Foreign direct investment in the mining sector and the legal implications for corporate social responsibility: a South African/Ghanaian case study

PS Stander

21800588

(LLB)

Mini-dissertation submitted in partial fulfilment of the requirements for the degree *Magister Legum* in Import and Export Law at the Potchefstroom Campus of the North-West University

Supervisor: Dr A Gildenhuys

Co-supervisor: Prof HJ Kloppers

November 2015

NORTH-WEST UNIVERSITY
YUNIBESITI YA BOKONE-BOPHIRIMA
NOORDWES-UNIVERSITEIT

It all starts here ™

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

CSR	Corporate social responsibility
DMA	Disclosure on Management Approach
FDI	Foreign direct investment
G4	Global Reporting Initiative's G4 Reporting Standard
G4 MM	G4 Sector Disclosures: Mining and Metal (2013)
GPBHR	Guiding Principles on Business and Human Rights
GPBHR	United Nations Guiding Principles on Business and Human Rights
GRI	Global Reporting Initiative
HDR	Human Development Report
HDR	Human Development Report
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
IISD	International Institute for Sustainable Development
IISD	International Institute for Sustainable Development
ILO	International Labour Organisation
IODSA	Institute of Directors in Southern Africa
IRAS	Integrated Reporting and Assurance Services
ISO	International Organisation for Standardisation
JSE	Johannesburg Stock Exchange
KING III	*KING III Code of Corporate Governance* (2010)
MDG	Millennium Development Goals
MNE	Multinational enterprise
NGO	Non-governmental organisation
OECD	The Organisation for Economic Co-operation and Development

SDG	Sustainable Development Goals
SEED	Sustainable Community Empowerment and Economic Development
SOX	*Sarbanes-Oxley Act* of 2002
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
USA	United States of America
WBCSD	World Business Council for Sustainable Development
WCED	World Commission on Environment and Development

(Afrikaans)

DBB	Direkte buitelandse belegging
KSV	Korporatiewe sosiale verantwoordelikheid
MNO	Multinasionale onderneming

Abstract

Mining activities in most third world countries include foreign direct investment (FDI) by large-scale foreign mining companies. Most third world countries welcome this as it contributes greatly to their developing economies. While these FDIs hold many benefits for the host country, it is argued that the negative social impacts of mining activities are great and felt most at local level. Local communities in mining towns are at risk of having their economic-, environmental and food security compromised in the mining process.

The expectation of the international community of mining companies to practise corporate social responsibility (CSR) has grown significantly over the last decade. Subsequently mining companies have increasingly started developing CSR programmes that focus on contributing to the development of directly affected communities.

The primary aim of this research is to determine the most recent contributions to the international framework for CSR and its implications for South African FDI in the mining sector of developing countries.

In attempting to reach this objective, relevant sections of the *Guiding Principles on Business and Human rights*, *ISO 26000*, *KING III* and the *GRI:G4* are examined. In addition, a case study is included to serve as an example of the practical implications for mining entities of international provisions applicable to FDI and CSR.

Some of the most noteworthy contributions by the above four instruments include the human rights due diligence process, requiring of companies to assess their possible human rights impacts prior to starting their operations; and the integrated reporting system, requiring of companies to include both financial and non-financial matters in their annual reports, amongst others.

It is argued that CSR and the subsequent reporting thereof are moving in a positive direction – towards realising sustainable development. The force behind external assurance of sustainability matters, however, leaves much to be desired.

Keywords: Mining, CSR, FDI, sustainable development, human security, MNE, international framework.

Opsomming

Mynbedrywighede in die meeste derde wêreld lande sluit direkte buitelandse belegging (DBB) deur grootskaalse buitelandse mynmaatskappye in. Die meeste derde wêreld lande verwelkom dit aangesien dit grootliks bydra tot hul ontwikkelende ekonomieë. Alhoewel hierdie beleggings baie voordele vir die gasheer land inhou, word daar aangevoer dat die negatiewe sosiale impak van mynbedrywighede groot is en die duidelikste gevoel word op plaaslike vlak. Plaaslike gemeenskappe in myndorpe loop die risiko dat hul ekonomiese-, omgewings- en voedselsekuriteit in gedrang kom in die mynbou-proses.

Die verwagting van die internasionale gemeenskap van mynmaatskappye om korporatiewe sosiale verantwoordelikheid (KSV) te beoefen het die afgelope dekade aansienlik gegroei. Vervolgens het mynmaatskappye toenemend KSV programme begin ontwikkel wat daarop fokus om by te dra tot die ontwikkeling van gemeenskappe wat direk beïnvloed word deur mynbedrywighede.

Die primêre doel van hierdie navorsing is om vas te stel wat die mees onlangse bydraes tot die internasionale raamwerk vir KSV en die implikasies daarvan vir Suid-Afrikaanse DBB in die mynbousektor van ontwikkelende lande is.

In 'n poging om hierdie doel te bereik, word relevante afdelings van die *Guiding Principles on Business and Human Rights*, *ISO 26000*, *King III* en die *GRI: G4* ondersoek. Daarbenewens is 'n gevallestudie ingesluit om te dien as 'n voorbeeld van die praktiese implikasies van internasionale voorsienings wat toepassing vind op DBB en KSV.

Sommige van die mees noemenswaardige bydraes deur die bogenoemde vier instrumente sluit in die menseregte omsigtigheidsondersoek, wat van maatskappye vereis om hul moontlike impak op menseregte te evalueer voor aanvang van hul bedrywighede; en die geïntegreerde stelsel van verslagdoening, wat van maatskappye vereis om beide finansiële en nie-finansiële sake in hul jaarlikse verslae in te sluit, onder andere.

Daar word aangevoer dat KSV en die verslagdoening daarvan in ‘n positiewe rigting beweeg – nader aan die verwesenliking van volhoubare ontwikkeling. Die kwessie van die eksterne versekering van jaarlikse verslae laat egter veel te wens oor.

Sleutelwoorde: Mynbou, KSV, DBB, volhoubare ontwikkeling, menslike veiligheid, MNO, internasionale raamwerk.

1 Introduction

1.1 Problem statement

Mining activities in most third world countries include foreign direct investment (FDI) by large-scale foreign mining companies. Most third world countries welcome this as it contributes greatly to their developing economies.[1] It also contributes to the infrastructure that the country itself is not necessarily financially capable of developing.[2]

Ghana is the second largest gold producer in Africa (South Africa being first).[3] Over the last decade, the mining industry in Ghana attracted US$2 billion in FDI, which adds up to 56% of the total FDI flows into the country. This sector also provides for 45% of all export earnings in Ghana.[4] Foreign companies mostly dominate the sector.[5]

While these FDIs hold many benefits for the host country, it is argued that the negative social impacts of mining activities are great and felt most at local level.[6] Local communities in mining towns are the ones at risk of having their economic-, environmental and food security compromised in the mining process.[7] It is for this reason that many institutions[8] started requiring of mining companies to practise

---

1 Ghana is one such example. Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 10.

2 Amponsah-Tawiah and Dartey-Baah 2011 *International Journal of Business and Social Science*; Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry–the risk of community dependency" 7.

3 Dickovick J *Africa* 2012 93.

4 Dickovick J *Africa* 2012 93.

5 KPMG 2013 http://www.kpmg.com/Africa/en/IssuesAndInsights/ArticlesPublications/Documents/Mining%20Indaba%20brochure.pdf. In Ghana gold is the most important mining sector due to the great investments it attracts.

6 A.G.N. Kitula 2006 *Journal of cleaner production*; Environmental News Service 2012 http://www.ens-newswire.com/ens/jan2010/2010-01-22-01. html; A study conducted by Action Aid in 2006 in host communities of Anglo Gold Ashanti in Ghana found several negative impacts on the local population. These included polluted drinking water, loss of crops, and therefore food and income, and disruptive noise. Action Aid 2006 https://www.actionaid.org.uk/sites/default/files/doc_lib/gold_rush.pdf 15, 18, 22.

7 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry–the risk of community dependency" 1; Environmental News Service 2012 http://www.ens-newswire.com/ens/jan2010/2010-01-22-01. html. Newmont mine is an example in Ghana.
In 2009 a cyanide spill occurred that contaminated the fish and drinking water of communities downstream. It was not properly reported by the mine and local communities started raising concerns. Environmental security of the communities affected is at risk here. The first phase of the mine, Ahafo South where the cyanide spill occurred, displaced roughly 9,500 people, at least 95 percent of whom are subsistence farmers. This clearly affects food security of local communities. The mine is located in the Brong Ahafo farming region northwest of the country's capital Accra. Known as Ghana's breadbasket, the region supplies about 30 percent of the nation's food. The economic security of food suppliers/farmers in this region is threatened.

8 Both domestic and international measures are put in place to set a framework for CSR. A number of international instruments are mentioned later in this section. In Ghana specifically the Ghana Chamber of Mines is a good example of a body erected for the implementation of the

corporate social responsibility (CSR). Subsequently mining companies have increasingly started developing CSR programmes that focus on contributing to the development of the directly affected communities.[9]

The importance for mining companies to foster good relationships with host communities is multifaceted.[10] In addition to the legal licences required for mining, it is also of great importance for mining companies, and especially foreign or multinational enterprises (MNEs), to obtain and maintain a so-called "social licence to operate".[11] If host communities perceive operations as a threat to their livelihoods and believe that they will not gain from mining operations, they are likely to resist such operations, which could have extensive consequences for mining companies.[12] Furthermore, other stakeholders,[13] such as shareholders, may lose trust in a company with a bad reputation regarding CSR, which in turn may lead to loss of financial support.[14]

Zadek[15] argues that there are multiple reasons that make out the "business case"[16] for CSR. Public opinion constitutes the first of these reasons.[17] As Rae *et al*[18] states:

---

framework surrounding good corporate citizenship. http://www.ghanachamberofmines.org/. Atuguba and Dowuona-Hammond 2006 *Corporate social responsibility in Ghana* Report submitted to Friedrich Ebert Foundation (FES) – Ghana; Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry–the risk of community dependency" 2.

9 http://www.ghanachamberofmines.org/. Atuguba and Dowuona-Hammond 2006 *Corporate social responsibility in Ghana* Report submitted to Friedrich Ebert Foundation (FES) – Ghana. http://lrcghanaorg.tempwebpage.com/assets/CSR%20FINAL%20REPORT.pdf.
The core values of the Chamber of Mines include Community Responsibility.
Members (being mines) should proactively consult their host communities on their aspirations, and values regarding development and operation of mining projects, recognizing that there are links between environmental, economic, social and cultural issues. Members in addition voluntarily contribute to the socio-economic development of their host communities in so far as their resources will allow.

10 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry–the risk of community dependency" 1-2; Rae, Rouse and Solomon 2002 *Australian Journal of Environmental Management* 202-204.

11 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry–the risk of community dependency" 1-2. According to Bice the term 'social licence' is "intended as a metaphor to encapsulate values, activities and ideals which companies must espouse within society to ensure successful operation." Bice 2014 *Resources* 63.

12 Maintaining 'a licence to operate' is a constant challenge. For example, resistance by numerous social organisations to the expansion of gold mining at Mount Quilish, Peru led Newmont to suspend its activities. MAC (Mines and Communities) 2004 http://www.minesandcommunities.org/article.php?a=5862.

13 Freeman defined a stakeholder as any group or individual that affects, or is affected by, the achievement of a company's aims, and he indicated the importance of the stakeholder approach in business management. Freeman 1984 *Strategic Management: A Stakeholder Approach* 3.

14 Weissbrodt and Kruger 2003 *The American Journal of International Law* 901-902.

15 Zadek 2000 https://www.conference-board.org/bio/index.cfm?bioid=65.

16 "The business case" refers to "the underlying arguments or rationales supporting or documenting why the business community should accept and advance the CSR 'cause'." See Carroll and Shabana 2010 *International Journal of Management Reviews* 86-92.

> Poor environmental and social performance on the part of some mining companies has created mainstream public concern about mining practice and affected the reputation of the industry as a whole.[19]

According to these and other authors,[20] opinion of natural resource extraction industries is influenced more by concerns over environmental and social performance than by performance in areas such as product pricing, quality and safety.[21]

Large-scale, and often multinational, mining companies, such as *Gold Fields* and *AngloGold Ashanti*, set up trust funds and/or foundations[22] specifically aimed at contributing to social development initiatives. *Gold Fields* (a South African company), specifically, contributes US$1 per ounce of gold mined plus 0.5% of pre-tax earnings every year to social development programmes – this roughly equals US$ 3 million per year.[23] While this and other contributions by mining companies are received positively, there are fears that it is not a sustainable[24] way of assuming social responsibility. The contributions are often seen as "gifts"[25] towards infrastructural development, as opposed to contributions towards community development as they only keep coming for as long as the mine is in operation and are not necessarily spent on the promotion of human security.[26] The latter points to a

---

17 "Zadek has argued that companies pursue CSR strategies to (1) defend their reputations, (2) justify benefits over costs, (3) integrate with their broader strategies, and (4) learn, innovate and manage risk." Zadek 2000 https://www.conference-board.org/bio/index.cfm?bioid=65.

18 Rae, Rouse and Solomon 2002 *Australian Journal of Environmental Management* 202-204

19 Rae, Rouse and Solomon 2002 *Australian Journal of Environmental Management* 202.

20 Rae and Rouse 2001 http://www.eldis.org/assets/Docs/13412.html.

21 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry–the risk of community dependency" 1; Rae and Rouse 2001 http://www.eldis.org/assets/Docs/13412.html.

22 AngloGold Ashanti 2007 http://www.anglogold.co.za/NR/rdonlyres/3B098072-7711-421B-B938-F31F1FF778E8/0/obuasi.pdf.
Aglanu 2013 http://business.myjoyonline.com/pages/news/201308/110696.php.
Gold Fields Ghana in 2002 set up the Gold Fields Ghana Trust Fund and later legally registered it as a foundation in 2004, the first of its kind in the mining industry in Ghana.

23 Aglanu 2013 http://business.myjoyonline.com/pages/news/201308/110696.php.
From 2005 to date an average of US$3million is realized by the Tarkwa and Damang mines for the socio economic development of communities annually.

24 At the heart of the concept of sustainable development lies the idea that any human activity, including mining, should be undertaken in such a way that the activity itself and the products produced provide a net positive long-term contribution to human and ecosystem well-being. International Council on Mining and Metals (ICMM) 2012 http://www.icmm.com/ International; Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry–the risk of community dependency" 1-2.

25 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 7.

26 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 1-2. Human security refers to "safety from chronic threats such as hunger, disease and repression and the protection from sudden and hurtful disruptions in the patterns of daily life – whether in jobs, in homes or in communities." UNDP *Human Development Report* (1994).

culture of dependency,[27] in which instance host communities rely solely on mining operations for their livelihood, which is not ideal due to the serious consequences it leaves for the host community, especially after mine closure.[28]

The contents and approach of CSR programmes are therefore very important in determining whether or not social development will be sustainable (both in general and in terms of the host country's development initiatives). There are international instruments and institutions,[29] such as the *International Council on Mining and Metals* (ICMM) and the *International Finance Corporation* (IFC), that provide for CSR and ultimately the protection of affected communities' human security. The African Union also has instruments aimed at protecting the rights of communities in Africa, such as the *African Charter on Human and Peoples' Rights* and the *African Convention on the Conservation of Nature and Natural Resources*.

All of the above instruments together with various others, hold important provisions for mining MNEs and CSR. Due to the nature and scope of this study, however, only a selected few will be examined. The instruments examined in this study are the United Nations (UN) Guiding Principles on Business and Human Rights (hereafter GPBHR),[30] the ISO 26000 Guidance (hereafter ISO 26000),[31] the KING III Code of Corporate Governance (hereafter KING III)[32] and the Global Reporting Initiative's (GRI's) G4 reporting standard (hereafter G4),[33] and related documents.[34] These instruments were specifically selected because all four of these instruments came into force within the last five years[35] and therefore contain some of the most recent contributions to the international framework on CSR and the subsequent reporting thereof for mining MNEs.

27 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 1-2; 7.

28 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry–the risk of community dependency" 1-2.

29 These also include the *OECD Guidelines for Multinational Enterprises ILO Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy*, the ISO14001, the *United Nations Global Compact and the United Nations Guiding Principles on Business and Human Rights*.

30 *United Nations (UN) Guiding Principles on Business and Human Rights* (2011) (hereafter the *GPBHR*).

31 *ISO 26000:2010 Guidance Standard* (2010) (hereafter *ISO 26000*).

32 IODSA *King Code on Corporate Governance* (2009) (hereafter *KING III*).

33 *GRI:G4 Reporting Principles and Standard Disclosures* (2013) (hereafter the G4).

34 These will include the *Commentary* on the *GPBHR*, the *Explanatory notes* to *ISO 26000*, the *KING III Report*, the *G4 Implementation Manual* and *G4 Sector Disclosures: Mining and Metals*.

35 Respectively 2009 (*KING III*), 2010 (*ISO 26000*), 2011 (the *GPBHR*) and 2013 (the G4).

1.2 Research question and primary objective

What are the most recent contributions to the international framework for CSR with specific regard to the implications for South African FDI in the mining sector of developing countries?

The primary aim of the proposed study is thus to determine the most recent contributions to the international framework for CSR and its implications for South African FDI in the mining sector of developing countries.

1.3 Overview

In order to reach the primary objective of this study, some secondary objectives are addressed. A number of questions are dealt with throughout the different sections in this study. Section two is aimed at providing a more comprehensive background of the key concepts[36] included in the study and determining whether and to what extent these concepts are interrelated. Section three deals with extracts from the GPBHR and ISO 26000, and is aimed at establishing how these instruments specifically provide for host communities of mining operations in developing countries in terms of human rights[37] and community development.[38] The section deals with the content of the guidance provided to mining MNEs for the implementation of CSR programmes. Section four examines extracts from KING III and the G4. The focus of section four falls on the reporting of entities on their sustainability and CSR initiatives and aims at establishing what is expected of entities, in terms of these instruments, to be included in its annual reports regarding CSR matters. Section five consists of a case study, which is included with the aim of assessing the practical application and outcomes of international guidance principles, as examined in its two preceding sections. Finally, section six serves as a conclusion to the study, reiterating the key findings of each section and offers recommendations as to possible improvements that may be made to the current approach to CSR in FDI.

The following section will continue to contextualise some of the most important elements contained in the study.

36 These are CSR, FDI, MNE's, human security and sustainable development.
37 Extracts from the *GPBHR* will be examined in this regard.
38 Extracts from the *ISO 26000* will be examined in this regard.

2 FDI, CSR, human security and sustainable development

2.1 Introduction

In order to determine the most recent contribution to international CSR framework, with specific regards to mining MNEs, some secondary questions need to be answered. This section aims at answering whether and to what extent key concepts linked to FDI is related. These concepts are human security, sustainable development and CSR.

2.2 Foreign Direct Investment and MNEs

As reflected in "*A Partnership for Growth and Development*"[39] FDI can play a key role in economic growth and development. FDI is considered to be an instrument through which economies are being integrated at the level of production into a globalising world economy by bringing a package of assets, including capital, technology and managerial capacities and skills.[40]

The United Nations (UN), in its Conference on Trade and Development (UNCTAD) series defines FDI as:

> …an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity (the foreign direct investor or parent enterprise) of one country in an enterprise (foreign affiliate) resident in a country other than that of the foreign direct investor...[41]

The country of the foreign direct investor as per the above definition is known as the home country,[42] while the country of the foreign affiliate is known as the host country.[43]

The International Labour Organisation (ILO),[44] in its Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,[45] explains that FDI

---

39 *UN Conference on Trade and Development* (1996) 14.

40 UN "Foreign Direct Investment and Development" 1-7.

41 UN "Foreign Direct Investment and Development" 7. This definition is also consistent with that of the OECD as documented in OECD *Benchmark Definition of Foreign Direct Investment* 48.

42 Bezuidenhout *Trade Patterns and Foreign Direct Investment in the Southern African Development Community* 32. The home county is the country in which the direct investor (parent company) is located. This is the country from which the investment originates.

43 Bezuidenhout *Trade Patterns and Foreign Direct Investment in the Southern African Development Community* 31. The host county is the country in which the direct investment enterprise is located. This country will host the investment.

44 The ILO was founded in 1919, in the wake of a destructive war, to pursue a vision based on the premise that universal, lasting peace can be established only if it is based on social justice. The ILO became the first specialized agency of the UN in 1946. ILO Date Unknown http://www.ilo.org/global/about-the-ilo/lang--en/index.htm.

45 *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (2006).

is a key player in economic and social development, especially in developing countries. It also states that multinational enterprises (MNEs) have the opportunity to further development, and specifically sustainable development, by investing in developing countries.[46] That said, the document does not provide a definition for FDI and merely explains briefly what "MNEs" are, claiming a precise legal definition is not required.[47] This explanation follows:

> Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. Unless otherwise specified, the term "multinational enterprise" is used … to designate the various entities (parent companies or local entities or both or the organization as a whole) according to the distribution of responsibilities among them, in the expectation that they will cooperate and provide assistance to one another as necessary to facilitate observance of the principles laid down in the Declaration.[48]

In many international documents and literature concerning social policy and MNEs, MNEs and FDI are used synonymously to form part of one concept, as if they were interchangeable.[49] It is difficult, however, for the inexperienced reader to establish exactly how close, or how vastly different, the relationship between these two terms is. The main reason being that neither of the terms' definitions are easily obtainable within the internationals instruments incorporating them. The reader is left to his own devices in assuming meaning for these terms throughout the document, arguably leading to enterprises excluding themselves from its scope of application because they assume they do not qualify as an MNE or a foreign direct investor.

Due to this somewhat vagueness of the available legal definitions for FDI and MNEs and the complete lack thereof in the international instruments[50] covered in this study,[51] the following simplified definitions are proposed to serve as working definitions for purposes of this study:

(a) An MNE may be defined as an enterprise that operates in more than one country, having its headquarters in the home country[52] and operating in one or more host countries.[53]

---

46 *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (2006) hereafter (*ILO Tripartite Declaration* (2006)).
47 *ILO Tripartite Declaration* (2006).
48 *ILO Tripartite Declaration* (2006).
49 See Yeaple 2003 *Journal of International Economics* 294-295; *OECD Guidelines for Multinational Enterprises* (2003) 63; OECD 2002 *Foreign Direct Investment for Development - Maximising Benefits, Minimising Costs.*
50 These are the *ISO 26000*, the *GPBHR*, *KING III* and the G4.
51 With reference to the *GPBHR*, *ISO 26000*, *KING III* and the G4, to follow in sections 3 and 4.
52 As defined in this chapter. See par 2.2.

(b) Arguably, the link between these two terms (FDI and MNEs) may be explained as follows – FDI is an activity carried out by MNEs. FDI refers to the lasting interest and control of the MNE as the foreign direct investor, originating from its home country, in the operations of that MNE in the host country.[54]

Therefore, in this study when reference is made to MNEs, it should be read as to include implicit reference to the FDI carried out by MNEs and *vice versa*.

With reference to the role of FDI in development – studies have found that FDI improves environmental and labour standards and other national conditions as a result of CSR.[55] It can therefore be said that CSR is a tool with which MNEs may contribute to development and national conditions in host countries. In this light, a brief discussion of the nature of CSR follows.

2.3 CSR in a nutshell

CSR is a concept with which businesses are faced wherever they turn.[56] A concept drowning in such an abundance of definitions that some scholars say there is none.[57]

The ILO[58] defines CSR as:

> A way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law.

The definition of the World Business Council for Sustainable Development (WBCSD) for CSR is as follows: [59]

> Corporate Social Responsibility is the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.[60]

---

53 This definition is a working definition meant for ease of reference for this study specifically.
54 See definition for FDI in par 2.2.
55 Alejandra, Perez, Riegler and Riegler 2011 *GCC* 43.
56 Dahlsrud and Alexander 2008 *Corporate social responsibility and environmental management* 1-13; Carroll and Shabana 2010 *International Journal of Management Reviews* 85.
57 Jackson and Hawker *Communication Directors' Forum* 200.
58 ILO Date Unknown http://www.ilo.org/global/about-the-ilo/lang--en/index.htm.
59 WBCSD 2000 *Corporate social responsibility – meeting changing expectations* 3.
60 The specific inclusion of this definition is, amongst others, due to the reference to continuation, which arguably relates it explicitly to sustainable development. The reference to improvement of quality of life, arguably implies a strong link with human security. One of the secondary purposes of this study is to try and define the relationship between CSR, human security and sustainable development. The WBCSD's definition of CSR, arguably, incorporates these elements.

CSR, although there is no globally accepted definition for the term,[61] may be most aptly explained, for purposes of this study, by the International Organisation for Standardisation's (ISO's)[62] definition of "social responsibility" (used synonymous to CSR) as:

> ...the responsibility of an organisation for the impacts of its decisions and activities on society and the environment through transparent and ethical behaviour that contributes to sustainable development. This includes health and the welfare of society; takes into account the expectations of stakeholders; compliance with applicable law and should be consistent with international norms of behaviour which should be integrated throughout the organisation and practised in its relationships.[63]

Out of these three definitions, some key elements may be drawn.

Firstly, CSR has a targeted "audience". CSR is not concerned with the activities of individuals; it is concerned with the activities of "enterprises",[64] "businesses"[65] and/or "organisations".[66] For purposes of this study, these groups will be collectively referred to as "entities". Entities, as special organs of society,[67] have legal personality and are therefore bound, as part of that society, by the rights and responsibilities awarded to them.[68]

The terms "corporate citizen" or "corporate citizenship" are often used with reference to these responsibilities.[69]

Secondly, CSR revolves around the consideration of entities of the "impact"[70] of their operations on society and the environment.

Thirdly, CSR refers to the need for entities to take responsibility[71] for such impacts. It is argued by the author that the "responsibility" element of CSR contains within it two sub-elements. The first is the responsibility of legal compliance and the second is the

---

61 Argandoña and Von Weltzien Hoivik 2009 *Journal of Business Ethics* 1; Mazurkiewicz 2004 *World Bank* 2.

62 ISO (International Organisation for Standardization) is the world's largest developer of voluntary International Standards. International Standards give state of the art specifications for products, services and good practice, helping to make industry more efficient and effective. Developed through global consensus, they help to break down barriers to international trade. ISO Date Unknown http://www.iso.org/iso/home/about.htm.

63 *ISO 26000* clause 2.1.18.

64 As per the ILO's definition.

65 As per the WBCSD's definition.

66 As per the ISO's definition.

67 Mushkat 2010 *Oregon Review of International Law* 59-62; A II(11) of the *GPBHR* and *Commentary*.

68 Mushkat 2010 *Oregon Review of International Law* 59-62.

69 Banketas 2004 *Boston University International Law Journal* 311.

70 As per the ILO's and ISO's definition.

71 The WCBSD phrases the responsibility as a "continuing commitment", the ILO refers to entities "affirm(ing) their principles" and the ISO uses the term "responsibility".

responsibility to contribute to community development beyond legal compliance. The ISO's definition assists in illustrating the twofold application of responsibility:

(i) The definition states that CSR includes "compliance with applicable law and should be consistent with international norms of behaviour";[72]

(ii) The definition further implies that CSR stretches beyond legal compliance[73] to extend to contributing to sustainable development[74] in the societies that host business operations. All three of these definitions strongly emphasise the responsibility, or continued commitment (as per the WCSSD's definition), to actively contribute towards community development in a way which exceeds legal compliance.

Combining these elements, CSR may be summarised as *entities* taking *responsibility* for their *impacts* on society and the environment by *complying* with legal norms and *contributing* to the *sustainable development* of the *communities* in which they operate, *beyond* legal expectation.

CSR programmes will need to differ in their content and approach depending on the circumstances in which different entities operate.[75] Different countries have different socio-economic climates, for example. Different industries also have different challenges, resources and responsibilities. A mining MNE in an underdeveloped region will operate in a different context than a financial institution in a first world country. While the mining company might have to include more far-reaching provisions regarding environmental pollution,[76] the financial institution's social responsibility may relate more to the stability of financial markets or place emphasis on transparency of its operations to prevent corruption.

Entities are likely to experience pressure from many different sources to practice business responsibly, such as from non-governmental organisations (NGO's),

72 Although legal compliance is not explicitly included in either of the definitions of the ILO and the WCBSD, it is arguably presupposed by the ILO. The ILO states that "CSR … refers to activities that are considered to exceed compliance with the law". One cannot, by definition, "exceed" a standard that has not even been met. Therefore it is, arguably, implied that CSR includes compliance with relevant laws *and* goes beyond it.

73 The ILO's definition states: "CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law." The ISO's definition refers to contributions to sustainable development and the WBCSD states that it is the "continuing commitment by business to contribute to economic development".

74 As specifically provided in the ISO's definition.

75 Argandoña and Von Weltzien Hoivik 2009 *Journal of Business Ethics* 12; Sarkis, Ni and Zhu 2011 http://iveybusinessjournal.com/topics/social-responsibility/winds-of-change-corporate-social-responsibility-in-china#.U28kc_mSxlo.

76 See par 2.5.3.

governments, investors and local communities.[77] Entities might choose to act on these pressures for different reasons. The motivation behind CSR initiatives is multi-faceted. While some enterprises practice business responsibly purely out of legal obligation, others do it for the competitive edge[78] that is gained from it, while others still are simply ethically inclined to do so.[79]

Paragraph 2.4 elaborates further on the responsibility of entities to contribute to sustainable community development beyond legal expectation. First, however, the relationship between CSR and the law need to be established with reference to the argued legal element thereof.

2.3.1 CSR and the law

The GPBHR explains that entities, as specialised organs of society performing their functions, are required to comply with all applicable laws and to respect human rights.[80] While compliance with all applicable laws forms part of CSR, due to the nature and scope of this study, human rights is specifically included as focus area of the legal element of CSR. According to the International Council for Mining and Metals (ICMM)[81] the respect for human rights is a key aspect of sustainable development in the mining industry.

As the GPBHR states,[82] entities have the responsibility to avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.[83] Compliance with human rights norms should not be considered optional.[84] Furthermore, the element of CSR consisting of contributions to community development should in no way be regarded as a substitute for human rights compliance.[85] Entities are urged to consider human rights considerations as a legal

77 Sarkis, Ni and Zhu 2011 http://iveybusinessjournal.com/topics/social-responsibility/winds-of-change-corporate-social-responsibility-in-china#.U28kc_mSxlo.
78 See par 1.1.
79 Sarkis, Ni and Zhu 2011 http://iveybusinessjournal.com/topics/social-responsibility/winds-of-change-corporate-social-responsibility-in-china#.U28kc_mSxlo.
80 See par 3.2.
81 ICMM 2009 http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues
82 A II(11) of the *GPBHR* and *Commentary*. See par 3.2.
83 Many companies have acknowledged their human rights obligations and the need to restore confidence in CSR. Weissbrodt and Kruger 2003 *The American Journal of International Law* 921.
84 Wettstein 2012 *Business Ethics Quarterly* 748.
85 See par 3. Entities should not approach CSR as to mean either refraining from violating human rights or contributing to community development. CSR should be approached as to mean refraining from violating human rights and contributing to community development.

compliance issue[86] and to do so regardless of whether or not the state territory in which it operates are willing and able to enforce human rights laws.[87]

Human rights should further be interpreted as to mean internationally recognised human rights.[88] The violation of human rights could expose entities to liability, both domestically and internationally.[89] Civil suits and even criminal suits could follow human rights violations.[90]

In the mining context, adverse human rights impacts pose a threat to host communities.[91] Mining MNEs, often operating in weak governance areas,[92] should therefore have particular regard to human rights, approaching it as a legal compliance issue regardless of the territory in which they operate.[93]

2.4 Sustainable development

The *Johannesburg Declaration on Sustainable Development (2002)*[94] states that the private sector has: -"a duty to contribute to the evolution of equitable and sustainable communities and societies", and that "there is a need for private sector corporations to enforce corporate accountability".

Sustainable development is defined by the International Institute for Sustainable Development (IISD)[95] as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[96] It contains within it two key concepts: (a) firstly the concept of needs and in particular the essential needs of the poor, which should enjoy overriding priority;[97] and (b) the concept that limitations exist due to the state of technology and social organisation on the environment's ability to provide for both current and future generations.[98]

---

86 A II(23)(c) of the *GPBHR* and *Commentary*.
87 A II(11) of the *GPBHR* and *Commentary*; *ISO 26000* clause 6.8.3.2.
88 A II(12) of the *GPBHR*.
89 Weissbrodt and Kruger 2003 *The American Journal of International Law* 922.
90 Weissbrodt and Kruger 2003 *The American Journal of International Law* 922.
91 See par 1.1.
92 Sub-Saharan African countries are generally considered as weak governance zones. *KING III Report* 23.
93 Surya 2012 *European Company Law* 103; UN 2012 *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* 13-14; See par 3.2.
94 *Johannesburg Declaration on Sustainable Development* (2002).
95 World Commission on Environment and Development (WCED) 1987 *Our Common Future* 43.
96 This widely accepted definition originated in the 1987 *Brundtland Report*.
97 WCED 1987 *Our Common Future* 43. This notion is also directly in line with the Millennium Development Goals (MDGs), which strive towards poverty alleviation.
98 WCED 1987 *Our Common Future* 43.

ISO[99] states that sustainable development is an umbrella term that rests on three pillars namely the environment, economy and society.[100] This may be understood to mean that development cannot be "sustainable" if, for example, economic development prospers at the expense of the environment.

For purposes of this study, the focus falls mainly on the development of local communities in mining areas and how development may be furthered by activating the potential benefits that FDI holds for these communities. The sustainability of development is a further issue, in particular, in developing countries where MNEs enter a community in order to mine there and leave when their activities are done.[101] The collateral damage, or positive changes, or both, are possibly left behind. How development initiatives are managed may arguably be the deciding factor regarding the nature of mining activities' residue. It may mean the difference between a lump sum paid to a random charity to technically meet the requirements of being regarded a socially responsible citizen[102] or the same amount of money managed in such a way that it is invested in developing local community members' skills in mining, for example. Proverbially speaking, teaching a man to fish is after all more sustainable than giving him one. In this light, skills development may be a more valuable and permanent contribution as opposed to simply donating money to community members to temporarily keep them happy and out of the way. Sustainability in the context of community development therefore, arguably implies that it should be about more than simply writing a cheque.

2.5 Human security

In the nineteenth and twentieth century, the concept of security was focused on the state.[103] National security and securing state territories was priority. Human security

99 ISO http://www.iso.org/iso/sustainable_development; Hopwood, Mellor and O'Brien 2005 *Sustainable Development* 39; Sneddon, Howarth and Norgaard 2006 *Ecological Economics* 255-256.

100 The concept of the three pillars referred to by ISO is reiterated by the current trend in sustainability reporting. Entities are urged by bodies such as the KING Committee and the GRI to report on the triple bottom line of their operations, also referred to as "people (society), planet (environment) and profit (economy)". See in this regard section 4 of this study.

101 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 1-7.

102 In 2008, Bill Gates spoke at the World Economic Forum about "creative capitalism." He encouraged companies to identify their expertise- be it technology, agriculture, healthcare- and develop products that could "stretch the market forces." A slightly more nuanced take on "doing good," it meant honing in on the business' specialty, not just throwing money at various charities. Forbes 2014 http://www.forbes.com/sites/eshachhabra/2014/04/18/corporate-social-responsibility-should-it-be-a-law/.

103 Alkire *A conceptual framework for human security* 3.

aims at bringing about a paradigm shift[104] in the way security is viewed – the object in need of protection is no longer state territory but shifts to human beings. Human security is "people-centred"; it focuses the attention of institutions on human individuals and their communities worldwide regardless of their race, gender or any other distinguishing factor.[105]

The 1994 Human Development Report of the United Nations Development Programme (UNDP)[106] defined "human security" as:

> Safety from chronic threats such as hunger, disease and repression and the protection from sudden and hurtful disruptions in the patterns of daily life – whether in jobs, in homes or in communities.

In this new "people-centred" way the human security approach parallels the movement in economic development and international law to shift the emphasis from instrumental objectives to human development and human rights. In doing so, human beings become the "end" of development, not only a "means" to increased economic productivity or legal coherence.[107]

The concept of human development refers to the broad approach to expanding people's choices or capabilities not only in terms of income, but also in areas such as health, education, technology, the environment and employment.[108] In the 2014 Human Development Report (HDR 2014)[109] it was found that 2.2 billion people are poor or near-poor.[110] It was stressed that it is not enough to affect a decline in poverty. Progress needs to be sustainable, countering fall-backs into poverty. The report calls for collective action at global level to address vulnerabilities and help build resilience.[111]

Human security aims at safeguarding human lives. When protection is an ongoing, preventative measure, rather than a reactive one, damage by unexpected occurrences may be minimised.[112] It has a pro-active, responsive approach,

---

104 Alkire *A conceptual framework for human security* 3.
105 Alkire *A conceptual framework for human security* 3.
106 UNDP *Human Development Report* (1994).
107 While there must be short-term protection from severe situations and threats, there must also exist the will and ability to sustain security and stability by the successful integration of political, social, environmental, economic, military, and cultural systems and processes that allow individuals to prosper over time. Liotta and Owen 2006 *The Whitehead Journal of Diplomacy and International Relations* 38; 42; Alkire *A conceptual framework for human security* 3.
108 Alkire *A conceptual framework for human security* 35.
109 *Human Development Report* (2014) 3.
110 "Poor" refers to individuals who live on $1.25 a day or less. UNDP 2014 http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi.
111 *Human Development Report* (2014) 7-9.
112 Alkire *A conceptual framework for human security* 3.

adapting to the needs of specific human beings and communities.[113] Linking this approach to development through MNEs' CSR initiatives, it is in tune with the current international trend in the CSR guidelines examined in this study.[114] As section 3 of this study will illustrate, some of the most recent international frameworks[115] place significant emphasis on flexibility and the fact that CSR regimes should be able to adapt to specific circumstances in which entities operate. Within these circumstances, international guidelines urge entities to practice CSR in such a way that it *prevents* human rights violations, for example,[116] rather than waiting for such violations to occur before remediating it (pro-active). Should human rights violations occur, entities are also urged to have structures already in place to address such violations efficiently and effectively (responsive).[117]

A further dimension to human security is respect. It encompasses the need for respect for the rights of human individuals, albeit by other individuals, institutions or corporations. It means that others will not foreseeably, albeit unintentionally, threaten human security.[118]

The concept of human security contains within it seven sub-categories that respectively relate to specific areas of focus. These are economic security, food security, environmental security, health security, personal security, community security and political security.[119] For purposes of this study only the first three of these will be briefly discussed in order to serve as examples in the context of some threats mining communities face with reference to mining MNEs.

2.5.1 Economic security

Economic security in the current context refers to protection from threats such as poverty and vulnerability to global economic change.[120] In the mining context resettlement of communities is a particularly big concern.[121] Extractive mining, such as open cast gold mining, often takes place in rural, underdeveloped areas. Communities residing within the vicinity of the mining area are likely to have established coping mechanisms within their environment concerning economic

---

113 Alkire *A conceptual framework for human security* 2.
114 See section 3. The guidelines referred to are the *UN Guiding Principles on Business and Human Rights* (2011) (hereafter *UNGPBHR*) and *ISO 26000*.
115 Specifically the *ISO 26000* (2010) guidance and the *UNGPBHR*. See section 3 in this regard.
116 See in this regard par 3.2 regarding human rights due diligence.
117 See par 3.2.
118 Alkire *A conceptual framework for human security* 3.
119 UNDP (*Human Development Report*) 1994: "New Dimensions of Human Security" 24-25.
120 Liotta and Owen 2006 *The Whitehead Journal of Diplomacy and International Relations* 42.
121 Terminski 2012 *Social Science Research Network* 22-27.

survival. In poor countries, these individuals often do not have the luxury of extensive education and skills that would enable them to easily adapt outside of their own, familiar economic structure.[122] When relocated, these individuals are not able to carry on their economic activity within the structures of their environment that enabled them to do so.[123] This threatens their very survival because due to the change, and effectively complete collapse, of their familiar internal economy, they lose income and are exposed to a greater risk of extreme poverty.[124] Considering the fact that the Millennium Development Goals (MDGs) are set to be reached in 2015[125] and poverty alleviation forms part of these goals, one can concede that mining companies not taking economic threats of local mining communities into consideration is in direct violation of the MDGs, to name but one international movement.

2.5.2 Food security

Food security relates to threats including hunger and famine and vulnerability to extreme climate events and agricultural changes.[126] Linking to both economic- and environmental security, resettlement and pollution are two of the greatest threats to food security in mining communities.[127] Firstly, resettlement may lead to landlessness.[128] As stated,[129] affected communities often live in rural areas without access to amenities like taps with running water, as well as luxuries such as grocery stores. They are dependent on natural resources gained from forests, pastures, rivers and the like.[130] When relocated, equal resources may not be as readily available, leaving them without adequate water for their crops or livestock, for example. Many of these individuals are subsistence farmers or even commercial farmers within the community.[131] If there are less or different resources and no skills to adapt to a completely different environment, there will quite simply be no food.

---

122 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 8.

123 Terminski 2012 *Social Science Research Network* 22-27.

124 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 10-12; Bharali 2006 "Development-Induced Displacement and Human Security in Assam" 1-4.

125 UN Date Unknown http://www.un.org/millenniumgoals/.

126 Liotta and Owen 2006 *The Whitehead Journal of Diplomacy and International Relations* 42.

127 Terminski 2012 *Social Science Research Network* 22-27.

128 Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 10-12.

129 See par 2.5.1.

130 Terminski 2012 *Social Science Research Network* 22-27.

131 In Ghana it was reported that between 1990 and 1998 more than 30,000 people were displaced in Ghana's Tarkwa District, as well as rivers contaminated and farms and forest land destroyed. Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 10-12.

Secondly, in the case of communities not being resettled, pollution may pose a threat to food security.[132] Water, air and soil pollution may affect the survival of fish, crops and livestock that might drastically influence the availability of food.[133]

2.5.3 Environmental security

Environmental security encompasses threats including resource depletion; vulnerability to pollution and environmental degradation.[134] In addition to the threats already listed under economic- and food security, mining could also have a detrimental effect on biodiversity and cause erosion.[135] Considering the strong dependence of local communities on their environment, especially for agriculture, sustainable development is crucial.[136] While FDI in mining induces a great amount of development in the form of infrastructure and contributions to the domestic economy, if not done sustainably, states may prosper but individuals will suffer.

The relationship between human rights and human security should also be noted.[137] It may be understood that although these two concepts overlap largely due to the protective nature of both, there are key differences. Human security, arguably, builds on the foundation of human rights. Where human rights provide for fundamental rights, such as the right to life, human security goes further to provide for the quality of that life. It strives towards human development.[138] It should not be a life filled with fear and want. It should be a life free from threats such as famine and political insecurity. Therefore the phrase "freedom from want and freedom from fear",[139] so often associated with this abstract concept. While human security is arguably still a broad concept, human rights are a set of specific, well defined norms.

---

132 "The environmental and social costs associated with the significant restructuring of Ghana's gold mining industry have been dear. The national Coalition of Civil Society Groups Against Mining argues that Ghana's growing foreign investment and production in the mining sector has had a devastating effect on the country's national economy, environment, community livelihoods and human rights. Communities have been detrimentally affected in many ways by large-scale mining activities; entire villages have been relocated to make way for surface mining operations compensation packages for the loss of land as well as livelihoods have been heavily criticised for being woefully inadequate, and violent clashes have taken place between communities and the security forces of mining companies and/or the police of the Ghanaian Government." Jenkins and Obara 2006 "Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency" 10-12.

133 Bharali 2006 "Development-Induced Displacement and Human Security in Assam" 1-4; Terminski 2012 *Social Science Research Network* 22-27.

134 Liotta and Owen 2006 *The Whitehead Journal of Diplomacy and International Relations* 42.

135 Terminski 2012 *Social Science Research Network* 22-27.

136 See par 2.4 with specific reference to the environmental pillar of sustainable development. This serves as an example of the interdependency of the environment, society and economic growth.

137 Alkire *A conceptual framework for human security* 7.

138 Alkire *A conceptual framework for human security* 5.

139 Alkire *A conceptual framework for human security* 5.

2.6 Conclusion

This section set out to explain the key concepts contained in this study and to answer whether and to what extent they are interrelated. After briefly examining the definitions and concepts surrounding FDI, MNEs, CSR, sustainable development and human security, it is contended that they may all be pieced together to assist in understanding the relationship between foreign mining companies and local mining communities and the expectations this relationship gives rise to. After careful consideration of the relevant concepts it is argued that FDI is the action carried out by MNEs when a South African mining company, for example, invests and operates in another country, such as Ghana. These two terms are so tightly interwoven that they may be read as one and the same for purposes of this study. MNEs may assume their social responsibilities by way of CSR initiatives. CSR contains within it a legal element specifically pertaining to the respect for human rights and an element regarding expectations beyond legal compliance touching on human security. If CSR initiatives are carried out as the current international measures intend it to be done, sustainable development in mining communities may be realised and the human security, and thus quality of life, of the individuals in the community may be promoted.

One may argue that it is not acceptable, in a developing, demanding and globalising world, to simply point to threats and failures and blame large MNEs, such as mines, for it. There need to be solutions, compromise and balanced efforts. While all the mining activities in the world cannot reasonably be brought to a halt, local communities cannot fall victim to its negative side effects without consequence. However, if mining companies assume social responsibility for their effects on the environment and on local communities in such a way as to counter threats to human security and contribute to sustainable development, individuals may cease to be victims and may start to be empowered. In the following section, two of the most recent international frameworks providing guidance on how entities may assume its social responsibility will be examined.

3 International guidance frameworks

3.1 Introduction

There are various international instruments that provide for CSR, sustainable development and FDI.[140] Due to the nature and scope of this study, only selected instruments will be outlined, which specifically include the *Guiding Principles on Business and Human Rights* (GPBHR)[141] and the *ISO 26000*[142] guidance standard (hereafter the Standard).

The question this section attempts to answer is what the latest, most noteworthy contributions to the current international CSR framework are by the two instruments included in this section. This question is related to the mining industry in particular. Extracts from the GPBHR will be examined, with the goal of determining the responsibilities of mining MNEs towards host communities regarding human rights. The GPBHR is a recent development in the international realm and may assist in contextualising in part the "legal compliance"[143] aspect of CSR. While the Standard also provides guidance on human rights practice,[144] the specific clauses pertaining to community development will be examined due to the comprehensive provisions it contains on this topic. The purpose of examining community development clauses is to determine what is expected of mining MNEs in terms of contributing to sustainable human development *beyond* legal compliance in its host communities.

3.2 Business and Human Rights

The GPBHR is a document compiled by the United Nations (UN) to guide enterprises in becoming more responsible corporate citizens. The document was drafted with the specific aim of conceptualising the *Protect, Respect, Remedy Framework* (as the Guiding Principles are also known), presents a model of what states' and businesses'

140 These include the *UN Global Compact*, the *OECD Guidelines for Multinational Enterprises*, the *ILO Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy*, the ISO14001 standard, *African Charter on Human and Peoples' Rights* and *The IFC Performance Standards on Social and Environmental Sustainability*, to name but a few.

141 UN Human Rights Council 2011 *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (hereafter referred to as the *GPBHR*).

142 It should be noted that South Africa has adopted this guidance standard in its entirety without any qualifications and the South African equivalent of the *ISO 26000* is *SANS 26000:2010*. Green Gazette 2011 http://www.greengazette.co.za/notices/standards-act-no-8-of-2008-standards-matters_20110318-GGN-34107-00230.pdf. It should further be noted that ISO compiled the standard to be consistent with and to complement existing relevant declarations and conventions by the UN, ILO, UN Global Compact Office and the OECD. ISO 2008 http://www.iso.org/iso/home/news_index.htm

143 See par 2.3.

144 Addressed in clause 6.3 of the Standard.

roles are in the protection of human rights and therefore, arguably, the promotion of human security.[145] In short the GPBHR is based on three foundational principles. The first is that states have existing obligations to respect, protect and fulfil human rights and fundamental freedoms;[146] the second relates to the role of business enterprises as specialised organs of society performing their functions, required to comply with all applicable laws and to respect human rights and the third pertains to the need for rights and obligations to be matched to appropriate and effective remedies when breached. Articles II(11) – II(24) of the GPBHR set out the specific expectations for entities. The majority of these provisions follow.

3.2.1 Human rights expectations for business entities

Article II(11) provides that business enterprises should respect human rights.[147] This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.[148]

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate.[149] Business enterprises have a responsibility, regardless of a state's willingness or unwillingness, to fulfil their own responsibility and it exists even beyond compliance with national law protecting human rights.[150] Human rights should therefore be interpreted to mean internationally recognised human rights[151] as set out in the *Universal Declaration of Human Rights*[152] and the principles concerning fundamental rights set out in the ILO’s *Declaration on Fundamental Principles and Rights at Work*.[153] Businesses may undertake projects to promote the enjoyment of certain rights, but this should not be accepted as a substitute for respecting human rights and refraining from violating it

---

145 Human security and human rights are deeply interconnected. Both are concerned with identifying a set of universal concerns that span poverty and violence. In fact fundamental human rights are arguably a tool for the implementation of the protection of human security. Alkire *A conceptual framework for human security* 35.

146 This principles supports the statement contained in the Special Representative to the UN Secretary General on Business and Human Rights’ (SRSG) Report of 2008 that “the state duty to protect lies … at the very core of international human rights regime.” *UN Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights* (2008) Par 50.

147 A II(11) of the *GPBHR*.

148 *Commentary* on A II(11) of the *GPBHR*.

149 *Commentary* on A II(11) of the *GPBHR*.

150 See 2.3 regarding CSR, which not only implies legal compliance with human rights but also exceeds legal compliance. *KING III* explains that entities have an ethical obligation to respect human rights regardless of whether a host country has sufficient human rights protection. See par 4.2.3.

151 A II(12) of the *GPBHR*.

152 *Universal Declaration of Human Rights* (1948).

153 *ILO Declaration on Fundamental Principles and Rights at Work* (1998).

during its operations.[154] Adequate measures should be in place to prevent, mitigate and, where necessary, remediate human rights violations.[155] The GPBHR indicates a duty on businesses *independent* of the state's involvement. It aims at shifting the responsibility away from states (which often lack the competence or willingness to implement and protect human rights) to entities directly.[156] It may be argued that the GPBHR unhinges the responsibilities of entities from any given domestic legal system, albeit only to a certain extent, and calls on them to adhere to human rights because the global community expects it of them.[157]

3.2.2 Managing primary and secondary human rights impacts

Article II(13) requires businesses to avoid causing or contributing to adverse human rights impacts[158] through their activities and to address such impacts should they occur.[159] It also requires that they prevent or mitigate such damage to human rights that are directly linked to their operations.[160] Article II(19) provides guidance on how to prevent and mitigate such human rights impacts. It provides that business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.[161] Subsection (a) explains that successful integration may be achieved by suggesting the responsibility for addressing such impacts be assigned to the appropriate department within a business.[162] It might be wise for large scale companies to create a department solely devoted to community issues, including human rights issues.[163] Mining companies especially can be very invasive[164] through their operations and are

---

154 See par 2.3. Entities cannot, arguably, exceed legal compliance without first achieving legal compliance. Similarly, the *GPBHR* explicitly provides that development measures or contributions, which go beyond meeting human rights obligations, can by no means substitute actually meeting human rights obligations. See 4.2.3 in this regard.

155 *Commentary* on A II(12) of the *GPBHR*.

156 Surya 2012 *European Company Law* 103.

157 "The responsibility to respect human rights is not limited to compliance with domestic law provisions. It exists over and above legal compliance, constituting a global standard of expected conduct applicable to all businesses in all situations. It therefore also exists independently of an enterprise's own commitment to human rights. It is reflected in soft law instruments such as the *OECD Guidelines for Multinational Enterprises*." UN 2012 *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* 13-14.

158 An "actual human rights impact" is an adverse impact that has already occurred or is occurring. An "adverse human rights impact" occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights. UN 2012 *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* 5.

159 A II(13)(a) of the *GPBHR*.

160 A II(13)(b) of the *GPBHR*.

161 A II(19) of the *GPBHR*.

162 A II(19)(b)(i) of the *GPBHR*.

163 *Commentary* on a II(19)(b)(i) of the *GPBHR*.

164 See par 1.1 and 2.5.

therefore are at a heightened risk of violating human rights. This should be avoided as far and as effectively as possible.

Internal decision-making, budget allocations and oversight processes should be able to respond to human rights impacts effectively.[165] Subsection (b) goes further to explain appropriate action.[166] Action will vary according to whether adverse human rights impacts is caused by the enterprise directly or whether it is solely involved due to being linked to the services of business relationships[167] and the extent of its leverage in addressing the adverse impact.[168] Although this provision is positive in the sense that it urges entities to also encourage suppliers, for example, to practice responsible business, it could have unreasonably far-reaching effects for business. While it is agreed that entities should encourage suppliers, for example, to practice business responsibly and may even do so by including it as criteria in the procurement process, it seems harsh to hold them accountable for such suppliers' human rights violations. It may be argued that it is unreasonable to impose liability on an MNE due to the conduct of independent contractors if the MNE did not mandate such conduct or could not have been reasonably expected to have knowledge thereof. As Giersch[169] states:

> In the future, multinational corporations will no longer be able to say that they did not know what was going on at their subsidiaries or at the end of the supply chain.

It is recommended that entities should consider the human rights impacts of its suppliers before contracting in a similar way to which shareholders consider the human rights impacts of a mine before buying shares. When, despite the appearance of human rights compliance, violations by such supplier then do occur, the mine should, arguably, be held no more accountable than a shareholder would for the mine's violations. The extent of measures required by entities to obtain information about their suppliers should not be unreasonably stringent. It is, after all not the duty of business entities to protect human rights, it is merely its responsibility to respect human rights by not infringing on such rights.[170]

---

165 A II(19)(a)(ii) of the *GPBHR*.
166 A II(19)(b) of the *GPBHR*.
167 A II(19)(b)(i) of the *GPBHR*.
168 A II(19)(b)(ii) of the *GPBHR*.
169 Giersch 2013 http://www.globalriskaffairs.com/2013/05/human-rights-due-diligence-i-corporate-social-responsibility-meets-compliance/.
170 'To respect rights essentially means not to infringe on the rights of others – put simply, to do no harm'. Surya 2012 *European Company Law* 103;

Overall, businesses should arguably not be burdened with the financial or other duty of taking responsibility for another entity's violations. Is the point not that every business should take responsibility for its own actions?

3.2.3 Policy commitment to respect human rights

Article II(14) states the responsibility to respect[171] human rights rests with all business enterprises. How they meet that responsibility, however, may vary according to size, sector, operational context, ownership and structure as well as the severity of the enterprise's adverse human rights impacts. Businesses should therefore have policies and processes appropriate to their size and circumstances.[172] These should include three aspects that will be discussed in the following paragraphs.

The first aspect is a policy commitment to meet their responsibility to respect human rights.[173] This has to be approved at the most senior level of the business enterprise[174] and be informed by relevant internal and/or external expertise.[175] It should stipulate the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;[176] and be publicly available and communicated internally and externally to all relevant parties.[177] It should further be reflected in operational policies and procedures necessary to embed their responsibility throughout the business enterprise.[178]

The second is the human rights due diligence process.[179] This process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.[180] The human rights due diligence should cover adverse human rights impacts that the business entity may either cause or contribute to through its own activities, or which may be directly linked to its operations.[181] It will vary in complexity

171 'To respect rights essentially means not to infringe on the rights of others – put simply, to do no harm'. Surya 2012 *European Company Law* 103;
172 A II(15) of the *GPBHR*.
173 A II(15)(a) of the *GPBHR*.
174 A II(16)(a) of the *GPBHR*.
175 A II(16)(b) of the *GPBHR*.
176 A II(16)(c) of the *GPBHR*.
177 A II(16)(d) of the *GPBHR*.
178 A II(16)(e) of the *GPBHR*.
179 A II(17) of the *GPBHR*: to identify, prevent, mitigate and account for how they address their impacts on human rights; Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 2-3.
180 Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 2-3.
181 A II(17)(a) of the *GPBHR*.

regarding size and circumstances.[182] The process should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.[183] This provision is arguably the most positive contribution to the international framework for business and human rights.

Lastly, there should be processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.[184]

In order to determine the scope of human rights risks, businesses need to assess and identify any potential adverse impacts on human rights. The assessment process should include drawing on internal and/or independent human rights expertise[185] and having meaningful consultations with affected groups and relevant stakeholders.[186] The latter steps should be taken with regard to the size and nature of the operations.[187]

In order to ensure human rights impacts are being addressed, businesses should track the effectiveness of their response[188] by using appropriate quantitative and qualitative indicators[189] and collecting feedback from internal and external sources, which should include stakeholders.[190]

3.2.4 Reporting on human rights impacts

Article II(21) provides for accountability. Businesses have to communicate how they have addressed their human rights impacts externally, especially when concerns have been raised by or on behalf of affected stakeholders. This provision places a duty on businesses to report on their human rights impacts.[191] Due to the importance of accountability section 4 of this study will be devoted solely to the reporting process. If the entity's operations pose risks of severe human rights impacts, it is required to report formally on its response. The use of the word “formally” without an indication as to what it entails, may lead to inconsistent methods of reporting. The wording is vague and arguably leaves too much room for interpretation.

---

182 A II(17)(b) of the *GPBHR*; Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 2-3.
183 A II(17)(c) of the *GPBHR*.
184 A II(14)(c) of the *GPBHR*. See 5.3.1.
185 A II(18)(a) of the *GPBHR*.
186 A II(18)(b) of the *GPBHR*.
187 A II(18)(b) of the *GPBHR*; Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 2-3.
188 A II(20) of the *GPBHR*.
189 A II(20)(a) of the *GPBHR*.
190 A II (20)(b) of the *GPBHR*; Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 3-4.
191 Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 14.

In all instances, communication should be in such form and frequency as to reflect human rights impacts and be accessible to its intended audience.[192] In the mining context, this may be interpreted to mean that should the mining company be required to report back to local community members on certain issues, it should be done in such a way that it matches the level of literacy, for example, of community members and it does not require technologies that they do not have access to.

Reports should provide information that is sufficient to evaluate whether or not the enterprise's response to particular human rights impacts is adequate.[193] Such reports should not pose risks, however, to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.[194] From this provision is it clear that the GPBHR does recognise the need to also protect the rights of enterprises. The rights of certain individuals cannot unconditionally be protected at the expense of the company or other stakeholders. This provision arguably highlights the need for a balancing of the rights and interests of both entities and the affected individuals.

3.2.5 Legitimacy of processes

Where enterprises identify that there have been adverse human rights impacts on its side, the remediation process they follow should be a legitimate one.[195] Put simply, this provision implies that remediation should not take the form of illegal pay-offs, bribery and the like. It is an important provision especially for MNEs operating in countries where corruption is a reality. It is also in line with the 10th principle of the UN Global Compact,[196] which illustrates that the GPBHR also strives to achieve other values of the UN.

In all circumstances, enterprises should comply with applicable laws and respect internationally recognised human rights, regardless of where they operate.[197] Furthermore they should treat the risk of gross human rights violations as a legal compliance issue.[198] Should conflicting requirements arise, businesses should seek

192 A II(21)(a) of the *GPBHR*.
193 A II(21)(b) of the *GPBHR*.
194 A II(21)(c) of the *GPBHR*.
195 AII(22) of the *GPBHR*.
196 Principle 10 of the Global Compact states that "Businesses should work against corruption in all its forms, including extortion and bribery." UN Date Unknown https://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle10.html.
197 A II(23)(a) of the *GPBHR*; This correlates with the first principle of the Global Compact, namely that businesses should support and respect the protection of internationally proclaimed human rights.
198 A II(23)(c) of the *GPBHR*; Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 3;6.

ways to honour the principles of such human rights.[199] Here, it is also necessary to prioritise actions so as to first prevent or mitigate the most severe adverse human rights impacts and those that will be irremediable if there is a delayed response.[200]

3.2.6 Summary

The GPBHR attaches a lot of significance to the protection of human rights. It places a positive duty on entities to consider its human rights impacts and act accordingly within their specific context.[201] Although this is a positive notion, some of the provisions are phrased so broadly that it arguably borders on being vague. While it is argued to be a positive element that a lot of scope is given to entities to build their own framework around the skeleton of the guiding principles, it is also argued that it is so broadly formulated that at times it lacks clear guidance. Words such as "adequate", "formally" and "sufficient" without any clear indication as to what would satisfy the meaning of said terms, are used throughout. All rather subjective terms, it arguably leaves too much room for interpretation.

In the following paragraphs, provisions regarding community development will be discussed. It should be stressed once more that development initiatives are by no means a substitute for respecting human rights.[202] The following clauses of ISO 26000 should be interpreted by mining entities as guidance on how to optimise their CSR efforts *in addition to* human rights compliance.

3.3 ISO 26000 and CSR

The ISO is a body that compiles standards to improve international trade.[203] ISO 26000 (hereafter the Standard) is a guidance standard on social responsibility.[204] It is a voluntary standard designed for use by any organisation operating in any circumstances.[205] It may be used by business leaders to plan and implement actions to improve their economic, social, and environmental sustainability.[206] Very

---

199 A II(23)(b) of the *GPBHR*.
200 A II(24) of the *GPBHR*.
201 Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 2-4;6.
202 See 2.3; 3.2 and 4.3.2.
203 ISO Date Unknown http://www.iso.org/iso/home/standards/benefits ofstandards.htm.
204 For purposes of the Standard, social responsibility refers to the responsibility of an organization for the impacts of its decisions and activities on society and the environment through transparent and ethical behaviour that contributes to sustainable development. This includes health and the welfare of society; takes into account the expectations of stakeholders; compliance with applicable law and should be consistent with international norms of behaviour which should be integrated throughout the organization and practised in its relationships. This description is contained in *ISO 26000* clause 2.1.18.
205 Ecologia *Handbook for Implementers of ISO 26000* 3.
206 Ecologia *Handbook for Implementers of ISO 26000* 3.

importantly, the standard may not be used for certification - it merely serves as a guide.[207] While the Standard does not provide specific instructions or require defined outcomes, it offers broad guidance.[208] Business enterprises that include the ISO standards in their operations have the opportunity to identify their own priorities and act on them. This Standard models a spirit of continuous improvement, and entities are thus urged to assemble their unique CSR programmes in that same spirit.[209]

The Standard has a number of key focus areas that are addressed throughout. These are organisational governance; human rights; labour practices; the environment; fair operating practices; consumer issues; community involvement and -development.[210] Even though the content of the clauses on human rights in the Standard are no less important or relevant than those contained in the GPBHR, for purposes of this study only provisions regarding community involvement and development will be sought out in the Standard. Space limitations allow this study only to explore the most meaningful (in terms of this study specifically) contributions of each instrument, and it is argued that the clauses that follow are unique in their scope and therefore selected to be included in this section.

3.3.1 Community development clauses

Clause 6.8 in the standard identifies specific community development issues. The most relevant of these issues are examined in the following paragraphs.

3.3.1.1 Community involvement

Community involvement is a pro-active outreach to the community within which a business operates.[211] It is not a substitute for taking responsibility for human rights impacts but a way for organisations to familiarise themselves with the development needs of the community.[212] This corresponds with article II(12) of the GPBH, emphasising that there is no substitute for refraining from violating human rights.

Proposed action for organisations to foster good relationships with local communities and promote community involvement includes five suggestions. Firstly, systematic consultation with representative community groups should be held in order to

207 Ecologia *Handbook for Implementers of ISO 26000* 4.
208 On the human rights front, the *GPBHR* and *ISO 26000* may be used in combination in order to obtain a more comprehensive and relevant set of guidelines.
209 Ecologia *Handbook for Implementers of ISO 26000* 3-4; Pojasek 2011 *Environmental Quality Management* 85;
210 Ecologia *Handbook for Implementers of ISO 26000* 5.
211 *ISO 26000* clause 6.8.3.2.
212 *ISO 26000* clause 6.8.3.2; This is reiterated in a II(12) of the *GPBHR* and *Commentary*.

establish priorities for social investment.[213] Vulnerable groups should enjoy special attention in order to respect their rights and expand their options. Secondly, indigenous people should be consulted prior to development in order to exchange clear and complete information on the terms and conditions that affect them.[214] The resettlement process of mining communities may, be addressed here, for instance. Thirdly businesses may contribute to development objectives of communities by participating in appropriate local associations.[215] Fourthly, and arguably very importantly especially in developing African countries,[216] businesses should maintain transparent relationships with local government officials, free from improper influence and bribery.[217] Again, the spirit of the UN Global Compact can be felt here regarding corruption, as contained in the tenth principle.[218] Lastly, policy formulation and the establishment, implementation, monitoring and evaluation of development programs should enjoy active contributions.[219] It is imperative for mining companies to build and maintain positive relationships with local communities in order to sustain their social license to operate and avoid possible conflicts. In order to achieve a positive relationship, effective communication and involvement is extremely important.[220]

3.3.1.2 Education and culture

The preservation and promotion of culture and promotion of education compatible with respect for human rights have proven to have positive impacts on social cohesion and development.[221] Ensuring inclusive and equitable quality education and promote lifelong learning opportunities for all is also one of the newly introduced[222] sustainable development goals (SDG).

213 *ISO 26000* clause 6.8.3.2; Entities should take a proactive approach by involving the public from the initial stages of new projects. Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 10,16; Ajikake 2015 *ScholarWorks* 143; See also 5.3.2 and 5.3.3.

214 Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative* 10,16; See section 5 of this study for practical examples.

215 *ISO 26000* clause 6.8.3.2; Ajikake 2015 *ScholarWorks* 143-145.

216 Due to the fact that African countries are prone to corruption. See 4.2.3.

217 *ISO 26000* clause 6.8.3.2. See 4.2.3. Sub-Saharan African countries have are considered weak governance zones and therefore more susceptible to corruption.

218 The UN Global Compact explains that: “Corporate sustainability starts with a company’s value system and a principled approach to doing business. This means operating in ways that, at a minimum, meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption.” The final of the ten principles states that: “Businesses should work against corruption in all its forms, including extortion and bribery.” UN Date Unknown https://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle10.html.

219 Ajikake 2015 *ScholarWorks* 143, 144.

220 See 5.2.3; 5.4.

221 *ISO 26000* clause 6.8.4.1; Ajikake 2015 *ScholarWorks* 144.

222 The SDGs are a set of 17 goals that were introduced in 2015, expanding on the 2001 MDGs due to expire end of this year. There is a broad agreement that while the MDGs provided a focal point for governments, they were too narrow. The SDGs have specific targets for each goal and are set

Entities should promote and support education and engage in actions to improve the quality of and access to education.[223] Thereby they will promote local knowledge and eradicate illiteracy. The Standard explains that entities may do this by encouraging the enrolment of children into formal education[224] and thereby contributing towards eliminating barriers preventing children from receiving an education. While entities may contribute to society, local cultures should be respected and supported to prevent discrimination and ensure respect for human rights.[225] An educated community not only benefits the individuals in that community but also the mine due to the greater availability of educated and skilled labour.[226]

3.3.1.3 Employment creation and skills development

Employment creation contributes to the alleviation of poverty, which is one of the MDGs[227] and, more importantly, consistent with the SDGs.[228] Skills development is an essential component of employment promotion and of assisting people to secure decent and productive jobs. It is vital to economic and social development.[229] In mining especially, it is important to enable local community members to adapt to the economic and environmental change that inevitably accompany mining activities.[230]

Here, organisations should analyse the impact of its investment decisions and, where possible, make direct investments that contribute to employment creation. They may also consider taking part in local and national skills development programs such as apprenticeship programs, skills recognition programs and the like. Such programs may also be developed in the community where skills are inadequate independently or in partnership with others in the community. A mine brings a certain set of skills to the area in which they develop. There is an opportunity to transfer some of those skills onto local individuals. Mines can run training programs that involve the community and enables them to work on the mine. This way, even when the mine

---

lead policy making towards 2030. The SDGs will enter into force in January 2016. Ford 2015 http://www.theguardian.com/global-development/2015/jan/19/sustainable-development-goals-united-nations.

223 See 5.3.3.3

224 *ISO 26000* clause 6.8.4.1

225 *ISO 26000* clause 6.8.4.2

226 When the education and skill level of the local population in mining communities rise, it also benefits mining entities due to the greater availability of educated and skilled labour. See 5.3.3.2; 5.3.3.3.

227 The MDGs are eight goals set to be achieved by the year 2015, which respond to the world's main development challenges. The MDGs are drawn from the actions and targets contained in the *Millennium Declaration* (2000).

228 SDG 1. Ford 2015 http://www.theguardian.com/global-development/2015/jan/19/sustainable-development-goals-united-nations.

229 *ISO 26000* clause 6.8.5.1.

230 See par 1.1.

closes, that individual is left with a set of skills and experience that opens up more employment possibilities at similar mines. When local communities need to be displaced, mines can invest in training programs that will assist them in adapting to a new environment. This could consist of sponsoring bursaries for higher education or presenting business management courses, to name some examples.

3.3.1.4 Technology development and access

To help advance economic and social development, communities need, among other, safe access to modern technology. Organisations can contribute to the development of the communities in which they operate by applying specialised knowledge, skills and technology in such a way as to promote human resource development and training in modern technology.[231]

An organisation can contribute to improved access to these technologies through training, partnerships and other actions that are deemed fit.[232] Low cost technologies with high positive impact on poverty and hunger eradication may be a meaningful contribution.[233] In the mining context, agricultural land is often obtained from local community members for mining. A positive way to counter this loss is for entities to introduce more efficient agricultural technology, for example, to improve the life of community members when they are relocated.[234] This could promote food security through new technologies.[235]

3.3.1.5 Health

Health is an essential element of life in society and is a recognized human right.[236] Threats to health can have a severe impact on the development of a community. Organisations should therefore, as far as possible, refrain from negatively affecting the health of local communities where they operate and rather contribute to the promotion of good health.[237]

Organisations should seek to minimise or eliminate the negative health impacts of any of its operations.[238] They should consider promoting good health by, for instance,

231 See 5.3.3.1; 5.3.3.2.
232 *ISO 26000* clause 6.8.6.1. See 5.3.3.1.
233 SDGs 1 and 2. Ford 2015 http://www.theguardian.com/globaldevelopment/2015/jan/19/sustainable-development-goals-united-nations.
234 See 5.3.3.1.
235 See 2.5.2.
236 *ISO 26000* clause 6.8.8.
237 *ISO 26000* clause 6.8.8.1; Ajikake 2015 *ScholarWorks* 145.
238 Ajikake 2015 *ScholarWorks* 145.

contributing towards access to vaccinations and medicine. Awareness is a further tool to be used to educate communities on the prevention and early detection of major diseases such as HIV/AIDS and Malaria.[239] Supporting access to essential health care, clean water and proper sanitation could also be meaningful way to prevent illness.[240]

3.3.1.6 Social investment[241]

In identifying opportunities for social investment, an organisation should align its contribution with the needs and priorities of the communities in which it operates.[242]

It should also encourage community involvement in its projects as this can help projects to survive even when the organisation is no longer involved.[243] Social investments should prioritise projects that are viable in the long-term and contribute to sustainable development. For mining entities this provision holds that social investment projects should be constructed in such a way that it does not cultivate a culture of dependency.[244] Communities should be able to reap the benefits of social investment, even after mine closure, and should be capable of maintaining it without the mining entity's help.[245]

When planning social investment projects, entities should take into account the promotion of community development. When initiatives are in place, entities should assess them, give feedback to communities and members of the organisation and make improvements where needed. Projects contributing to essential needs such as access to food and clean water may be meaningful, especially for vulnerable, low-income groups.[246]

With the MDGs due to expire at the end of 2015, sustainable social development has been an important topic and one that is enjoying the spotlight while progress is being

239 See 5.3.3.4.
240 *ISO 26000* clause 6.8.8.2; see 5.3.3.4.
241 "Social investment occurs when organizations invest resources in infrastructure and other programs designed to improve the social aspects of community life. Some of the investments could be in training, education, healthcare, culture, infrastructure development, income generation, improvements of access to information and other 146 economic or social development activities." Ajikake 2015 *ScholarWorks* 145.
242 *ISO 26000* clause 6.8.9.1.
243 See 1.1 and 5.3.
244 See1.1. A very important aspect in social investment is that communities should not become dependent on the organisation's philanthropic activities, presence or support.
245 "Sustainable long-term projects, *ISO 26000* positioned, are those with strong community involvement in its design and implementation because they tend to survive and prosper long after the investing organization is no longer involved." Ajikake 2015 *ScholarWorks* 146.
246 *ISO 26000* clause 6.8.9.2.

measured.[247] Entities have the opportunity and arguably responsibility to play an active role in reaching development goals. Skills development, education and employment opportunities are all linked (whether directly or indirectly) to poverty alleviation. What is encouraging to see in the ISO 26000 is the express rejection of a culture of dependency.[248] It implies throughout that communities should be educated, trained and empowered to enable them to acquire a set of skills and apply it independently of a specific project/job. This approach is encouraged, as opposed to compensating (or rather "paying off") community members for the inconvenience caused. This means when a mine closes, a community of skilled or at least better educated individuals are left behind. A community that is able to find employment elsewhere and take care of themselves and as such move forward.

3.4 The legal enforceability of CSR guidelines

Some authors[249] are of the opinion that entities should resist international CSR initiatives that have a mandatory effect. Roberts[250] argues that although the ISO 26000,[251] for example, states that it is merely a guideline and not a certification standard,[252] it will have a mandatory effect if the principles are legislated. This will mean that all entities, regardless their size or nature, will be legally obligated to follow a 'one-size-fits-all' approach. He further argues that if made mandatory,[253] CSR initiatives, such as the ISO 26000, create a stepping stone for corruption due to foreign investors then effectively paying host country governments to operate on their soil.[254]

While the original idea of CSR is a positive one[255] and has the potential to further development, especially through FDI in developing countries, Roberts does make a

---

247 As mentioned, the MDGs are being replaced by the SDGs, aiming at getting all the countries of the world to participate in affecting sustainable development. Sachs 2012 *The Lancet* 2206; Ford 2015 http://www.theguardian.com/global-development/2015/jan/19/sustainable-development-goals-united-nations

248 Ajikake 2015 *ScholarWorks* 146; *ISO 26000* clause 6.8.9.1.

249 Roberts 2010 *Backgrounder* 1-7; Visser 2013 http://www.csrwire.com/blog/posts/974-a-giant-leap-backwards-on-csr-indias-great-missed-opportunity; KING committee, see par 4.2.

250 Roberts 2010 *Backgrounder* 1-7.

251 *ISO 26000*:2010.

252 ISO 2010 http://www.iso.org/iso/home/news_index/news_archive/news.htm?refid=Ref1378

253 In India, the country's *Company Act* of 2013 made CSR mandatory prescribing how much entities should spend, who should spend it and where it should be spent. India was the first country to take the bold step of mandating CSR. Mehta and Aggarwal 2015 *International Journal of Research in Business Management* 21,22.

254 Visser, commenting on the CSR mandate in India, is of the opinion that by regulating CSR directly, India is more likely to create bureaucracy, stifle innovation and invite corruption. Visser 2013 http://www.csrwire.com/blog/posts/974-a-giant-leap-backwards-on-csr-indias-great-missed-opportunity

255 Smith 2003 *Center for Marketing Working Paper* 2.

valid and relevant argument. In developing countries especially, corruption is an obstacle to development[256] as funds that should be invested in development, poverty alleviation or conservation do not necessarily trickle down to the intended recipients.[257] If what is meant to be principles and guidelines for entities to practise business responsibly within each entity's unique context is made a purely legal issue, governments fraught with corruption may take advantage of such circumstances.

On the other hand, if CSR is purely voluntary, without any kind of binding accountability, it may arguably hold back potential development. The reason for this lies therein that entities that might have been moved by CSR instruments to invest in socially responsible practices will have less reason to do so if it is not binding at least to some extent. Section 4 of this study explores further the link between voluntary CSR initiatives and the law, as well reporting measures that provide for accountability.

3.5 Key findings on the GPBHR and ISO 26000

Although neither the ISO 26000 nor the GPBHR contains provisions for FDI or MNEs specifically, both instruments imply it. The GPBHR clearly states that it applies to all business entities.[258] It also continually states that measures and provisions should be applied according to the specific context within the business' operations. Likewise, the ISO 26000 explicitly states[259] that it is intended for use by any organisation, operating in any circumstances. Thus, while it does not find specific application on MNEs, MNEs are not expressly excluded and does fall within the broad scope of application of both these frameworks.

One of the key similarities in these two documents is the emphasis on flexibility. There is a clear resistance towards a rigid, "one-size-fits-all" approach CSR. Businesses are encouraged to assess, in detail, their unique circumstances. According to this assessment, including their possible negative impacts, development opportunities, available funding and any other relevant factors, they are encouraged to compile action plans unique to their operations.

---

256 Lawal 2007 *Humanity and Social Sciences Journal* 4; Bamidele 2013 *The African Symposium* 42 -56.

257 Bamidele 2013 *The African Symposium* 42 -56. Kofi Annan, former Secretary General of the United Nation, put the cost of corruption succinctly in his foreword to the 2004 United Nations Convention against Corruption. Calling corruption an "insidious plague that has a wide range of corrosive effects on societies." he added that it diverts funds intended for development, undermines the ability of governments to provide basic services, feeds inequalities and injustice and discourages foreign aid investment." *UN Convention against Corruption* (2004).

258 The *GPBHR* under General Principles 1.

259 Ecologia *Handbook for Implementers of ISO 26000* 3.

Also noteworthy is the fact that neither of the documents may be used for certification. Both simply provide guidance as to how action should be affected. The action should then speak for itself.

There are also a few key differences between the GPBHR and ISO 26000 regarding the contributions they have made to the international framework for CSR. The main focus of the GPBHR falls solely on human rights issues. For mining entities in particular, the relevant sections focus on refraining from infringing on human rights and responding to and remediating infringements effectively, should it arise. The ISO 26000 provides comprehensive guidance in terms of a number of specific focus areas. Human rights is one of these areas but the Standard also includes a comprehensive section on community development, among other. The ISO 26000 makes reference to human rights as a specific area of focus but it also goes beyond that to guide business entities as to how it can make active contributions to improving the quality of life of host communities affected by their operations. It is a much longer, more detailed document than the GPBHR, covering a wider array of topics.

In this light, the relationship between these two documents may be compared to the relationship between human rights and human security. While the two concepts are deeply interwoven and overlapping in some instances, one is focused solely on specific fundamental rights and the protection thereof, while the other is concerned with development *beyond* the scope of human rights. In this analogy, the GPBHR represents human rights, while the ISO 26000 arguably represents human security. Although no mention to human security as such is made, the ISO 26000, especially, conveys the concept of human security and strongly prioritises sustainable development.

3.6 Conclusion

Very few, if any, international instruments are flawless. The GPBHR and ISO 26000 are no exception. One might argue that some provisions are superfluous, merely repeating what has already been established, while others are lacking, being unclear in its implications and extent. The question this section aimed at answering was what the two documents examined in this section contributed to the international CSR framework.

It is argued that the specific provisions examined in this section do embody an overall positive contribution to the current international framework for socially responsible business. What is more, entities may incorporate *both* instruments into their CSR practices, which will ensure a more comprehensive action plan that focuses on both the protection of human rights and the sustainable development of local communities, *beyond* human rights. The GPBHR and ISO 26000 are compatible.

The GPBHR, albeit arguably fairly broad and vague at times, offers a very business-orientated, practical method to addressing human rights impacts. This process is referred to as the human rights due diligence. It is commendable for a few reasons. The first is that it takes a concept, due diligence,[260] which is familiar to businesses and relates it to arguably a less familiar concept to business, namely human rights. It is likely to make it easier for business men (which is arguably the intended audience) to grasp. It is important to remember that it is not always legal experts that are responsible for interpreting and incorporating international principles into business strategies. The second is that it clearly maps out the whole process from start to finish – from pre-production consultations, to drawing up plans for avoiding human rights infringements, to remediating human rights violations that do occur. Lastly, it points to a very pro-active approach. It is precautionary, acknowledging that prevention is better than cure. It encourages entities to manage their human rights impacts *before* someone suffers.

Both the ISO 26000 and the GPBHR portray the need for the protection and empowerment of individuals exposed to the impacts of business and, in this particular case, mining. It offers clear guidance to entities as to how they can practically implement CSR.

The next step in the CSR process is reflecting on the action that has been taken and presenting the content and outcome of such actions to stakeholders. The following section will therefore continue to examine relevant provisions in two of the relevant and most recent international instruments regarding reporting on CSR. These are KING III and the G4.

260 Due diligence is a term businessmen are familiar with. It refers to the duty of a firm's directors and officers to act prudently in evaluating associated risks in all transactions. Business Dictionary Date Unknown http://www.businessdictionary.com/definition/due-diligence.html.

4 Reporting

4.1 Introduction

After considering the relevant provisions in the GPBHR and ISO 26000, it is apparent that stakeholders need to be able to determine whether these provisions are being implemented. Sustainability reporting and, more recently, integrated reporting,[261] aids in providing stakeholders with the information necessary to form an informed opinion regarding an entities operations.

The question this section will attempt to answer is what the most recent international trends are in reporting and how it should be practically implemented by mining MNEs. Two of the most relevant reporting standards[262] will be briefly discussed in this regard in order to establish the implications of claiming to be a socially responsible enterprise. The reporting standards to be examined are the *King Code on Corporate Governance* of 2009 (hereafter KING III)[263] and the Global Reporting Initiative's (GRI) *G4 Reporting Principles and Standard Disclosures* (hereafter G4)[264] and *G4 Implementation manual*.[265]

4.2 KING III

KING III, along with the *King Report on Governance for South Africa* (hereafter the report), is a South African document compiled by the KING committee,[266] in cooperation with the Institute of Directors in Southern Africa (IODSA). It is a document that applies to any size and kind of South African enterprise, meaning public, private or state owned companies.[267] The latter provision is one of the alterations made to the preceding KING I and KING II documents - where in the past the manner and form of incorporation of the company and whether it was private-, public- or non-profit sector were points of consideration, KING III includes all companies regardless of such considerations.[268] It also applies to multinational

261 See 4.2.1.
262 Relevance to this study specifically. *KING III* is a Southern African document which finds application on South African enterprises and the G4 is the latest reporting guide compiled by the GRI, which is a globally respected reporting body, and finds global application, also on South African MNEs. *KING III* also makes reference and strongly supports the GRI's sustainability reporting standards and incorporates it in their *KING III Report* under principle 9.2, which deals with sustainability disclosure. *KING III Report* 109.
263 IODSA *King Code on Corporate Governance* (2009) (hereafter *KING III*).
264 *GRI:G4 Reporting Principles and Standard Disclosures* (2013).
265 *GRI:G4 Implementation manual* (2013).
266 The KING committee is a committee of experts from different fields that work together, without remuneration, to periodically publish the KING Code of Governance. The latest of these is the *KING III*, which came into effect on 1 March 2010. *KING III* 4-5.
267 *KING III* 16.
268 *KING III* 16.

companies of which the parent company is incorporated in South Africa.[269] It is therefore relevant to this study because it explains the domestic application of CSR and subsequent reporting frameworks for South African incorporated MNEs.

In the introductory pages, KING III explains clearly to businesses which principles have legal implications or are legally binding by using the word "must". Recommended practice is indicated by the word "should". The explanation is a positive inclusion considering business men, who are arguably the audience, are not necessarily inclined to understand the full context of the law and therefore able to distinguish between guidelines and binding principles. The fact that the code also incorporates the relevant legislative sections contained in domestic legislation,[270] provides ease of reference. Where one would otherwise have to research each possibly relevant act for applicable sections, the code makes reference to specific legislative sections that require attention. This makes it a more compact framework for South African entities and MNEs on which it finds application.

4.2.1 The objective of KING III

The philosophy of the report revolves around leadership, sustainability and corporate citizenship.[271] It refers to entities' duty to take responsibility for their economic-, environmental- and social impacts.

The statutory regime, as applied in some parts of the world,[272] is known as 'comply or else', which basically means there are legal sanctions for non-compliance.[273] There is quite some criticism against this approach. The KING committee is of the opinion that the greatest flaw of this approach lies therein that it is illogical to force a 'one size fits all' regime onto different entities that vary so greatly in the type of business carried out.[274] Furthermore the implications for compliance are extensive. It is both time consuming and expensive and it could easily happen that companies' focus are so set on compliance that it undermines enterprise.[275] If an enterprise fails financially due to compliance issues, the very instruments fighting for CSR and development defeat its purpose. If the enterprise fails, it has no chance of contributing in any way

269 Foreign subsidiaries of local companies should apply the Code to the extent prescribed by the holding company and subject to entity-specific foreign legislation. *KING III* 16.
270 Especially those contained in the *Companies Act* 71 of 2008.
271 *KING III* 9.
272 Such as the USA, who implemented the *Sarbanes-Oxley Act* (SOX), which is also known as the 'comply or else' regime. *KING III* 5.
273 *KING III* 3.
274 *KING III* 5.
275 *KING III* 5; Roberts 2010 *Backgrounder* 6.

to development. As Roberts[276] states, the very fact that a company invests in a host country means that it is already contributing to the economic development of that country. It creates employment, skills development and revenue, all of which help alleviate poverty and invest in the future of individuals.[277]

The 56 Commonwealth countries, including South Africa, taking a voluntary stance, in addition to certain governance issues that are indeed legislated,[278] opted for the 'comply or explain' approach.[279] KING II was in line with this method of reporting. At the UN, however, after much debate,[280] several representatives were opposed to the term 'comply', arguing it connotes to strict adherence and leaves no room for flexibility.[281] Taking all of this into consideration, the KING committee continues to believe that there should be a code of principles on a non-legislative basis. In drafting KING III it was decided that the most appropriate phrasing for their current approach would be 'apply or explain', focusing on a more practical way of meeting objectives.[282] That being said, the code is not entirely without legal backing.[283] Companies listed on the JSE are required by the JSE Listing Requirements[284] to either apply the principles or explain why and to what extent it has not been applied.[285]

Another positive development contained in KING III is the integrated reporting system. As stated in the report, and in conformation with the current international line of thought,[286] "planet, people and profit are inextricable intertwined." [287] The integrated reporting system basically entails that businesses should elaborate on

276 "U.S. businesses should focus on their primary purpose of providing high quality goods and services to consumers at the lowest cost with the highest possible profit for their shareholders. Corporations can best help people in developing countries by trading with them and investing in their countries, which will create sustainable private-sector jobs." Roberts 2010 *Backgrounder* 1-7.
277 Roberts 2010 *Backgrounder* 1-7; See 1.1 and 5.3.
278 Some acts containing relevant provisions, as contained in *KING III*, include the *Companies Act* 71 of 2008 and the *Public Finance Management Act* 1 of 1999.
279 *KING III* 5.
280 *KING III* 5.
281 *KING III* 5.
282 *KING III* 6.
283 *KING III* 6-7.
284 *JSE Listing Requirements* https://www.jse.co.za/content/JSEEducationItems/JSEListingsRequirements.pdf.
285 Companies seeking a primary listing must comply in full with all the listing requirements. JSE Listing Requirements par 7.F.5, 7.F.6 and 18.2.
286 Wirtenberg 2014 *Building a Culture for Sustainability: People, Planet, and Profits in a New Green Economy* 2-3.
287 *KING III* 11.

their "triple bottom line",[288] meaning their social-, environmental-, and economic impacts.

Due to the newly incorporated integrated reporting system, stakeholders, and especially investors, reviewing annual reports are now inevitably faced with an entity's overall performance.[289] For the shareholder that values responsible investment it is now easier to review the company's performance as a whole, having both financial performance and corporate governance included in one report. The shareholder that might not necessarily have considered corporate governance otherwise, is now also more likely to become aware of developmental-, environmental- and social issues whether he set out to or not. This is a positive contribution by KING III. All stakeholders are now forced to consider the positive and negative effects a company has on the environment and the community in which it operates. This is directly linked to the well-being of the company considering it is the same stakeholders reading the report whose support, whether financially or otherwise, is needed for the company to prosper.

It is especially good news for the investors of MNEs, where the company's operations are often not where investors reside. This often means that it is easier for the company to shield itself from bad publicity in the respective countries where investors reside.[290] If a South African company operating in Ghana is not behaving responsibly, for example, it might never reach South African news. South African shareholders may never even become aware of irresponsible corporate behaviour if they are not inclined to research it specifically. The integrated report ensures that remote investors or shareholders become aware[291] of both the positive and negative impacts of entities operating in other countries than their own even if it does not necessarily feature in their own media.

288 *KING III* 11; Also referred to as "profit, planet and people" Wirtenberg 2014 *Building a Culture for Sustainability: People, Planet, and Profits in a New Green Economy* 2-3. See 2.4.

289 Eccles and Saltzman 2011 *Stanford Social Innovation Review* 58.

290 "Western public opinion is rarely informed about the negative consequences of … mining projects." Terminski 2012 *Social Science Research Network* 22-27; Eccles and Saltzman 2011 *Stanford Social Innovation Review* 58.

291 Eccles and Saltzman 2011 *Stanford Social Innovation Review* 58.

4.2.2 The legal link

4.2.2.1 To legislate or not to legislate

The question of whether corporate governance codes should be legislated, and therefore be legally enforceable on a domestic level, has been hotly debated.[292] In the United States of America (USA) it is in fact legislated and it has unleashed an extensive amount of criticism.[293] The main criticism against a legislated CSR approach is that it boils down to a one-size-fits-all approach, which is not ideal considering every business is different. From size, to industry to financial position and everything in between.[294] In the USA the *SOX Act*[295] has resulted in certain entities not being able to reach the high standards set by the act and their financial performance has suffered because of it.[296] The KING committee continues to believe, also for these reasons, that a code of governance principles should exist on a non-legislative basis.

4.2.2.2 Corporate governance codes and the law

Although corporate governance codes may not be legislated, either in its entirety of partially,[297] it does not operate separate from the law. The KING committee so aptly states that it is "entirely inappropriate to unhinge governance from the law."[298] This is because of directors' and other officers' responsibility to discharge their legal duties.[299] These duties are separated into two groups – the duty of care, skill and diligence and fiduciary duties.[300] Corporate governance, as far as applicable legislation is concerned, mainly involves the establishment of structures and processes, including appropriate checks and balances. This enables directors to perform their legal responsibilities, and oversee compliance with legislation.

In addition to compliance with legislation, the criteria of good governance codes will be considered to determine what an acceptable standard of conduct is for directors.[301] The more established certain governance practices become, the more

292 De la Cuesta Gonza´lez and Martinez 2004 *Journal of Business Ethics* 276; Broomhill 2007 *Don Dunstan Papers* 16-17.
293 Roberts 2010 *Backgrounder* 1-7; *KING III* 5.
294 *KING III* 5.
295 *Sarbanes-Oxley Act* of 2002; *KING III* 5.
296 *KING III* 5; DeFond, Hung, Carr and Zhang 2011 *Accounting Horizons* 485.
297 While a specific governance code as a whole may not be legally binding, some of its content might overlap with domestic legislation. Examples of such legislation in South Africa are the *Companies Act*, *PAJA* and *The Constitution of the Republic of South Africa*, 1996.
298 *KING III* 6.
299 *KING III* 6.
300 *KING III* 6.
301 *KING III* 7.

likely a court would be to regard conduct that conforms with these practices as meeting the required standard of care.[302] Corporate governance practices and codes to the like therefore lift the bar of the regarded appropriate standards of governance. Consequently, failure to meet a recognised standard of conduct, albeit not legislated, may render a board or individual director liable at law.[303]

4.2.3 Specific principles relating to CSR disclosure

While no specific reference is made in the KING III Code to the mining industry, the code does provide that it does find application in any sector.[304] Thus, all provisions may be read as to apply within the mining context. The content of the code is divided into nine[305] chapters laid out in three columns, clearly showing the governance element, principle(s) relating to it and the recommended practice regarding the principles. Some of the most relevant[306] principles follow.

Chapter one deals with ethical leadership and corporate citizenship.[307] The first[308] of three principles in this chapter states that the board should provide effective leadership based on an ethical foundation.[309] The KING III Report (hereafter the report)[310] provides context to this principle. The first note[311] under this principle explains that good corporate governance[312] is essentially about responsible leadership. Responsible leadership in turn rests on the ethical foundation of four topics – responsibility,[313] accountability,[314] fairness[315] and transparency.[316] Through

---

302 *KING III* 6.
303 *KING III* 7.
304 *KING III* 16.
305 These are: Ethical Leadership and Corporate Citizenship; Boards and Directors; Audit Committees; The Governance of Risk; The Governance of Information Technology (IT); Compliance with Laws, Rules, Codes and Standards; Internal audit; Governing Stakeholder Relationships; Integrated reporting and disclosure.
306 Relevant to this study specifically. Due to the nature and scope of the study only a few principles will be analysed.
307 *KING III* 19.
308 Principle 1.1 *KING III* 19.
309 *KING III* 19.
310 IODSA *KING Report on Corporate Governance* (2009) (Hereafter *KING III Report*).
311 *KING III Report* 20.
312 The report states that “good corporate governance is, in essence, a company’s practical expression of ethical standards.” *KING III Report* 21.
313 The board should assume responsibility for the assets and actions of the company and be willing to take corrective actions to keep the company on a strategic path that is ethical and sustainable. *KING III Report* 21.
314 The board should be able to justify its decisions and actions to shareholders and other stakeholders. *KING III Report* 21.
315 The board should ensure that it gives fair consideration to the legitimate interests and expectations of all stakeholders of the company. *KING III Report* 21.
316 The board should disclose information in a manner that enables stakeholders to make an informed analysis of the company‘s performance, and sustainability. *KING III Report* 20; 21.

their strategies and operations, responsible leaders build sustainable businesses.[317] The underlying principle of sustainability is further underpinned by the call for leaders to reflect on their role in society and on both the short- and long term effects that their decisions have on the economy, society and environment.[318] It is stated that responsible leaders also do not compromise the livelihood of future generations.[319]

The report also imposes a responsibility on business leaders that stretches beyond legal compliance. It provides that responsible leadership is about doing business *ethically* rather than simply being satisfied with legal compliance. Lastly, responsible leaders "embrace the shared future with all the company's stakeholders".[320] The report stresses that it is the board's responsibility to establish a culture of ethical conduct throughout the business and incorporate that culture in a code of conduct. When elaborating on what an "ethical corporate culture" is, the report states that it is more than social philanthropy or charitable donations.[321] Entities need the cooperation and support of stakeholders, including local communities, to operate. When a business is run ethically, it will earn its licence to operate.[322]

The second principle[323] in this chapter provides that the board should ensure that the company is and is seen as a responsible corporate citizen. Although a business is an economic entity, it is also regarded a corporate citizen. From this emanates its social and moral standing and its associated responsibilities.[324]

The report, once again, highlights the importance of sustainability under this principle. By continually considering the triple context[325] and looking beyond immediate financial gain, the company protects it reputation, which is its most valuable asset. A sustainability approach, as reflected in an integrated report, builds trust.[326] Building on the foundation of ethics, the report states that it is unethical for entities to expect future generations to carry the costs and burdens, within the triple context, of its operations.[327] There is an implied ethical relationship between entities

317 *KING III* Report 20.
318 *KING III Report* 20.
319 *KING III Report* 20.
320 *KING III Report* 20.
321 *KING III Report* 20
322 *KING III Report* 21.
323 Principle 1.2 *KING III* 20.
324 *KING III Report* 22.
325 The economy, environment and society. *KING III Report* 22.
326 *KING III Report* 22.
327 *KING III Report* 22.

and the communities in which they operate and therefore entities should invest in and enhance the economy, environment and society.[328]

This principle also touches on human rights. The report provides that entities should:

> …respect and realise universally recognised, fundamental human rights. To realise human rights in any society, companies (and other institutions) should respect and recognise the basic interests of individuals and communities by creating and sustaining conditions in which human potential can develop. This entails liberating people from unfair discrimination and empowering them to take control of their own lives through, for example, access to education, health care and other resources.[329]

While it is agreed that entities are, not only ethically but also legally, bound to respect human rights and refrain from human rights infringements, it is arguably not reasonable to burden entities with the responsibility of realising basic human rights. Considering the application of human rights in South Africa,[330] it is the state's duty to realise human rights.[331] It is imperative that entities refrain from violating human rights. Furthermore, it is desirable that entities contribute, within their economic ability, to the development of individuals and therefore the realisation of human rights. It is argued, however, that it should not be the responsibility of a business entity to fulfil the state's duties. Unfortunately, as the report states,[332] there are many economic, environmental and social challenges that many communities face. This is despite the state's responsibility to address some of these challenges. It has become widely accepted[333] that business entities should respond to these challenges. In parts of the world, and especially parts of Africa, states are not realising human rights and that leads to the expectation by stakeholders of business entities having to fulfil those duties.[334]

This is arguably an obstacle to further development and the promotion of human security. The contributions made by business entities in circumstances where states fail to fulfil their duties, effectively help individuals to get to the baseline and merely survive by having their most basic needs fulfilled. The greatest opportunity of development programmes arguably lies therein that development beyond human

---

328 *KING III Report* 22.
329 *KING III Report* 22 - 23.
330 As provided for in the *Constitution of the Republic of South Africa*, 1996 and the *Bill of Rights* contained therein.
331 The *Constitution of the Republic of South Africa*, 1996 stipulates in s 7(2): "The state must respect, protect, promote and fulfil the rights in the *Bill of Rights*."; The Constitution places a specific duty on the State to take positive measures in order to give effect to some of the constitutional rights, in particular the second and third generation (socio-economic) fundamental rights. Olivier 2002 *Victoria U. Wellington L.* 119.
332 *KING III Report* 23.
333 *KING III Report* 23.
334 *KING III Report* 23.

rights may be affected. The concept of human security may assist in illustrating this argument. When basic human rights are already being realised, CSR programmes can build on a strong foundation to better the quality of such realisation.

Let the following example illustrate the above point. Consider the right of access to water.[335] If a mine, after assessing the needs of its host community, finds that it will be most meaningful to contribute to the access to potable water, the action (or inaction) of the state could affect the value added by such contribution. If the state has indeed realised this basic human right by way of putting the infrastructure in place for access to clean water at a central point within the community, the mine may contribute towards extra water points to those furthest from the current source. If no infrastructure is in place, the same amount of money available would first have to be directed towards establishing infrastructure. Thus, the contribution may provide either accessible water, contributing to individuals' survival, or *easily* accessible water, contributing to individuals' quality of life. Therefore, the state should be encouraged to assume its own responsibilities to prevent being an obstacle to development.

What is also important to note in this chapter is that the report clearly states that the responsibility to respect and contribute to the realisation of human rights stretches beyond the borders of South Africa.[336] The role of South African companies in other African countries is of specific increasing concern. The OECD characterises many countries in sub-Saharan Africa as "weak governance zones".[337] Companies operating in these countries face unique ethical challenges, such as becoming accomplices, albeit unwittingly, to human rights violations. Along with climate change, human rights in weak governance areas are, according to the report, a key CSR focal point for the next decade. Entities should be encouraged to approach their operations in such weak governance zones with "awareness, circumspection, and sensitivity to local contexts, drawing from international best practice."[338]

4.2.4 Summary

KING III has a number of noteworthy implications for South African MNEs especially. Due to the JSE listing requirements, entities desiring to maintain their primary listing on the JSE are *required* to "apply or explain (why they have not applied)" the

335 S27(1)(b) of the *Constitution of the Republic of South Africa*, 1996.
336 *KING III Report* 23.
337 *KING III Report* 23.
338 *KING III Report* 23.

principles in KING III.[339] The principles contained in KING III apply beyond the borders of South Africa and urge entities to take special care in weak governance zones. In addition to these provisions, KING III has introduced the integrated reporting system. Integrated reporting is a giant leap forward in terms of attaching more importance to non-financial sustainability matters.[340] The latter was a ground breaking contribution to the international CSR framework.[341] The implication for South African mining MNEs is that their annual reports have to contain both financial and non-financial (environmental, social and governance)[342] performance. What is arguably lacking in KING III is the strict requirement of external assurance of non-financial matters.[343] The document merely recommends it.[344] In the following paragraphs relevant parts of the latest reporting standard by the GRI will be briefly discussed.

4.3 GRI:G4

The GRI is an international body that compiles global sustainability reporting guidelines. Periodically it reviews documents in order to compile the most globally relevant and up-to-date guidelines for businesses, large and small, to report on their sustainability.[345] The G4 is the latest such document with a focus on 'materiality'. Explained by the preface to the document, this means those aspects that reflect the organisation's significant economic, environmental and social impacts; or substantively influence the assessments and decisions of stakeholders.[346] It aims at converting abstract concepts to more concrete issues, so these issues may be more easily addressed. The G4 is relevant to this study because it is one of the latest reporting guidelines.[347] Three aspects[348] of the G4 will forth be discussed. These are materiality, compliance with the G4 and the industry specific disclosures.[349]

---

339 Eccles and Saltzman 2011 *Stanford Social Innovation Review* 57.
340 Eccles and Saltzman 2011 *Stanford Social Innovation Review* 57.
341 Eccles and Saltzman 2011 *Stanford Social Innovation Review* 57.
342 Eccles and Saltzman 2011 *Stanford Social Innovation Review* 57.
343 Solomon and Maroun 2012 *The Association of Chartered Certified Accountants* 53.
344 "The audit committee should consider and recommend to the board the need to engage an external assurance provider to provide assurance over the accuracy and completeness of the sustainability reporting to stakeholders." Principle 3.4 *KING III*; Solomon and Maroun 2012 *The Association of Chartered Certified Accountants* 53.
345 GRI Date Unknown https://www.globalreporting.org/information/about-gri/Pages/default.aspx.
346 *G4 Reporting Principles and Standard Disclosures* (2013) 7.
347 The G4 came into effect in 2013 and will phase out its predecessor over a period of two years. By the end of 2015, the G3.1, the previous standard, will have been entirely replaced by the G4.
348 Three aspects chosen as relevant for this study, specifically. Due to space constraints only some of the most relevant topics are highlighted. It is arguably relevant because it reflects changes brought about since the GRI: G3.1.
349 Including the *G4 Sector Disclosures: Mining and Metal* (2013).

4.3.1 Materiality

The G4 contains general standard disclosures[350] and specific standard disclosures. Under specific standard disclosures there are three categories, namely economic, environment and social.[351] Each category contains certain aspects relating to it. Out of these, entities should identify those aspects that are 'material' within their operations.

Material aspects refer to those aspects that reflect the organisation's significant economic-, environmental- and social impacts or that substantively influence the assessments and decisions of stakeholders.[352] Under every aspect listed in the G4, certain indicators are provided to zoom in on specific areas of focus. For example, under the aspect[353] "Local Communities"[354] there are two indicators, labelled "G4-SO1" and "G4-SO2".[355] The first indicator deals with the percentage of operations with implemented local community engagement, impact assessments and development programmes.[356] Under this indicator further details are bulleted. It provides that the report on this aspect should include social impact assessments;[357] environmental impact assessments[358]; public disclosure of results of these assessments; local community development programmes based on local communities' needs and so forth.[359] The implementation manual[360] goes further to give guidance on the specific aspects and indicators. It outlines the relevance, compilation of the content, possible documentation sources and provides reference to relevant definitions of terms contained within the aspect.[361] In the current example of indicator "G4-SO1", the implementation manual gives comprehensive guidance by elaborating on each of the mentioned outlines. Under 'Relevance' the importance of

---

350 GRI 2013 https://g4.globalreporting.org/general-standard-disclosures/Pages/default.aspx. The general standard disclosures are applicable to all organisations preparing sustainability reports. Depending on the organization's choice of 'in accordance' option, the organization has to identify the required general standard disclosures to be reported. There are seven areas regarding general standard disclosures including "Governance" and "Ethics and Integrity".

351 Representing the triple bottom line or triple context in which businesses operate.

352 *G4 Reporting Principles and Standard Disclosures* (2013) 92.

353 In the mining context this aspect is likely to be a material one where mining operations take place within or close to a local/host community.

354 *G4 Reporting Principles and Standard Disclosures* (2013) 77.

355 "SO" indicating that it falls under the social category.

356 *G4 Reporting Principles and Standard Disclosures* (2013) 77.

357 …including gender impact assessments, based on participatory processes.

358 …and ongoing monitoring thereof.

359 The list goes on to provide inclusion in the report of stakeholder engagement plans based on stakeholder mapping; broad based local community consultation committees and processes that include vulnerable groups; works councils, occupational health and safety committees and other employee representation bodies; formal local community grievance processes.

360 *G4 Implementation manual* (2013).

361 *G4 Implementation manual* (2013) 200-201.

engagement with local communities are underlined.[362] Under ‘Compilation’ the manual gives guidance as to how the necessary information may be obtained from local communities, for example by means of broad based local community consultation committees and processes that include vulnerable groups.[363] Under the heading ‘Key Definitions’ there are links to the definitions for the terms “community development program”, “local community” and “vulnerable groups”. Finally, under the heading ‘Documentation Sources’[364] a bulleted list of twelve possible sources are given which include, to name a few, community development plans; grievance or complaints mechanisms and documents held in community information centres.

For every aspect included in the G4 this whole framework, as discussed above, is in place. The two documents – the Standard Disclosures and the Implementation Manual – used in conjunction, provide comprehensive guidance surrounding possible material aspects.

4.3.2 Compliance

The G4 maps out two possible ways of applying the standards when preparing a sustainability report. Firstly, an entity may choose one of two ‘in accordance’ options – either ‘core’ or ‘comprehensive’. Secondly, if an entity applies the standard but has not done so ‘in accordance’ with the standard, it must include the following statement in its report: “This report contains Standard Disclosures from the GRI Sustainability Reporting Guidelines”.[365] In this case, a list of the standard disclosures and where they could be found in the organisation’s report should be provided together with the statement.[366]

The implications for the two ‘in accordance’ options follow. Entities must focus on material aspects[367] and include a disclosure on management approach (DMA)[368] for all material aspects. If an entity chooses to follow the core level[369] the report should include at least one indicator per material aspect; general standard disclosures such

362 “Engagement, impact assessments, and development programs, combined with the consistency of their application, provide insight into the overall quality of an organisation’s efforts, as well as its degree of follow-up on policy or policies.” *G4 Implementation manual* (2013) 200.
363 *G4 Implementation manual* (2013) 200.
364 *G4 Implementation manual* (2013) 201.
365 *G4 Reporting Principles and Standard Disclosures* (2013) 35.
366 *G4 Reporting Principles and Standard Disclosures* (2013) 35.
367 *G4 Implementation manual* (2013) 31.
368 The DMA is intended to give the organization an opportunity to explain how the economic, environmental and social impacts related to material Aspects are managed. DMA is ordinarily provided for GRI Aspects, to report specific management practices. *G4 Implementation manual* (2013) 63.
369 Referred to throughout the G4 as “in accordance – core”.

as organisational profile, stakeholder engagement and governance; 'specific standard disclosures'[370] where a sector supplement exists and the issues identified in the sector supplement have been identified as material and a GRI content index with page numbers for where indicators can be found in the organisation's report.

If an entity aligns its report with the comprehensive level[371] its report should include all relevant indicators for all material aspects; general standard disclosures and additional disclosures on strategy, governance and ethics and integrity; 'specific standard disclosures' where a sector supplement exists and the issues identified in the sector supplement have been identified as material; include a GRI content index with page numbers displaying where indicators can be found in the organisation's report.[372]

The 'in accordance' approach used in the G4 is a new development by the GRI. In the past[373] the level of compliance was graded in terms of an A, B or C application level and an added "+" if the report had been externally assured or checked by the GRI.

Through the new 'in accordance' method of reporting, entities no longer need to report on every single aspect provided for in the reporting framework. They are urged to identify only those aspects that are material in their operations and report more comprehensively on it.[374]

In order to be 'in accordance' with the G4 at either of the two levels, entities must meet new requirements to explain why the issues they report on are regarded as material, how all material issues are managed and how the management approach (known as the DMA) is evaluated.[375]

---

370 This term is defined as follows: "Specific Standard Disclosures offer information on the organisation's management and performance related to material Aspects." *G4 Reporting Principles and Standard Disclosures* (2013) 92.

371 Referred to as "in accordance – comprehensive" throughout G4.

372 KPMG 2013 https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/g4-the-impact-on-reporting-v2.pdf.

373 As contained in the GRI:G3.1 standard.

374 KPMG 2013 https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/g4-the-impact-on-reporting-v2.pdf.

375 KPMG 2013 https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/g4-the-impact-on-reporting-v2.pdf.

4.3.2.1 Assurance

The GRI recommends external assurance.[376] It does not require it, however. The GRI *requests*[377] entities to give notification to them when applying the standard and to send them a report, whether hard copy or digital, containing a GRI Index.[378] On the index it is indicated which aspects have been externally assured and where they may be found in the report.[379]

This approach is, arguably, lacking in force. The problem the GRI's "gentle" approach poses is that of misrepresentation. An independent study done by Integrated Reporting and Assurance Services (IRAS)[380] for the period 2010-2012 showed that the information on the GRI database containing GRI-based reports, is in fact not a true depiction[381] of both the statistics and performance of companies claiming to apply the GRI standards. Regarding the statistics – in 2011, for example, the GRI database contained 88 reports from South African companies claiming to have applied the guidelines. IRAS, however, found 40 more South African reports claiming application of the guidelines that were not submitted to the GRI database.[382] As the IRAS report states:

> While it might be reasonable to assume that anyone using the GRI Guidelines would want to let the GRI know, and thus be included in the GRI's database, this is not the case.[383]

The threat posed by the lack of adequate information is, arguably, a loss of trust in reporting bodies, such as the GRI. Entities are effectively free to claim GRI compliance in annual reports, without the GRI even being aware of its application or of the correctness of such application.[384] What is to prevent an entity that is not correctly aligned with the standards to claim that it is? There is no mandatory process to be completed prior to claiming compliance[385] - any report may state that it is based on the GRI standards. While the GRI does not claim to be a certification standard,

376 *G4 Implementation manual* (2013) 51, *G4 Reporting Principles and Standard Disclosures* (2013) 13
377 *G4 Reporting Principles and Standard Disclosures* (2013) 9.
378 *G4 Reporting Principles and Standard Disclosures* (2013) 9.
379 *G4 Reporting Principles and Standard Disclosures* (2013) 31-35.
380 IRAS 2012 *Review of Sustainability Reporting in South Africa as per the Global Reporting Initiative (GRI) Guidelines* (hereafter *Review of Sustainability Reporting*). An electronic copy of this report can be found on IRAS's website at http://www.iras.co.za.
381 IRAS 2012 *Review of Sustainability Reporting* 4.
382 IRAS 2012 *Review of Sustainability Reporting* 4.
383 IRAS 2012 *Review of Sustainability Reporting* 4.
384 The GRI does not actually go and look for reports, it waits for reporting entities to send their reports to be uploaded to their 'known reports' database. IRAS 2012 *Review of Sustainability Reporting* 4.
385 *G4 Reporting Principles and Standard Disclosures* (2013) 11.

the application of its standards does, arguably, lead to certification. In the G4 the specific phrases of "in accordance – core" or "in accordance – comprehensive" have to be included in GRI aligned reports in terms of the guidelines.[386] This arguably implies that the reader may assume the report has been drafted "in accordance" with either of the two options, *correctly*. If a report has not been checked by either the GRI or an external assurer, the self-proclaimed correct or adequate application of the reporting entity, may in fact be a misrepresentation of the true facts.

Consequently, two companies claiming compliance with the guidelines alike, one being self-proclaimed (and maybe incorrectly so) compliant and the other being externally assured, are free to have the exact same phrase in their reports portraying their compliance. It may be argued that entities that have something to hide will be less likely to obtain external assurance. Thus the purpose of external assurance, that purpose being to ensure transparency, is defeated by the fact that reports most in need thereof are not required to obtain external assurance.

4.3.3 Industry specific disclosures

In addition to the standard disclosures contained in the G4, the GRI also compiled ten sector specific guidelines.[387] Amongst these is the *G4 Sector Disclosures: Mining and Metal* (hereafter referred to as the G4 MM).[388] It should be noted that the latter does not substitute the provisions and principles contained in the G4 and its implementation manual. The provisions contained in the sector specific document should be read in conjunction with the general G4 documents. Thus where it was felt that the general documents were lacking in terms of certain industries, provisions were added by way of industry specific provisions to offer more comprehensive guidance.[389] It provides both sector specific guidance on indicators already contained in the standard G4 and additional indicators.

In the G4MM additional indicators under each category, as contained in the standard G4, are labelled "MM10", for example. To continue with the example on the aspect of local communities,[390] the G4MM added two indicators to this aspects for the mining and metals sector.[391] The first of these is labelled "MM6" and deals with the number and description of significant disputes relating to land use, customary rights

386 *G4 Reporting Principles and Standard Disclosures* (2013) 9.
387 GRI 2013 https://www.globalreporting.org/reporting/sectorguidance/sectorguidanceG4/Pages/default.aspx.
388 *G4 Sector Disclosures: Mining and Metals* (2013).
389 *G4 Sector Disclosures: Mining and Metals* (2013)
390 See 4.3.1.
391 *G4 Sector Disclosures: Mining and Metals* (2013) 29-30.

of local communities and indigenous peoples.[392] Under the same headings used in the implementation manual[393] with the addition of a “References” heading, material aspects are elaborated on. This indicator stresses the strong dependency of extractive industries on stable access to land and natural resources. Land is equally important to local communities as their livelihood often depends on it.[394] Therefore access to land easily becomes a point of conflict between these two parties. The indicator suggests that the number of significant disputes be reported and the nature thereof explained. Potential documentation will include the reporting organisation’s operating procedures and guidelines on the issue. A useful addition in the G4MM, under the “References” heading, is the reference to applicable international policies and standards on specific matters. Under this specific indicator the IFC Performance Standard 1[395] and -7[396] are listed.

Organisation-specific indicators included in the report should be reported on with the same technical rigor as the standards disclosures.[397]

4.4 Conclusion

Having regard to KING III and G4, which are two of the latest and most important reporting standards for South African entities, there have been some noteworthy contributions. Both documents, respectively and in conjunction to one another, have delivered positive developments. The flexible, non-legislated approach to corporate governance appears to be the most suitable for an ever-changing and diverse business community.

The newly incorporated integrated reporting system contained in KING III signifies a positive step towards making sustainability and CSR less avoidable topics. While the G4 provides for sustainability reporting specifically, KING III offers guidance towards interweaving sustainability matters and financial matters into an integrated report.

While the contents of both KING III and the G4 are commendable, it is arguably somewhat idealistic in its approach regarding enforcement. The principles contained in KING III, having the backing of the JSE Listing Requirements, are mandatory to some extent for listed companies. Although it remains to be incorporated on an

392 *G4 Sector Disclosures: Mining and Metals* (2013) 29.
393 Namely relevance, compilation, definitions and documentation. See 4.3.1.
394 *G4 Sector Disclosures: Mining and Metals* (2013) 29.
395 *IFC Performance Standard 1395: Social and Environmental Assessment and Management System* 2006.
396 *IFC Performance Standard 7: Indigenous Peoples* (2006)
397 *G4 Implementation manual* (2013) 39.

“apply or explain” basis, it *must* be incorporated by listed companies if such companies wish to maintain their listing. While the JSE Listing Requirements is not considered legislation, it has been argued that there exists a contract[398] between the JSE and listed companies in terms of which the requirements are binding and therefore legally enforceable.[399] Furthermore certain aspects contained in KING III are also legally supported by the *Companies Act*.

The G4, however, is arguably flawed in its “gentle” approach to external assurance. It is not argued by this author that the principles and guidelines contained in the G4 should be legislated, or that the application thereof be legally required of companies. It is argued that the GRI should, however, not allow entities to use the name of the GRI on reports that have not been checked to be correctly “in accordance” with its guidelines. In order to avoid misrepresentation, external assurance should arguably be made a prerequisite for claiming the use of the standard. Thus entities should not be legally required to implement the G4 standard but *if* they choose to do so, proof of it being implemented *correctly* should be required before they should be allowed to state alignment with the standards.

In the following section relevant parts of the integrated report of an MNE in the Mining and Metals sector will be examined to serve as an example of good practice. While integrated reporting is still a recent concept, this study wishes to turn to the successes of a South African mining MNE that has been acclaimed for their CSR initiatives and integrated reporting efforts.

398 Hendricks *Towards Good Corporate Governance in South Africa: Private Enforcement versus Public Enforcement* 26-28; Kleitman *Self-regulation of securities markets: the legal status of rules and the mechanisms of enforcement* 1.

399 Kleitman *Self-regulation of securities markets: the legal status of rules and the mechanisms of enforcement* 1.

5 South African/Ghanaian case study

5.1 Introduction

After having established a broad background to some of the latest international instruments pivotal to CSR, this section will explore, by way of an industry example, the practical implementation thereof. Gold Fields is a multinational mining company with its roots in South Africa and operating plants in multiple other countries of which Ghana is one. This company maintains an international reputation of good practice regarding sustainability and CSR.[400] For these reasons, the company may serve as a sensible case study regarding the effects of good CSR practice and subsequent reporting. In this section an integrated annual report of Gold Fields, the *Gold Fields 2013*[401] *Integrated Annual Review* (hereafter the Report), will be examined.[402] The aim of this section is to obtain an understanding of what award winning integrated reporting looks like in practice. Additionally this section aims to determine the social-, economic- and environmental impacts the MNE had on host communities through FDI in Ghana during the year of 2013, flowing out of its CSR initiatives.

5.2 Why Gold Fields?

Gold Fields was specifically chosen to be included in this study for a number of reasons. Firstly, it qualifies as an MNE[403] due to it being a South African

400 *Gold Fields 2013 Integrated Annual Review* (hereafter GF 2013 IAR) 38. During 2013, Gold Fields won the following awards and recognition, among others: Fifth place among global mining companies in the 2013 Dow Jones Sustainability Index ('DJSI'). Gold Fields remains the top-ranked South African-listed mining company on the DJSI. In 2012, Gold Fields was ranked third; Ranked joint first in the JSE Top 100 Carbon Disclosure Leadership Index ('CDLI') by the global Carbon Disclosure Project ('CDP'); The John T Ryan Trophy for safety in the Peruvian open-pit mining category, for the fourth consecutive year in 2013; Gold Fields La Cima was awarded the 'Socially Responsible Company Distinctive' granted by Peru 2021 and the Mexican Centre for Philanthropy; Inclusion in the JSE's Socially Responsible Investment Index for the ninth year in succession; 'Prime Grade' under Oekom's classification of companies' social and environmental performance; Global Reporting Initiative ('GRI') A+ compliance for our 2012 Integrated Annual Review; Achievement of advanced level reporting under the UN Global Compact; Gold Fields Ghana was ranked second in the Ghana Investment Promotion Centre's ('GIPC') Ghana Club 100 Awards. It also won the 'Best largest company' and 'Largest taxpaying company' categories. The company's 2012 Integrated Annual Review also received a number of awards: Top rank in Ernst & Young's Excellence in Integrated Reporting awards (which evaluated the reports of the top 100 JSE-listed companies and the top 10 state-owned entities); First place in the Top 40 JSE category of the Institute of Chartered Secretaries/JSE Annual Report Awards; Runner-up in the 'Best Sustainability Reporting in the Resources Sector' category in the ACCA South Africa Sustainability Reporting Awards; Winner in the PwC UK's Building Public Trust Awards in the 'Overseas award: Toward integrated reporting' category

401 At the time this study was conducted the 2013 Integrated Report was the latest report that was publicly available prior to the restructuring of the company.

402 The report was found and is available publicly on Gold Fields' website at https://www.goldfields.co.za/.

403 See 2.2.

incorporated company, operating in four different countries[404] through eight different mines. Secondly, as the report states,[405] it has a South African heritage. Gold Fields is a JSE-listed company.[406] South African companies, specifically, may do well in following the example of this company, which is evidently a leader in sustainable operations.[407] Thirdly, some of its mines, such as the two mines in Ghana, West Africa, operate in rural areas where host communities are directly impacted, making those mines a sensible case study. Lastly, as evidenced by the report, it incorporates the KING III Code[408] and reporting principles and is also in accordance with the GRI[409] reporting standards. It further also makes mention of both the ISO 26000[410] and the GPBHR,[411] claiming that its policies and practices are in line with the guidelines set out in these two instruments. Studying the contents of the report, with reference to the relevant information contained in it, might therefore serve as an example of how an entity typically incorporates the content of these specific instruments into CSR practises.

5.3 Ghana mines

Gold Fields has two operating mines in Ghana. The two West African mines will be referred to as the Tarkwa- and Damang mines, which is where they are respectively situated. To set the scene – both mines are situated in a very rural part of Ghana, roughly 300 km from the capital, Accra. The area is home to a number of communities of which eight are affected by the mining activities of Gold Fields.[412] Poor socio-economic conditions and a lack of proper infrastructure have always been challenges for these communities.[413]

---

404 Australia, Ghana, Peru and South Africa.

405 GF 2013 IAR 29.

406 Gold Fields has a primary listing on the JSE.

407 As evidenced by the array of awards the company has won for its operations and reports. See 5.1 in this regard. The company has also proven itself worthy of the title of "standard setter for responsible business" in 2014. The New Economy 2014 http://www.theneweconomy.com/strategy/gold-fields-ghana-sets-standard-for-responsible-business.

408 Being a JSE listed company, application of *KING III* is a requirement for maintaining its listing. See par 4.2.1.

409 Albeit GRI:G3.1 due to the latter being the applicable edition at the time the report was compiled.

410 GF 2013 IAR 136.

411 GF 2013 IAR 140, 152. The second party assurance found that there is scope for Gold Fields to build on its recently updated Human Rights Policy Statement by further demonstrating its explicit alignment with the *UNGPBH* (for example through human rights impact assessment and other associated due diligence actions).

412 GF 2013 IAR 85.

413 GF 2013 IAR 85, 86.

5.3.1 Managing adverse human rights impacts

In April, 2013 there was an environmental incident at the Damang mine, which had the potential of leading to adverse human rights violations. This incident, along with the action that followed, is included in the report.[414] Turbid water from the construction site for a new tailings storage facility flowed into the Beni River. This followed the failure of the sediment traps constructed at the site.

The company immediately supplied potable water to downstream communities – initially with water tanks and eventually with two new boreholes. The sediment traps were reengineered, which resulted in a marked improvement in water quality. Ghana's Environmental Protection Agency was also notified of the incident.[415]

5.3.2 Community involvement

Gold Fields realises that in order to contribute meaningfully to local communities, proper communication is pivotal. The company's policies and guidelines on local community involvement are in line with a range of international best practice frameworks,[416] of which ISO 26000 is one. The company's consistency with ISO 26000 is reflected in the distinct community affairs team that exists at every mine, focusing solely on community affairs.[417] Gold Fields conducts public engagement through Environmental and Social Impact Assessments[418]- whenever significant operational developments are due to take place, community members are notified and involved in communications. The company explains the specific project impacts, how they plan on mitigating those impacts and the company identifies and addresses relevant concerns as highlighted by the community.[419] The company's proactive approach regarding the management of possible social impacts on the community also highlights their consistency with the principles of the GPBHR.[420] Furthermore, the company engages with local community members by conducting regular meetings where municipalities, traditional community leaders, informal community groups, NGOs, organised labour and local business men are present.[421] Relevant

414 The report offers the reader information on the impacts it has on its environment – whether it is good or bad. This clearly portrays the transparency aimed at in *KING III* and the G4. See 4.3.1.
415 GF 2013 IAR 85.
416 These are the ICMM's *10 Principles and Community Development Toolkit*, the International Finance Corporation's ('IFC') Performance Standards, the *Equator Principles*, the *AA 1000 stakeholder engagement standard* and the *ISO 26000* social responsibility standard. GF 2013 IAR 136.
417 See 3.3.1.1; GF 2013 IAR 135.
418 GF 2013 IAR 136.
419 GF 2013 IAR 136.
420 See 3.2.
421 GF 2013 IAR 136.

and material issues are discussed at these meetings and community representatives have the opportunity to indicate which community development projects they would like to see prioritized based on the specific needs of the community.[422]

5.3.3 Community development

In 2013 Gold Fields spent $16 million on socio-economic development.[423] Ghana's share of this amount was $3 million.[424] This money was distributed across a number of projects within the company's host communities. A brief discussion of some of these projects follows.

Gold Fields set up the Gold Fields Ghana Foundation, which is a mechanism through which they fund socio-economic development. For each ounce of gold mined, they contributed $1 to the fund. In 2013, the company, although it still made use of the fund, took a more direct approach to community development, following its restructuring.[425] The projects are divided into the following categories: community-based enterprise; skills development; education investment; health investment and infrastructure support.[426] Before some of the projects under these categories are discussed, it is important to note the company's outlook on "contributions". Gold Fields strongly expresses throughout the report that the essence of its socio-economic development spend is not the amount it spends but rather the value that it adds.[427] This approach strongly reiterates the mind-set that CSR is about more than simply writing a cheque.[428] It illustrates the community development approach laid down in ISO 26000[429] as well as the ethical corporate culture referred to in KING III.[430]

The report goes further to explain the contributions and outcomes of each of these categories. The projects initiated by the company is clearly driven by the community development guidance provided in ISO 26000 and each category will be linked with the specific section it fits to by way of reference to section three of this study.

---

422 This point to effective community involvement as prioritised by *ISO 26000*. See 3.3.1.1.
423 GF 2013 IAR 127.
424 Socio-economic development spending includes spending on infrastructure, health and wellbeing, education and training, local environmental initiatives and donations. GF 2013 IAR 127.
425 Where in the past, Gold Fields was one of the largest gold producers in the world and focused on large quantity, the company's approach shifted towards scaling down their operations in order to establish a better cash flow. This shift meant that the company has decided to be a more cash efficient mid-tier company. GF 2013 IAR 135.
426 GF 2013 IAR 133-135.
427 See par 3.3.1.6.
428 See par 2.4 and par 4.2.3.
429 See par 3.3.1.6.
430 See par 4.2.3.

5.3.3.1 Community-based enterprise

Regarding community-based enterprise,[431] the company runs the Sustainable Community Empowerment and Economic Development (SEED) programme.[432] This programme is aimed at boosting the local cultivation of palm oil. Since the programme was launched, two thousand farmers have benefitted from it. The programme included 500 participants in 2013 and continued to make a material impact on local yields. Each participant, whether past or present, has received enough palm tree seedlings to fill at least two acres of land. In addition, they were also given related marketing and technical support.[433]

This project arguably contributes to the promotion of human security in Gold Fields' host communities in Ghana. Specifically it contributes to the food- and economic security of these communities.[434] Palm oil has a number of different uses. It is used as cooking oil, to make margarine and ice cream, and also to make bio fuel.[435] Therefore, the yields provide a source of food to the direct community and may also be sold commercially, which provides economic security to the farmers (and their families) due to the income it creates. Furthermore, if sold commercially, it effects a stronger economic flow into the host community.

5.3.3.2 Skills development

The second category is skills development.[436] The report highlights the positive consequences of skills development in the community for both the company and the community members. It states that skills development helps local individuals pursue viable livelihoods, within and beyond the operations of Gold Fields, while enhancing the company's ability to integrate those individuals as skilled labour into its workforce or that of its suppliers.[437] A positive aspect of skills development, as reiterated by the report, is the fact that it amounts to a sustained benefit.[438] Skills are permanent. Therefore, even after mine closure, individuals will have been equipped to acquire employment within similar operations.

431 This category illustrates the approach of *ISO 26000* regarding both employment creation and access to modern technologies. See par 3.3.1.3 and 3.3.1.4.
432 GF 2013 IAR 133.
433 GF 2013 IAR 133.
434 See par 2.5.
435 REA Date Unknown http://www.rea.co.uk/rea/en/markets/oilsandfats/palmoilproduction
436 This category illustrates the approach of *ISO 26000* regarding employment creation and skills development. See par 3.3.1.3.
437 GF 2013 IAR 133.
438 Azapagic 2004 *Journal of Cleaner Production* 646.

Gold Fields runs internal and external apprenticeship programmes at the Tarkwa and Damang mines. Internally the company trains community members to become vehicle operators, significantly enhancing their employment prospects at both Gold Fields' mines and those of its Ghanaian peers.[439] Externally the company runs programmes aimed at equipping the youth in local communities with marketable, non-mining-related skills such as hairdressing and car mechanics.[440] In 2013, 92 people benefited from the company's external apprenticeship programmes in Ghana.[441]

5.3.3.3 Education

The third category is investment in education.[442] Once again, the report emphasises the sustained benefits of this type of contribution by stating: "education offers a long-term means of driving the development of our host communities."[443] It does so by creating an improved operating environment and enhances the ability of local individuals to gain employment.[444]

The company's educational initiatives at the Damang and Tarkwa mines in 2013 included three key contributions. The first was the provision[445] of 245 bursaries and scholarships to support attendance at local schools and tertiary institutions.[446] The second was the salary enhancements of 70 teachers working near Damang in order to attract top teaching talent. This proved to be successful as Ghana's National Best Teacher Award went to one of these teachers in 2013.[447] The third education-related contribution amounted to almost $400 000, which was spent on initiatives around Tarkwa and Damang and included the renovation of schools and provision of furniture and educational material.[448]

5.3.3.4 Health

Second to last is health-related investments.[449] Once again, the report explains the rationale for these investments as being beneficial to both the local community and

439 GF 2013 IAR 133.
440 GF 2013 IAR 133.
441 GF 2013 IAR 133.
442 This category illustrates the approach of *ISO 26000* regarding education. See par 3.3.1.2.
443 GF 2013 IAR 134.
444 GF 2013 IAR 134.
445 Both directly and through the GGF. GF 2013 IAR 134.
446 In addition, the company also continues to support 329 beneficiaries from previous years. GF 2013 IAR 134.
447 GF 2013 IAR 134.
448 GF 2013 IAR 134.
449 This category is in line with *ISO 26000* regarding health investment. See par 3.3.1.5.

the company.[450] There is a high degree of interaction between the employees of the company and local individuals due to the fact that the majority of the company's employees are drawn from, or reside in, host communities.

The report provides three examples of health initiatives carried out by the company in 2013. The first was the delivery of medical care to its employees and up to an additional six dependents per employee. This was provided to both mines via the Tarkwa Mine Hospital. The hospital is state-owned but is managed and partially funded by Gold Fields.[451] The report states that:

> As a result the hospital offers high-quality medical care to around 25,000 locally based employees and dependents – making a material impact on the health of the wider community.[452]

The second initiative involves the regular broadcasting on community radio in the Tarkwa area on a range of community health issues.[453] The report's final example is that the company provided training for 32 community health facilitators, as well as community health and sanitation committees, at both Damang and Tarkwa.[454]

5.3.3.5 Infrastructural support

The final category of the company's community development investments is infrastructure support.[455] The report states that this is a key area of focus due to the fact that some of the areas in which the company operates, lacks high quality infrastructure.[456] Within this category, the company collaborated with the Ghanaian government.[457] The $2.3 million Gold Fields-funded project revolved around constructing an all-weather road between Samahu and Pepesa, two villages near Tarkwa. In 2013, the road already delivered significant benefits to five of the company's host communities[458] in terms of their access to markets, public services and other communities.[459] The new road helped the beneficiaries of the company's

---

450 GF 2013 IAR 134.
451 GF 2013 IAR 134.
452 GF 2013 IAR 134.
453 GF 2013 IAR 134. See 3.3.1.5.
454 GF 2013 IAR 134.
455 GF 2013 IAR 135.
456 This approach illustrates that of *ISO 26000* in terms of assessing the needs of the community and spending accordingly. See par 3.3.1.1.
457 GF 2013 IAR 135.
458 Comprising more or less 5000 people. GF 2013 IAR 135.
459 GF 2013 IAR 135.

SEED project in particular as it enabled them to sell their produce via local markets.[460]

In addition to the active direct contributions towards community development projects, Gold Fields has also improved its efforts to support local markets. For the 2013 year, 68% of the company's procurement for the Ghana mines was spent on Ghanaian suppliers.[461] Beyond this, the company is exploring how it can help its current and potential Ghanaian suppliers to access third-party financing in order for them to enhance their capabilities.[462]

5.3.4 Shared value

Gold Fields strongly emphasises their "shared value" [463] approach throughout the report. The funds set aside for socio-economic development are spent directly within the community, as illustrated by their projects. The report claims experience has taught them that no matter how great the contributions made on national level, it does not necessarily trickle down to affect local economic development.[464] It also does not necessarily ensure a strong social licence to operate.[465]

Gold Fields recognises the need to therefore act with respect to host communities, and deliver valued, continued and visible contributions to local development. This does not just relate to distributing social investment funds, but rather to creating community level *value* in the widest sense of the word.[466]

5.4 The need for external assurance

While this section deals with a practical application of CSR principles and integrated reporting, it is the opinion of this author that the issue of external assurance, or lack thereof, be addressed by way of another example of an integrated report.[467] The following discussion is included not to be related to the mining industry but to the

460 GF 2013 IAR 133, 135.

461 This includes the use of local operators for stripping and hauling, catering, employee transportation, fuel supplies and grinding media. Local procurement is subject to regulation under the *Minerals and Mining Act* of 2006 of Ghana. This also displays the company's active participation in the Chamber of Mines' initiatives to increase the proportion of procurement spend in the mining sector going to Ghanaian suppliers. GF 2013 IAR 129.

462 GF 2013 IAR 129.

463 According to the report "shared value" is created when both business and social needs are addressed at a host community level. At its core, shared value is a business strategy that has social impact. GF 2013 IAR 135.

464 GF 2013 IAR 28.

465 GF 2013 IAR 28; Bice 2014 *Resources* 63; See 1.1.

466 GF 2013 IAR 28

467 In section 4.3.2.1 of this study the issue of external assurance is discussed with reference to the latest GRI reporting guidance, the G4. The G4 does not require external assurance.

integrated reports of MNEs in general. The integrated report of another South African MNE is analysed to specifically illustrate the need for external assurance.

Because of the wide range of definitions for CSR and the flexible nature of CSR frameworks, entities often take the 'easy way out'. To take an example from another, the fast food, industry - Famous Brands is a food services business owning franchises such as Wimpy, Steers and Mugg & Bean amongst others. This company is also an MNE, having its roots in South Africa and operating in twenty countries, including South Africa.[468] The company confirms in its Integrated Annual Report of 2013[469] that it is compliant[470] with the KING III Code, JSE Listing Requirements and the *Companies Act.*[471] Comparing the available CSR content (or lack thereof) in its report with that of Gold Fields, it pales in comparison. Famous Brands' report makes one single mention of CSR[472] or anything to that effect, where it states their contribution to the community. This contribution solely translates to a sports sponsorship. The sponsorship entails a R10 million-a-year sport sponsorship agreement over a five-year period with Varsity Sports. The programme is designed for university students across South Africa to participate in their preferred sports, on a televised platform. This is the company's first ever participation in sports sponsorship and the report states that they "believe the CSR component of this investment will benefit all stakeholders."[473] In terms of the agreement, Wimpy will sponsor netball and athletics, Mugg & Bean – hockey, Debonairs Pizza – soccer, and Steers – beach volley ball and 7's Rugby.[474] This gives cause for concern.

Firstly, from the agreement it is clear that the marketing value of the sponsorship is of great importance to the company. It specifically states that it has to be on a "televised platform", meaning the respective restaurants will get television exposure by being associated with competing students as their sponsors. It is argued that this constitutes advertising under the veil of being a good corporate citizen. While one cannot blame a business for being business-minded, the very purpose of community

---

468 Famous Brands 2014 http://www.famousbrands.co.za/who_we_are.php. Famous Brands has 1,181 restaurants in South Africa.
469 *Famous Brands Integrated Annual Report 2013* http://www.famousbrands.co.za/downloads/annual_report/2013_annual_report.pdf.
470 GF 2013 IAR 28
471 Companies Act 71 of 2008.
472 *Famous Brands Integrated Annual Report 2013* 16.
473 The only stakeholders listed in the report are customers and consumers. The latter are listed as the two key stakeholders and no other stakeholders are expressly identified throughout the report.
474 *Famous Brands Integrated Annual Report 2013* 16.

development in CSR programmes is about giving back to the community, not trying to find opportunities to gain even more from it while disguising it as philanthropy.

Secondly, the fact that funds are basically handed over to an entity (Varsity Sport) that is exclusively open to university students, is cause for further doubt in the entity's intentions. While the money does contribute to sports development in South Africa, it does seem to be a rather meticulous as to what portion of South Africans' development it supports. One may argue that sportsmen competing at university level, thus attending university, are not the most financially distressed portion of South Africans typically in need of sponsorships. It appears as though they are bringing coal to New Castle, which may be an indication that an assessment of the needs of their host communities were not done. It does seem like an opportunity missed if one considers that the same amount of money could have been spent to further education, skills within their industry, or even sports development in poverty-ridden communities, where talent often goes unnoticed or undeveloped.

Lastly, it is more difficult for an entity to ensure that funds are being spent sensibly when it is not in own hands. No mention is made in the report of how the funds will be tracked, what it will be used for specifically and, most importantly, why this need should be prioritised within their host communities.

While the KING III states that cultivating an ethical corporate culture[475] is about more than social philanthropy or charitable donations. What is disconcerting in considering the information available in the two respective IARs in this section is the fact that two MNEs, so vastly different in their CSR approaches, are both able to claim alignment with KING III to the same effect.

While it is agreed that CSR and the subsequent reporting thereof should not be legislated in totality, some form of legal sanction may be necessary to counter misrepresentation in these circumstances. If not, codes such as the KING III might eventually lose the trust of stakeholders.

5.5 Conclusion

This section set out to illustrate what the practical implications are for mining MNEs when they incorporate the provisions of the instruments covered in this study into their CSR approaches. Gold Fields, being internationally acclaimed for their good practice regarding CSR and the subsequent reporting thereof, assisted as an

475 See par 4.2.3.

industry example. In light of the provisions discussed in section three and four, the company's report highlighted some positive outcomes that may be reached when international instruments are implemented correctly regardless of the strength or weakness of domestic legislation.

Gold Fields' approach of value rather than money added to the community strongly reiterates the KING III principle of ethical leadership and corporate citizenship.[476] As discussed in the previous section of this study[477] the KING III report explains that an ethical corporate culture is about more than social philanthropy and charitable donations.

The company, in its alignment with the GPBHR, takes a proactive approach to human rights issues and when it does occur it is addressed and corrective action is immediately taken.[478]

Perhaps most clearly displayed in the report are the positive outcomes of the ISO 26000 provisions. The report proves that communication is key. In order to make meaningful contributions to community development, community involvement is needed. In order to avoid conflict and misunderstandings with local communities, community involvement is imperative.

Although the company's report is based on the previous version of the GRI's reporting standard, it is important to note that the report has been externally assured, which arguably makes it more trustworthy.

In conclusion, the actual, measurable effects of good CSR practice are visible through an integrated report that has been properly drafted and serves up adequate information in order for the reader to form an informed opinion.

476 GF 2013 IAR 20. See par 4.2.3.
477 See par 4.2.3.
478 This is displayed by the example referred to in par 5.4.3.1.

6 Conclusion and recommendations

The primary aim of this study was to determine the most recent contributions to the international framework for CSR and its implications for South African FDI in the mining sector of developing countries.[479]

The introduction touched on the relevance of the study by explaining the negative impacts of the mining industry on the environment and individuals. Resource extraction often happens in developing countries with weak governance systems and poor or non-existent legislative support. The international community has developed expectations for large entities to accept social responsibilities not only by requiring that they abide by host country legislation but also by voluntarily binding themselves to international norms.[480]

In section two some key concepts were discussed and the interrelation between MNEs and FDI, CSR, sustainable development and human security was made apparent.[481] While mining companies are infamous for their negative impact on the environment and local communities,[482] they also have the opportunity to contribute *positively* to their surroundings. Through FDI, mining MNEs can contribute greatly to the sustainable development and the promotion of human security in developing countries.[483] CSR may be used as a tool to implement positive contributions. International frameworks that provide for CSR assist in guiding MNEs in assuming their social responsibilities as expected of them by the international community.

In section three relevant provisions of two of the most recent international CSR instruments, the GPBHR and the ISO 26000 standard, were examined. The provisions displayed some ground breaking contributions to CSR. The GPBHR speaks to the legal obligation of companies to respect human rights even when the enforcement thereof is non-existent in host countries.[484] The proposed human rights due diligence process explained in the GPBHR is arguably the most noteworthy contribution to the collective international framework by this instrument.[485] Provisions regarding community involvement and development were singled out in the discussion of the ISO 26000. It is the opinion of this author that the detailed

479 See par 1.2.
480 See par 1.1.
481 See par 2.6.
482 See par 1.1.
483 See par 2.5; 5.3.
484 See par 3.2.
485 See par 3.2.

guidance provided by the Standard offers action-orientated suggestions[486] as to how community development may be most efficiently affected.

Section four dealt specifically with the reporting on CSR. Here, relevant sections of the KING III and GRI:G4 instruments were included. KING III is especially of great importance for South African mining MNEs listed on the JSE. It is a requirement that JSE listed companies incorporates KING III in their operations in order to maintain their listing.[487] Arguably the most important development brought about by KING III is the integrated reporting system.[488] This development has been internationally recognised as a benchmark in CSR reporting.[489] The newly incorporated integrated reporting system contained in KING III signifies a positive step towards making sustainability and CSR less avoidable topics. While the G4 provides for sustainability reporting specifically, KING III offers guidance towards interweaving CSR and sustainability aspects with financial aspects into a single integrated report, as opposed to separately, as it was done in the past. The G4 also offers sector specific guidance,[490] which aids in guiding the mining sector, for one, regarding the specific expectations of mining reports.

Finally section five provided an industry example by way of an integrated report of a South African mining MNE with operations in Ghana. Relevant sections of the report were included with the aim of translating broader CSR provisions and guidelines into specific practical implications for entities and measureable outcomes for local communities.[491] Gold Fields' integrated report, based on the guidance of KING III and the G3.1 standard,[492] illustrates the value that is added to local mining communities when the guidance of leading international CSR instruments are properly implemented. The company's efforts are also guided by both the GPBHR and ISO 26000, amongst others. The company's report provides adequate information on sustainability and human rights matters for the reader to form an informed opinion. Out of the report, the positive contributions made to the quality of life of the individuals in local communities are clear and measurable. The report, which has been externally assured, deems itself trustworthy by the integrated financial aspects and statistics regarding its CSR initiatives.

---

486 See par 3.3.1.
487 See par 4.2.1.
488 See par 4.2.1.
489 See par 4.2.1; Solomon and Maroun 2012 *The Association of Chartered Certified Accountants* 53; IRAS 2012 *Review of Sustainability Reporting* 4.
490 See par 4.3.3.
491 Section 5 aimed to serve as a practical illustration of the principles discussed in sections 3 and 4.
492 The G4 will only have fully phased out its previous versions at the end of 2015.

To conclude - South African MNEs are expected by the international community to bear their social responsibilities. This expectation exists regardless of the ability or inability of host country governments to enforce applicable legislation or human rights laws. Although it is mainly in the court of public opinion that entities are judged for their inaction and misconduct, certain aspects of CSR do have legal implications - albeit limited.[493]

Although it is not concluded that CSR in its entirety should be legislated, it is argued that some form of legal sanctions regarding the legitimacy of reports is necessary. If bodies such as the GRI and KING III merely recommend[494] external assurance of non-financial aspects in integrated reports, there is a great risk of misrepresentation to stakeholders.[495] Integrated annual reports are often lengthy and it is arguably reasonable to assume that certain stakeholders would look only at certain key phrases and conclusions. If an integrated report claims to be KING III compliant or "in accordance with the G4", it may easily be interpreted as a stamp of approval by these bodies. The risk posed is that neither the KING III nor the G4 strictly requires external assurance of non-financial aspects as prerequisite for claiming alignment with its respective principles. Entities are thus enabled to (possibly falsely) represent themselves as good corporate citizens to those stakeholders that only judge on the surface of integrated reports.

It is the recommendation of the author of this study that the content of CSR initiatives remain to be implemented on a voluntary basis. However, when entities do volunteer to incorporate CSR guidelines, such as the GPBHR, ISO26000, KING III and the G4, it is recommended that external assurance[496] be made mandatory before allowing entities to claim compliance.

Further it is recommended that mining MNEs affecting FDI in developing countries incorporate the principles embodied in all four documents discussed in this study. These documents are compatible and provide a comprehensive toolkit for CSR and reporting principles. And, as proven by the South African/Ghanaian example in section 5, CSR *does* matter and it *does* make a difference when implemented correctly.

---

493 See par 2.3.1; 4.2.1; 4.2.2.2.

494 Principle 3.4 *KING III*; *G4 Standard Disclosures* (2013) 13. See par 4.2.4 and 4.3.2.1

495 See par 4.3.2.1 and 5.4.

496 External assurance of both the adequacy of the information provided in the report, in line with *KING III* and G4, and the accuracy of the content of such information. Assurance is important to gain and maintain the trust of stakeholders. Solomon and Maroun 2012 *The Association of Chartered Certified Accountants* 53.

BIBLIOGRAPHY

Literature

Ajikake 2015 *ScholarWorks*

Ajikake M 2015 "The Triple Bottom Line and Social Responsibility Framework in Public Sector Management" *ScholarWorks* 1-199

Alejandra, Perez, Riegler and Riegler 2011 *GCG*

Alejandra M, Perez G, Riegler S and Riegler FX "Foreign Direct Investment (FDI) and Social Responsibility Networks (SRN) in Colombia" 2011 *GCG Georgetown University - Universia Enero* 42-59

Alkire *A conceptual framework*

Alkire S *A Conceptual Framework for Human Security* (Centre for Research on Inequality, Human Security and Ethnicity University of Oxford Oxford 2003)

Argandoña and Von Weltzien Hoivik 2009 *Journal of Business Ethics*

Argandoña A and Von Weltzien Hoivik H "Corporate social responsibility: One size does not fit all. Collecting evidence from Europe" 2009 *Journal of Business Ethics* 221-234

Atuguba and Dowuona-Hammond 2006 *Corporate social responsibility in Ghana* Report submitted to Friedrich Ebert Foundation (FES) – Ghana

Atuguba and Dowuona-Hammond 2006 *Corporate social responsibility in Ghana* Report submitted to Friedrich Ebert Foundation (FES) – Ghana 1-115

Axworthy 2001 *Global governance*

Axworthy L "Human security and global governance: putting people first" 2001 *Global governance* 19-23

Azapagic 2004 *Journal of Cleaner Production*

Azapagic A "Developing a framework for sustainable development indicators for the mining and minerals industry" 2004 *Journal of Cleaner Production* 639-662

Bamidele 2013 *The African Symposium*

Bamidele O "Corruption, Conflict and Sustainable Development in African States" 2013 *The African Symposium* 42 -56

Bezuidenhout 2007 *Trade Patterns and Foreign Direct Investment in The Southern African Development Community*

Bezuidenhout H *Trade Patterns and Foreign Direct Investment in The Southern African Development Community* (PhD-thesis North West University 2007)

Bharali 2006 "Development-Induced Displacement and Human Security in Assam"

Bharali G "Development-Induced Displacement and Human Security in Assam", paper presented at the Seminar on Human Security at Gauhati University 17-18 November 2006.

Carroll and Shabana 2010 *International Journal of Management Reviews*

Carroll and Shabana "The business case for Corporate Social Responsibility: A Review of Concepts, Research and Practice" 2010 *International Journal of Management Reviews* 85 -105

Dahlsrud 2008 *CSREM*

Dahlsrud A "How corporate social responsibility is defined: an analysis of 37 definitions" 2008 *Corporate social responsibility and environmental management* 1-13

Eccles and Saltzman 2011 *Stanford Social Innovation Review*

Eccles R and Saltzman D 2011 "Achieving Sustainability Through Integrated Reporting" *Stanford Social Innovation Review* 56-61

Ecologia *Handbook for Implementers of ISO 26000*

Ecologia *Handbook for Implementers of ISO 26000 - Global Guidance Standard on Social Responsibility* (Ecologia Vermont www.ecologia.org 2011)

Hopwood, Mellor and O'Brien 2005 *Sustainable Development*

Hopwood B, Mellor M and O'Brien G "Sustainable development: mapping different approaches" 2005 *Sustainable Development* 38-52

IRAS 2012 *Review of Sustainability Reporting*

IRAS 2012 Review of Sustainability Reporting in South Africa as per the Global Reporting Initiative (GRI) Guidelines 1-92

Jackson and Hawker 2001 Communication Directors' Forum

Jackson P and Hawker B "Is Corporate Social Responsibility Here to Stay" 2001 *Communication Directors' Forum*

Lawal 2007 *Humanity and Social Sciences Journal*

Lawal G "Corruption and development in Africa: challenges for political and economic change" 2007 *Humanity and Social Sciences Journal* 1-7

Liotta and Owen 2006 *The Whitehead Journal of Diplomacy and International Relations*

Liotta P and Owen T "Why Human Security?" 2006 *The Whitehead Journal of Diplomacy and International Relations* 37 -54

Mazurkiewicz 2004 *World Bank*

Mazurkiewicz P "Corporate environmental responsibility: Is a common CSR framework possible" 2004 *World Bank*

Mehta and Aggarwal 2015 *International Journal of Research in Business Management*

Mehta D and Aggarwal M 2015 "Making Corporate Social Responsibility Mandatory in India - Prospects and Problems" *International Journal of Research in Business Management* 21-29

Mushkat 2010 *Oregon Review of International Law*

Mushkat "Corporate Social Resposibility, International Law, and Business Economics: Convergences and Divergences" 2010 *Oregon Review of International Law* 55 - 76

OECD 2008 *Benchmark Definition of Foreign Direct Investment*

OECD *Benchmark Definition of Foreign Direct Investment: Fourth Edition* (OECD 2008)

OECD 2002 *Foreign Direct Investment for Development - Maximising Benefits, Minimising Costs*

OECD *Foreign Direct Investment for Development - Maximising Benefits, Minimising Costs* (OECD Publishing London 2002)

Pojasek 2001 *Environmental Quality Management*

Pojasek R 2011 "ISO 26000 – Guidance on Social Responsibility" *Environmental Quality Management* 85-93

Roberts 2010 *Backgrounder*

Roberts JM "How Corporate Social Responsibility (ISO 26000) Mandates Undermine Free Markets" 2010 *Backgrounder* 1-12

Sachs 2012 *The Lancet*

Sachs J 2012 “From Millennium Development Goals to Sustainable Development Goals” *The Lancet* 2206-2211

Smith 2003 *Center for Marketing Working Paper*

Smith NC “Corporate social responsibility: not whether, but how” 2003 *Center for Marketing Working Paper* 1 -35

Sneddon, Howarth and Norgaard 2006 *Ecological Economics*

Sneddon, Howarth and Norgaard “Sustainable development in a post – Brundtland world” 2006 *Ecological Economics* 253-268

Solomon and Maroun 2012 *The Association of Chartered Certified Accountants*

Solomon J and Maroun W 2012 “Integrated Reporting: The Influence of King III on Social, Ethical and Environmental Reporting” *The Association of Chartered Certified Accountants* 1-55

Surya 2012 *European Company Law*

Surya “Guiding Principles on Business and Human Rights: Implications for Companies” 2012 *European Company Law* 101 – 109

Taylor, Zandvliet and Forouhar 2009 *Corporate Social Responsibility Initiative Working Paper No. 53*

Taylor M, Zandvliet L and Forouhar 2009 “Due Diligence for Human Rights: A Risk-Based Approach” *Corporate Social Responsibility Initiative Working Paper No. 53* 1-23

Terminski 2012 *Social Science Research Network*

Terminski B “Applying the Concept of Human Security to Research on the Consequences of Mining-Induced Displacement and Resettlement” 2012 *Social Science Research Network*

UN 2012 *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*

UN 2012 *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (Office of the UN High Commissioner New York 2012)

UNCTAD 1999 "Foreign Direct Investment and Development"

UNCTAD "Foreign Direct Investment and Development" 1999 *UNCTAD Series on issues in international investment agreements, United Nations New York and Geneva* 1-70

UNDP (*Human Development Report*) 1994: "New Dimensions of Human Security"

UNDP "New Dimensions of Human Security" (*Human Development Report*) 1994 1-136

WBCSD 2000 *Corporate social responsibility – meeting changing expectations*

WBCSD 2000 *Corporate social responsibility – meeting changing expectations* (John Wiley and Sons, Ltd and ERP Environment 2006)

WCED *Our common future*

WCED *Our common future* (Oxford University Press Oxford 1987)

Weissbrodt and Kruger 2003 *The American Journal of International Law*

Weissbrodt D and Kruger M "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights" 2003 *The American Journal of International Law* 1 - 28

Wettstein 2012 *Business Ethics Quarterly*

Wettstein "CSR and the Debate on Business and Human Rights: Bridging the Great Divide" 2012 *Business Ethics Quarterly* 739 – 770

World Business Council for Sustainable Development

World Business Council for Sustainable Development *Corporate social responsibility: Meeting changing expectations* (World Business Council for Sustainable Development Geneva 1999)

Yeaple 2003 *Journal of International Economics*

Yeaple "The complex integration strategies of multinationals and cross country dependencies in the structure of foreign direct investment" 2003 *Journal of International Economics* 293 -314

Legislation

Companies Act 71 of 2008

Sarbanes-Oxley Act 2002

Public Finance Management Act 1 of 1999

The Constitution of the Republic of South Africa, 1996

Theses and Dissertations

Hendricks E *Towards Good Corporate Governance in South Africa: Private Enforcement versus Public Enforcement* (LLM-dissertation University of Cape Town 2010)

Kleitman Y *Self-regulation of securities markets: the legal status of rules and the mechanisms of enforcement* (LLM-dissertation University of Johannesburg 2013)

International instruments

African Charter on Human and Peoples' Rights (1981)

Brundtland Report (1987)

Declaration on Fundamental Principles and Rights at Work (1998)

GRI:G4 Implementation manual (2013)

GRI:G4 Reporting Principles and Standard Disclosures (2013)

GRI:G4 Sector Disclosures: Mining and Metal (2013)

Human Development Report (1994)

Human Development Report (1994)

Human Development Report (2014)

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (2006)

ISO 26000 (2010)

ISO14001 (2004)

Johannesburg Declaration on Sustainable Development (2002)

Johannesburg Declaration on Sustainable Development (2002)

KING Code of Corporate Governance (2009)

KING Report on Corporate Governance (2009)

Millennium Declaration (2000)

OECD Guidelines for Multinational Enterprises (2003)

OECD Guidelines for Multinational Enterprises (2011)

Report of the World Summit on Sustainable Development (Johannesburg 2002)

The IFC Performance Standards on Social and Environmental Sustainability (2012)

UN Convention against Corruption (2004)

UN Convention against Corruption (2004)

UN Global Compact (2000)

UN Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (2011)

UN Human Rights Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights (2008)

UN Millennium Declaration (2000)

Universal Declaration of Human Rights (1948)

Universal Declaration of Human Rights (1948)

World Investment Report (1996)

Internet sources

Famous Brands 2013 *Integrated Annual Report 2013* http://www.famousbrands.co.za/downloads/annual_report/annual_report_2013.pdf [accessed on 18 Oct 2014]

Famous Brands 2014 *Who we are* http://www.famousbrands.co.za/who_we_are.php [accessed on 18 Oct 2014]

Forbes 2014 Forbes *Corporate Social Responsibility: Should It Be A Law?* http://www.forbes.com/sites/eshachhabra/2014/04/18/corporate-social-responsibility-should-it-be-a-law/ [accessed on 16 Oct 2014]

Ford 2015 *Sustainable development goals: all you need to know* http://www.theguardian.com/global-development/2015/jan/19/sustainable-development-goals-united-nations [accessed on 15 Oct 2015]

Giersch 2013 *Human Rights Due Diligence (I): Corporate Social Responsibility meets Compliance* http://www.globalriskaffairs.com/2013/05/human-rights-due-diligence-i-corporate-social-responsibility-meets-compliance/ [accessed on 22 Oct 2014]

Giersch 2013 *Human Rights Due Diligence (I): Corporate Social Responsibility meets Compliance* http://www.globalriskaffairs.com/2013/05/human-rights-due-diligence-i-corporate-social-responsibility-meets-compliance/ [accessed on 15 Oct 2014]

Gold Fields 2013 *Integrated Annual Review 2013* https://www.goldfields.co.za/reports/annual_report_2013/pdf/annual-review-2013.pdf [accessed on 15 Oct 2014]

Green Gazette 2011 *Standards Act, 2008 Standards Matter* http://www.greengazette.co.za/notices/standards-act-no-8-of-2008-standards-matters_20110318-GGN-34107-00230.pdf [accessed on 27 Dec 2014]

GRI 2013 *About the G4 Sector Disclosures* https://www.globalreporting.org/reporting/sector-guidance/sectorguidanceG4/Pages/default.aspx [accessed on 24 Oct 2014]

GRI 2013 *General Standard Disclosures* https://g4.globalreporting.org/general-standard-disclosures/Pages/default.aspx [accessed on 25 Oct 2014]

ICMM 2009 *Human Rights in the Mining and Metals Industry - Overview, Management Approach and Issues* http://www.icmm.com/page/14809/human-rights-in-the-mining-and-metals-industry-overview-management-approach-and-issues [accessed on 23 Jul 2015]

ILO *About the ILO* Date Unknown http://www.ilo.org/global/about-the-ilo/lang--en/index.htm [accessed on 20 Dec 2014]

ISO 2010 *It's crystal clear. No certification to ISO 26000 guidance standard on social responsibility* http://www.iso.org/iso/home/news_index/news_archive/news.htm?refid=Ref1378 [accessed on 15 Aug 2014]

ISO 2014 *Benefits of International Standards* http://www.iso.org/iso/home/standards/benefits ofstandards.htm [accessed on 11 May 2014]

ISO Date Unknown *The Benefits of Standards* http://www.iso.org/iso/home/standards/benefits ofstandards.htm [accessed on 13 Nov 2014]

ISO *ISO Standards and Sustainable Development* Date Unknown http://www.iso.org/iso/sustainable_development [accessed on 20 Dec 2014]

Jenkins, H and Obara, L 2006 *Corporate Social Responsibility (CSR) in the mining industry – the risk of community dependency* http://www.crrconference.org/Previous_conferences/previousconferences/crrc2006/papersinalphabeticalorder.html [accessed on 6 Nov 2014]

KPMG 2013 *GRI's G4 Guidelines: the impact on reporting* https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/g4-the-impact-on-reporting-v2.pdf [accessed on 19 Oct 2014]

REA Date Unknown *The Uses of Palm Oil* http://www.rea.co.uk/rea/en/markets/oilsandfats/palmoilproduction [accessed on: 15 Aug 2014]

Sarkis J, Ni N and Zhu Q 2011 *Winds of Change: Corporate Social Responsibility* http://www.iso.org/iso/sustainable_development [accessed 11 May 2014]

The New Economy 2014 *Gold Field Ghana sets standard for sustainable business* http://www.theneweconomy.com/strategy/gold-fields-ghana-sets-standard-for-responsible-business [accessed on: 30 Mar 2015]

UN Date Unknown *The Ten Principles of the UN Global Compact* https://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle10.html [accessed on 10 Oct 2014]

UN *Millenium Development goals and beyond 2015* Date Unknown http://www.un.org/millenniumgoals/ [accessed on 21 Dec 2014]

UNDP 2014 *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience* http://hdr.undp.org/en/content/human-development-report-2014 [accessed on 15 Oct 2014]

UNDP *Multidimensional Poverty Index* 2014 http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi [accessed 21 Dec 2014]

UNGC Date Unknown *Principle 10* https://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle10.html [Date of use 17 Oct 2014]

Visser 2013 *A giant leap backwards on CSR: India's great missed opportunity* http://www.csrwire.com/blog/posts/974-a-giant-leap-backwards-on-csr-indias-great-missed-opportunity [accessed on 20 Sept 2014]