

**REVISTA DE DIREITO INTERNACIONAL**  
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**Business and human rights in Brazil:** exploring human rights due diligence and operational-level grievance mechanisms in the case of Kinross *Paracatu* gold mine

**Empresas e direitos humanos no Brasil:** explorando devida diligência em direitos humanos (human rights due diligence) e mecanismos de queixa a nível operacional (operational-level grievance mechanisms) no caso de Kinross e a mina de ouro em Paracatu, Minas Gerais

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# Sumário

<b>I. CRÔNICAS DO DIREITO INTERNACIONAL .....</b>	<b>1</b>
<b>REPARAÇÃO DE VÍTIMAS À LUZ DE UM TRATADO SOBRE EMPRESAS E DIREITOS HUMANOS .....</b>	<b>3</b>
Ana Cláudia Ruy Cardia	
<b>CONSUMER SOCIAL RESPONSIBILITY AS A REQUIREMENT FOR CORPORATE SOCIAL RESPONSIBILITY .....</b>	<b>13</b>
Nitish Monebhurrn	
<b>CRISIS IN VENEZUELA: THE BRAZILIAN RESPONSE TO THE MASSIVE FLOW OF VENEZUELAN IN RORAIMA.....</b>	<b>18</b>
Jacqueline Salmen Raffoul	
<b>II. DOSSIÊ ESPECIAL: BUSINESS AND HUMAN RIGHTS.....</b>	<b>23</b>
<b>SOME REMARKS ON THE THIRD SESSIONS OF THE BUSINESS AND HUMAN RIGHTS TREATY PROCESS AND THE ‘ZERO DRAFT’.....</b>	<b>25</b>
Humberto Cantú Rivera	
<b>THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, THE STATE DUTY TO PROTECT HUMAN RIGHTS AND THE STATE-BUSINESS NEXUS.....</b>	<b>42</b>
Mihaela Maria Barnes	
<b>HARDENING SOFT LAW: ARE THE EMERGING CORPORATE SOCIAL DISCLOSURE LAWS CAPABLE OF GENERATING SUBSTANTIVE COMPLIANCE WITH HUMAN RIGHTS? .....</b>	<b>65</b>
Justine Nolan	
<b>DEL DOCUMENTO DE ELEMENTOS AL DRAFT 0: APUNTES JURÍDICOS RESPECTO DEL POSIBLE CONTENIDO DEL PROYECTO DE INSTRUMENTO VINCULANTE SOBRE EMPRESAS TRANSNACIONALES Y OTRAS EMPRESAS CON RESPECTO A LOS DERECHOS HUMANOS .....</b>	<b>85</b>
Adoración Guamán	

<b>ACCESS TO REMEDIES AND THE EMERGING ETHICAL DILEMMAS: CHANGING CONTOURS WITHIN THE BUSINESS-HUMAN RIGHTS DEBATE .....</b>	<b>116</b>
------------------------------------------------------------------------------------------------------------------------------	------------

Justin Jos

<b>LA RESPONSABILIDAD PENAL DE LAS EMPRESAS POR GRAVES VIOLACIONES DE DERECHOS HUMANOS: PRÁCTICA ACTUAL Y DESAFÍOS FUTUROS.....</b>	<b>130</b>
-------------------------------------------------------------------------------------------------------------------------------------	------------

Daniel Iglesias Márquez

<b>THE ENVIRONMENTAL LAW DIMENSIONS OF AN INTERNATIONAL BINDING TREATY ON BUSINESS AND HUMAN RIGHTS .....</b>	<b>151</b>
---------------------------------------------------------------------------------------------------------------	------------

Juan Gabriel Auz Vaca

<b>LOS OBJETIVOS DE DESARROLLO SOSTENIBLE EN EUROPA Y SU INTERSECCIÓN CON EL MARCO DE LOS NEGOCIOS Y LOS DERECHOS HUMANOS .....</b>	<b>190</b>
-------------------------------------------------------------------------------------------------------------------------------------	------------

Paolo Davide Farah

<b>HUMAN RIGHTS AND MARKET ACCESS .....</b>	<b>203</b>
---------------------------------------------	------------

Danielle Mendes Thame Denny

<b>BUSINESS AND HUMAN RIGHTS IN BRAZIL: EXPLORING HUMAN RIGHTS DUE DILIGENCE AND OPERATIONAL-LEVEL GRIEVANCE MECHANISMS IN THE CASE OF KINROSS <i>PARACATU</i> GOLD MINE...</b>	<b>222</b>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------

Mariana Aparecida Vilmondes Türke

<b>HUMAN RIGHTS AND EXTRACTIVE INDUSTRIES IN LATIN AMERICA: WHAT RESPONSIBILITY OF CORPORATIONS AND THEIR STATES OF ORIGIN FOR HUMAN RIGHTS VIOLATIONS IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM?.....</b>	<b>243</b>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------

Alberto do Amaral Junior e Viviana Palacio Revello

<b>MULTINACIONAIS FAST FASHION E DIREITOS HUMANOS: EM BUSCA DE NOVOS PADRÕES DE RESPONSABILIZAÇÃO .....</b>	<b>255</b>
-------------------------------------------------------------------------------------------------------------	------------

Laura Germano Matos e João Luis Nogueira Matias

<b>III. ARTIGOS SOBRE OUTROS TEMAS.....</b>	<b>269</b>
---------------------------------------------	------------

<b>EFFICIENCY AND EFFICACY OF PUBLIC FOOD PROCUREMENT FROM FAMILY FARMERS FOR SCHOOL FEEDING IN BRAZIL.....</b>	<b>271</b>
-----------------------------------------------------------------------------------------------------------------	------------

Rozane Márcia Triches

<b>A RELAÇÃO ENTRE O GRAU DE INTEGRAÇÃO ECONÔMICA E O SISTEMA DE SOLUÇÃO DE CONTROVÉRSIAS: UM ESTUDO COMPARATIVO ENTRE A UNIÃO EUROPEIA E O MERCOSUL.....</b>	<b>286</b>
Luciane Klein Vieira e Elisa Arruda	
<b>THE RIGHTS TO MEMORY AND TRUTH IN THE INTER-AMERICAN PARADIGMS OF TRANSITIONAL JUSTICE: THE CASES OF BRAZIL AND CHILE .....</b>	<b>308</b>
Bruno Galindo	
Juliana Passos de Castro	
<b>A MARGEM NACIONAL DE APRECIÇÃO NA CORTE INTERAMERICANA DE DIREITOS HUMANOS.</b>	<b>325</b>
Gilberto Schäfer, José Eduardo Aidikaitis Previdellie e Jesus Tupã Silveira Gomes	
<b>NOVOS DIREITOS FUNDAMENTAIS NO ÂMBITO DA UNASUL: ANÁLISE DAS AGENDAS DE BRASIL E VENEZUELA À LUZ DO DIREITO À PAZ.....</b>	<b>339</b>
Pedro Pulzatto Peruzzo e Arthur Ciciliati Spada	
<b>A ATUAÇÃO DO GRUPO MERCADO COMUM FRENTE À CRIMINALIDADE ORGANIZADA TRANSNACIONAL.....</b>	<b>354</b>
Sabrina Cunha Kesikowski, Luis Alexandre Carta Winter e Eduardo Biacchi Gomes	
<b>COUNTER-TERRORISM LEGISLATION AND TERRORIST ATTACKS: DOES HUMAN RIGHTS HAVE SPACE?.....</b>	<b>371</b>
Heloisa Tenello Bretas e Daniel Damásio Borges	
<b>TERRITÓRIOS DA VIOLÊNCIA DE GÊNERO: NORMATIVA INTERNACIONAL E OS CASOS “CAMPO ALGODOEIRO” (MÉXICO) – “MORRO DO GARROTE” (BRASIL).....</b>	<b>392</b>
Eugênia Nogueira do Rêgo Monteiro Villa e Bruno Amaral Machado	
<b>O USO DE MECANISMOS INFORMAIS DE GOVERNANÇA GLOBAL E SUA APLICABILIDADE NAS LICITAÇÕES PÚBLICAS BRASILEIRAS.....</b>	<b>409</b>
Fabiano de Figueiredo Araujo e Paulo Afonso Cavichioli Carmona	
<b>AUTONOMIA INSTITUCIONAL DA IGREJA CATÓLICA E A INGERÊNCIA INDEVIDA DO ESTADO BRASILEIRO POR EVENTUAIS ILÍCITOS CANÔNICOS: ANÁLISE DO CASO DE FORMOSA-GO, À LUZ DO TRATADO BRASIL-SANTA SÉ DE 2010 .....</b>	<b>423</b>
Antonio Jorge Pereira Júnior e Renato Moreira de Abrantes	

**A MORE TARGETED APPROACH TO FOREIGN DIRECT INVESTMENT: THE ESTABLISHMENT OF SCREENING SYSTEMS ON NATIONAL SECURITY GROUNDS .....440**

Carlos Esplugues Mota

**IV. RESENHAS .....467**

**DIREITO INTERNACIONAL EM PERSPECTIVA TRANSCIVILIZACIONAL DE YASUAKI ONUMA.....469**

Arthur Roberto Capella Giannattasio

**RESENHA DO LIVRO SPACE, GLOBAL LIFE: THE EVERYDAY OPERATION OF INTERNATIONAL LAW AND DEVELOPMENT, DE LUIS ESLAVA .....473**

Matheus Gobbato Leichtweis

**QUEM TEM MEDO DO PÓS-COLONIAL NO DIREITO INTERNACIONAL? UMA RESENHA DE “DECOLONISING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY” DE SUNDHYA PAHUJA .....485**

Gabriel Antonio Silveira Mantelli

**DIREITOS HUMANOS COMO UM NOVO PROJETO PARA O DIREITO INTERNACIONAL?  
NOTAS SOBRE THE LAST UTOPIA, DE SAMUEL MOYN .....490**

João Roriz

## **Business and human rights in Brazil:** exploring human rights due diligence and operational-level grievance mechanisms in the case of Kinross *Paracatu* gold mine\*

## **Empresas e direitos humanos no Brasil:** explorando devida diligência em direitos humanos (human rights due diligence) e mecanismos de queixa a nível operacional (operational-level grievance mechanisms) no caso de Kinross e a mina de ouro em Paracatu, Minas Gerais

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### **ABSTRACT**

In the past decades, enterprises have been looking after more responsible social-environmental practices by designing their bylaws in compliance to the Guiding Principles on Business and Human rights (GPBHRs) and specific national requirements. This legal study explores the case of Kinross gold mine in Paracatu, Brazil, and the corporate responsibility to respect human rights. From a rights-based approach, it sheds light on the design of the firm's due diligence practices and operational-level grievance mechanisms. If, on the one hand, Kinross shows policy commitment to applicable norms, on the other hand, local communities still claim to be impacted by health, infrastructural and environmental damages. In such a contentious situation, the biggest matter lies on the inability of affected stakeholders to seek redress from a firm, that tries to excuse itself by showing policies based on internationally accepted procedures. Looking at the realization of human rights and at more respectful business-community relations, this article highlights means of improving the enterprise's legal mechanisms and possible causes of inefficacy that affect the firm's ability to respect human rights.

**Keywords:** Human rights due diligence. Operational-level grievance mechanisms. Mining, Paracatu. Brazil. Kinross.

### **RESUMO**

Nas últimas décadas, corporações têm focado em práticas socio-ambientais mais responsáveis ao desenhar políticas internas de acordo com os Princípios Orientadores sobre Empresas e Direitos Humanos e requisitos similares de leis nacionais. Este estudo legal explora o caso da mina de ouro de Kinross em Paracatu, Minas Gerais, e a responsabilidade corporativa de

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respeitar direitos humanos. Os modelos de devida diligência e os mecanismos de queixa a nível operacional daquela empresa são elucidados com uma abordagem baseada nos direitos humanos. Se, por um lado, Kinross demonstra políticas de acordo com normas aplicáveis, por outro lado, comunidades locais ainda se queixam por impactos a saúde, infra-estrutura e meio-ambiente. Nessa situação contenciosa, o problema maior corresponde à inabilidade de partes interessadas em buscar reparação contra uma corporação, que tem como pretexto e justificativa possuir políticas internas condizentes com o requerido internacional e nacionalmente. Considerando a realização dos direitos humanos e relações empresa-comunidade mais respeitáveis, este artigo enfatiza maneiras de aprimorar os mecanismos legais desenvolvidos por Kinross e possíveis causas de ineficácia da habilidade dessa em respeitar direitos humanos.

**Palavras-chave:** Empresas e direitos humanos. Devida diligência. Mecanismos de queixa a nível operacional. Mineração. Brasil. Kinross.

## 1. INTRODUCTION

In 2011, a United Nations-based initiative set new guidelines on the matter of respect, protection and remediation of human rights. The Guiding Principles on Business and Human Rights (GPBHRs) clarify upon responsibilities of enterprises and States and provide a framework for implementing practices that shall prevent or mitigate potential or actual human rights impacts. The framework, alongside with the Brazilian constitution, inspires this investigation of a contentious situation observed in the city of *Paracatu*, Brazil. Local communities claim adverse health and environmental impacts due to the exploration of a gold mine run by Kinross, a Canadian enterprise.

By exploring Kinross's bylaws and publicly available statements, this article examines if the corporation corroborates to those guidelines, particularly on the matters of human rights due diligence and operational-level grievance mechanisms. The aim of this case study is to clarify if the firm's policies are committed to the GPBHRs and Brazilian constitutional principles. Since the international community has been paying more attention to environmental and social matters, the current study case will provide new evidence on the matter of

business-community relations. Although there has been plenty of research about foregone environmental catastrophes and human rights impacts in Brazil, this paper sheds light upon current challenges particularly faced by Paracatu's local communities.

Local communities claim to be unable to seek redress, when addressing the enterprise to find solutions to daily issues. A possible cause to that may be the lack or misconception of operational-level grievance mechanisms and due diligence processes provided by the firm itself. If conducted efficiently, those mechanisms enable the realization of human rights. They provide channels of communication, redress and remediation, which are essential in order to prevent business-community conflicts to escalate. But, most of all, they support the respect to civil, economic, cultural, social, environmental human rights. However, the sole existence and average performance of grievance mechanisms and due diligence is also not enough; because they are not a requirement but a useful means to the realization of human rights. No corporation can be excused from its actual responsibility only by showing its policy commitment to the human rights perspective. Thus, based on the human-rights approach, the position of this paper is also that, regardless accordance of operational-level grievance mechanisms and a human rights due diligence process to accepted standards, an enterprise must show moral commitment to any adverse human rights impacts it has created.

On the one hand, it is possible that Kinross policy lacks commitment to human rights, and needs to improve its own bylaws and internal codes in order to provide a legal strategy to meet its inherent responsibility. On the other hand, it might also be that those codes are already in partial or full conformity to applicable standards. In such a possible scenario, although more harmonic business-community relations could have been expected, it will be clear that issues lie in other sphere(s) than on the policy of human rights due diligence and operational-level grievance frameworks presented on paper. This would also be a very important result, because it would highlight other matters that require attention by the firm.

Thus, the first main question is, if the enterprise's processes and mechanisms are based on human rights directives, as proposed by GPBHRs and Brazilian standards, and in to what extent could they be improved.

Kinross' bylaws will be evaluated in regard to applicable legal standards and related to general matters of the local community, constituting the first part of the normative framework. That will make possible to prescribe suggestions, turning to the second concluding part of this article. The set of standards of this paper's normative framework is limited to the GPBHRs and similar principles found in the national constitution.

This research is based on legal doctrine, jurisprudence, legislation, governmental and policy reports, as well as, specific bylaws, policies and statements publicly provided by the firm, in addition to the most recent academic research, report statements from the press, social media (blogs and watchdogs) and from non-governmental organizations. Information available in Portuguese will be prioritized, since it is the primary language of local communities. If not available, then applicable documents provided by the international corporation in English language will be explored. This is important, in order to understand how much access of information is given to the local community, something also required by the GPBHRs.

On the first section, this article presents background information regarding the city of Paracatu, local communities, Kinross operations and conflicts behind the gold mine exploration. The second section outlines the main important aspects of international and national norms on business and human rights, condensed by the GPBHRs, but limited to the aspects of human rights due diligence and operational-level grievance mechanisms. A third section explores Kinross publicly available policies, in comparison to the proposed guidelines. A fourth section prescribes possible approaches and suggestions to the matters that most require most attention in this case study.

## 2. BUSINESS-COMMUNITY RELATIONS IN PARACATU, MINAS GERAIS, BRAZIL

*Paracatu*, a municipality situated in the southeast of Brazil, in the state of Minas Gerais (General Mines), has a long history in gold exploration, which dates from the 18th century<sup>1</sup>. With a population estimated in more

than 92.000 inhabitants in 2017, Paracatu's economy is mainly dependent on mining and agriculture<sup>2</sup>. Only the gold mine should supply 22% of the city's formal jobs<sup>3</sup>. Although 35,8% of the population lived in 2010 with less than half of a minimum wage, GDP per capita was estimated in approx. USD 8,371.84<sup>4 5</sup>. The latest available data shows that the local GINI raised from 0,458 in 1991 to 0,744 in 2010<sup>6</sup>, meaning high income concentration, in a city with high levels of poverty.

Situated to the north of the city of *Paracatu* is the gold open-pit mine led by Kinross Gold Corporation, which is one of the largest mining companies in the world, and is based in Toronto, Canada. Kinross Brazil integrates the group. The enterprise not only has developed an own international and national agenda for showing commitment to human rights, but also has been awarded international prizes for its corporate social responsibility practices (CSR)<sup>7</sup>. In 2017 and for the 8th time in a row, the corporation was named one of Canada's top corporate citizens by Corporate Knights<sup>8</sup>. *Paracatu's* subsidiary was named 'Company of the Year' in the Precious Metals and Mineral category awarded by Brazil Mineral magazine<sup>9</sup>. In the years of 2016 and 2018, Kinross was given the RobercoSAM Bronze class award and the Industry Mover award, respectively, which are based on assessments of how firms incorporate economic, environmental and social strategies<sup>10</sup>.

humanrights.org>. Access in: 1 Apr. 2018.

2 Fundação Instituto Brasileiro de Geografia e Estatística. *Panorama*. 2018. Available in: <<https://cidades.ibge.gov.br>>. Access in: 2 Apr. 2018.

3 Kinross BraSIL. *Conheça a Kinross*. 2018. Available in: <<http://www.kinross.com.br/a-kinross/conheca/>>. Access in: 2 Apr. 2018.

4 BRL 31,289.84 conversion in USD on May 20th, 2018.

5 IBGE (note 2, above).

6 IBGE (note 2, above).

7 Kinross BraSIL. *Our Approach*. 2017. Available in: <<http://www.kinross.com/corporate-responsibility/our-approach/default.aspx>>. Access in: 3 Apr 2018.

8 Kinross BraSIL. *Kinross named one of Canada's top Corporate Citizens by Corporate Knights for 8th year in a row*. 2018. Available in: <<http://www.kinrossworld.kinross.com/en/articles/kinross-named-one-canada%E2%80%99s-top-corporate-citizens-corporate-knights-8th-year-row>>. Access in: 3 Apr. 2018.

9 Kinross WORLD. *Paracatu named 'Company of the Year' in Brazil for second year in a row*. 2018. Available in: <<http://www.kinrossworld.kinross.com/en/articles/paracatu-named-%E2%80%98company-year%E2%80%99-brazil-second-year-row>>. Access in: 3 Apr. 2018.

10 Kinross Gold Corporation. *Commitments & Recognition*. 2017. Available in: <<http://www.kinross.com/corporate-responsibility/commitments-and-recognition/default.aspx>>. Access in: 3 Apr. 2018.

1 BARROS, J. Neves. *Mineração e Violações de Direitos: o caso da empresa Kinross em Paracatu*. New York: Business and Human Rights Resource Centre. 2018. Available in: <

Paracatu's first open-pit mine started its operations in 1987 at Morro do Ouro (Gold Mountain), led by Rio Preto Mineração e Participações, later TVX Gold Inc. and Echo Bay, and Rio Tinto<sup>11</sup>. Since 2004, Kinross Brasil Mineração (Kinross) is the complete owner and operator of the gold mine, and it is expected to conclude its activities in 2030<sup>12</sup>. The firm extracted in 2017 the gold equivalent production of 359,959 oz<sup>13</sup>, what makes it the largest gold mine in Latin America and represents 22% of the national production<sup>14</sup>. In the surroundings of the mine, residents consist of low-income and/or quilombola communities<sup>15</sup> <sup>16</sup>. Adjacent are namely the neighborhoods of *Alto da Colina, Bela Vista II, Amoreiras II, Esplanada, Sao Domingos, Santa Rita, Lagoa de Santo Antonio and Santo Eduardo*<sup>17</sup>.

## 2.1. Business-community conflicts

Because of the mine, local communities claim to struggle with social, health and environmental issues. The situation has been portrayed by scientific studies, NGO reports, press and social media. Judiciary or Executive powers could not yet put an end to discussions about those potential or actual human rights impacts. Kinross has rejected allegations of misconduct, and also presented their own reports and case studies, which differ very much to those first results. Such a friction leads to unsatisfactory business-community relations.

A water dam, with a surface of two thousand hectares, has been constructed to serve as disposal for 1 billion tons of toxic waste<sup>18</sup>. Since the environmental tragedy of Mariana, the worst in Brazil's history, local community members have urged for more debates regarding the situation of the dam. According to the local press, a public hearing actually took place on December 2015, where Kinross managers could respond to questions of the public<sup>19</sup> <sup>20</sup>.

The largest gold-mine in Latin America uses a special method in gold extraction that requires daily explosions and demands round-the-clock machinery work, but makes it possible to remove 180 tons of soil per day<sup>21</sup>. According to community members, the explosions are strong enough to cause earth tremors, which have led to housing structural damages particularly in the neighboring community Sao Domingos. Due to the extent of the activity, night shifts allegedly cause noise pollution too. Communities also claim that the dust coming from the explosions throw toxic substances in the atmosphere, what has been triggering diseases such as, rhinitis, sinusitis, asthma, pneumonia<sup>22</sup>. Locals signed a petition and pressed charges against the business activities, in order to call attention to their issues. Due to the severe allegations, the national Public Prosecution Office has installed a civil inquiry against Kinross mining exploration, the IC 1.22.021.000030/2013-88<sup>23</sup>.

11 ANON. Massive expansion program triples mine's production. *Canadian Mining Journal*, North York, p. 16-17, Jun./Jul. 2009. Available in: <www.canadianminingjournal.com>. Access in: 15 Apr. 2018.

12 Kinross BraSIL. *Conheça a Kinross*. 2018. Available in: <http://www.kinross.com.br/a-kinross/conheca/>. Access in: 2 Apr. 2018. (note 3, above).

13 Kinross Gold Corporation. *Operations: Paracatu, Brazil*. 2017. Available in: <http://www.kinross.com/operations/default.aspx#americas-paracatu>. Access in: 2 Apr. 2018.

14 Kinross BraSIL. *Conheça a Kinross*. 2018. Available in: <http://www.kinross.com.br/a-kinross/conheca/>. Access in: 2 Apr. 2018. (note 3, above).

15 *Quilombolas* or *quilombos* are, shortly explained, self-identified black peasant communities.

16 BARROS, J. Neves. *Mineração e Violações de Direitos: o caso da empresa Kinross em Paracatu*. New York: Business and Human Rights Resource Centre. 2018. Available in: <https://www.business-humanrights.org>. Access in: 1 Apr. 2018. (note 1, above).

17 OLIVEIRA, G. V. C. *Explaining mining company and community relations in Paracatu, Brazil: situational context and company practice*, Master of Arts. Guelph: University of Guelph, 2010. Available in: <https://atrium.lib.uoguelph.ca/xmlui/handle/10214/2435>. Access in: 15 Apr. 2018.

18 FURTADO, B. Extração de ouro ameaça Paracatu. *O Estado de Minas*, Belo Horizonte, jul. 2008. Available in: <http://www.justicaambiental.org.br/noar/anexos/acervo17\_080714\_extracao\_ouro\_ameaca\_paracatu.pdf>. Accessed 12 Abr. 2010.

19 SITUAÇÃO de barragens em Paracatu é esclarecida por mineradora. 2015. Available in: <http://g1.globo.com/minas-gerais/triangulo-mineiro/noticia/2015/12/situacao-de-barragens-em-paracatu-e-esclarecida-por-mineradora.html>. Access in: 10 Apr. 2018

20 LABOISSIÈRE, M. *Ministério Público Federal vê ameaça em Paracatu após tragédia em Mariana*. 2015. Available in: <https://www.em.com.br/app/noticia/gerais/2015/11/17/interna\_gerais,708904/ministerio-publico-federal-ve-ameaca-em-paracatu-apos-tragedia-em-mari.shtml>. Access in: 13 Apr 2018.

21 SCHPREJER, P.; ARAUJO, E. Mina de ouro em Paracatu (MG) afeta comunidades tradicionais. In: FERNANDES, F. R. C.; ALAMINO, R. C. J.; ARAUJO, E. R. (Ed.). *Recursos Minerais e Comunidade: impactos humanos, socioambientais, econômicos*. Rio de Janeiro: Centro de Tecnologia Mineral (CETEM), 2014. p. 280-282

22 BARROS, J. Neves. *Mineração e Violações de Direitos: o caso da empresa Kinross em Paracatu*. New York: Business and Human Rights Resource Centre. 2018. Available in: <https://www.business-humanrights.org>. Access in: 1 Apr. 2018. p. 57-60.

23 BRASIL. Procuradoria da República no Município de Paracatu/Unai-MG. Inquérito Civil. *Inquérito Civil n. 1.22.021.000030/2013-88*. Instaurado para investigar danos estruturais causados às residências do acampamento em decorrência da atividade mineradora da

Although primary investigations did not evidence sound pollution above legal standards, locals pointed out on that same civil inquiry that, whenever tests were conducted, machines were put off or explosions were evidently not being conducted, so that there would be no sound pollution over legal standards. And, although the technical report about structural housing damages showed that the probable cause of deterioration is their own poor infra-structure, it was highlighted that it was a report privately commissioned by Kinross<sup>24</sup> <sup>25</sup>.

Nonetheless, the release of arsenic, a carcinogenic agent, and other toxic materials in the atmosphere and water reserves due to the mining activities represent potential severe human rights impacts<sup>26</sup>. Scientific publications, though, differ in their conclusions if that has been contaminating environment and local population. According to a study conducted by a centre of mineral technology, CETEM, in 2014, levels of arsenic found in the people, water sheds and dust were in accordance to international standards provided by the World Health Organization<sup>27</sup>. Another study found that “arsenic drinking water contents did not represent risk on human health, meaning municipal water sources—fluvial water and groundwater— [were] adequate for human consumption”<sup>28</sup>.

However in another study, concentration of arsenic was detected higher than legal standards at freshwater of watersheds and at abandoned artisanal mining sites, whereas levels in drinking water, tap water and groundwater were noted acceptable<sup>29</sup>. Another study finds that levels of arsenic found in sediments of *Rico* stream, in *Paracatu*, are above limits accepted by national and international standards, indicating contamination<sup>30</sup>. Whereas national resolution CONAMA 344/2004 and TEL (threshold effect level) require the limit of 5.9 mg.kg-1 (meaning there is no risk to the ecosystem), the study recorded values between 2,318 mg.kg-1 and 4,727 mg.kg-1 of arsenic in three different spots. Other reports published in international, national press and social media conducted by a local social movement, have also shown adults and children from neighborhoods close to the dam with levels of arsenic in urine samples higher than accepted by state, national and international standards<sup>31</sup> <sup>32</sup>. They conclude by intoxication due to arsenic<sup>33</sup>.

Furthermore, it has been reported that local activists have been victims of harassment and threats. Social movement and community leaders, a former city mayor, and even employees on their free time have been allegedly under constant monitoring<sup>34</sup>. According to the same

Kinross. Representante: Ministério Público Federal. Representado: Kinross Brasil Mineração e outros. Autuação 9 Dec 2013. Paracatu, v. I, mar. 2013.

24 BRASIL. Procuradoria da República no Município de Paracatu/Unai-MG. Inquérito Civil. *Inquérito Civil n. 1.22.021.000030/2013-88*. Instaurado para investigar danos estruturais causados às residências do acampamento em decorrência da atividade mineradora da Kinross. Representante: Ministério Público Federal. Representado: Kinross Brasil Mineração e outros. Autuação 9 Dec 2013. Paracatu, v. I, mar. 2013. (note 23, above).

25 BARROS, J. Neves. *Mineração e Violações de Direitos*: o caso da empresa Kinross em Paracatu. New York: Business and Human Rights Resource Centre. 2018. Available in: <<https://www.business-humanrights.org>>. Access in: 1 Apr. 2018. p. 58-59. (note 1, above)

26 BARROS, J. Neves. *Mineração e Violações de Direitos*: o caso da empresa Kinross em Paracatu. New York: Business and Human Rights Resource Centre. 2018. Available in: <<https://www.business-humanrights.org>>. Access in: 1 Apr. 2018. p. 61-62. (note 1, above)

27 SCHPREJER, P.; ARAÚJO, E. Mina de ouro em Paracatu (MG) afeta comunidades tradicionais. In: FERNANDES, F. R. C.; ALAMINO, R. C. J.; ARAÚJO, E. R. (Ed.). *Recursos Minerais e Comunidade: impactos humanos, socioambientais, econômicos*. Rio de Janeiro: Centro de Tecnologia Mineral (CETEM), 2014. p. 280-282 (note 21, above).

28 Bidone, E. et al. Hydrogeochemistry of arsenic pollution in watersheds influenced by gold mining activities in Paracatu (Minas Gerais State, Brazil). *Environmental Science and Pollution Research*, New York, 2016.

29 Bidone, E. D. et al. Arsenic levels in natural and drinking waters from Paracatu, MG, Brazil. In: LITTER, Marta I. et al. *One century of the discovery of arsenicosis in Latin America (1914-2014)*. London: Taylor & Francis Group. 2014. 162-164.

30 FERREIRA, M.M. et al. *Teores de Arsênio em sedimentos superficiais do córrego Rico, Paracatu-MG*. Rio de Janeiro: Centro de Tecnologia Mineral (CETEM), 20—. Available in: <<http://www.cetem.gov.br/images/programas/paracatu/Teores-de-arsenio-em-sedimentos-superficiais-do-Corrego-Rico-Paracatu-MG.pdf>>. Access in: 2 Apr. 2018.

31 ARAÚJO, H., & VECIANA, A. Canadian mining company spied on opponents and activists in Brazil. *The Guardian*. 13 May 2015. Available in: <<https://www.theguardian.com/sustainable-business/2015/may/13/canadian-mining-company-spied-on-opponents-and-activists-in-brazil>>. Access in: 10 Apr 2018.

32 LABOISSIÈRE, P. Expansão da maior mina de ouro do país assusta moradores de Paracatu. [on line] *Agência Brasil*. 16 Mar 2015. Available in: <<http://agenciabrasil.ebc.com.br>> Access in: 10 Apr 2018].

33 DANI, L.D. Dr.med. D.Sc. S. U. Comprovada contaminação ambiental grave, persistente e progressiva, e intoxicação da população pelo arsênio liberado pela Kinross em Paracatu. *Alerta Paracatu*, 5 Dez 2015. Available in: <<http://alertaparacatu.blogspot.de/2015/12/comprovada-contaminacao-ambiental-grave.html>>. Access in: 10 Apr 2018].

34 ARAÚJO, H.; VECIANA, A. *Canadian mining company spied on opponents and activists in Brazil*. 2015. Available in: <<https://www.theguardian.com/sustainable-business/2015/may/13/canadian-mining-company-spied-on-opponents-and-activists-in-brazil>>. Access

article, two local activists say to have left the city under death threats, apparently due to their opposition to the business operations. In response, Kinross rejected allegations, and emphasizes reaching out for dialogue with the local community through its CSR practices<sup>35 36</sup>.

In sum, it is possible to observe potential and/or actual adverse human rights impacts due to the mining operations of Kinross in Paracatu. Especially regarding environmental and social questions, local communities strive to find redress and grievance. Dialogue is clearly not in evidence in this case study. Even if community claims end up being exaggerated, it is of most importance that Kinross, as a powerful enterprise it is, searches for dialogue and harmony with locals. The reason is that, under a rights-based approach, a minimum of guarantees are supposed to be granted to those in less favor. But from another perspective, more harmonious relations are also profitable for the enterprise itself.

Therefore, the next section provides outlines on important aspects of international and national norms on business and human rights, limited to the aspects of human rights due diligence and operational-level grievance mechanisms. These not only generally serve to guide business on their responsibility to respect human rights, but also apply to this case study and can help dealing with those mentioned issues.

### 3. THE INTERNATIONAL LEGAL FRAMEWORK: ABOUT BUSINESS AND HUMAN RIGHTS

Since the 1970's, the international community has

in: 10 Apr. 2018. (note 31, above)

35 Crossland, J. *Kinross Gold takes its ethical standards seriously*. 2015. Available in: <<https://www.theguardian.com/business/2015/may/27/kinross-gold>>. Access in: 13 Apr 2018.

36 Even though there could not be found any conclusive findings upon those allegations against Kinross operations in Brazil, death threats shall be taken into consideration as usual human rights violations in the region. Death threats are so common in Brazil that, according to a statement made after the last OHCHR visit to the country, between 2002 and 2013, almost 50% of all world wide cases were reported to be in Brazil. Around 6% of that amount, 51 human rights defenders of the state of Minas Gerais, where the city of Paracatu is situated, were at the time of the report under protection programme. See: UNITED NATIONS. *Statement at the end of visit to Brazil by the United Nations Working Group on Business and Human Rights*. 2015. Available in: <[http://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf)>. Access in: 15 Apr. 2018.

been discussing on the matter of business enterprises and their responsibility to meet human rights. Some of the first documental initiatives consisted on the publication of the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, in 1977, and the OECD Guidelines, in 2000<sup>37</sup>. And yet, only after the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights, in 2011, that it has become clear which are the exact expected responsibilities. The 31-principle charter proposed three basic pillars, complementary to each other. Also named the “Protect, Respect and Remedy Framework”, the pillars consist of: (i) the duty of States to protect human rights; (ii) the responsibility of the firm to respect human rights; and (iii) the right to have access to remedies<sup>38</sup>.

Although not legally bound by international law, enterprises are expected to conduct their activities within moral and ethical standards. The GPBHRs do not exclude the responsibility of firms to meet extra human rights that refer to specially vulnerable groups presented by other international treaties or national laws. In fact, there is even an expectation to promote human rights through CSR practices, depending on the scope of business activities. However, different from States, an enterprise is under current general understanding not obliged to protect<sup>39</sup>. Those responsibilities to which the GPBHRs refer derive from different international bills on human rights, including the 1948 Universal Declaration of Human Ri-

37 RATNER, S. R. Corporations and Human Rights: a theory of legal responsibility. *The Yale Law Journal*, New Haven, v. 111, n. 3, p. 452-540, Dez. 2001. Available in: <<https://www.yalelawjournal.org/article/corporations-and-human-rights-a-theory-of-legal-responsibility>>. Access in: 28 Apr. 2018.

38 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixgMvP45bbAhWm34MKHQTpCzMqFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\_EN.pdf&usq=AOvVaw1eXHpXS2jxinTbBidRBbsn](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixgMvP45bbAhWm34MKHQTpCzMqFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR_EN.pdf&usq=AOvVaw1eXHpXS2jxinTbBidRBbsn)>. Access in: 10 Apr. 2018.

39 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <

ghts, and the 1966 International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights<sup>40</sup>. Mining companies might face issues related to, for instance, the right to housing, health, education, adequate standard of living, security of person, freedom of opinion and expression, non-discrimination, potable water and sanitation, safe working conditions<sup>41</sup>.

The premise is that business shall: clearly express their intention to respect human rights, conduct human rights due diligence for the purpose of coping with human rights, and provide access to grievance and remediation, when necessary<sup>42</sup>. According to Principle 16, that is to be done through any appropriate means and publicized in the company's policy, such as bylaws or codes of conduct<sup>43</sup>. That means, too, that processes such as the ones explored in this article have to be explicitly articulated.

Human rights due diligence is an ongoing process, complementary to operational-level grievance mechanisms. They are both essential for the realization of human rights from the perspective of a firm. If efficiently carried out, they shall provide channels of communication, redress and remediation, before business-community conflicts escalate. Remediation comes as a response to adverse impacts, as a means of coping with human rights.

Since the GPBHRs set directives to be followed by business enterprises, this section summarizes the most relevant principles and guidelines particularly concerning processes that are of special relevance, also for the Kinross case. Finally, the guidelines proposed by the Brazilian Constitution supporting responsibilities of businesses will also be presented.

### 3.1. Human Rights Due Diligence

Human rights due diligence is an “ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights”<sup>44</sup>. Vital for business-community relations, it not only helps building up trust, but also, as a channel of communication, it supports redress. It shall be designed for means of identification, prevention, mitigation and accounting for solving actual or potential human rights impacts<sup>45</sup>. That means too, that this process must be integrated to the decisions undertaken by an enterprise, in order to determine them in the rationality of respect to human rights<sup>46</sup>.

Human rights due diligence refers not only to a corporation conducting economic activities, but also to subsidiaries, partners, or those involved in the supply

40 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[41 Kemp, Dr. D. et al. \*Why human rights matter\*. 2013. Available in: <<https://www.csr.mq.edu.au/publications/why-human-rights-matter>>. Access in: 28 May 2018.](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhW114MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssue%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_>. Access in: 10 Apr. 2018. p. 9-10 (note 39, above).</p>
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42 FASTERLING, B.; DEMUIJNCK, G. J. Human rights in the Void?: due diligence in the UN guiding principles on business and human rights. *Bus Ethics*, New York, v. 116, p. 799-814. 2013. Available in: <<https://doi.org/10.1007/s10551-013-1822-z>>. Access in: 15 Jun. 2018]

43 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixgMvP45bbAhWm34MKHQtpCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\_EN.pdf&usg=AOvVaw1eXHpXS2jxnTbBidRBbsn](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixgMvP45bbAhWm34MKHQtpCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR_EN.pdf&usg=AOvVaw1eXHpXS2jxnTbBidRBbsn)>. Access in: 10 Apr. 2018. GP 16 (note 38, above).

44 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[45 UNITED NATIONS. \*Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework\*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <\[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixgMvP45bbAhWm34MKHQtpCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\\_EN.pdf&usg=AOvVaw1eXHpXS2jxnTbBidRBbsn\]\(https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixgMvP45bbAhWm34MKHQtpCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\_EN.pdf&usg=AOvVaw1eXHpXS2jxnTbBidRBbsn\)>. Access in: 10 Apr. 2018. GP 15b \(note 38, above\).](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhW114MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssue%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_>. Access in: 10 Apr. 2018. p. 6 (note 39, above).</p>
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46 FASTERLING, B.; DEMUIJNCK, G. J. Human rights in the Void?: due diligence in the UN guiding principles on business and human rights. *Bus Ethics*, New York, v. 116, p. 799-814. 2013. Available in: <<https://doi.org/10.1007/s10551-013-1822-z>>. Access in: 15 Jun. 2018]. p. 801 (note 42, above).

chain<sup>47</sup> 48. How that may be put in practice is a hard question, since from a legal perspective and just as in this study case, core companies are usually separate entities and liability is directed to affiliate enterprises abroad, which act autonomously. As Mares points out, the core company remains complicit to impacts, and should also therefore build a due diligence process to prevent any adverse human rights impacts<sup>49</sup>.

In a nutshell, human rights due diligence can be synthesized in four steps: identification, assessment, tracking and communication of human rights impacts. Firstly, it is necessary to identify and assess human rights impacts. Secondly, findings must be addressed and tracked and, thirdly, responses must be communicated promptly and transparently to stakeholders<sup>50</sup>. The final aim is to work along with affected stakeholders in order to provide means of grievance and, if necessary, remediation<sup>51</sup>.

47 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <[https://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwJxgMvP45bbAhWm34MKHQTPCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn](https://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwJxgMvP45bbAhWm34MKHQTPCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn)>. Access in: 10 Apr. 2018. GP 13 (note 38, above).

48 Human rights due diligence “should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships” (UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <[https://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwJxgMvP45bbAhWm34MKHQTPCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn](https://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwJxgMvP45bbAhWm34MKHQTPCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn)>. Access in: 10 Apr. 2018. GP 17a (note 38, above).

49 MARES, R. Responsibility to Respect: why the Core Company should act when affiliate infringe human rights. In: MARES, Radu (Ed.). *Siege or Cavalry Charge?: the UN Mandate on Business and human rights the Hague*. Belgium: Martinus Nijhoff, 2012.

50 Kemp, Dr. D. et al. *Why human rights matter*. 2013. Available in: <<https://www.csr.mq.edu.au/publications/why-human-rights-matter>>. Access in: 28 May 2018. p. 14 (note 41, above).

51 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <[https://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwJxgMvP45bbAhWm34MKHQTPCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn](https://www.google.com/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwJxgMvP45bbAhWm34MKHQTPCzMQFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn)>. Access in: 10 Apr. 2018.

In the first phase of identification and assessment, it is also important to understand the circumstances in which a firm conducts its business relations. On that depends the whole scope of a human rights due diligence process. Among the different factors that influence the scope are the company’s size, severity of impacts, the nature and operating context<sup>52</sup>. Thus, specially in the case of mining activities, the risk of social and environmental catastrophes may be taken into consideration.

After that, the process goes on to integrating solutions in a continuous basis and searching for means of addressing indicated issues, that will depend on the scope of the actual business activities<sup>53</sup>. Though all enterprises have the responsibility to respect human rights, the scale, complexity and irremediability of impacts will draw upon expectations of remediation and prevention<sup>54</sup>. Hence, the type of exploration conducted will partly design due diligence systematics. For instance, in an operational context of a highly profitable mining firm, it is justified to demand openly health, environmental and infra-structure support, or even a quota of revenues to finance the prevention of potential or to minimize actual adverse human rights impacts.

Addressing issues must be done accurately, otherwise human rights due diligence processes may be seen as biased and stakeholders lose trust on the process<sup>55</sup>. In order to achieve that, processes must provide transpa-

TbBidRBbsn>. Access in: 10 Apr. 2018.

52 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. Seventeenth session. A/HRC/17/31 Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. GP 14 (note 38, above).

53 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. Seventeenth session. A/HRC/17/31 Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. GP 14 (note 38, above).

54 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. Seventeenth session. A/HRC/17/31 Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. p. 19 (note 38, above).

55 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. Seventeenth session. A/HRC/17/31 Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. p. 60-61 (note 38, above).

rency and accountability. Businesses need to communicate their approaches in mitigating adverse human rights impacts as well as be held accountable to external parties, especially, but not only, to interested stakeholders<sup>56</sup>. What kind of information should be communicated is a challenging question for many firms, since they tend to ponder on what to reveal, depending on legal risks and probable lawsuits<sup>57</sup>. But, between such grey lines, it is mostly important that businesses keep on their intention in demonstrating pragmatic commitment to human rights<sup>58</sup>.

Additionally, granting accessibility is fundamental for the purposes of the GPBHRs. An enterprise shall engage with stakeholders and potentially affected groups, as well as with experts in the field, to ensure accountability, credibility and participation to that process. Especially in what comes to the most relevant stakeholders, consultation requires sensitivity to barriers. Engagement is only possible when channels of communication are made accessible, meaning that the most diverse limitations must be addressed, such as language and literacy. Experts in the field of human rights can be of great use in breaking barriers, creating and mediating communication channels. Once accessibility is granted, engagement can take place - a pivotal tool in this process. All these standards support legitimation to the due diligence process<sup>59 60</sup>.

Finally, a firm shall seek to mitigate potential or actual adverse impacts to human rights by using due diligence, because this process is a differentiator when perceiving impacts too<sup>61 62</sup>. According to studies conducted by Mccorquodale et al among mining companies, there is a clear difference in the identification of impacts between enterprises who dedicate to human rights due diligence and those who only consider them indirectly: a 55.6% of the first group identified human rights impacts, compared to none of the second group<sup>63</sup>. That means that human rights due diligence provides an insight to actual or potential impacts, which are not assessed via regular risk assessments.

When facing impacts, businesses shall also take their leverage into consideration. In other words, their ability to influence other actors, as of business partners or anyhow contributors, shall be used, at least to avoid impacts even if that means finding remediation alternatives, ceasing or changing activities<sup>64 65</sup>.

56 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Seventeenth session. A/HRC/17/31Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. p. 59 (note 39, above).

57 Addo, M., et al. *Implementing the U.N. Guiding Principles on Business and Human Rights: the United Nations guiding principles on business and human rights*. Storrs: Thomas J. Dodd Research Center, 2013, p. 22. p. 22.

58 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6\\_>](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_>)>. Access in: 10 Apr. 2018. p. 57 (note 39, above).

59 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Seventeenth session. A/HRC/17/31Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. p. GP 18 (note 38, above).

60 UNITED NATIONS. *The corporate responsibility responsibility to*

*respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6\\_>](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_>)>. Access in: 10 Apr. 2018. p. 33 (note 39, above).

61 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Seventeenth session. A/HRC/17/31Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. p. GP 18 (note 38, above). GP 13;15 (note 38, above).

62 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6\\_>](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_>)>. Access in: 10 Apr. 2018. p. 16 (note 39, above).

63 MCCORQUODALE, R. et al. Human rights due diligence in law and practice: good practices and Challenges for business enterprises. *Business and Human Rights Journal*, Cambridge, v. 2, p. 195–224, 2017. Available in: <<https://www.cambridge.org/core>>. Access in: 15 Jun. 2018.

64 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6\\_>](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_>)>. Access in: 10 Apr. 2018. p. 18;49-50 (note 39, above).

65 The GPBHRs define an "impact-based negative responsibility

### 3.2. Operational-level Grievance Mechanisms

Grievance mechanisms are the best form to seek redress and of guaranteeing remediation. In combination with human rights due diligence, they provide firms with means of identifying and mitigating human rights impacts<sup>66</sup>. In addition, comprehension of recurrent issues enables enterprises to anticipate or avoid prospective adverse impacts. Various institutions can enable state-led grievance mechanisms, such as, in the case of Brazil, courts, Ministries in their respective fields, or the Public Prosecution Office.

Typically developed by a business itself and supported by the GPBHRs, operational-level grievance mechanisms are as well legitimate, active forms of redress<sup>67</sup>. They are expected to be conducted under the same standards of judicial and non-judicial grievance mechanisms, and yet to require engagement and dialogue to stakeholders. Individuals or groups shall be able to formalize concerns regarding any genuine impacts and, if necessary, to seek remediation directly in contact with the enterprise<sup>68</sup>.

ity”, in which firms are not required to affirmatively contribute to positive impacts nor use leverage for that purpose, but to mainly use leverage to avoid impacts. And yet, differing to the general understanding, the Wood proposes the understanding that enterprises may actually have an obligation to use leverage for positive outcomes. See more: WOOD, S. The case for Leverage-Based Corporate human rights responsibility. *Business Ethics Quarterly*, Cambridge, p. 63-98, 2012. Available in: <[http://digitalcommons.osgoode.yorku.ca/scholarly\\_works](http://digitalcommons.osgoode.yorku.ca/scholarly_works)>. Access in: 3 Jun. 2018.

66 UNITED NATIONS. *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*. A/HRC/11/13. 2009. Available in: <<http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>>. Access in: 24 May 2018.

67 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <[https://www.google.com/url?sa=t&rcrt=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjxgMvP45bbAhWm34MKHQTPCzMqFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn](https://www.google.com/url?sa=t&rcrt=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjxgMvP45bbAhWm34MKHQTPCzMqFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn)>. Access in: 10 Apr. 2018. GP 29 (note 38, above).

68 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[https://www.google.com/url?sa=t&rcrt=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6\\_](https://www.google.com/url?sa=t&rcrt=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_)>. Access in: 10 Apr. 2018. p. 68 (note 39, above).

Particularly in regards to this case study, the aim of an operational-level grievance mechanism can be defined as to provide means of redress against any genuine claims, but most specifically, against any potential or actual adverse human rights impacts. That means too, that the whole process requires a predictable procedure with clear and public stages, using transparent communication channels to ensure legitimation. By considering that stakeholders may not have as much leverage as their own, it is necessary that businesses ensure equitable conditions, such as “reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms”<sup>69</sup>. The outcome of such a process is also to ensure respect to human rights and to draw lessons, for the sake of preventing impacts. Showing interest in dialogue and in finding agreed solutions is therefore fundamental for that matter<sup>70</sup>.

An operational-level grievance mechanism can not be treated as one more administrative procedure. In fact, it has to be faced as an active and legitimate instrument of seeking redress, in which businesses can directly respond to complaints<sup>71 72</sup>. It complements human rights due diligence, provides more channels for communica-

69 UNITED NATIONS. *Guiding Principles on Business and Human Rights: implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <[https://www.google.com/url?sa=t&rcrt=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjxgMvP45bbAhWm34MKHQTPCzMqFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn](https://www.google.com/url?sa=t&rcrt=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjxgMvP45bbAhWm34MKHQTPCzMqFggoMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn)>. Access in: 10 Apr. 2018. GP 29 (note 38, above).

70 UNITED NATIONS. *Guiding Principles on Business and Human Rights: implementing the United Nations “Protect, Respect and Remedy” Framework*. Seventeenth session. A/HRC/17/31Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. GP 31 (note 38, above).

71 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[https://www.google.com/url?sa=t&rcrt=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6\\_](https://www.google.com/url?sa=t&rcrt=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_)>. Access in: 10 Apr. 2018. p. 65 (note 39, above).

72 UNITED NATIONS. *Guiding Principles on Business and Human Rights: implementing the United Nations “Protect, Respect and Remedy” Framework*. Seventeenth session. A/HRC/17/31Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. p. 31 (note 38, above).

tion and helps the enterprise find systemic issues. Additionally, by making grievance possible on operational levels, a company allows early and direct remediation of adverse human rights impacts and prevents further escalation, something often costly<sup>73 74</sup>.

Building trust is crucial. The lack of it can give stakeholders the sense of losing empowerment and respect, in which case, may lead to more human rights impacts<sup>75</sup>. The GPBHRs provide a minimum of criteria to be in operational-level grievance mechanisms, to serve as strategy to build up trust in business-community relations<sup>76</sup>, namely: legitimation, accessibility, predictability, equitability, transparency, rights-compatibility, source of learning, and being based on engagement and dialogue.

Since grievance can only be possible through legitimate and accountable means for all stakeholders, it is senior-level staff responsibility to ensure oversight so that investigations are fairly conducted.<sup>77</sup> Access can be provided only after barriers have been identified, such as

73 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[74 UNITED NATIONS. \*Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework\*. Seventeenth session. A/HRC/17/31Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. p. 32 \(note 38, above\).](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_>. Access in: 10 Apr. 2018. p. 68-69 (note 39, above).</p>
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75 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Seventeenth session. A/HRC/17/31Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. p. 14-35 (note 38, above).

76 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Seventeenth session. A/HRC/17/31Agenda item 3. 2011. Available in: <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/31&Lang=E>>. Access in: 1 Apr. 2018. GP 31 (note 38, above).

77 The lack of senior-staff management in due diligence has been found to be recurrent, in a study conducted by Mccorquodale among 200 senior corporate executives. Even in enterprises with dedicated human rights due diligence, only 15.56% selected of CEOs have responded to be responsible for the identification of human rights impacts. It can be expected that, as well, operational-level mechanisms lack the same oversight from senior-staff. See more: MccORQUODALE R et al, Human Rights Due Diligence in Law and Practice... 2017 (note 63, above).

language, financial costs, possible threats, or even gender and different migration backgrounds<sup>78</sup>. Limitations of any kind need to be alleviated, so that stakeholders are finally able to engage. Targets should be, first, directly affected stakeholders, and, then, the general public. However, as it is not always possible to foresee directly impacted parties, the more wide the accessibility to a mechanism, the better<sup>79</sup>. Likewise, assessment of claims deserves equitable and predictable procedures, to which stakeholders may be aware of. Findings need to be in accordance to human-rights principles and norms and be transparently reported. Only under strict standards can grievance take place efficiently<sup>80</sup>.

Among the different examples of grievance mechanisms, literature provides a variety of solutions which support feedback, response and engagement and can be better adapted to each context. For instance, complaint boxes and call centers back confidentiality and anonymity, although only the later backs illiteracy limitations. Social workers and the installation of committees can support dialogue and understanding. However, it is not

78 UNITED NATIONS. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. HR/PUB/11/04 New York and Geneva. 2011. Available in: <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR\\_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FPublications%2FGuidingPrinciplesBusinessHR_EN.pdf&usg=AOvVaw1eXHpXS2jxinTbBidRBbsn)>. Access in: 10 Apr. 2018. p. 34 (note 38, above).

79 UNITED NATIONS. *The corporate responsibility responsibility to respect human rights: an interpretive guide*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <[80 Nevertheless, only acknowledging and supporting redress to impacts is not enough. Thus, the third pillar of the Guiding Principles enables remediation, for which businesses carry the responsibility to provide means for or at least cooperate. Remediation includes "apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions \(whether criminal or administrative, such as fines\), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition" \(UNITED NATIONS. \*The corporate responsibility responsibility to respect human rights: an interpretive guide\*. HR/PUB/12/02 New York and Geneva. 2012. Available in: <](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwixm9et6ZbbAhWI14MKHe59Ab4QFggrMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FIssues%2FBusiness%2FRtRInterpretativeGuide.pdf&usg=AOvVaw1hWNQhUkwmTdGkCpcjRv6_>. Access in: 10 Apr. 2018. p. 69-70 (note 39, above).</p>
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possible to provide anonymity and confidentiality, what might hinder complaints<sup>81</sup>. Depending on the case, suitable mechanisms must be chosen to provide the best access to affected stakeholders. Most used channels relate to “whistleblowing channels, such as emails and hotlines, and human resources or workplace complaints systems”, and to audits, which are actually ineffective for the purpose of identifying and assessing human rights impacts<sup>82</sup>.

It must be clear, finally, that the mere existence of a framework of due diligence and grievance may not be sufficient to make a corporation cope with human rights. If, on the one hand, a firm is able to respect human rights even without those processes, on the other hand, the simple design of these mechanisms in internal policies cannot be taken as a security or shield by enterprises, meaning they now comply with human rights. Fasterling and Dmujnck understand that “if a corporation causes or is complicit in human rights violations, even a proper due diligence will not change the fact that the corporation violated its moral duties”<sup>83</sup>. Therefore, bylaws, policies or statements designed in coherence with all the above explained processes and mechanisms are only there to help, not to justify excuses to adverse impacts. An enterprise carries the responsibility against human rights impacts that may happen due to its business activities.

### 3.3. Business, Human Rights & the Brazilian context

Although not explicitly proposing a guiding strategy for business to respect human rights, Brazilian law subjects firms to a variety of principles and norms. The Constitution of 1988 and its following amendments states that the national economic order shall “intend to ensure everyone a life with dignity, in accordance with

the dictates of social justice”<sup>84</sup>. It is also guided by principles of environmental protection and reduction of regional and social differences, among others<sup>85</sup>.

In a decision of 2006, Supreme Court Min. Celso de Mello decided that environmental protection reflects an extensive concept, including not only the protection of nature, but also of cultural, artificial (as of urban space) and labor environments<sup>86</sup>. According to his decision, it is unacceptable to compromise health, security, culture, work, social well-being, as well as environment, for the sake of an economic activity. In other words, that means too that business enterprises are entitled to respect those as human rights under his interpretation of the Constitution, and this shall be taken into consideration for further judicial rulings.

Following constitutional articles underpin the respect of business activities towards human rights by means of regulating them. For instance, environmental impact assessments are required to be conducted prior to the commencement of any business operations that might cause adverse environmental impacts<sup>87</sup>. Enterprises exploiting mineral resources “shall be required to restore the degraded environment”<sup>88</sup>. Actual adverse environmental crimes conducted by individuals or legal entities will be subject to legal sanctions, detailed on Bill 9.605/98 of environmental crimes<sup>89 90</sup>. Research

84 BRASIL. Constituição (1988). *Emenda constitucional, 91 de 2016*. Available in: <[http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)>. Access in: 21 May 2018.

85 BRASIL. Constituição (1988). *Emenda constitucional, 91 de 2016*. Art. 170 Available in: <[http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)>. Access in: 21 May 2018. (note 84, above).

86 BRASIL. Supremo Tribunal Federal. *ADI 3.540 MC*. Relator: Min. Celso de Mello, j. 1º-9-2005, P, Diário da Justiça 3 February 2006. *Lex: Jurisprudência do STF*. Available in: <[www.stf.jus.br](http://www.stf.jus.br)>. Access in: 2 May 2018.

87 BRASIL. Constituição (1988). *Emenda constitucional, 91 de 2016*. Art. 225, IV. Available in: <[http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)>. Access in: 21 May 2018. (note 84, above).

88 BRASIL. Constituição (1988). *Emenda constitucional, 91 de 2016*. Art. 225, p.2. Available in: <[http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)>. Access in: 21 May 2018. (note 84, above).

89 BRASIL. Constituição (1988). *Emenda constitucional, 91 de 2016*. Art. 225, p.3. Available in: <[http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)>. Access in: 21 May 2018. (note 84, above).

90 BRASIL. *Lei 9.605 de 12 de fevereiro de 1998*. Dispõe sobre as sanções penais e administrativas derivadas de condutas e atividades lesivas ao meio ambiente, e dá outras providências. *Diário Oficial da União*, Brasília, 13 Feb 1998. Available in: <[http://www.planalto.gov.br/ccivil\\_03/leis/1998/leis/9605.htm](http://www.planalto.gov.br/ccivil_03/leis/1998/leis/9605.htm)>. Access in: 21 May 2018.

81 Barca, V. Grievance mechanisms for social protection programmes: stumbling blocks and best practice. *International Policy Centre for Inclusive Growth*, Brasília, Apr. 2015.

82 McCORQUODALE, R. et al. Human rights due diligence in law and practice: good practices and Challenges for business enterprises. *Business and Human Rights Journal*, Cambridge, v. 2, p. 195–224, 2017. Available in: <<https://www.cambridge.org/core>>. Access in: 15 Jun. 2018. p. 211 (note 63, above).

83 FASTERLING, B.; DEMUIJNCK, G. J. Human rights in the Void?: due diligence in the UN guiding principles on business and human rights. *Bus Ethics*, New York, v. 116, p. 799-814. 2013. Available in: <<https://doi.org/10.1007/s10551-013-1822-z>>. Access in: 15 Jun. 2018. p. 805-806 (note 42, above).

and utilization of potentials, registration, monitoring, as well as the approval of concessions require licenses and specific bureaucratic arrangements<sup>91 92 93</sup>.

And yet, after its mission to Brazil in 2015, a United Nations working group report concluded that “human rights risks were mainly seen as risks to a company’s operations, rather than risks faced by vulnerable rights holders”<sup>94</sup>. Meaning that, in the country, most businesses focus on analyzing risks in relation to their projects or economic activities, instead of considering local communities’ needs. Finally, the Working Group suggested the need to increase awareness of the GPBHRs framework among Brazilian entrepreneurs.

#### 4. EXPLORING KINROSS HUMAN RIGHTS DUE DILIGENCE AND OPERATIONAL-LEVEL GRIEVANCE MECHANISMS

Given Paracatu’s contentious situation, it is expected that the cause to the issue lays on local communities being unable to seek redress due to lack or misconception of operational-level grievance mechanisms and human rights due diligence process. In order to find that out, it is necessary to evaluate Kinross policy observed in publicly available documents. First, this section will explore the due diligence process and operational-level grievance mechanisms developed by the enterprise, and later assess if they are based on human rights directives,

gov.br/ccivil\_03/Leis/L9605.htm>. Access in: 2 May 2018.

91 OLIVEIRA, G. V. C. *Explaining mining company and community relations in Paracatu, Brazil*: situational context and company practice, Master of Arts. Guelph: University of Guelph, 2010. Available in: <<https://atrium.lib.uoguelph.ca/xmlui/handle/10214/2435>>. Access in: 15 Apr. 2018. p. 51 (note 17, above).

92 BRASIL. Constituição (1988). *Emenda constitucional, 91 de 2016*. Not exclusively art. 22, XII, art. 23, XI, art. 176, art. 176, p.1, art. 23, X. Available in: <[http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicaocompilado.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm)>. Access in: 21 May 2018. (note 84, above).

93 One of the newest actions was the enactment of Bill 12.527 in 2011, also named *Lei de Acesso à Informação* (Bill of Access to Information). It created a public “dirty list” of business involved with slave work, under the principle of “naming and shaming”. Although the list mostly focused on labor rights, it has been an achievement in the field.

94 UNITED NATIONS. *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*. A/HRC/11/13. 2009. Available in: <<http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx>>. Access in: 24 May 2018.

as proposed by the Guiding Principles on Business and Human Rights and the Brazilian constitution.

#### 4.1. Kinross policy commitments

Kinross openly stresses its policy commitment to: the UN Global Compact; the Voluntary Principles for Security and Human Rights; the Kinross Code of Business Conduct and Ethics; its “internal policies for Environment, [...] [its] procedures and practices in community relations, [its] approach to project permitting/consultation”; and “to support and respect the protection of human rights in the workplace and the community, in accordance with the Universal Declaration of Human Rights”<sup>95</sup>. Therefore, in alignment to Principle 15.a, Kinross shows clearly policy commitment to respect human rights. Both the international group and the Brazilian subsidiary have in their bylaws a variety of codes, documents and publications that guide their business relations, in detail in English, but also Portuguese versions.

Kinross International has published guidelines on corporate responsibility, including internal policies on environment, community relations, whistleblowing, as well as a “Ten Guiding Principles for Corporate Responsibility”, a “Kinross Code of Business Conduct and Ethics”, and a “Conflict-Free Gold Standard” strategy plans. It also means to require suppliers to sign a “Supplier Standards Conduct” (SSoC), making sure they not only comply to the company’s Code of Conduct, but also to international standards, “including applicable anti-corruption laws, as well as the fundamental principles of the UN Global Compact respecting human rights, labour standards, environmental protection, and anti-corruption”<sup>96</sup>.

Besides other public statements, Kinross presents a Portuguese version of its Código de Ética e Conduta de Negócios (“Code of Ethic and Business Conduct” or “Code”)<sup>97</sup>. The Code guides all Kinross representa-

95 Kinross Gold Corporation. *Our Approach*. 2017. Available in: <<http://www.kinross.com/corporate-responsibility/our-approach/default.aspx>>. Access in: 3 Apr 2018.

96 Kinross Gold Corporation. *Our Approach*. 2017. Available in: <<http://www.kinross.com/corporate-responsibility/our-approach/default.aspx>>. Access in: 3 Apr 2018. (note 95, above).

97 Kinross Gold Corporation. *Código de Ética e Conduta de Negócios*. 2016. Available in: <<http://www.kinross.com.br/a-kinross/nossos-valores/>>. Access in: 5 Apr. 2018.

tives to e.g. promote an honest and ethical conduct and comply to applicable laws, the same basic expectation of the GPBHRs<sup>98</sup>. It also states that both local laws and international standards shall be observed and that violations to human rights shall not be tolerated, what shows policy commitment to respect human rights. According to the bylaws, potential or actual violations to human rights are required to be reported, meaning thus, that Kinross aims to address issues and support a human rights due diligence. The text also asserts about the firm's expectation towards "all representatives, suppliers and agents [to] respect human rights of interested parties and local communities with which Kinross makes business with"<sup>99</sup>, in resemblance to Principle 13.

In affinity to the Brazilian constitution, socio-environmental responsibility is displayed as one of the corporation's pillar values. More specifically, Kinross commits to minimizing any adverse impacts that may be caused to communities or environment, as well as to contribute to the quality of life of the population. Such commitments are communicated on the company's website and practiced as part of CSR projects<sup>100</sup>.

#### 4.2. Human rights due diligence and operational-level grievance mechanisms

The corporate strategy proposed on the "Ten Guiding Principles" paper publicly recognizes the enterprise's social responsibility, and its need to maintain "strong and mutually beneficial relationships with communities and stakeholders"<sup>101</sup>. Among the corporation's guiding principles, principle 6 states its will to "conduct [...] all activities in accordance with accepted standards in protection and promotion of human rights[, to] respect the cultural and historical perspectives and rights of those affected by [their] operations, in particular indigenous peoples"<sup>102</sup>. One of the aims is to "maximize

employment, business and economic opportunities for local communities from [...] existing operations and new projects"<sup>103</sup>. Nevertheless, the firm expresses its commitment to "maintain active engagement and dialogue with [...] civil society on CSR best practices and evolving global standards" and to provide "lasting benefits to communities [...] by supporting sustainable initiatives to develop their social, economic, and institutional fabric"<sup>104 105</sup>. It is also stated that Kinross looks after "an ongoing dialogue and engagement with stakeholders in the communities where (they) operate, maintained in a spirit of transparency and good faith", and after the "highest standards of corporate governance, ethic and honesty"<sup>106</sup>.

This concise but comprehensive proposal from Kinross "Ten Guiding Principles" can be interpreted to be in harmony with the Brazilian constitutional understanding and the GPBHRs, for the enterprise clearly accepts to act in accordance to defined standards in promotion of human rights. Kinross takes a step further towards the constitutional quest for social justice by bringing awareness and offering support to the needs of local communities, e.g. respecting cultural and historical heritages and minority rights, or developing transparent dialogue and engagement. The necessity of providing ethic and honesty standards reflects the core intention of both national and international norms. Therefore, Kinross has shown policy commitment to the crucial guidelines enlisted.

Additional Environmental<sup>107</sup>, Community-Relations<sup>108</sup> and Whistleblower policies<sup>109</sup> are also in alignment to the GPBHRs. Although only found available on the international website on English language, the

98 Kinross Gold Corporation. *Código de Ética e Conduta de Negócios*. 2016. p. 1. Available in: <<http://www.kinross.com.br/a-kinross/nossos-valores/>>. Access in: 5 Apr. 2018. (note 97, above).

99 Kinross Gold Corporation. *Código de Ética e Conduta de Negócios*. 2016. p. 13. Available in: <<http://www.kinross.com.br/a-kinross/nossos-valores/>>. Access in: 5 Apr. 2018. (note 97, above).

100 KINROSS BRASIL. *Nossos Valores*. 2018. <<http://www.kinross.com.br/a-kinross/nossos-valores/>>. Access in: 23 May 2018.

101 Kinross Gold Corporation. *10 Guiding Principles for corporate responsibility, n.d.* Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 Apr. 2018.

102 Kinross Gold Corporation. *10 Guiding Principles for corporate responsibility, n.d.* p.6. Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 Apr. 2018. (note 101, above).

103 Kinross Gold Corporation. *10 Guiding Principles for corporate responsibility, n.d.* p.8. Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 Apr. 2018. (note 101, above).

104 Kinross Gold Corporation. Kinross Gold Corporation. *10 Guiding Principles for corporate responsibility, n.d.* p.10. Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 Apr. 2018. (note 101, above).

105 Kinross Gold Corporation. *10 Guiding Principles for corporate responsibility, n.d.* Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 Apr. 2018. P.9 (note 101, above).

106 Kinross Gold Corporation. *10 Guiding Principles for corporate responsibility, n.d.* p. 2-3. Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 Apr. 2018. (note 101, above).

107 Kinross Gold Corporation. *Environmental Policy*. 2017. Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 May 2018.

108 Kinross Gold Corporation. *Community Relations Policy*. Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 May 2018.

109 Kinross Gold Corporation. *Whistleblower Policy*. 2016. Available in: <[kinross.com](http://www.kinross.com)>. Access in: 5 May 2018.

guidelines also apply to the Brazilian subsidiary. Recurrent on the texts is the statement that those internal policies shall not only make all workers accountable, but also be ensured by Chief Executive Officer and Chief Operating Officer, and supported by Regional Vice-Presidents, General Managers, Department Heads and Supervisors, as well as maintained by a Corporate Safety and Sustainability Department<sup>110 111 112</sup>. Depending on the matter, a particular Committee shall monitor the development of those policies too<sup>113 114 115</sup>. That is in alignment to interpretations on the GPs.

Internal policy on environment has, among its objectives, to “meet or exceed applicable laws”<sup>116</sup>. Plus, in conformity to Principles 17 and 19, it aspires to minimize adverse impacts, as well as to assess and mitigate environmental risks. Besides that, the agenda supports transparent audit and report, as well as channels of communication for stakeholders, as required by Principle 18. In the pursue to actively promote human rights, Kinross also looks at managing its environmental footprint.

The Community Relations policy sustains a strategy for an “on-going dialogue with stakeholders in the communities [...], maintained in a spirit of transparency and good faith”<sup>117</sup>, by monitoring local contexts, assessing and minimizing impacts. Transparent report and engagement with local communities are also covered by the policy. That is all in accordance to the proposed design of human rights due diligence, just as required by Principles 15, 17, 18 and 21.

Even more enlightening is Kinross’ Whistleblowing policy. It concerns mechanisms to ‘detect and prevent or deter “improper activities”<sup>118</sup>. Thus, even though it

does not make clear reference to them, the firm presents in this policy its operational-level grievance mechanisms, in alignment to Principles 29 to 31. Communication channels include post, e-mail, internet site, toll-free hotline, and, as part of its CSR strategy in Paracatu, regular community meetings<sup>119 120</sup>. Assessment procedures are designed to be predictable, transparent and legitimate and aim at providing accountability and trust building. Section 5b describes factors to be taken into account during investigations of reports, including subject, nature, seriousness and credibility of allegations. By seriousness, the text clarifies it as meaning the urgency and scope of investigations, thus similar to the concept of severity and scope of human rights due diligence<sup>121</sup>. According to Kinross, claims are also confidential and, upon request, anonymous<sup>122</sup>. The platform EthicsPoint supports reporting as through the company’s Intranet site, an external website<sup>123</sup> or an “integrity hotline toll-free phone”<sup>124</sup>. After filling up a report, it is also possible to receive updates on the matter with a given password. All communication channels are available in the country’s primary language, Portuguese.

Moreover, it is also possible to observe a detailed description of the firm’s human rights due diligence process on that same document. The policy shows clear procedures for transparent reporting and accountability. First, it enlists among reportable matters any violations to human rights, laws, or internal policies and appoints reportable representatives<sup>125</sup>. This is in harmony with Principles 21 and 22. The commitment to protect whistleblowers and provide confidentiality is again in accor-

110 Kinross Gold Corporation. *Environmental Policy*. 2017. Available in: <kinross.com>. Access in: 5 May 2018. (note 107, above).

111 Kinross Gold Corporation. *Community Relations Policy*. Available in: <kinross.com>. Access in: 5 May 2018. (note 108, above).

112 Kinross Gold Corporation. *Whistleblower Policy*. 2016. Available in: <kinross.com>. Access in: 5 May 2018. (note 109, above)

113 Kinross Gold Corporation. *Environmental Policy*. 2017. Available in: <kinross.com>. Access in: 5 May 2018. (note 107, above).

114 Kinross Gold Corporation. *Community Relations Policy*. Available in: <kinross.com>. Access in: 5 May 2018. (note 108, above).

115 Kinross Gold Corporation. *Whistleblower Policy*. 2016. Available in: <kinross.com>. Access in: 5 May 2018. (note 109, above)

116 Kinross Gold Corporation. *Environmental Policy*. 2017. Available in: <kinross.com>. Access in: 5 May 2018. (note 107, above).

117 Kinross Gold Corporation. *Community Relations Policy*. Available in: <kinross.com>. Access in: 5 May 2018. (note 108, above).

118 Kinross Gold Corporation. *Whistleblower Policy*. 2016. p.1.

Available in: <kinross.com>. Access in: 5 May 2018. (note 109, above, original emphasized).

119 Kinross BraSIL. *Fale Conosco*. 2018. Available in: <http://www.kinross.com.br/fale-conosco/>. Access in: 23 May 2018.

120 Kinross BraSIL. *Ouidoria*. 2018. Available in: <http://www.kinross.com.br/fale-conosco/ouvidoria/>. Access in: 23 May 2018.

121 Kinross Gold Corporation. *Whistleblower Policy*. 2016. p.8. Available in: <kinross.com>. Access in: 5 May 2018. (note 109, above).

122 Kinross Gold Corporation. *Whistleblower Policy*. 2016. p.11. Available in: <kinross.com>. Access in: 5 May 2018. (note 109, above).

123 Kinross BraSIL. *Ouidoria*. 2018. Available in: <http://www.kinross.com.br/fale-conosco/ouvidoria/>. Access in: 23 May 2018. (note 120, above).

124 Kinross Gold Corporation. *Whistleblower Policy*. 2016. p.11. Available in: <kinross.com>. Access in: 5 May 2018. (note 109, above).

125 Kinross Gold Corporation. *Whistleblower Policy*. 2016. p.2. Available in: <kinross.com>. Access in: 5 May 2018. (note 109, above).

dance do the GPBHRs and the Brazilian constitution<sup>126</sup>. Since the general concept of Kinross Whistleblower policy is to identify and address claims, it can be inferred that it also frames the firm's human rights due diligence process.

Indeed, mechanisms designed by Kinross are among sources of sustainable learning expected by the GPBHRs, that enable monitoring and assessment in the context of operational-level grievance mechanisms and human rights due diligence. Finally, the enterprise's policy can be understood as rights-compatible, for in alignment to GPBHRs and the Brazilian constitution.

### 4.3. CSR practices in Paracatu

Specifically in regard to CSR practices in Paracatu, Kinross has been supporting communities in matters such as health, culture, social, education, gender- and indigenous-development, environment and environmental education, and has even created formal dialogue channels with local leaders. According to the company's disclosed information, 3.8 million USD were spent in a project for the revitalization of Paracatu's Rico creek, including cleaning up, planting vegetation alongside riverbanks and even creating a recreational park<sup>127</sup>.

Project *Fábrica de Biscoitos* (Cookies Factory) financed the implementation of a baking factory in the low-income community of Sao Domingos. It aimed at promoting jobs and gender empowerment by supporting regional culinary traditions<sup>128</sup>. In the area of culture and education, Kinross also claims to support 8 municipal public schools with cultural and leisure programs. In 2017, the firm says to have offered 480 hours of gastronomy, dance, theatre and audiovisual activities<sup>129</sup>. A Center for Environmental Education engages 15 public schools, and per year more than one thousand students.

Among those projects led by Kinross, attention must be drawn to communication channels created with

local communities within the project Rodas de Diálogo ("Dialogue Wheels"). The goal is that managers meet regularly with locals and use that as an open communication channel, in which any affected stakeholders could "clarify questions" and "know more" about operations<sup>130</sup>. The *Comitê de Desenvolvimento Sustentável* (Sustainable Development Committee, also referred to as the "Stakeholder Committee"), also meets regularly to address and discuss mining impacts. It is formed by direct neighborhood communities. Nonetheless, meetings and public hearings have been also hold with other city neighborhoods of *Paracatu*. Special attention shall be given upon the findings of a previous research, which found out that local members feel that the enterprise "is very good at listening and understanding [...], but [...] does not always address their concerns"<sup>131</sup>. Meetings are perceived to be too formal and, instead of planting dialogue, they provide only an one-way platform of information<sup>132</sup>. Although these CSR practices commit towards the respect and promotion of human rights as expected by the GPBHRs, communication channels still lack in efficiency.

In its publications, the firm shows understanding for community complaints, addressing for instance the matter of air dust prevent from mining crushing. In an internal magazine, it justifies the expansion of the "dust management program significantly by increasing the use of dust surfactants, installing additional water spray systems, reducing the area of active vehicle movement within the mining area during the dry season, and improving dust monitoring systems and programs"<sup>133</sup>. Kinross has also guaranteed the installation of the gold mine with international and national certificates, such as the International Cyanide Management Code (ICMI), OSHAS 18001, ISO 14001 e SA 8000<sup>134</sup>.

126 Kinross Gold Corporation. Whistleblower Policy. 2016. Available in: <<http://www.kinross.com>>. Access in: 5 May 2018. (note 109, above)

127 KINROSS WORLD. *Environmental stewardship: the Kinross way*. 2012. p.6.

128 Kinross BraSIL. *Relacionamento com a comunidade quilombola*. 2018. Available in: <<http://www.kinross.com.br/project/relacionamento-com-a-comunidade-quilombola/>>. Access in: 2 Apr. 2018.

129 Kinross BraSIL. *Programa integrar*. 2018. Available in: <<http://www.kinross.com.br/project/programa-integrar/>>. Access in: 3 Apr. 2018.

130 Kinross BraSIL. *Rodas de Diálogo*. 2018. Available in: <<http://www.kinross.com.br/project/rodas-de-dialogo/>>. Access in: 3 Apr. 2018.

131 OLIVEIRA, G. V. C. *Explaining mining company and community relations in Paracatu, Brazil: situational context and company practice*, Master of Arts. Guelph: University of Guelph, 2010. Available in: <<https://atrium.lib.uoguelph.ca/xmlui/handle/10214/2435>>. Access in: 15 Apr. 2018. p. 87 (note 17, above)

132 OLIVEIRA, G. V. C. *Explaining mining company and community relations in Paracatu, Brazil: situational context and company practice*, Master of Arts. Guelph: University of Guelph, 2010. Available in: <<https://atrium.lib.uoguelph.ca/xmlui/handle/10214/2435>>. Access in: 15 Apr. 2018. p. 92 (note 17, above)

133 KINROSS WORLD. *Environmental stewardship: the Kinross way*. 2012. p. 10 (note 127, above).

134 Kinross BraSIL. *Conheça a Kinross*. 2018. Available in: <<http://www.kinross.com.br/conheca-a-kinross/>>.

On polemic issues, such as the matter of arsenic exposure, Kinross provides detailed clarification about the mining process on its website, but the latest study results provided are, however, from 2012 and 2013<sup>135</sup>. This is a transparent means of communication, welcomed by the GPBHRs. And yet, controversies between corporation and community have not yet been solved.

As much effort as it seems to have been taken through policies and CSR practices, it is possible to infer from legal claims, press and NGOs reports that community-business relations are still contentious. If, on the one hand, Kinross presents itself as standing for applicable standards, just as required by international and national human rights norms, on the other hand, local communities deal with potential and/or actual human rights impacts. And, even if allegations against the corporation are proven false, the dilemma continues in the unharmonious relations between local community and Kinross.

## 5. SUGGESTIONS TO LESSONS LEARNED

It has become clear that Kinross shows general policy commitment to human rights and has designed a human rights due diligence process and operational-level grievance mechanisms in general compliance to the GPBHRs and to the Brazilian Constitution. The company also develops a variety of CSR strategies for that purpose. However, in the case of the Paracatu's gold mine, though all policy commitment, it is still clear that business-community relations are contentious. That means that the issue does not lie directly on the designed framework of the processes here explored.

As argued before and seen in this case study, the sole creation of a due diligence process or installation of grievance mechanisms has not guaranteed respect to human rights. Most of all, the corporation cannot justify its conduct for only presenting compatible policies, if in practice it is causing adverse potential or actual impacts. In such a case, more commitment of the core company and of senior-level staff can ensure that

policies are efficiently conducted. Additionally, better training to local personnel can also reduce current limitations and improve harmony in business-community relations.

Attention shall as well be portrayed to the following points, which could make the enterprise's policy framework more efficient. Kinross could first of all update and publish studies that regard the operation's size, severity, nature and context. Main policies are not available in Portuguese language, owing more descriptive policy commitment to local stakeholders which might not be able to understand all policies informed in English language. A human rights due diligence process could be inferred from policy statements, but that can be clearly and with more strategic details stated as such in a local policy document and led by a special department. Such an approach can also support local senior-level staff conducting investigations. Although operational-level grievance mechanisms are documented in detail, Kinross could publish quantitative and qualitative results upon all findings and investigations for the general public. Under those circumstances, it should be easier to make the enterprise accountable, and hence, more efficient, by observing how it is conducting due diligence and grievance.

## 6. CONCLUSION

The largest gold open-pit mine in Latin America led by Kinross, a Canadian corporation, is the cause of adverse human rights impacts in the city of Paracatu, Brazil. Local communities complaint of, among others, health, environmental, infra-structural issues, and mostly because they do not find means of efficiently communicating, receiving feedback and finding common solutions. Although the enterprise has a strong corporate social responsibility local agenda and has created different means of communication, Kinross' due diligence process and operational-level grievance mechanisms still fail in fulfilling their designed task.

Ultimate causes of the lack in efficiency require a new study, but already hint to that the lack of senior-level staff capability on ensuring policy commitment. Low-quality of training to local personnel has been also a limiting factor. However, the policy presented on bylaws and different public means is already sufficient to show the corporation's commitment to the GPBHRs

[www.kinross.com.br/a-kinross/conheca/](http://www.kinross.com.br/a-kinross/conheca/). Access in: 2 Apr. 2018. (note 3, above).

135 Kinross BraSIL. *Resultados de Estudos sobre Arsênio Paracatu e Referências*. 2018. Available in: <<http://www.kinross.com.br/duvidas-frequentes/resultados-de-estudos-sobre-arsenio-paracatu-e-referencias/>>. Access in: 3 May 2018.

and to Brazilian constitutional standards. But, the sole compatibility on paper does not guarantee respect to human rights. Neither Kinross nor any corporation can be excused from its responsibility to respond to adverse human rights created by its own business activity, even if by showing policy commitment.

Since response to impacts have been disappointing, the enterprise must finally develop a moral commitment to human rights, take advantage of an already constructed framework, improve it and use it as a means of achieving the best possible business-community relations. Embedding human rights due diligence and grievance mechanisms to the enterprise's routine is a tricky assignment, but it is the final means of guaranteeing that human rights are respected.

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