks to people intersect with risks to business. In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

provide access to effective remedy where harms have occurred. Implementing the UNGPs into a MIDR is the focus of Chapter 5, below.

Pillar 3 of the UNGPs focuses on remedy, and sets out that both states and companies have roles to play in ensuring that victims of business-related human rights abuses have access to effective remedy. This means that those who have their human rights affected by MIDR need to be able to seek redress through effective judicial and non-judicial grievance mechanisms. Access to remedy has long been an impediment in the context on MIDR, with operational level grievance mechanisms often inadequate, and systems set up by investors such as the IFC being inaccessible.

4.2 Human Rights and Responsible Business Conduct

One of the reasons that the UNGPs are such a key framework for taking practical steps to minimise human rights harms is the extent to which they have been taken up by other multilateral frameworks, where we have seen the endorsement of the UNGPs and some convergence in the way that human rights responsibilities are expressed.¹⁵⁰

Directly relevant to the mining sector are the OECD Guidelines for Multinational Enterprises (OECD Guidelines).¹⁵¹ The OECD Guidelines are a series of recommendations, first adopted in 1976, that provide principles and standards for responsible business conduct for MNCs operating in or from OECD member states. The purpose of the OECD Guidelines is to provide consistency in codes of conduct across OECD member nations and clarity to MNCs.¹⁵² They provide recommendations to MNCs on responsible business conduct and are managed and upheld by the National Contact Point in each member country, providing high-level policy guidance. There are 11 general policy recommendations, and targeted

¹⁵⁰ Nolan, J., 2016. Mapping the movement: the business and human rights regulatory framework. In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

¹⁵¹ OECD, 2011, *op. cit.*

¹⁵² *Ibid.*

policy guidance on issues such as disclosure and combating bribery. Policy recommendation IV offers guidance on Human Rights, and has been drafted since 2011 so as to be closely aligned with the UNGPs, committing enterprises to respect human rights and conduct human rights due diligence. Specifically, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (as discussed above) has created a benchmark for human rights due diligence in that sector.¹⁵³ However, the OECD Guidelines are normative and only provide recommendations on what to do, not how to implement or incorporate them.¹⁵⁴

A key part of implementing the UNGPs is to ‘know and show’ what human rights impacts a company may be connected to.¹⁵⁵ And while the human rights risk is expressed as that of the affected rights-holder, the responsibility to conduct human rights due diligence lies with the company. This mainstreaming of corporate human rights due diligence aligns with existing corporate risk management processes,¹⁵⁶ and encourages the type of systematic, ongoing information gathering and stakeholder engagement that is far more effective at identifying human rights challenges than, for example, an auditing type approach to risk.¹⁵⁷ This means that respect for human rights, and an approach to human rights issues centred on affected people has become much more mainstream over the last 7 years.

4.3 IFC Performance Standards and World Bank Guidelines

Between the enforceable obligations of hard law and unenforceable CSR measures, the principal framework currently applicable to MIDR emanates from the World Bank Policy on Involuntary Resettlement¹⁵⁸ and the IFC Performance Standard 5

¹⁵³ OECD, 2013, *op. cit.*

¹⁵⁴ Nolan, 2016, *op. cit.*

¹⁵⁵ Ruggie, 2013, *op. cit.*

¹⁵⁶ Taylor, M. & L. Zandvliet, 2009. *Due Diligence for Human Rights: A Risk-Based Approach*. Harvard University Corporate Social Responsibility Initiative: Working Paper No. 53.

¹⁵⁷ LeBaron, G. & J. Lister, 2016. *Ethical Audits and the Supply Chains of Global Corporations*. University of Sheffield: SPERI Global Political Economy Brief No. 1.

¹⁵⁸ World Bank, 2001. *op. cit.*

on Land Acquisition and Involuntary Resettlement.¹⁵⁹ It is worthwhile to consider both, especially in light of the former emanating from a pre-UNGPs era, and having been roundly criticised, and the latter emerging since the publication of the UNGPs and positioning itself as being aligned with the UNGPs. It is typical that only the IFC or World Bank will be invested in any given project, given the different remits of these International Financial Institutions. Very simply, while the World Bank invests in or lends to state-led projects, the IFC invests in or lends to private sector development projects.

The most straightforward way in which either the IFC Performance Standards or World Bank Guidelines could apply to a mining company is where they would be binding components of financing agreement between the company and the respective IFI. Where that is the case, then it is through contractual obligation to the IFI financing the project that the company would have to implement any relevant human rights responsibilities. However, these standards are influential beyond where they are contractually required, and are frequently cited as the benchmark “best practice” for companies to follow when implementing a MIDR.¹⁶⁰

Indeed, these comprise the main sources of responsibilities and set the standards to which mining companies should conduct resettlements. According to the ICMM, the “IFC standards are generally regarded as the guiding standard in the extractive sector, with the expectation that companies comply with them or model their own corporate standards on them.”¹⁶¹ Compliance with World Bank or IFC guidelines is not in itself legally enforceable by local communities or host states, but they are an extensively formalised set of principles with wide industry acceptance, and effectively operate as the de facto ‘soft law’ on MIDR. Legally the policies and guidelines tend only to have weight in private law when incorporated by reference into agreements between a mining venture and the respective bank.

¹⁵⁹ IFC, 2012a. *op. cit.*

¹⁶⁰ International Council on Mining & Metals, 2015. *Land acquisition and resettlement: Lessons learned.*

¹⁶¹ *Ibid.*

Mining projects are very expensive, and the transition from exploration to extraction requires a great deal of investment. Mining is especially capital intensive, even compared to other extractive industries, with a huge amount of costs put 'in the ground' (sometimes for many years) before a mine site becomes operational. Sometimes financing is raised through private investors, and often through lending facilities. But because of the financial scale, political significance and strategic importance of mining to developing economies, it is often the case that financing is obtained from institutional lenders, such as the World Bank or IFC. This is especially the case as mining is seen by international financial institutions as an agent of development, with large mining projects tending to be joint-ventures involving multinational companies and host states. Even where private financing is obtained, the conditions and standards of the international financial institutions are often applied (for example the IFC Performance Standards are embedded in the standards of Equator Principle Banks¹⁶²). This makes international financial institutions a very important actor in relationship between a mining company and a local community subject to a resettlement.

In community relations, especially with regard to resettlement, the World Bank plays two main roles. The first is as a source of domestic law reform in host countries. Szablowski¹⁶³ has written widely on the role of the World Bank in generating mining law reform, considering the World Bank's extractive industries policies as a source of global norm production; 'initiatives from the multi-lateral arena creating a transnational legal framework' with a 'markedly different governance structure to that provided by most states'¹⁶⁴. In seeking to substantively define 'social responsibility' Szablowski¹⁶⁵ sees the World Bank creating new obligations and closing off other avenues of claim in an attempt to

¹⁶² For information on the Equator Principles see: www.equator-principles.com.

¹⁶³ Szablowski, D., 2002. Mining, Displacement and the World Bank: A Case Analysis of Compania Minera Antamina's Operations in Peru. *Journal of Business Ethics*. Volume 39(3), pp.247–273. See also: Szablowski, D., 2006. Who Defines Displacement? The Operation of the World Bank Involuntary Resettlement Policy in a Large Mining Project. In P. Vandergeest, P. Idahosa, & P. S. Bose, eds. *Development's displacements: ecologies, economies, and cultures at risk*. Vancouver: UBC Press, pp. 33–60. See also: Szablowski, D., 2007. *Transnational Law and Local Struggles: Mining, Communities and the World Bank*. Portland: Hart.

¹⁶⁴ Szablowski, 2007, *op. cit.*

¹⁶⁵ *Ibid.*, p. 100.

arrive at ‘a new post-liberal social contract with regard to the development of large scale projects in the global south.’ The second role of IFIs is as a source of international guidance and rules on corporate conduct.

As discussed, as a source on international guidance and rules on corporate conduct, the World Bank Guidance¹⁶⁶ and the IFC Operational Policy¹⁶⁷ represent *de facto* international best practice on MIDR. Both policies apply where the respective institution invests in a project or lends to a project that has the potential create a situation of displacement or resettlement. They are influential far beyond that and are the reference point for all mining resettlements, due in part for being widely accepted ‘international best practice’ on resettlement; and thus incorporated by reference into or as the resettlement policies of government agencies around the world. The World Bank Guidance on Involuntary Resettlement is the basis for the IFC Policies discussed below.

The IFC Performance Standards on Environmental and Social Sustainability¹⁶⁸ represent the IFC’s sustainability framework and are perhaps the key central source in directing the standards multinational companies seek to uphold through their community relations. Importantly, these standards are ‘directed towards clients [of the IFC], providing guidance on how to identify risks and impacts, and are designed to help avoid, mitigate and manage risks and impacts as a way of doing business in a sustainable way’.¹⁶⁹ As such the IFC Performance Standards approach the issue of community relations from the perspective of corporate risk management, which, while an effective approach in mainstreaming issues within a company, can be problematic and result in human rights not being considered from the perspective of the affected person.

IFC Performance Standard 5 (“PS5”) requires clients of the IFC to consider alternative projects designed to avoid displacement. Where displacement cannot

¹⁶⁶ World Bank, 2001, *op. cit.*

¹⁶⁷ IFC, 2012a, *op. cit.*

¹⁶⁸ IFC, 2012b. *Performance Standards on Environmental and Social Sustainability*. 1 January 2012.

¹⁶⁹ *Ibid.*

be avoided, PS5 requires full compensation to be paid, requires the company to engage with affected communities through stakeholder engagement; to plan for and implement livelihood restoration; to establish appropriate grievance mechanisms and to implement a Resettlement Action Plan. These requirements form the basis of ‘good conduct’ in the industry, but are not enforceable by force of law, and create no legal relationship between a company and an affected community.¹⁷⁰

Generally, the policy of producing ‘Resettlement Action Plans’ as a planning device for firms positions MIDR as a process to be ‘managed’ rather than negotiated, which is at odds with the industry increasingly focusing on building relationships and mutual understanding in relation to other issues.¹⁷¹ As seen above, ‘contemporary international standards and safeguards essentially encourage developers to formulate a management plan, rather than an agreement with impacted stakeholders.’¹⁷²

Where mining companies have their own policies on resettlement, those are invariably based on the standards set by the IFIs. However, one major development during the research for this thesis has been the World Bank admitting in March 2015 that their policies on resettlement are grossly inadequate, acknowledging ‘serious shortcomings in the implementation of its resettlement policies’.¹⁷³ In admitting that the World Bank ‘have no idea how many people may have been forced off their land or lost their jobs due to its projects’ and not knowing ‘whether these people were compensated fairly, on time or at all’,¹⁷⁴ found that ‘oversight of those projects often had poor or no documentation, lacked follow through to ensure that protection measures were implemented, and some projects were not sufficiently identified as high-risk for

¹⁷⁰ van der Ploeg & Vanclay, 2017, *op. cit.*

¹⁷¹ Owen & Kemp, 2015, *op. cit.*

¹⁷² Owen & Kemp, 2015, *op. cit.*

¹⁷³ World Bank, 2015, *op. cit.*

¹⁷⁴ Schlieff, R., 2015. World Bank president admits resettlement failures: “What we found causes me deep concern.” *The Guardian*. 9 March 2015.

populations living in the vicinity.’¹⁷⁵ This disclosure was part of the World Bank’s on-going process intended to ‘develop’ and ‘strengthen’ its policies on involuntary resettlement. In admitting that World Bank policies have scant monitoring, the World Bank undermine the argument that unenforceable ‘guidance’ is sufficient to offer adequate protection to people displaced by mining projects.

Further, while the IFC PS5 does represent good practice from a corporate perspective, it does not amount to a right-based framework and does not sufficiently emphasise the fundamental human rights risks attached to MIDR. As such, in order to develop a systematic human rights based approach to MIDR, this thesis contends that step by step guidance to MIDR premised on the UNGPs be developed.

¹⁷⁵ World Bank, 2015, *op. cit.*

5. Implementing the Corporate Responsibility to Respect in the context of Resettlement

Having surveyed the limitations of both the legal framework governing MIDR and corporate social responsibility approaches, Chapter 4, above, made the case that responsible resettlement should be premised on the framework of the UNGPs. As stated, the UNGPs establish that businesses have a responsibility to respect human rights throughout their activities and business relationships. This means avoiding infringing rights, and addressing negative impacts where the business has caused or contributed to them. As such, this chapter focuses on what businesses should do to implement their *responsibility to respect human rights* as defined within the UNGPs in the context of an MIDR project. Guidance for implementing responsible business practices through the lens of the UNGPs have been developed for a number of sectors, notably for conflict minerals, but also for apparel, agriculture and construction activities, amongst others.¹⁷⁶ To date however, no bespoke guidance on responsible resettlement has been developed, a gap that this thesis calls out and begins to fill.

Principle 15 of the UNGPs sets out:

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Business enterprises need to know and show that they respect human rights. They cannot do so unless they have certain policies and processes in place.

This chapter will explore in practical terms what implementation of the UNGPs looks like in the context of MIDR. The steps set out here represent the approach a company may take in developing a standalone MIDR policy, where an overarching human rights policy exists and MIDR has been identified as a salient risk.

¹⁷⁶ For examples see: <http://mneguidelines.oecd.org/sectors/>

In practical terms, to some extent these six steps apply a human rights lens to existing risk management strategies and policies, but, being premised on international human rights standards, put the people affected by MIDR at the centre of the approach.

5.1 Step One: Policy commitment

In general terms, the UNGPs set out that “as the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy” (UNGP Principle 16).

In the context of MIDR, typical policies¹⁷⁷ do not frame MIDR in human rights terms, but rather in terms of minimising social impact. For example:

*Where displacement or the loss of economic assets and means of livelihood are unavoidable, the objective of this policy is to ensure that affected people can improve or at the very least recover their standard of living and livelihoods in the shortest possible time.*¹⁷⁸

This clearly does not explicitly reference human rights, and it is important in complying with the UNGPs that any such policy explicitly states that any resettlement activity undertaken will respect the human rights of people affected by MIDR.

Company policies on MIDR are largely framed in terms of implementing IFC Performance Standards.¹⁷⁹ However, as has been discussed, these standards are not wholly consistent with international human rights standards on eviction and resettlement. The IFC Performance Standards, for example do not contain an explicit prohibition of forced evictions (which, according to Amnesty

¹⁷⁷ Republic of Kosovo, 2009. *Resettlement Policy Framework for Land Acquisition for the New Mining Field Zone*.

¹⁷⁸ *Ibid.*

¹⁷⁹ IFC, 2012a, *ibid*

International, are “evictions that are carried out contrary to international human rights law, which requires a number of specific safeguards to be in place prior to any eviction”¹⁸⁰). In implementing the UNGPs, any policy on MIDR should thus incorporate full adherence to international and regional human rights standards.

Going further, while the concept of ‘Free, Prior and Informed Consent’ is a right of indigenous peoples, it does not apply more widely to typical infrastructure projects. A call for Free Prior and Informed Consent for non-indigenous peoples to be included in the 2001 revision of the World Bank’s involuntary resettlement policy was rejected.¹⁸¹ In addition to a commitment to respect international human rights standards, including those prohibiting forced evictions, an ambitious corporate policy on MIDR could extend the principle of Free, Prior and Informed Consent to all affected people.

As per the UNGPs Principle 16, the policy should be:

- approved at the most senior level of the mining company;
- informed by relevant internal and external expertise;
- stipulate the expectations of personnel, business partners, and other parties directly linked to its operations;
- publicly available and communicated internally and externally;
- reflected in operational policies and procedures throughout the business.

Going further, the policy should express the standards to which those contracting with the company will be held. The embedding aspect of policy development also needs to be addressed clearly. This means that there should be a clear protocol outlining the day-to-day responsibility for ensuring that the human rights impacts of a resettlement are minimised and managed. Adherence to this aspect of the UNGPs also requires a system of internal responsibility right up to board level. This should go hand in hand with establishing strong company management

¹⁸⁰ Amnesty International, 2012. *Comments on EBRD Mining Strategy*. 2012. AI Index: IOR 80/003/2012.

¹⁸¹ Goodland, R., 2004. Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law & Policy*. Volume 4(2).

systems that support the operational steps of this framework – the conducting of human rights due diligence.

5.2 Step Two: Human Rights Due Diligence

Once an MIDR policy that commits to human rights is in place, the next step towards implementing a responsibility to respect human rights, as set out in the UNGPs is for a company to conduct human rights due diligence. Such 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” (UNGPs Principle 17). This means the human rights due diligence, by focusing on impacts, goes beyond looking at risks to business.¹⁸² The scope of due diligence required under the UNGPs depends on various factors, including the company’s size, the risk of severe human rights impacts, and the nature of the operating context.¹⁸³ While companies may be familiar with undertaking commercial or legal due diligence on counterparties, transactions or acquisitions, human rights due diligence differs from these examples in that it is expressed as a continuous process, closer to a company’s experience of corporate risk management than one-off due diligence processes.¹⁸⁴

Due diligence has been the cornerstone of attempts to regulate corporate human rights impacts for some time, which has only grown since becoming the key process and expectation of companies in the UNGPs. This is in part because the concept of due diligence in corporate governance has been a core part of company practice for decades.¹⁸⁵

The primary tool in conducting Human Rights Due Diligence is a Human Rights

¹⁸² Martin-Ortega, O., 2014. Human Rights Due Diligence for Corporations: From Voluntary Standards to Hard Law at Last? *Netherlands Quarterly of Human Rights Law*. Volume 32 (1).

¹⁸³ United Nations, 2011, *op. cit.* See: UNGP 17(b) and 17(c)

¹⁸⁴ *Ibid.* See: UNGP 17(c)

¹⁸⁵ Martin-Ortega, 2014, *op. cit.*

Impact Assessment.¹⁸⁶ The company should map, identify and prioritise human rights risks according to those most salient, based on those that have the greatest risk to affected people. The UNGPs Reporting Framework states that:

“The emphasis of salience lies on those impacts that are:

- *Most severe: based on how grave and how widespread the impact would be and how hard it would be to put right the resulting harm.*
- *Potential: meaning those impacts that have some likelihood of occurring in the future, recognizing that these are often, though not limited to, those impacts that have occurred in the past;*
- *Negative: placing the focus on the avoidance of harm to human rights rather than unrelated initiatives to support or promote human rights;*
- *Impacts on human rights: placing the focus on risk to people, rather than on risk to the business.*

Salience therefore focuses the company’s resources on finding information that is necessary for its own ability to manage risks to human rights, and related risks to the business.”¹⁸⁷

As such, a company should identify the salient human rights risks associated with MIDR and ensure that risks are interpreted as those risks to affected people from MIDR impacts, which is distinct from any risk to the business. Through a process of stakeholder engagement,¹⁸⁸ consideration of the lifecycle of a MIDR, and mapping and engaging with rights-holders, a due diligence process should result in a clear understanding of the types of human rights impacts conceivable from a MIDR, and the particular rights affected.

As discussed above in Chapter 1 it is anticipated that any MIDR would have the scope to impact upon:

- (i) The Right to Life
- (ii) The Right to Property;

¹⁸⁶ Both BSR and The Danish Institute for Human Rights have developed tools and guidance on conducting a Human Rights Impact Assessment. For more information see: https://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf and <https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox>

¹⁸⁷ For more information on the UNGP Reporting Framework see:

<http://www.ungpreporting.org/key-concepts/salient-human-rights-issues/>

¹⁸⁸ A detailed resource on meaningful stakeholder engagement has been developed by the Inter-American Development Bank. See: Kvam, R., 2017. *Meaningful stakeholder consultation*. IDB series on environmental and social risk and opportunity (IDB Monograph 545).

- (iii) The Right to Housing;
- (iv) The Right to Respect for private life;
- (v) The Right to Free Movement and Residence;
- (vi) The Right to an Adequate Standard of Living
- (vii) The Right to Effective Remedy

Based on the risks identified to the human rights of project affected persons, companies should then develop action plans around mitigating potential risks in each case. Risk assessments should be systematic, regular and ongoing throughout the lifecycle of a MIDR, and be based on a range of internal and external sources, including issues raised by NGOs, news media, expert reports, and cases arising via grievance mechanisms. A systematic approach to human rights due diligence in this way will minimise the risk of harm occurring and raise the likelihood of the MIDR proceeding without the unjust treatment of local communities. A legitimate due diligence process should also be based on input from affected people themselves, and demonstrate that a company fully understands its operating context.

5.3 Step Three: Integrate and Act on Due Diligence

Where potential human rights impacts have been exposed through a due diligence process, UNGPs Principle 19(a) sets out that:

“Effective integration requires that:
(i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
(ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.”

As such, all staff whose work raises potential human rights impacts should be involved in finding ways to address them, and methods should be identified to share learning across different operational departments. Applying this principle to MIDR means, for example, that a human rights impact, such as improper use of force by security contractors protecting the perimeter of the mine, should be identified as a human rights issue and risk to the person affected. In practice, this

means that such an incident should be reported to the designated person responsible for human rights within the company, and that risk management and remediation strategies be put in place. Acting on due diligence may mean suspending a staff member or contractor, instigating a transparent investigatory process or terminating a contract. Companies should consider their leverage and ability to influence, and where necessary take steps to build leverage.

5.4 Step Four: Track Progress

Inherent to effective due diligence, and part of this cyclical process, it is essential that companies undertaking a MIDR commit to systematic monitoring throughout a displacement and resettlement project, and specifically to monitor any particular grievance or human rights issue identified. Tracking should be ongoing, with the goal continuously improving the implementation of the MIDR policy (as noted in Step One). According to the UNGPs (Principle 20), tracking should:

- a) Be based on appropriate qualitative and quantitative indicators;*
- b) Draw on feedback from both internal and external sources, including affected stakeholders.*

This is a central part of a company's requirement under the UNGPs to "know and show" their exposure to human rights risks. Responding to the framework of the UNGPs, and grounding a company's approach to social impacts transparently in a way that puts the human rights of affected groups at the centre is important not only for protecting those people's rights, but is also advantageous for companies reporting on their human rights impacts, and indeed, those being assessed and ranked for how they deal with human rights challenges. Being able to show progress in mitigating human rights impacts is increasingly a part of transparency in supply chains legislation, and a consideration of investors.

The legitimacy of tracking activities would be enhanced by independent third-party monitoring and auditing of both the company's implementation of its MIDR policy, and of salient identified risks. It is important to note that auditing on its

own is unlikely to develop better practices unless it is a coherent part of a wider risk management approach as set out here.¹⁸⁹

5.5 Step Five: Communicate Effectiveness

As stated, the UNGPs have been drafted to explicitly require companies to “know and show” what their human rights risks are. Communicating how you are addressing actual and potential impacts is a key part of ‘showing’. According to the UNGPs, ‘showing’ involves “communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.”

Key aspects to consider with this requirement to communicate will be to consider the stakeholders most interested in understanding a company’s commitment – which will certainly include those affected or potentially affected by a company’s activities. This may require careful thought as to how to provide information, both in terms of the appropriate fora and method. In the context of an MIDR, communication will need to be culturally sensitive and appropriately delivered to affected communities.

Companies should also seek out opportunities to share lessons learned from MIDR, pool information with other companies and develop best practices through trade bodies and engagements with civil society and NGOs.

A significant factor in generating company reporting on human rights has been legislative reporting requirements and supply chains transparency laws. This has particularly been the case for risks associated with forced labour and human trafficking, where there are obligations to report the risks that forced labour and human trafficking occur in supply chains in both the United Kingdom¹⁹⁰ and in the

¹⁸⁹ LeBaron & Lister, 2016 *op. cit.*

¹⁹⁰ The UK Modern Slavery Act 2015 requires, under s54, that companies with a turnover of over £36 million issue an annual statement which sets out the steps the company has taken to ensure that forced labour and human trafficking is not taking place in its supply chain and in any part of its own business.

United States.¹⁹¹ Both human trafficking and forced labour have clear definitions in international protocols, treaties and conventions that require states to implement national legislation, and the risks of these offences occurring in the supply chains of any business is high. However, there are also sector specific reporting requirements that require due diligence and disclosure for particular high-risk business activities. For example, Section 1502 of the US Dodd-Frank Wall Street Reform and Consumer Protection Act requires companies to disclose annually whether certain materials are sourced from the Democratic Republic of Congo or adjoining countries, and to describe the due diligence undertaken.

Such legislative compulsion to report on human rights impacts and due diligence does not however apply explicitly to MIDR. However, a number of tools have been developed to frame such reporting, such as the UNGPs Reporting Framework,¹⁹² while initiatives such as the Corporate Human Rights Benchmark, which rewards companies for transparency and attracts investor interest in disclosed human rights reporting, might lay the foundations for increased expectations of disclosure. While we can state here that good practice for a mining company conducting a resettlement would be to fully disclose its risks and responses, in practice that is unlikely to suffice. Instead, an example to consider is a recently adopted French law, which specifically requires human rights due diligence be undertaken by all companies over a certain size, and to publish annual vigilance plans.¹⁹³ If this legislative trend is to continue, then it can only be advisable that companies conducting MIDR put their house in order voluntarily and instigate reporting as a matter of good practice under the UNGPs.

5.6 Step Six: Remedy

¹⁹¹ The California Transparency in Supply Chains Act 2010 also requires certain companies to disclose how they sought to eradicate slavery and human trafficking from their supply chains. Another examples in the US Federal Acquisition Regulations, which require companies that supply the US government to have a plan in place to show how they adhere to a range of requirements around trafficking and modern slavery.

¹⁹² For more information on the UNGPs Reporting Framework see: <https://www.ungpreporting.org/>

¹⁹³ McCorquodale, R. et al, 2017. Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises, *Business and Human Rights Journal*. Vol 2:2, 2017.

Potentially the most critical aspect of implementing a corporate responsibility to respect human rights is the full participation of a company in providing meaningful access to remedy. As noted in the UNGPs, “even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.” Principle 22 states that: “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”

The most effective route to securing a remedy for a person affected by MIDR must be considered. Access to state-based grievance systems may be particularly time consuming, costly and difficult to access. Very often, an operational level grievance process, as close to the activity itself, will be the swiftest means of resolving grievances. Such mechanisms, where developed are strengthened by independent oversight or cooperation with, for example, unions. Grievance mechanisms can be developed and the company level, or potentially as industry-wide initiatives and beyond just providing a remedial function for affected people, also serve as an early-warning risk-awareness system for the company.

For IFC funded projects, a last recourse for affected people is to seek redress through the IFC Compliance Advisor Ombudsman, which is an independent accountability mechanism. However, access to this level of grievance process is also inhibitive and “too often, the IFC offers a half-hearted action plan that does very little to address the harms communities have suffered.”¹⁹⁴

¹⁹⁴ Jessica Evans, Human Rights Watch, quoted in: Freudenthal, E. & A. David, 2017. At a Liberian Gold Mine, World Bank Money Flows, Despite Broken Promises. *100Reporters*. 19 March 2017.

Conclusion

This thesis has posited, in Chapter 5, the architecture of a framework for responsible resettlement that aligns with the UNGPs second pillar of corporate responsibility to respect human rights. The UNGPs provide a widely accepted and practical basis for developing a rights-based approach and applicable steps to guide companies in implementing their responsibility to respect human rights, ultimately reducing the risk that companies conducting MIDR might cause, contribute to, or be linked with human rights abuses.

This framework in Chapter 5 builds on comparable initiatives in other sectors and industries, and has been grounded in a broad context that has established the human rights risks associated with MIDR and the weak regulatory environment that makes such a framework a useful endeavour.

It has been established that to reduce the risk of serious human rights harms occurring through resettlement, companies should adopt a “responsible business conduct” approach and align their resettlement practices with the company’s responsibility to respect human rights, as articulated in the UNGPs. In practice, this means an on-going and proactive process of due-diligence as expressed in the six steps set out above.

Taking this guidance further, and achieving adoption of the framework articulated above, will require leading companies to pilot adoption of this and align their resettlement policies with their responsibility to respect human rights. This can be supported by a number of measures, which echo those expressed in the OECD Due Diligence Guidance for Conflict Minerals.¹⁹⁵ Such steps might include:

- Cooperating in building industry-wide capacity to conduct human rights due diligence in the context of MIDR;
- Cost-sharing within the mining industry for specific due diligence tasks associated with MIDR;

¹⁹⁵ These recommendations are based on those made similarly in OECD, 2013, *op. cit.* See p. 15.

- Participating in initiatives on responsible resettlement;
- Building partnerships with international and local civil society organisations.

Incentivising mining companies to undertake these steps will remain a question for legislators, activist investors, and ultimately consumers. This, however, is just one part of a much wider agenda relating to sustainability, supply chains and responsible business. At a time when governments around the world appear to lack the will or capacity to protect human rights, other actors, including companies must help fill the gaps. This thesis has shown that a human rights approach, premised on the UNGPs, has the potential to be more systematic and rights-based than CSR approaches, but there are still great limitations in this approach, not least around enforceability and access to remedy for those affected.

For real substantive change that prevents harm to those in the way of major mining projects a much wider conversation is needed addressing how globalisation works for those at the bottom ends of supply chains, how quarterly capitalism incentivises short-term profit cycles,¹⁹⁶ and how buying power is exercised ethically.¹⁹⁷ This will also require new thinking about how MNCs are addressed by international law,¹⁹⁸ and possibly re-imagining a whole range of relationships between states, companies, communities and individuals.¹⁹⁹ In the medium term however, what companies need is for human rights to be de-mystified, and for practical steps to be proposed that they should take to minimise their impact on the rights of those they interact with. It is in that vein that this thesis addresses its conclusions.

¹⁹⁶ Baumann-Pauly, D., J. Nolan & M. Posner, 2016. The future of business and human rights: challenges and opportunities. In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

¹⁹⁷ Martin-Ortega, O., O. Outhwaite & W. Rook, 2015. Buying power and human rights in the supply chain: legal options for socially responsible public procurement of electronic goods. *The International Journal of Human Rights*. Volume 19(3), pp. 341-368.

¹⁹⁸ Ganesan, A., 2016. Towards a business and human rights treaty? In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

¹⁹⁹ Morrison, 2015, *op. cit.*

BIBLIOGRAPHY

Adam, A., J. Owen & D. Kemp, 2015. Households, livelihoods and mining-induced displacement and resettlement. *The Extractive Industries and Society*. Volume 2(3), pp. 581-589.

Africa Report, 2013. *Top 500 Companies in Africa 2013*. Available at: <http://www.theafricareport.com/top-500-companies-in-africa-2013.html>.

Aguirre, D., 2005. Corporate social responsibility and human rights law in Africa. *African Human Rights Law Journal*. Volume: 5, pp.239–265.

Alvarez, J., 2011. Are Corporations “Subjects” of International Law? *Santa Clara Journal of International Law*. Volume 9, pp.1–36.

Amnesty International, 2012. *Comments on EBRD Mining Strategy*. 2012. AI Index: IOR 80/003/2012. Available at: <https://www.amnesty.org/download/Documents/24000/ior800032012en.pdf>

Avery, C., 2006. The difference between CSR and human rights. *Corporate Citizenship Briefing*. Volume 89. 1 August 2006. Available here: <https://business-humanrights.org/sites/default/files/reports-and-materials/Avery-difference-between-CSR-and-human-rights-Aug-Sep-2006.pdf>

Ballard, C. & G. Banks, 2003. Resource Wars: The Anthropology of Mining. *Annual Review of Anthropology*. Volume 32, pp.287–313.

Ballard, C., 2001. Human Rights and the Mining Sector in Indonesia: A Baseline Study. *Mining, Minerals and Sustainable Development*. Volume 182. Available at: <http://pubs.iied.org/pdfs/G00929.pdf>.

Barutciski, M., 2006. International Law and Development-induced Displacement and Resettlement. In C. de Wet, ed., *Development-induced displacement: Problems, policies and people*. New York: Berghahn Books.

Baumann-Pauly, D. & J. Nolan, 2016. *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

Baumann-Pauly, D., J. Nolan & M. Posner, 2016. The future of business and human rights: challenges and opportunities. In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

Bugalski, N. & D. Pred, 2013. *Reforming the World Bank Policy on Involuntary Resettlement*. Submission to the World Bank Safeguards Review, April 2013. Available at: <https://consultations.worldbank.org/Data/hub/files/reformingtheworldbankpolicyoninvoluntaryresettlement.pdf>

- Calvano, L.**, 2008. Multinational Corporations and Local Communities: A Critical Analysis of Conflict. *Journal of Business Ethics*, 82(4), pp.793–805.
- Campbell, B.**, 2009. *Mining in Africa: Regulation and Development*. London: Pluto Press
- Cao, Y., S. Hwang and X. Juan**, 2012. Project Induced Displacement, Secondary Stressors and Health. *Social science and medicine*. Volume 74(7), pp. 1130-1138.
- Carroll, A.**, 1979. Three-Dimensional Conceptual Model of Corporate Performance. *The Academy of Management Review*. Volume 4(4), pp.497–505.
- Centre on Housing Rights and Evictions, European Roma Rights Centre & Milan Simecka Foundation**, 2004. *Defending Roma housing rights in Slovakia: A training manual on international law and the right to adequate housing*. Available at: <http://www.errc.org/cikk.php?cikk=2003>
- Cernea, M. & S. Guggenheim**, 1993. *Anthropological Approaches to Resettlement: Policy, Practice and Theory*. Boulder: Westview Press.
- Cernea, M.**, 1995. Understanding and Preventing Impoverishment from Displacement: Reflections on the State of Knowledge. Keynote Address, International Conference on Development Induced Displacement. *Journal of Refugee Studies*. Volume 8(3), pp. 245-264.
- Cernea, M.**, 1996. Public Policy Responses to Development-Induced Population Displacements. *Economic and Political Weekly*. Volume 31(24), pp.1515–1523.
- Cernea, M.**, 2000. Risks, Safeguards and Reconstruction: A Model for Population Displacement and Resettlement. *Economic and Political Weekly*. Volume 35(41), pp.3659–3678.
- Cernea, M.**, 2006. Development-induced and conflict-induced IDPs: bridging the research divide. *Forced Migration Review*. Special Issue (December 2006), pp.25–27. Available at: <http://www.fmreview.org/en/FMRpdfs/BrookingsSpecial/15.pdf>.
- CESCR**, 1991. *General Comment No. 4. The Right to Adequate Housing*. 13 December 1991, E/1992/23. Available at: <http://www.refworld.org/docid/47a7079a1.html>
- CESCR**, 1997. *General Comment No. 7. The Right to Adequate Housing: Forced Evictions*. 20 May 1997, E/1998/22. Available at: <http://www.refworld.org/docid/47a70799d.html>
- Chambers, R.**, 1969, *Settlement schemes in Tropical Africa: A study of organisations and development*. London: Praeger.
- Clapham, A. & S. Jerbi**, 2001. Categories of Corporate Complicity in Human Rights Abuses. *Hastings International and Comparative Law Review*. Volume 24, p. 339.
- Clapham, A.**, 2006. *Human Rights Obligations of Non-State Actors*. Oxford: OUP.

Courtland Robinson, W., 2003. *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*. Occasional Paper, The Brookings Institution. Available at: <https://www.brookings.edu/wp-content/uploads/2016/06/didreport.pdf>

Courtland Robinson, W., 2004. Minimizing Development Induced Displacement. *Migration Information Source*. 1 January 2004. Available at: <http://www.migrationpolicy.org/article/minimizing-development-induced-displacement>

Dashwood, H., 2012. *The Rise of Global Corporate Social Responsibility. Mining and the Spread of Global Norms*, Cambridge: CUP.

Davis, R. & D. Franks, 2011. The costs of conflict with local communities in the extractive industry. In: D. Brereton, D. Pesce & X. Abogabir, eds., *Proceedings of the First International Seminar on Social Responsibility in Mining*. Santiago, Chile, 19–21 October, 2011. Available at: <https://www.csr.uq.edu.au/publications/the-costs-of-conflict-with-local-communities-in-the-extractive-industry>

Davis, R. & D. Franks, 2014. *Costs of Company-Community Conflict in the Extractive Sector*. Corporate Social Responsibility Initiative Report No. 66. Cambridge, MA: Harvard Kennedy School. Available at: http://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs_of_Conflict_Davis_Franks.pdf.

De Schutter, O., A. Ramasastry, M.B. Taylor & R.C. Thompson, 2012. *Human Rights Due Diligence: The Role of States*. International Corporate Accountability Roundtable. Available at: <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/58671817d2b857fd0d141820/1483151386977/Human-Rights-Due-Diligence-The-Role-of-States.pdf>

de Wet, C., 2006. *Development-induced displacement: Problems, policies and people*. New York: Berghahn Books.

Department for Business, Enterprise and Regulatory Reform, 2009. *HM Government Corporate Responsibility Report*. Available here: <http://www.educationandemployers.org/wp-content/uploads/2014/06/corporate-responsibility-report-hm-gov.pdf>

Dixon, M., 2013. *Textbook on International*, Oxford: OUP.

Downing, T. & C. Garcia-Downing, 2009. Routine and Dissonant Culture: A theory about the psycho-social-cultural disruptions of involuntary displacement and ways to mitigate them without inflicting even more damage. In A. Oliver-Smith, ed., *In Development and Dispossession: The Anthropology of Displacement and Resettlement*. Santa Fe: School for Advanced Research Press.

Downing, T., 2002. Avoiding New Poverty: Mining-Induced Displacement and Resettlement. *Mining, Minerals and Sustainable Development*. No. 58, April 2002. Available at: http://commdev.org/files/1376_file_Avoiding_New_Poverty.pdf.

European Commission, 2011. *A renewed EU strategy 2011-14 for Corporate Social Responsibility*. Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions. COM(2011) 681. Available at:

<https://www.employment.gov.sk/files/slovensky/ministerstvo/spolocenska-zodpovednost/new-communication-on-csr-2011-2014.pdf>

Franks, D., et al., 2014. Conflict translates environmental and social risk into business cost. *Proc. Natl. Acad. Sci.* Volume 111 (21), pp.1-6. Available at:

<http://www.pnas.org/content/111/21/7576.abstract>

Freudenthal, E. & A. David, 2017. At a Liberian Gold Mine, World Bank Money Flows, Despite Broken Promises. *100Reporters*. 19 March 2017. Available at: <https://100r.org/2017/03/at-liberian-gold-mine-world-bank-money-flows-despite-broken-promises/>

Friedman, M., 1962. *Capitalism and Freedom*, Chicago: University of Chicago Press.

Friedman, M., 1970. The Social Responsibility of Business is to Increase its Profits. *The New York Times Magazine*. 13 September 1970. Available here:

<http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>

Ganesan, A., 2016. Towards a business and human rights treaty? In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

Garriga, E. & D. Melé, 2004. Corporate Social Responsibility Theories: Mapping the Territory. *Journal of Business Ethics*. Volume 53(1/2), pp.51–71.

Garvin, T. et al., 2009. Community-company relations in gold mining in Ghana. *Journal of Environmental Management*. Volume 90(1), pp.571–86.

Goodland, R., 2004. Free, Prior and Informed Consent and the World Bank Group. *Sustainable Development Law & Policy*. Volume 4(2). Available at:

<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1381&context=sdlp>

Hilson, G., & N. Yakovleva, 2007. Strained relations: A critical analysis of the mining conflict in Prestea, Ghana. *Political Geography*. Volume 26, pp. 98-119.

Hilson, G., 2002. An overview of land use conflicts in mining communities. *Land Use Policy*. Volume 19(1), pp.65–73. Available at:

<http://linkinghub.elsevier.com/retrieve/pii/S0264837701000436>.

Hilson, G., 2012. Corporate Social Responsibility in the extractive industries: Experiences from developing countries. *Resources Policy* Volume 37(2), pp.131–137. Available at:

<http://linkinghub.elsevier.com/retrieve/pii/S0301420712000037>

IFC, 2012a. *Performance Standard 5. Land Acquisition and Involuntary Resettlement*. 1 January 2012. Available at: http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/P55_English_2012.pdf?MOD=AJPERES

IFC, 2012b. *Performance Standards on Environmental and Social Sustainability*. 1 January 2012. Available at: https://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES

International Council on Mining & Metals, 2012. *Human rights in the mining and metals industry: Integrating human rights due diligence into corporate risk management processes*, Available at: <http://www.icmm.com/document/3308>.

International Council on Mining & Metals, 2015. *Land acquisition and resettlement: Lessons learned*. Available at: <https://www.icmm.com/website/publications/pdfs/9714.pdf>

IRIN Africa, 2013. *Tanzanian farmers displaced by mining live like refugees*. *IRIN Africa*, (April 2013). Available at: <http://www.irinnews.org/report/98150/tanzanian-farmers-displaced-by-mining-live-like-refugees>.

Jenkins, H. & L. Obara, 2006. *Corporate Social Responsibility (CSR) in the mining industry - the risk of community dependency*. Corporate Responsibility Research Conference 2006. Available at: http://www.crrconference.org/Previous_conferences/downloads/2006jenkinsobara.pdf.

Jenkins, H. & N. Yakovleva, 2006. *Corporate social responsibility in the mining industry: exploring trends in social and environmental disclosure*. *Journal of Cleaner Production*. Volume 13, Issue 3, 2006, pp. 271-284.

Kälin, W. & J. Künzli, 2009. *The law of international human rights protection*. Oxford: OUP.

Kapelus, P., 2002. *Mining, Corporate Social Responsibility and the "Community": The Case of Rio Tinto, Richards Bay Minerals and the Mbonambi*. *Journal of Business Ethics*. Volume 39(3), pp.275–296.

Kinley, D. & J. Tadaki, 2004. *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*. *Virginia Journal of International Law*. Volume 44(4), pp.931–1024.

Kvam, R., 2017. *Meaningful stakeholder consultation*. IDB series on environmental and social risk and opportunity (IDB Monograph 545). Available here: <https://publications.iadb.org/bitstream/handle/11319/8454/Meaningful-Stakeholder-Consultation.pdf?sequence=1&isAllowed=y>

LeBaron, G. & J. Lister, 2016. *Ethical Audits and the Supply Chains of Global Corporations*. University of Sheffield: SPERI Global Political Economy Brief No. 1.

Available at: <http://speri.dept.shef.ac.uk/wp-content/uploads/2016/01/Global-Brief-1-Ethical-Audits-and-the-Supply-Chains-of-Global-Corporations.pdf>

Leigh Day, 2013. *Tanzanian villagers sue London-based African Barrick Gold for deaths and injuries*. Press release, May 2013. Available at:

<http://www.leighday.co.uk/News/2013/July-2013/Tanzanian-villagers-sue-London-based-African-Barri>

Makene, M., J. Emel, & J. Murphy, 2012. Calling for Justice in the Goldfields of Tanzania. *Resources*. Volume 1(1), pp.3–22. Available at:

<http://www.mdpi.com/2079-9276/1/1/3/>

Mària, J. & E. Devuyt, 2011. CSR and development: a mining company in Africa. *Journal of Management Development*. Volume 30(10), pp. 955-957.

Martin-Ortega, O., 2014. Human Rights Due Diligence for Corporations: From Voluntary Standards to Hard Law at Last? *Netherlands Quarterly of Human Rights Law*. Volume 32 (1).

Martin-Ortega, O., O. Outhwaite & W. Rook, 2015. Buying power and human rights in the supply chain: legal options for socially responsible public procurement of electronic goods. *The International Journal of Human Rights*. Volume 19(3), pp. 341-368.

McCorquodale, R. et al, 2017. Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises, *Business and Human Rights Journal*. Vol 2:2, 2017.

Morel, M., 2013. *The Right not to be Displaced in International Law*. Unpublished PhD thesis. Ghent: Ghent University.

Morel, M., 2014. *The Right not to be Displaced in International Law*. Cambridge: Intersentia.

Morrison, J., 2014. *The Social License. How to keep your organization legitimate*. Basingstoke: Palgrave Macmillan.

Muchlinski, P., 2007. *Multinational Enterprises & the Law*, Oxford: OUP.

Mugini, J., 2012. Tanzanian police shoot dead two civilians at conflict-torn gold mine. *Tanzania Daily News*. 1 September 2012. Available at:

<http://www.minesandcommunities.org/article.php?a=11887>.

Nieuwenkamp, R., 2016. CSR is Dead! What's next?. *OECD Insights*. January 2016. Available at: <http://oecdinsights.org/2016/01/22/2016-csr-is-dead-whats-next/>

Nolan, J., 2016. Mapping the movement: the business and human rights regulatory framework. In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

OECD, 2011, *OECD Guidelines for Multinational Enterprises. 2011 Edition*. Paris: OEDC Publishing. Available at: <http://www.oecd.org/daf/inv/mne/48004323.pdf>

OECD, 2013. *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Second Edition*. Paris: OECD Publishing. Available at: <http://dx.doi.org/10.1787/9789264185050-en>

Owen, J. & D. Kemp, 2013. Social licence and mining: A critical perspective. *Resources Policy*. Volume 38, Issue 1, March 2013, pp. 29-35.

Owen, J. & D. Kemp, 2015. Mining-induced displacement and resettlement: a critical appraisal. *Journal of Cleaner Production*. Volume 87, pp.478–488. Available at: <http://linkinghub.elsevier.com/retrieve/pii/S0959652614010269>

Pillay, R., 2015. *The Changing Nature of Corporate Social Responsibility. CSR and Development in Context – The Case of Mauritius*. Oxford: Routledge.

Pitts, C., 2016. The United Nations “Protect, Respect, Remedy” Framework and Guiding Principles. In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

Ramasastri, A., 2015. Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability. *Journal of Human Rights*. Volume 14(2), pp. 237-259.

Ratner, S., 2001. Corporations and Human Rights: A Theory of Legal Responsibility. *The Yale Law Journal*, 111(May), pp.443–545.

Rees, C. & R. Davis, 2016. Salient human rights issues: when severe risks to people intersect with risks to business. In: D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

Republic of Kosovo, 2009. *Resettlement Policy Framework for Land Acquisition for the New Mining Field Zone*. Available here: http://www.mzheks.net/repository/docs/Kosovo_Resettlement_Policy_Framework_final.pdf

Ruggie, J., 2013. *Just Business: Multinational Corporations and Human Rights*. New York: Norton.

Sassòli, M., 2013. Foreword. In L. Cameron & V. Chetail, eds. *Privatizing War: Private Military and Security Companies under International Law*. Cambridge: CUP.

Schlief, R., 2015. World Bank president admits resettlement failures: “What we found causes me deep concern.” *The Guardian*. 9 March 2015. Available at: <http://www.theguardian.com/global-development-professionals-network/2015/mar/09/world-bank-president-jim-yong-kim-resettlement-land-rights>.

Shihata, I., 1993. Legal Aspects of Involuntary Population Resettlement. In M. Cernea and S. Guggenheim, eds., *Anthropological Approaches to Resettlement: Policy, Practice and Theory*. Boulder: Westview Press.

- Siegel, S.**, 2013. The Missing Ethics of Mining. *Ethics and International Affairs*. Issue 27.1, February 2013. Available at: <https://www.ethicsandinternationalaffairs.org/2013/the-missing-ethics-of-mining-full-text/>
- Sonnenberg, D. & F. Münster**, 2002. Mining, Minerals and Sustainable Development in southern Africa. The Report of the Regional MMSD Process. *Mining, Minerals and Sustainable Development*, 1. Available at: <http://pubs.iied.org/pdfs/G00607.pdf?>
- Sonter, L., et al**, 2014. The process of land use change in mining regions. *Journal of Cleaner Production*. 2014, pp. 1-8. Available here: https://www.researchgate.net/publication/262143166_Processes_of_land_use_change_in_mining_regions
- Stavropoulou, M.**, 1994. The Right Not to be Displaced. *American University International Law Review*. Volume 9(3), pp. 689-749.
- Szablowski, D.**, 2002. Mining, Displacement and the World Bank: A Case Analysis of Compania Minera Antamina's Operations in Peru. *Journal of Business Ethics*. Volume 39(3), pp.247–273.
- Szablowski, D.**, 2006. Who Defines Displacement? The Operation of the World Bank Involuntary Resettlement Policy in a Large Mining Project. In P. Vandergeest, P. Idahosa, & P. S. Bose, eds. *Development's displacements: ecologies, economies, and cultures at risk*. Vancouver: UBC Press, pp. 33–60.
- Szablowski, D.**, 2007. *Transnational Law and Local Struggles: Mining, Communities and the World Bank*. Portland: Hart.
- Taylor, M. & L. Zandvliet**, 2009. *Due Diligence for Human Rights: A Risk-Based Approach*. Harvard University Corporate Social Responsibility Initiative: Working Paper No. 53. Available at: https://sites.hks.harvard.edu/mrcbg/CSRI/publications/workingpaper_53_taylor_et.al.pdf
- Terminski, B.**, 2011. Towards Recognition and Protection of Forced Environmental Migrants in the Public International Law: Refugee or IDPs Umbrella?. *Political Studies Organisation Summit*. December 2011. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2029796
- Terminski, B.**, 2012. *Mining-Induced Displacement and Resettlement: Social Problem and Human Rights Issue (A Global Perspective)*. Warsaw: University of Warsaw. Available at: <http://ssrn.com/abstract=2028490>.
- Terminski, B.**, 2013. Public International Law and Development-Induced Displacement and Resettlement: A Socio-Legal analysis. *Mediterranean Journal of Human Rights*. Volume 17, 2013. Available here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2295558
- Terminski, B.**, 2015. *Development-Induced Displacement and Resettlement: Causes, Consequences and Socio-Legal Context*. Stuttgart: Ibidem-Verlag.

UN Habitat & OHCHR, 2009. *The right to adequate housing*. Fact sheet No. 21 (Rev. 1). Available at:
http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf

United Nations, 2008. *Protect, Respect and Remedy: a Framework for Business and Human Rights*. United Nations Human Rights Council. 8th Session. April 2008. Office of the High Commissioner for Human Rights, New York and Geneva. Available at: <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf>

United Nations, 2011. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. United Nations Human Rights Council. 17th Session. March 2011. Office of the High Commissioner for Human Rights, New York and Geneva. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

van der Ploeg, L. & F. Vanclay, 2017. A human rights based approach to project induced displacement and resettlement. *Impact Assessment and Project Appraisal*. Volume 35(1), pp. 34-52. Available at:
<http://www.tandfonline.com/doi/full/10.1080/14615517.2016.1271538>

Vogel, D., 2005. *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility*. Washington DC: Brookings Institution Press.

Wallace, R. & O. Martin-Ortega, 2013. *International Law* (7th ed.). London: Sweet & Maxwell.

Weissbrodt, D., 2006. Business and Human Rights. *University of Cincinnati Law Review*. Volume 74, pp.55–74.

Wettstein, F., 2016. From side show to main act: can business and human rights save corporate responsibility? D. Baumann-Pauly & J. Nolan, eds., *Business and Human Rights: From Principles to Practice*. Oxford: Routledge.

World Bank, 2001. *Operational Policy 4.12 – Involuntary Resettlement*. December 2001, Revised April 2013. Available at:
<https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89db.pdf>

World Bank, 2015. *World Bank Acknowledges Shortcomings in Resettlement Projects, Announces Action Plan to Fix Problems*. Press release, 4 March 2015. Available at: <http://www.worldbank.org/en/news/press-release/2015/03/04/world-bank-shortcomings-resettlement-projects-plan-fix-problems>

Wright, J., 2014. All Human Rights are interdependent – but which are the most likely source of risk to Business in the mining sector? *GOXI*. 16 February 2014. Available at: <http://goxi.org/profiles/blogs/all-human-rights-are-interdependent-but-which-are-the-most-like-1>

Zandvliet, L. & M. Anderson, 2009. *Getting in Right: making Corporate-Community Relations Work*. Sheffield: Greenleaf.

Zerk, J., 2006. *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law*, Cambridge: CUP.