

Vitol and coal trading: Challenges of human rights due diligence in the supply chain

August 2015



BROT FÜR ALLE
PAIN POUR LE PROCHAIN
PANE PER TUTTI



Table of contents

1. Executive Summary	3
2. Introduction	8
2.1. General context.....	8
2.2. Goal of this report.....	8
2.3. Methodology.....	9
3. Vitol.....	10
3.1. Company profile	10
3.2. Corporate governance.....	10
3.3. Vitol and coal.....	11
3.4. Transparency of Vitol	12
3.5. Controversies	14
4. The UN Guiding Principles on Business and Human Rights	16
4.1. Introduction to the UN Guiding Principles	16
4.2. Vitol's responsibility for human rights	18
4.3. Leverage of Vitol on Coal of Africa Limited.....	19
5. The context of coal mining and of South Africa.....	21
5.1. Coal in South Africa.....	21
5.2. Environmental impact of the coal mining industry.....	22
5.3. Health and safety impacts of coal mining	22
5.4. Impacts of coal mining on water	23
5.5. Water scarcity in South Africa	23
5.6. Weakness of government oversight in South Africa.....	24
5.7. Legal context.....	25
5.8. Characteristics of Limpopo Province	26
6. Coal of Africa Limited	27
6.1. Company profile	27
6.2. Coal of Africa's assets.....	27
6.3. Coal of Africa's reporting	30
6.4. Coal of Africa's CSR and environmental approach.....	30
6.5. Coal of Africa's human rights approach	31
7. Human rights and environmental issues at CoAL	33
7.1. Vele mine	34
7.2. Makhado mine project	45
7.3. Regional cumulative impacts.....	52
7.4. How can CoAL implement the Guiding Principles?.....	54

8. Box: Coal and its impact on health and climate change.....55
9. How can Vitol implement the Guiding Principles?57
10. Conclusion.....60
11. About the authors61

Foreword

This report is the product of the joint work of the research teams of Bench Marks Foundation and Bread for all. We thank David van Wyk, Chris Molebatsi, Trevor Shaku, Melusi Nkomo, Daniel Hostettler, Chantal Peyer, Daniel Tillmanns and Yvan Maillard Ardentti for their contributions.

Cover photo: Gate of a sample pit (East of the Mudimeli village, part of the Makhado mine project of Coal of Africa Limited), dug to assess the quality and quantity of coal in the soil.

© Daniel Tillmanns, Bread for all.

1. Executive Summary

Context of this report

For about fifteen years, **Switzerland has been a hub for commodity trading**. In its 2013 "Background Report: Commodities", the Federal Council recognises that the sector of mining and commodity trading poses "**special challenges**" in terms of "respect for human rights or environmental standards" as well as transparency.¹ The Federal Council adds: "These challenges can also involve **reputational risks** for individual companies, and **for Switzerland as a country** [...]"².

Goal of the report

This report is a **case study** that **for the first time assesses the human rights approach of Vitol**, a Swiss commodity trader, and one of its suppliers, **Coal of Africa Limited**, against the criteria of the United Nations Guiding Principles on Business and Human Rights (UNGPs). The responsibility of Vitol regarding the **health and climate change impacts of coal** is also assessed.

Vitol company profile

Vitol, a Swiss commodity trader, is the **largest Swiss company by turnover**. It has revenues of CHF 264 billion and **trades mainly oil**, but also other commodities such as natural gas, coal, power, agricultural products and ethanol. Vitol is also active in the shipping, refining, storage and marketing of oil. In 2014, Vitol was **one of the world's top five coal traders, trading over 30 million tonnes of coal**.

The transparency of Vitol regarding **human rights and the environment is very limited**. Only one page of its website is dedicated to Corporate Social Responsibility (a separate section of the website covers Vitol's charitable foundation).

The UN Guiding Principles on Business and Human Rights

In 2011, the United Nations Human Rights Council unanimously endorsed the **Guiding Principles on Business and Human Rights**, which provide for the first time a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. The Principles make it clear that, in order to meet their responsibility to respect human rights, **all companies have to adopt a human rights policy**, put in place a human rights due diligence process and offer adequate remediation in case abuses occur.

The Guiding Principles **define human rights due diligence** as comprising the following steps: 1) **assess** actual and potential human rights impacts; 2) **integrate and act upon** the findings of such assessments; 3) **track** how impacts are addressed; and 4) **communicate** regarding how the impacts are addressed.

¹ Federal Council, *Background Report: Commodities*. Report of the interdepartmental platform on commodities to the Federal Council, 2013, <http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf>, pp. 5 and 42 (emphasis added).

²Ibid, p. 2 (emphasis added).

Vitol should implement human rights due diligence by taking into account the following factors: its **many business relationships**; the fact that it is active in both a **high-risk sector (commodities) and high-risk contexts**; and its **large size** (as measured by its turnover).

Vitol has a high level of influence, or “**leverage**”, over **Coal of Africa Limited (CoAL), a coal mining company operating in South Africa**, because Vitol, as CoAL’s **exclusive marketing agent for all exported coal, is a large customer of CoAL**. According to the Guiding Principles, Vitol therefore must exercise its leverage “to prevent or mitigate the adverse human rights impacts” that could be caused by CoAL.

The context of coal mining and South Africa

South Africa has the fifth largest coal deposits in the world. **Coal mining has a number of adverse effects on the environment**, such as the release of methane, a potent greenhouse gas, the release of carbon monoxide (CO) from explosives, the drastic alteration of the landscape, and the creation of large mountains of solid waste. Coal mining also has **significant impacts on water, through high water consumption and water pollution**. The health impacts of coal mining on communities due to dust pollution are also massive. **South Africa suffers from a relative scarcity of water**.

The South African Government maintains **weak oversight of mining companies in the country**. As an example, in South Africa there are **nearly 6,000 abandoned mines**, many of which contribute to uncontrolled water pollution. Limpopo Province, where the mines of CoAL are located, is considered the “**Bread and Fruit Basket of South Africa**,” producing up to 60% of all (winter) fruit, vegetables maize meal, wheat and cotton in South Africa.

Coal of Africa Limited

Coal of Africa Limited (CoAL) is an Australian company that explores, develops and mines thermal and coking coal projects in Limpopo Province. CoAL is experiencing massive financial problems, with a falling share price in recent years. **None of its mines is currently operational** (of the two mines examined in this research, the Vele Mine is temporarily closed and Makhado is a mine project – that is, in the planning phase).

CoAL communicates certain **information on social and environmental matters** on its website and in its annual report and can be considered as relatively transparent. It has taken a number of measures, in particular on health and safety and the environment. However, its approach does not cover all human rights, such as the right to health or to housing.

Vele Mine

The Vele Mine, owned by CoAL, is closed. It is located in Limpopo Province, an area with **high water scarcity** and high cultural heritage value. This mine is **surrounded by large vegetable and fruit farms**. It is only 9 km from the Mapungubwe Cultural Landscape, which is listed as a World Heritage Site by UNESCO.

The findings of our research on Vele are the following:

- No proper consultation process has been carried out by CoAL with regard to the mine, according to the interviewees (company presentations were unbalanced, communities faced a knowledge gap);

- CoAL was **non-compliant** on its water licence in 2010 and paid a **fine** of ZAR 9 million (USD 730,000);
- Farmers and several environmental organisations have expressed **massive opposition** to the mine because of water risks associated with it;
- An **appeal** has been filed by several organisations against the new Environmental Authorisation filed in 2014 for the mine, in which CoAL wants to **increase the mining area from 102 hectares to 502 hectares**.

The mine could have the following potential impacts on human rights

1. The **right to water** could be violated due to high **water consumption and water pollution** due to the mine's close proximity to the Limpopo River (an international river);
2. The **right to work** could also be violated by the destruction of at least **5'650 agricultural and tourism jobs**;
3. The **right to health** is threatened by **dust pollution** from mining and truck transport to Musina (**up to 856 trucks per day**);
4. The mine poses a threat to the **UNESCO** Mapungubwe Cultural Landscape because of dust pollution and truck traffic on the access road to the site.

Makhado Mine Project

Makhado is a mine project, for which CoAL received mining rights in May 2015.

The findings of our research on Makhado are the following:

- **No proper consultation process has been carried out by CoAL**, according to the interviewees (company presentations were unbalanced, communities faced a knowledge gap);
- **Mudimeli Village (3,000 inhabitants) is very close to the mine** (250 meters) and will be surrounded by two open pits.
- Chief Mudimeli, farmers and several farmer and cultural organisations stand in **massive opposition** to the mine because of risks related to water.
- An **Appeal** has been filed by several organisations against the mining rights.

The mine has the following potential impacts on human rights:

1. The **right to water** could be violated due to water **pollution and high water consumption** (the mine operations could lead to limited access to water for Mudimeli villagers and farmers);
2. The **right to health** of villagers is threatened by **dust pollution** from coal mining and from trucks and because of the close proximity of the mine to the village.
3. The right to **housing** of **villagers** could be violated as a result of rock-blasting activity by the company; **houses can crack** because of vibrations.

Cumulative impacts

CoAL plans to construct not only the Makhado mine in the Vhembe district but also three additional mines that will all be much larger than Makhado. The total amount of land associated with CoAL's Mining Rights **comprises 96,000 hectares**. Land owners in this area may risk **being forced to sell their properties** to CoAL and entire villages may risk **being relocated or negatively affected by the mines**.

Many stakeholders (farmer organisations, villagers and their leaders) have called into question the **cumulative impacts** of these mines on the right to water, to health and to work. **Many thousands of jobs in agriculture and tourism could be destroyed** because of the mines of CoAL. For these reasons, stakeholders are asking CoAL to conduct a **Regional Strategic Impact Assessment** to assess its cumulative impacts.

The coal industry has tremendous **impacts on health** through air pollution. The World Health Organization attributes about **one million deaths per year to coal air pollution**. Moreover, burning coal is the **largest single source of climate changing carbon dioxide** emissions in the world. Climate change deprives people of the basic human right to shelter, security, food and water. According to the executive secretary of the United Nations framework convention on climate change, there is **no space for new coal development**. Vitol plays a significant role by signing an offtake agreement with CoAL, as the **agreement may allow new coal mines to be opened** (such as Makhado).

Vitol is a key player in the coal industry as **one of the top five coal traders in the world**. In 2014, Vitol traded over "30 million tonnes of physical coal."³ The greenhouse gas emitted by burning this coal amount to 1.4 times the total greenhouse gas emissions of Switzerland. The health impact of this coal is also significant. Vitol **bears co-responsibility for the negative human right impacts of the coal industry**.

Recommendations to Vitol

On its website and in its publications, Vitol provides **very little information about its CSR and human rights approach**. Vitol did not respond to BFA's invitation for a meeting to discuss the findings of this research and failed to answer the questionnaire that BFA sent requesting more information about the company's policies.

From publicly available documents and information, it appears that Vitol's **human rights approach at Group level is weak**. Given, however, that Vitol has a high turnover, works with numerous suppliers and trades high-risk commodities, such as coal and oil, we believe Vitol **should put in place a comprehensive human rights approach**.

Vitol should first **define a human rights policy**. It should then implement the different elements of human rights due diligence. Namely, it should 1) **assess** actual and potential human rights impacts; 2) **integrate and act upon** the findings of such assessments; 3) **track** how impacts are addressed; and 4) **communicate** regarding how the impacts are

³Vitol website, : <http://www.vitol.com/what-we-do/trading/coal/>

addressed. Finally, Vitol should introduce a mechanism to address harm, such as a **grievance mechanism**.

Conclusion

This case study demonstrates that **trading activities in Switzerland can be linked with negative human rights impacts abroad. Vitol has not implemented the UNGPs** in order to reduce its possible involvement in human rights violations.

Voluntary initiatives taken by companies are not sufficient to prevent the involvement of Swiss companies, including traders, in negative human rights impacts. **Mandatory measures are necessary**. For this reason, Bread for all is part of the 70 organisations that are supporting the **Initiative for Responsible Multinational Corporations**,⁴ which calls on the government to require every Swiss multinational company to conduct human rights due diligence.

⁴ Initiative for Responsible Multinational Corporations (Konzernverantwortungsinitiative) website, <http://konzern-initiative.ch/>

2. Introduction

2.1. General context

For about fifteen years, **Switzerland has been a hub for commodity trading**. Switzerland represents, for example, 35% of oil trading, ahead of London, New York/Houston and Singapore. It also accounts for 50% of the sugar trade and 60% of metal trading. The importance of Switzerland in commodities trading was highlighted in the "Background Report: Commodities", published by the Federal Council in March 2013: "It is estimated that around 500 companies and some 10,000 employees are active in the commodities industry, which, in addition to trading, also comprises shipping, transaction financing, inspections services and product testing. The commodity cluster contributes some 3.5% to Switzerland's GDP."⁵

In this report, the Federal Council also recognises that the sectors of mining and commodity trading pose **significant challenges** in terms of transparency, respect for human rights and the environment. Indeed, in recent years, reports of child labour, water pollution, toxic fumes from factories or forced displacement of communities have multiplied. The Federal Council adds: "These challenges can also involve **reputational risks** for individual companies, and **for Switzerland as a country** [...]".⁶

In light of this situation, the government reiterated its expectations, namely that companies "in addition to complying with statutory requirements both in Switzerland and abroad ...will also meet their duties of care and diligence as comprised in the notion of corporate social responsibility."⁷

But what does this mean for a commodity trader? How do they now recognise their responsibility and how should they implement their due diligence on human rights and the environment?

With a concrete case study on Vitol, Bread for all and Bench Marks Foundation seek answers to these questions.

2.2. Goal of this report

This report is a **case study that evaluates the human rights approach and impact of Vitol**, a Swiss commodity trader, **and one of its suppliers**, Coal of Africa Limited (CoAL), against the criteria of the United Nations Guiding Principles and Business and Human Rights (UNGPs). Vitol is the exclusive marketing agent for CoAL, an Australian coal mining company operating in South Africa. The **responsibility of Vitol regarding the health and climate change impacts of coal** is also assessed.

This report is the **first of its kind** to study the human rights approach of Vitol and to discuss the human rights responsibility of a Swiss trader along its supply chain, based on concrete field research.

⁵Federal Council, *Background Report: Commodities*. Report of the interdepartmental platform on commodities to the Federal Council, 2013, p. 1, <http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf>

⁶Ibid, p. 2.

⁷Ibid, p. 3, <http://www.news.admin.ch/NSBSubscriber/message/attachments/30136.pdf>

2.3. Methodology

The research teams conducted a thorough review of all company documents, government documents and media articles related to Vitol and CoAL. This included consulting the following materials:

- Websites of Vitol and CoAL
- Minutes and attendance registers of meetings, including company meetings with focus groups;
- Company annual reports;
- Company correspondence with stakeholders;
- Company media releases, statements and responses;
- Impact Assessments for both mines;
- Documents, submissions and correspondence from Community Based Organisations (CBOs) and Civil Society Organisations (CSOs).

The review also involved conducting interviews with:

- Stakeholders and affected communities around the mines (Vele and Makhado)
- Management of Coal of Africa Limited

The research teams visited the affected stakeholders of CoAL's mines in South Africa in January and April 2015. The research teams met the management of CoAL in April 2015. Bread for all also attempted several times to reach out to Vitol's management in Geneva. A letter and questionnaire were sent in May 2015. But despite several phone calls and contacts, the company failed to answer the questionnaire. The company also failed to respond to BFA's proposal for a face-to-face meeting to discuss this research.

3. Vitol

This chapter describes the operations of the Vitol Group, its management and its coal trading arm.

3.1. Company profile

Vitol Group defines itself as an “energy and commodity trading company”⁸ and is based in Geneva. The group was founded in Rotterdam in 1966 by Henk Viëtor and Jacques Detiger, two Dutchmen, who traded barges of petroleum products up and down the Rhine.⁹ They came up with the name "Vitol" by combining Viëtor's last name with "oil."¹⁰

In 2014, the company generated **revenues of USD 270 billion (CHF 264 billion)**, down from USD 307 billion in 2013, and **profits of USD 1.35 billion**.¹¹

Vitol is **active mainly in oil trading**. But it also trades commodities such as **natural gas, coal, power, agricultural products and ethanol, among others**. The company is the **largest independent energy trader in the world**, shipping more than 268 million tonnes of crude oil in 2014.¹²

Apart from trading, Vitol is also involved in other activities:¹³

- **Refining:** Vitol owns several refineries through its subsidiary Varo Energy. In Switzerland for instance, it owns the refinery of Cressier in the Canton of Neuchâtel.
- **Shipping:** Through its subsidiary Mansel, Vitol is active in commercial tanker shipping, with 200 ships at sea at any one time.
- **Terminals and Storage:** Through the joint venture VTTI, Vitol owns and operates terminals, storage tanks and pipelines.
- **Marketing:** Through its subsidiary Vivo Energy, it sells gasoline and lubricants directly to local end-users in Africa. Through its subsidiary Vitol Aviation, it provides jet fuel to aviation companies worldwide.
- **Exploration & Production:** Vitol also owns upstream assets including oil and gas reserves primarily in Africa (Ghana, Cote d'Ivoire, Cameroon) and Asia (Russia, Kazakhstan, Azerbaijan).
- **Power Generation:** through its subsidiary VPI Immingham, Vitol owns one of the largest combined heat and power stations in the UK (it is gas-fired).

Vitol is **the largest Swiss company by turnover, larger than Glencore, which generated revenues of USD 224 billion (CHF 219 billion) in 2014**.¹⁴

3.2. Corporate governance

The Vitol Group is **managed by a CEO and a Managing Director**.

⁸Vitol website, <http://www.vitol.com/about-us/>

⁹ *Fortune Magazine*, “The unseen hand that moves the world's oil”, Feb. 28, 2013.

http://www.academia.edu/25284791/2FVitol_-_The_Oil_Industrys_Hidden_Giant

¹⁰ Ibid.

¹¹ *Financial Times*, “Oil trader Vitol's profits rebound to \$1.35 bn”, March 19, 2015, http://www.ft.com/intl/topics/people/ian_Taylor

¹² Vitol website, <http://www.vitol.com/about-us/key-figures/>

¹³ Vitol website, <http://www.vitol.com/about-us/>

¹⁴ Glencore factsheet 2014, http://www.glencore.com/assets/investors/doc/reports_and_results/2014/2014-Factsheet-Full-Year.pdf

The **CEO, Ian Taylor**, is a British businessman who joined Vitol in 1985 after working in various positions in shipping, operations and trading at Shell.¹⁵ Taylor's estimated wealth is USD 267 million (CHF 253 million).¹⁶

The **Managing Director is David Fransen**, also a British businessman, who has been the Head of the Geneva offices of Vitol since 2002.¹⁷ He started his career in the energy trading sector at BP in 1986. His wealth has been estimated at between CHF 100 and 200 million.¹⁸

Vitol is **not quoted but is privately owned by its 350 employees**. According to media reports,¹⁹ none of its senior employees, including the CEO, holds more than five percent of the company. There is no detailed information publicly available on who the biggest individual shareholders of the Group are.

The parent company of the Group in Switzerland is **Vitol Holding Limited Liability Company**, which, like other Limited Liability Companies, does not have a Board of Directors. There are only two owners of this company: David Fransen, the Managing Director, and **Vitol Holding B.V.**,²⁰ a company registered in Rotterdam. Vitol Holding B.V. has a Supervisory Board comprising five directors,²¹ among them Ian Taylor and David Fransen.

3.3. Vitol and coal

According to its website, **Vitol entered the coal market in 2006.**²² The company "trades both steam coal and anthracite out of four main regional centres, which are Singapore, Geneva, London and Houston."²³ Vitol "partners with, funds or owns mines in the United States, Indonesia, Canada, South Africa and Russia."²⁴

In 2014, Vitol traded over **"30 million tonnes of physical coal,"**²⁵ corresponding to a **market share of 2.6% of internationally traded coal.**²⁶ Vitol claims to have "become **one of the world's top 5 coal traders.**"²⁷

The total **estimated value of the coal traded by Vitol is USD 2.4 billion**, or 1% of the total turnover of Vitol. Even if this corresponds to only 1% of the turnover of Vitol, the greenhouse gas emitted by the burning of this coal amounts to the annual equivalent of approx. 74 million tonnes of CO₂ (1.4 times more than the total greenhouse gas emissions of Switzerland.)²⁸

¹⁵ Richest Lifestyle website, <http://www.richestlifestyle.com/networth/ian-taylor-net-worth/>

¹⁶ Ibid.

¹⁷ Bilan website. 2013, <http://www.bilan.ch/node/124326>

¹⁸ Ibid.

¹⁹ *Business News*, "Meet the mysterious trading firms who control the price of commodities," October 2011, <http://businessnews.com.ng/2011/10/31/meet-the-mysterious-trading-firms-who-control-the-price-of-commodities/>

²⁰ Moneyhouse website, http://www.moneyhouse.ch/en/u/v/vitol_holding_sarl_CH-660.0.353.978-0.htm

²¹ Quotenet website, http://files.quotenet.nl/pdf/vitol_2013.pdf

²² Vitol website, <http://www.vitol.com/what-we-do/trading/coal/>

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ According to the World Coal Association, "overall international trade in coal reached 1142 Mt in 2011; while this is a significant amount of coal it still only accounts for about 16% of total coal consumed." See <http://www.worldcoal.org/coal/market-amp-transportation/>

²⁷ Vitol Corporate Brochure, <http://www.vitol.com/brochures/vitol-energy-2013/files/assets/common/downloads/publication.pdf>

²⁸ The total greenhouse gas emissions of Switzerland amount to 52.6 million tonnes. Source: Federal Office of the Environment. 2015, <http://www.bafu.admin.ch/klima/13879/13880/index.html?lang=en>

3.4. Transparency of Vitol

3.4.1. Financial transparency

On its website, **Vitol does not publish an Annual Report or a Financial Report**, unlike other companies. The Annual Report 2013²⁹ of Vitol Holding B.V. is available, however, on a Dutch financial website.

3.4.2. Transparency on CSR and the environment

Vitol Group's **information on corporate social responsibility is very scarce**. Only one page of its website is dedicated to Corporate Social Responsibility, and the page provides very general information and commitments, such as the following:

“Responsibility is core to our culture. It defines how we work, how we behave and how we interact with our clients, our partners and our communities. We understand that our reputation depends on our honouring our commitments, doing what is right for the long-term and always treating others with respect.”³⁰

“We expect all the assets in which we are invested to conform to the highest international safety standards, wherever they are based, and to act with consideration to local stakeholders.”³¹

Vitol has a section on its website **where it details its charitable giving and corporate volunteering through the Vitol Foundation**. It states the following: “The Vitol Group first began making charitable grants in 2002 with the aim of enabling children living in deprivation to reach their potential in life.”³²

Moreover, some of Vitol's subsidiaries, such as Varo Energy³³ or Mansel³⁴, **mention health, safety and the environment (HSE) on one webpage**. Viva Energy Australia³⁵, in addition to HSE, publishes its Business Principles and Code of Conduct³⁶ and information on its involvement with communities³⁷ on its website.

The company's website **provides no information on a human rights policy**. At a minimum, companies that have begun to work seriously on international human rights or environmental policies commonly publish their policies and mention specific international human rights or environmental standards by name³⁸. But on Vitol's website and in publicly available documents, there is:

- **No reference to or mention of any international human rights standards;**
- **No information on a human rights policy,** that the company has adopted;

²⁹ Quotenet website, http://files.quotenet.nl/pdf/vitol_2013.pdf

³⁰ Vitol website, <http://www.vitol.com/about-us/corporate-responsibility/>

³¹ Ibid.

³² Vitol website, <http://www.vitol.com/about-us/vitol-foundation/>

³³ Varo Energy website, <http://varoenergy.com/environment-safety/our-hse-values/>

³⁴ Mansel website, <http://mansel-ltd.com/Home/Home>

³⁵ Viva Energy Australia is the exclusive licensee of Shell products in Australia. See <http://www.vivaenergy.com.au/about-us>

³⁶ Viva Energy Australia, <http://www.vivaenergy.com.au/about-us/business-principles-and-code-of-conduct>

³⁷ Viva Energy Australia, <http://www.vivaenergy.com.au/about-us/in-the-community/programs>

³⁸ For example, the Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the ILO Core Conventions, or international environmental standards.

- **No information** on measures for implementing a human rights policy, such as a **human rights due diligence** process, or on remedy mechanisms, such as complaints mechanisms.

In fact, there is not a single mention of “human rights” anywhere on the company’s website.³⁹

The table below is an assessment of this Vitol’s approach regarding human rights at group level, based on publicly available information: it appears that Vitol’s **human rights approach at group level is weak**.

Topic	Criteria	Assessment
Human rights commitment/policy	Does Vitol have a commitment to human rights?	Partly: some general commitment on health and safety on the website
	Does Vitol have a HR policy? Signed by senior management?	No information
	Does the policy refer to international HR standards?	No information
Human rights due diligence	Does Vitol assess its HR impacts? And identify any changes over time?	No information
	Does Vitol integrate the assessment findings into decision-making and processes and act upon these?	No information
	Does Vitol track its performance?	No information
	Does Vitol report on its HR assessment and measures?	No information
	Does Vitol engage with stakeholders on HR?	No information
Remedy	Does Vitol address harms to individuals if it causes or contributes to an impact?	No information
	Does Vitol have a corporate grievance mechanism?	No information

Regarding implementation of CSR, Human Rights or transparency policies, it should also be noted that **Vitol is not member of any of the existing sector or multi-stakeholder initiatives**, for example:

- The International Council on Mining and Minerals,⁴⁰ which is a business-driven initiative that brings together 23 mining and metals companies as well as 35 national

³⁹Vitol website, <http://www.vitol.com/?s=human+rights>

and regional mining associations and global commodity associations with the aim of improving the sustainability practices of those firms.

- The Extractive Industry Transparency Initiative (EITI)⁴¹, which requires companies to publish the payments they make to governments. EITI was launched as an extractive sector initiative, but is also open to traders. Trafigura, for instance, joined in 2014 as the first commodity trader.⁴²

Vitol is, however, a member of the Working Group for the development of guidance for the implementation of the UNGPs for the commodity trading sector in Switzerland. This initiative was launched in June 2015 by the Swiss Government (the State Secretariat for Economic Affairs, SECO, and the Federal Department of Foreign Affairs, FDFA). The largest trading firms based in Switzerland are participating in this initiative, as are several Swiss NGOs, including Bread for all.

3.5. Controversies

The commodity trading industry has a **reputation for opacity**⁴³ and for “sailing as close to the wind as they legally can.”⁴⁴ Vitol, like other commodity traders, has faced a number of controversies in recent years.

In November 2007, Vitol pleaded **guilty to grand larceny in a New York court for paying surcharges to Iraq's national oil company** during Saddam Hussein's regime and circumventing the **UN oil-for-food programme**. Vitol subsequently paid **USD 17.5 million** in restitution for its actions.⁴⁵

In September 2012, it was reported that Vitol **bought and sold Iranian fuel oil, bypassing an EU embargo against Tehran**. Vitol bought 2 million barrels using a ship-to-ship transfer off the coast of Malaysia from a National Iranian Tanker Company vessel. Vitol then sold it to Chinese traders. As Vitol is based in Switzerland, which did not implement Western sanctions, the company skirted the charges and stated it was in compliance with all international laws on trade with Iran.⁴⁶

According to a 2013 report by the Swiss NGO Berne Declaration,⁴⁷ two **Swiss-based commodity traders, including Vitol, were profiting from joint ventures with the Nigerian national oil company**. According to the NGO, “ongoing investigations by the Nigerian authorities show that those Swiss traders dominant in oil exports have been making

⁴⁰ International Council on Mining and Minerals website, <http://www.icmm.com/>

⁴¹ The Extractive Industries Transparency Initiative (EITI) is a global standard to promote open and accountable management of natural resources. It seeks to strengthen government and company systems, inform public debate, and enhance trust. In each implementing country it is supported by a coalition of governments, companies and civil society organisations working together. Source: EITI website, <https://eiti.org/eiti>

⁴² Trafigura website, <http://www.trafigura.com/responsibility/transparency/>

⁴³ Berne Declaration, *Commodities: Switzerland's Most Dangerous Business*. 2012.

⁴⁴ *Business News*. “Meet the mysterious trading firms who control the price of commodities,” October 2011,

<http://businessnews.com.ng/2011/10/31/meet-the-mysterious-trading-firms-who-control-the-price-of-commodities/>

⁴⁵ Reuters, “Swiss firm Vitol pleads guilty in UN oil/food case”, November 2007, <http://uk.reuters.com/article/2007/11/20/un-food-vitol-idUKN2058211120071120>

⁴⁶ Reuters, “Exclusive: Vitol trades Iranian fuel oil, skirting sanctions,” September 2012,

<http://www.reuters.com/article/2012/09/26/us-iran-oil-sanctions-vitol-idUSBRE88P06C20120926>

⁴⁷ Berne Declaration website, „Dunkle Geschäfte, dreckige Gewinne: Schweizer Rohstoffhändler in Nigeria“,

https://www.evb.ch/medien/medienmitteilung/dunkle_geschaefte_dreckige_gewinne_schweizer_rohstoffhaendler_in_nigeria/

good business with dubious Nigerian import firms.”⁴⁸ The report claims that USD 6.8 billion (CHF 6.6 billion) of unjustifiable state subsidies were paid out in 2009 and 2011. Vitol has denied the charges.

⁴⁸Ibid.

4. The UN Guiding Principles on Business and Human Rights

This chapter gives an overview of the UN Guiding Principles on Business and Human Rights and discusses the relevance of the guidelines for a commodity trader like Vitol.

4.1. Introduction to the UN Guiding Principles

In 2011, the United Nations Human Rights Council unanimously endorsed the **Guiding Principles on Business and Human Rights (UNGPs)**, also commonly called the **Ruggie Principles** (so named for John Ruggie, the UN Special Rapporteur on Business and Human Rights). The Guiding Principles are “**designed to provide for the first time a global standard** for preventing and addressing the risk of adverse impacts on human rights linked to business activity.”⁴⁹ The standard outlines “how States and businesses should implement the UN ‘**Protect, Respect and Remedy**’ Framework in order to better manage business and human rights challenges.”⁵⁰

Principle 12 of the Guiding Principles states the following: “The responsibility of business enterprises to respect human rights **refers to internationally recognized human rights** – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work”.⁵¹

According to the Guiding Principles, an “**authoritative list of the core internationally recognized human rights** is contained in the International Bill of Human Rights [...] and the eight ILO core conventions.”⁵² The International Bill of Human Rights is comprised of the Universal Declaration of Human Rights and the most important instruments through which it has been codified:

- the International Covenant on Civil and Political Rights and
- the International Covenant on Economic, Social and Cultural Rights.

In order to meet their responsibility to respect human rights, business enterprises should have (according to Principle 15 of the Guiding Principles):

- a) “A **policy commitment** to meet their responsibility to respect human rights;
- b) A **human rights due diligence** process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- c) Processes to enable the **remediation** of any adverse human rights impacts they cause or to which they contribute.”⁵³

The Interpretive Guide for the Guiding Principles defines human rights due diligence as follows: “human rights due diligence comprises an **ongoing management process that a reasonable and prudent enterprise needs to undertake**, in the light of its circumstances

⁴⁹Office of the High Commissioner for Human Rights website, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11164>

⁵⁰Ibid.

⁵¹Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations „Protect, Respect and Remedy“ Framework*, New York and Geneva: United Nations, 2011, principle #12, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁵²Ibid.

⁵³ Ibid.

(including sector, operating context, size and similar factors) **to meet its responsibility to respect human rights.**⁵⁴

Conducting human rights due diligence should comprise the following four steps:⁵⁵

- **Assess** actual and potential human rights impacts;
- **Integrate and act upon** the findings of such assessments;
- **Track** how impacts are addressed; and
- **Communicate** regarding how the impacts are addressed.

Moreover, Principle 18 defines how businesses can identify actual or potential adverse human rights impacts. This process should:

(a) “Draw on **internal and/or independent external human rights expertise**;

(b) **Involve meaningful consultation with potentially affected groups and other relevant stakeholders**, as appropriate to the size of the business enterprise and the nature and context of the operation.”⁵⁶

Management of risks should be **communicated externally** in such a way that stakeholders, especially those who are affected by the operations, can make an assessment as to whether the company has managed risks adequately.⁵⁷

Finally, Principle 19 addresses the **need for grievance mechanisms**: “To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in **effective operational-level grievance mechanisms** for individuals and communities who may be adversely impacted.”⁵⁸

Grievance mechanisms are tools that can help companies fulfil their corporate responsibility to respect human rights. They do not replace judicial remedies but they can help the company to monitor and remediate certain human rights problems. Grievance mechanisms can include the “use of external resources - possibly shared with other companies - such as **hotlines for raising complaints, advisory services for complainants, or expert mediators.**”⁵⁹

⁵⁴ Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights. An Interpretive Guide*. New York and Geneva: United Nations, 2012, http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

⁵⁵ Ibid.

⁵⁶ Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework*. New York and Geneva: United Nations, 2011.

⁵⁷ Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights. An Interpretive Guide*. New York and Geneva: United Nations, 2012.

⁵⁸ Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights. Implementing the United Nations “Protect, Respect and Remedy” Framework*. New York and Geneva: United Nations, 2011.

⁵⁹ UN Human Rights Council, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/8/5*, 2008, para. 94, www2.ohchr.org/english/bodies/.../A-HRC-8-5.doc

4.2. Vitol's responsibility for human rights

This section discusses the human rights responsibility of Vitol for human rights. In order to gauge what kind of human rights due diligence needs to be implemented, a company should consider the following factors:

1. **Activities and business relationships:** The Guiding Principles state that companies “should identify and assess any actual or potential adverse human rights impacts with which they may be involved either **through their own activities or as a result of their business relationships.**”⁶⁰ This means that Vitol must conduct human rights due diligence not only on its own operations but **also on its business relationships**, i.e. its **commodities suppliers**. Examples of this in other sectors are computer firms such as Apple or HP auditing their suppliers in China or clothing companies working with subcontractors in Asia to ensure that human rights are respected.
2. **The human rights risks of its operations.** According to the Guiding Principles: “The severity of a potential adverse human rights impact is the most important factor in determining the scale and complexity of the processes the enterprise needs to have in place in order to know and show that it is respecting human rights. The processes must therefore first and foremost be **proportionate to the human rights risks of its operations.**”⁶¹ Vitol is active in a **high-risk sector**. Indeed, the commodity sector has the largest share of alleged human rights violations of any industry (29%), according to the website of the Business and Human Rights Resource Centre.⁶² This means that Vitol should **adapt the scale and the complexity of the human rights due diligence** to be proportionate to these risks.
3. **Size of the company and of its business relationships.** The Guiding Principles state: “All enterprises have the same responsibility to respect human rights as they go about their business. However, **size will often influence the kinds of approaches they take to meet that responsibility.** A large enterprise will have more employees, typically undertake more activities and be engaged in more relationships than a small one. This may increase its human rights risks.”⁶³ Vitol, due to **its large turnover** (USD 270 billion, CHF 264 billion), **needs to take account of these factors** in order to ensure respect for human rights.
4. **The context.** According to the Guiding Principles: “an enterprise’s sector and its operational context will typically determine which human rights it is at greatest risk of having an impact on in the normal course of its operations.”⁶⁴ “An enterprise’s operational context can also make a significant difference[...]. If the **region suffers from water scarcity**, then the risk of **adverse impact on the right to safe water will be high.** If the affected communities include indigenous peoples, then their rights, including their cultural rights, may be at particular risk”.⁶⁵ Following this logic, Vitol should **take into account the South African context**, including the fact that some regions of South Africa suffer from water scarcity.

⁶⁰ Principle 18 of the UN Guiding Principles on Business and Human Rights.

⁶¹ Principles 14 and 17 of the Guiding Principles.

⁶²This is based on 1,877 allegations between 2005 and 2014 on <http://business-humanrights.org/>. Source: Menno T. Kamminga, *Company Responses to Human Rights Reports: An Empirical Analysis*. Utrecht University, 2015, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2559255

⁶³ Principles 14 and 17 of the Guiding Principles.

⁶⁴ Principles 14 and 17 of the Guiding Principles.

⁶⁵ Principles 14 and 17 of the Guiding Principles.

In conclusion, it is worth noting that Vitol:

- has **many business relationships**;
- is active in a **high-risk sector**;
- can be considered a **large company** due to its turnover;
- has business relationships in **high-risk contexts**, such as South Africa.

All these factors should be taken into consideration by Vitol in order to define the **scale and the complexity of its human rights due diligence**.

4.3. Leverage of Vitol on Coal of Africa Limited

This section discusses the leverage of Vitol on CoAL, based on the factors defined in the UN Guiding Principles.

The Guiding Principles introduced a new concept of “**leverage**.” According to the Guiding Principles, leverage refers to “the **ability of a business enterprise to effect change in the wrongful practices of another party** that is causing or contributing to an adverse human rights impact.”⁶⁶

The Guiding Principles state that: “**If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it**. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.”⁶⁷

Leverage may reflect one or more factors, such as:

- (a) “Whether there is a **degree of direct control** by the enterprise over the entity;
- (b) The **terms of contract** between the enterprise and the entity;
- (c) The **proportion of business** the enterprise represents for the entity [...]”⁶⁸

Factor (a): Through its subsidiary, Vitol Energy (Bermuda), Ltd.,⁶⁹ Vitol holds 1.4% of the **share capital** of CoAL.⁷⁰ Vitol has a **low “degree of direct control”** over CoAL, even if Vitol was the **sixth largest shareholder of CoAL** (as of September 2014).

Factor (b): There is a contract between Vitol and CoAL. Vitol signed an **offtake agreement**⁷¹ with Coal of Africa making Vitol the “**exclusive marketing agent for all export [...] coal**.”⁷² Offtake agreements are common in the trading industry. An offtake agreement is “normally

⁶⁶Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights. An Interpretive Guide*. New York and Geneva: United Nations, 2012, p. 7.

⁶⁷Principle 19 of the Guiding Principles.

⁶⁸Office of the High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights. An Interpretive Guide*. New York and Geneva: United Nations, 2012, p. 49.

⁶⁹Vitol website, <http://www.vitol.com/contact-locations/bermuda/>

⁷⁰ Shareholding at August 2015. Source: Bloomberg.

⁷¹ An offtake agreement is an “agreement between a producer of a resource and a buyer of a resource to purchase/sell portions of the producer’s future production.” If lenders or investors can see the company will have a purchaser of its production, “it makes it easier to obtain financing or investments to construct a facility.” Source: Investopedia website, <http://www.investopedia.com/terms/o/offtake-agreement.asp#ixzz3cBZ6QMqo>

⁷²Vitol website, <http://www.vitol.com/vitol-group-signs-memorandum-of-understanding-with-coal-of-africa/>

negotiated prior to the construction of a facility such as a mine in order to secure a market for the future output of the facility.”⁷³

In January 2013, Vitol “announced that it had been appointed as CoAL’s **exclusive marketing agent for all export thermal and coking coal for a period of eight years.**”⁷⁴ **As an exclusive marketing agent, Vitol plays a vital role:** it makes it easier for CoAL to obtain financing from banks or investments from investors to construct its mines, because lenders or investors can see CoAL will have a purchaser for its production.

Factor (c): Vitol will be the “**exclusive marketing agent for all export [...] coal.**”⁷⁵ Thus it is crucial to know how much coal has been exported by CoAL compared to the coal that has been sold on the national market (e.g. to the South African power company, Eskom). In 2013 and in 2014, respectively **40% and 30% of the coal produced by CoAL has been exported**⁷⁶.

Through these three factors, we note that Vitol, **as an exclusive marketing agent, is a large customer of CoAL** and **therefore has substantial leverage over CoAL.** Vitol can exercise its leverage “to prevent or mitigate the adverse impact” that may be caused by CoAL.

The table below lists the three factors and the degree of leverage.

Factor of leverage	Leverage of Vitol over CoAL	Assessment
(a) Degree of direct control by the enterprise over the entity	Vitol holds 1.4% of the shares of CoAL	Limited leverage
(b) Terms of contract between the enterprise and the entity	Exclusive marketing agent for all export coal for a period of 8 years	High leverage
(c) The proportion of business the enterprise represents for the entity	Significant share of turnover	High leverage

Table: Leverage of Vitol over Coal of Africa Limited (CoAL).

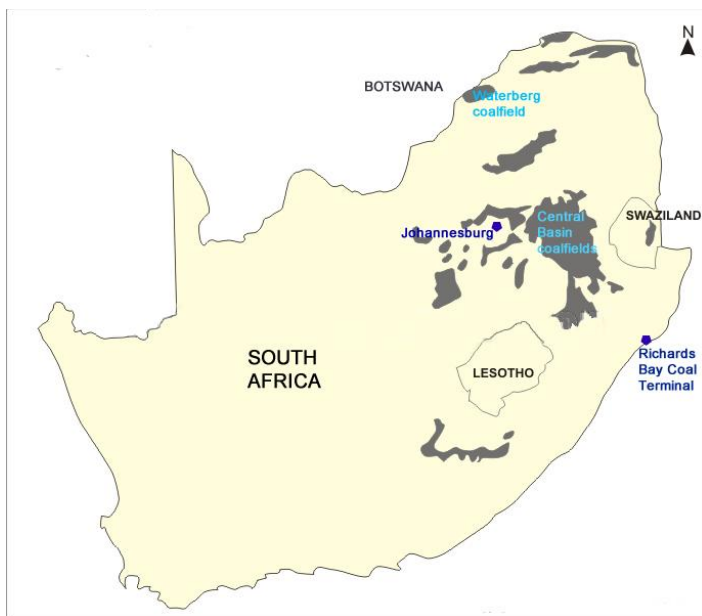
⁷³ Investopedia, <http://www.investopedia.com/terms/o/offtake-agreement.asp#ixzz3cBZ6QMgo>
⁷⁴ Vitol website, <http://www.vitol.com/vitol-group-signs-memorandum-of-understanding-with-coal-of-africa/> The exception is production from Makhado, where the marketing period is five years from the start of production. Source: Ibid.
⁷⁵ Vitol website, <http://www.vitol.com/vitol-group-signs-memorandum-of-understanding-with-coal-of-africa/>
⁷⁶ Coal of Africa Limited. *Annual Report 2014*, <http://www.coalofafrica.com/investors-and-media/corporate-publications/2014>

5. The context of coal mining and of South Africa

In this chapter, we present some contextual information, such as coal deposits in South Africa; the impacts of coal mining -- in particular its impact on water; water scarcity in South Africa; the weakness of government supervision of the mining sector and the characteristics of Limpopo Province, where CoAL's assets are located.

5.1. Coal in South Africa

South Africa has the fifth largest coal deposits in the world.⁷⁷ In 2006, coal accounted for 93% of the electricity generated in South Africa, followed by nuclear (4.6%) and hydropower (2.2%). By 2030, South Africa's electricity generation mix is forecast to change considerably and should be composed as follows: 48% coal, 14% nuclear, 16% renewable energy and 9% natural gas.⁷⁸ **South Africa also exports a large volume of coal to other countries.** The majority of South Africa's reserves and mines are in the Central Basin, which includes the Witbank, Highveld and Ermelo coalfields located in Mpumalanga and Gauteng Provinces in the Northeast of the country.⁷⁹



Map showing the coal fields in South Africa.⁸⁰

⁷⁷ UNEPFI (United Nations Environment Programme's Financial Initiative). *Country Case Studies South Africa*, 2012, http://www.unepfi.org/fileadmin/publications/water/chief_liquidity3-2South_Africa.pdf

⁷⁸ Ibid.

⁷⁹ Bench Marks Foundation. 2014. *South African Coal Mining: Corporate Grievance Mechanisms, Community Engagement Concerns and Mining Impacts*. Policy Gap 9, 2014, http://www.bench-marks.org.za/research/policy_gap_9.pdf

⁸⁰ Adam Welz. "In South Africa, Renewables Vie With the Political Power of Coal," *Environment* 360, Yale University, 2013, http://e360.yale.edu/slideshow/in_south_africa_renewables_vie_with_the_political_power_of_coal/257/1/

5.2. Environmental impact of the coal mining industry

Coal mining has a number of adverse effects on the environment.⁸¹

- The **release of methane** (CH₄). Methane is a **potent greenhouse gas** that is 21 times more potent in its greenhouse effect than carbon dioxide. All coal contains some methane.
- The release of carbon monoxide (CO) from explosives, which pollutes the air and poses a health risk for mine workers.
- **Drastic alteration of the landscape**, which can render an area unfit for other purposes, even after coal mine reclamation. The clearing of trees, plants, and topsoil from mining areas destroys forests and natural wildlife habitats. It also promotes soil erosion and flooding, and stirs up **dust pollution that can lead to respiratory problems in nearby communities**.
- **Water pollution and high water consumption**: see section 5.4 below, Impacts of coal on water.
- **Dust and coal particles** stirred up during the mining process, as well as the soot released during coal transport, which **can cause severe and potentially deadly respiratory problems**.⁸²
- The **large mountains of solid waste produced by mining**. Coal heaps are prone to **spontaneous combustion**. **Leachate from waste heaps is often acidic**, adding to the general and large-scale impact of acid mine drainage and interference with underground and surface water.⁸³

5.3. Health and safety impacts of coal mining

The **health impacts of coal mining on communities** are massive. Studies have looked at health effects in coal mining communities and found that community members have a 70% greater risk of developing **kidney disease** and a 64% greater risk than the general population of developing **chronic obstructive pulmonary disease** (COPD) such as emphysema⁸⁴. They are also 30% more likely to report high blood pressure (hypertension).⁸⁵

Mining accidents are relatively frequent in South Africa even if their number is decreasing. The unofficial number of fatalities in 2014 was recorded at a low of 84 (a drop from 93 in

⁸¹Sourcewatch, "Environmental Impacts of Coal Mining,"

http://www.sourcewatch.org/index.php/Environmental_impacts_of_coal#Coal_mining

⁸²Sourcewatch website, http://www.sourcewatch.org/index.php/Environmental_impacts_of_coal#Coal_mining

⁸³Victor Munnik et al, *The Social and Environmental Consequences of Coal Mining in South Africa: A Case Study*, Environmental Monitoring Group and Both ENDS, January 2010,

http://www.bothends.org/uploaded_files/uploadlibraryitem/1case_study_South_Africa_updated.pdf

⁸⁴Bench Marks Foundation. *South African Coal Mining: Corporate Grievance Mechanisms, Community Engagement Concerns and Mining Impacts*, Policy Gap 9, 2014, http://www.bench-marks.org.za/research/policy_gap_9.pdf

⁸⁵Ibid.

2013).⁸⁶ However, **mining-related dust exposure, lung disease, silicosis and tuberculosis (TB)** kill many more miners than mining incidents do.⁸⁷

5.4. Impacts of coal mining on water

Coal mining has a significant impact on local water resources through **high water consumption and water pollution**. For underground and surface mining, groundwater is pumped out so that the area being mined stays dry.⁸⁸ Among other results are the following: flows of groundwater and streams are affected, water tables are lowered, ecosystems are damaged and entire regions are put at risk.⁸⁹ **Coal mining pollutes water**, as sulfuric acid forms when coal is exposed to air and water. This creates acid run-off that can dissolve **heavy metals such as copper, lead and mercury**, which subsequently leach into streams, acidifying and polluting the water and killing fish, plants, and aquatic animals. This phenomenon is called **Acid Mine Drainage (AMD)**. Seepage from coal sludge can also contaminate local water supplies.

Mining operations require vast volumes of water for **dust control measures**. Large amounts of dust are created as coal is hauled along roads; dust also results from stockpiles of coal and soil.⁹⁰ This means that **substantial amounts of water must be used for dust suppression** and road wetting at the mines. Significant quantities of **water are also needed for washing coal**. Most coal mines have their own coal washing plants. Washing coal further depletes water resources and creates **substantial amounts of contaminated 'sludge'**, which must be disposed of in dams, and can pollute freshwater supplies if stored incorrectly.⁹¹

5.5. Water scarcity in South Africa

South Africa is a relatively water-scarce country. It has "decreasing water resources and some areas are fully allocated and already experience water stress."⁹² The areas where current mining operations are located and future ones are planned are in the most arid regions of the country, such as the northeast and in the relatively high water-yield areas of the grasslands.⁹³ This situation places pressure on water users, and the challenge is compounded by a need to redistribute or reallocate water resources toward those who were previously disadvantaged.⁹⁴

Moreover, the arid areas (including Limpopo Province) are **forecast to receive less precipitation in general climate models**. Mining in these areas therefore faces water scarcity but also social challenges from communities that are historically disadvantaged (including in relation to their access to water).⁹⁵

⁸⁶South Africa Info. January 27, 2015. "Fatalities at South Africa's mines drop," <http://www.southafrica.info/news/business/mine-deaths-27115.htm#.VY0H6kZrOjw#ixzz3e9a0CMSK>

⁸⁷Edmond Furter, Dust kills more miners than accidents, says NGO", SHEQ Africa, May 12, 2012,; <http://sheqafrika.com/dust-kills-ngo/>

⁸⁸Greenpeace South Africa. "Water hungry coal: Burning South Africa's water to produce electricity" 2012, <http://www.greenpeace.org/africa/Global/africa/publications/coal/WaterHungryCoal.pdf>

⁸⁹Ibid.

⁹⁰Ibid.

⁹¹Ibid.

⁹²UNEPFI ., *Country Case Studies South Africa*, 2012, http://www.unepfi.org/fileadmin/publications/water/chief_liquidity3-2South_Africa.pdf

⁹³Ibid.

⁹⁴Ibid.

⁹⁵Ibid.

5.6. Weakness of government oversight in South Africa

The South African Government maintains **weak oversight of mining companies**. Government departments – mineral and energy, water affairs and local governments – operate “with **progressive legislation, but constrained capacity for monitoring and acting against mining** and other industrial polluters.”⁹⁶

The **South African Government has a very pro-mining policy**. This is evident in the recent amendments to the environmental assessment process that granted oversight to the Department of Mineral Resources rather than the Department of Environmental Affairs, as had been the case previously. This change weakened the role of the Department of Environmental Affairs, and implies that **environmental issues are not taken into account as seriously as in the past**.⁹⁷

South African legislation (through the National Water Act, NWA) supports the ‘Polluter Pays Principle.’ According to this principle, mines causing pollution, including acid mine draining (AMD), should be held liable for the cost of cleaning up and legal enforcement.⁹⁸ **In practice, however, it has not been easy to enforce this legislation, partly due to capacity constraints** in the Department of Water Affairs and the Department of Minerals and Energy. The latter department has only 79 inspectors for the whole country; they must deal with prospecting and mining applications as well as infringements.⁹⁹

In 2013, the Centre for Environmental Rights reported that **water licences (particularly relevant for mining) were issued late, by staff who were not well supported**. The licences were issued without the recommendations made during the evaluation process.¹⁰⁰

In 2014, the Public Protector launched an investigation into the water pollution allegedly caused by mining houses. Almost **40 percent of mines were found not to have adequate funds for environmental rehabilitation**.¹⁰¹

South Africa has nearly **6,000 abandoned mines, many of which contribute to uncontrolled AMD**.¹⁰² Many mines are abandoned by mining companies instead of being rehabilitated by backfilling open pits in order to mitigate their environmental impact. There is a tendency for coal majors to sell off mines approaching the end of their life to ‘junior coal mines’ who do not have the resources or capacity to close such mines properly.¹⁰³ Mines are abandoned despite strict environmental and water regulations and a legal requirement for

⁹⁶Victor Munnik et al, *The Social and Environmental Consequences of Coal Mining in South Africa: A Case Study*, Environmental Monitoring Group and Both ENDS, January 2010,

http://www.bothends.org/uploaded_files/uploadlibraryitem/1case_study_South_Africa_updated.pdf

⁹⁷Bench Marks Foundation. *South African Coal Mining: Corporate Grievance Mechanisms, Community Engagement Concerns and Mining Impacts*, Policy Gap 9, 2014, http://www.bench-marks.org.za/research/policy_gap_9.pdf

⁹⁸Victor Munnik et al, *The Social and Environmental Consequences of Coal Mining in South Africa. A Case Study*, Environmental Monitoring Group and Both ENDS, January 2010,

http://www.bothends.org/uploaded_files/uploadlibraryitem/1case_study_South_Africa_updated.pdf

⁹⁹Ibid.

¹⁰⁰South African Human Rights Commission. *Human Rights and Business Country Guide. South Africa, 2015*,

<http://www.sahrc.org.za/home/21/files/Guide%20Final%20final.pdf%20March%202019.pdf>.

¹⁰¹Ibid..

¹⁰²UNEPFI, *Country Case Studies South Africa, YEAR?*, http://www.unepfi.org/fileadmin/publications/water/chief_liquidity3-2South_Africa.pdf

¹⁰³Bench Marks Foundation. *South African Coal Mining: Corporate Grievance Mechanisms, Community Engagement Concerns and Mining Impacts*, Policy Gap 9, 2014, http://www.bench-marks.org.za/research/policy_gap_9.pdf

mines to set aside funds for effective mine closure. **Abandoned mines represent a major cost externalisation to society, as post-closure impact is extensive.**

5.7. Legal context

The **South African Constitution** is the highest applicable law in South Africa, to which all other laws must adhere.¹⁰⁴ The constitution guarantees a number of rights, for example the right to adequate housing (Section 26), the right to water and health (Section 27), the right to property (Section 25), as well as the right to an environment that is not hazardous to health or well-being (Section 24).¹⁰⁵ According to the Constitution, the South African state has the responsibility for ensuring these rights.

The **Minerals and Petroleum Resources Development Act (MPRDA)** is the central piece of legislation regulating the mining industry in South Africa.¹⁰⁶ The law provides guidance on how the prospecting, quarrying and production of minerals in South Africa should take place. In order for a company to be awarded mineral rights, a so-called “Social and Labour Plan” must be developed in which the company describes how it will contribute to community development in the region where mining will take place. These plans have been criticised by the Bench Marks Foundation and other sources.¹⁰⁷ Most of these plans are not drawn up in consultation with the public and communities living near mines. They are often not made public despite the fact that by law they should be accessible. And if they are not made public, it is impossible for concerned stakeholders to determine whether the company complies with its commitments.¹⁰⁸

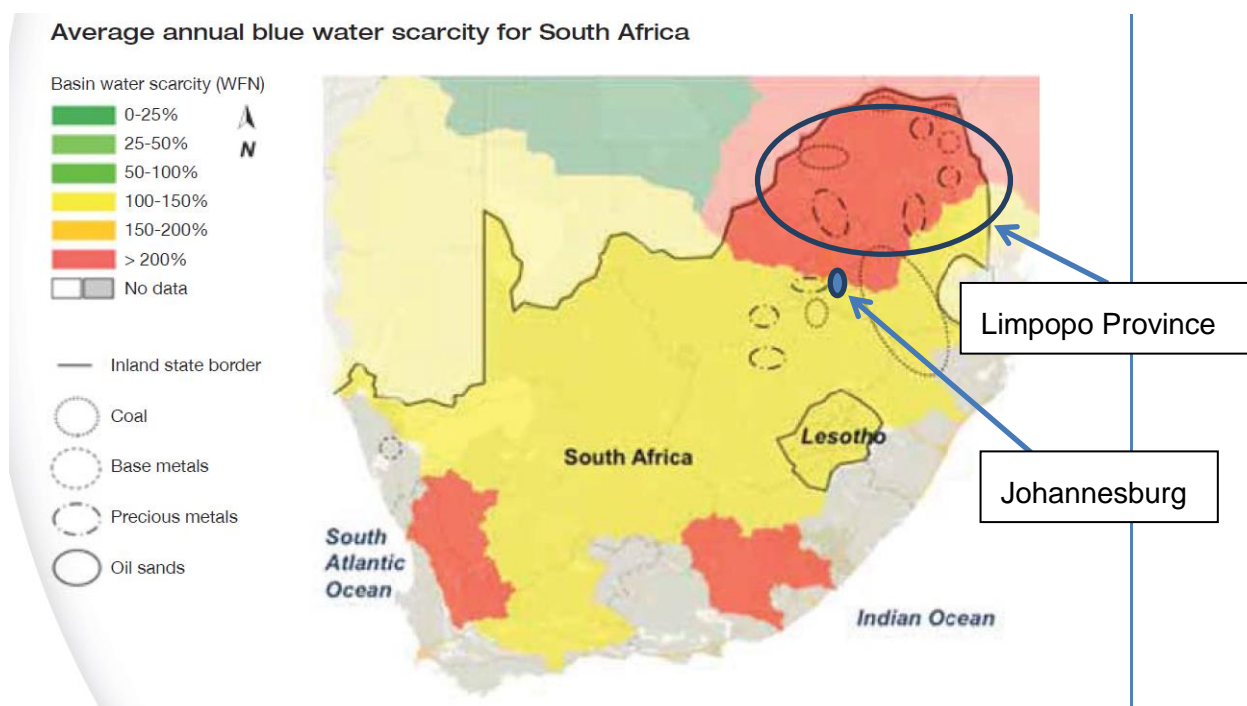
¹⁰⁴Ibid.
¹⁰⁵Ibid.
¹⁰⁶Ibid.
¹⁰⁷Ibid.
¹⁰⁸Ibid.

5.8. Characteristics of Limpopo Province

Limpopo Province is the northernmost province of South Africa and borders Mozambique, Zimbabwe and Botswana. The population of the province is estimated at 5.2 million. The unemployment rate is estimated at 26.8%.¹⁰⁹ The three pillars of the Limpopo economy are **mining, agribusiness and tourism**.¹¹⁰ The province includes vast areas of the Kruger National Park and many private reserves.¹¹¹ In the North **coffee, tea and citrus** plantations can be found due to the more exotic climate above the Tropic of Capricorn.¹¹²

Limpopo Province is considered the “**Bread and Fruit Basket of South Africa**”, producing up to 60% of all (winter) fruit, vegetables maize meal, wheat and cotton in South Africa.¹¹³

Water is scarce in the province. The graph below shows the **annual blue water scarcity** for South Africa. Red areas face a high blue water scarcity. In the northeast of South Africa, **Limpopo Province is marked red as it has an annual blue water scarcity of more than 200%**.¹¹⁵



Source: Hoekstra, A.Y., Mekonnen, M.M., Chapagain, A.K., Mathews, R.E. and Richter, B.D. (2012) Global monthly water scarcity: Blue water footprints versus blue water availability, PLoS ONE 7(2)

¹⁰⁹National Development Agency website, http://www.nda.org.za/?option=3&id=1&com_id=195&parent_id=158&com_task=1

¹¹⁰Wikipedia website, "Limpopo Province." Accessed at: <https://en.wikipedia.org/wiki/Limpopo#Economy>

¹¹¹Wikitravel website, "Limpopo"., <http://wikitravel.org/en/Limpopo>

¹¹²Ibid.

¹¹³Polokwane Food, Arts and Culture Fair website, http://www.polokwane.gov.za/index.php?view_page+2053

¹¹⁴According to UNEP-FI, "Blue water scarcity is defined as the ratio of blue water footprint "how much water is consumed" (rather than withdrawal) to blue water availability, where the latter is taken as natural runoff minus environmental flow. Blue water resources are surface water and ground water." UNEPFI, *Country Case Studies South Africa*, 2012, http://www.unepfi.org/fileadmin/publications/water/chief_liquidity3-2South_Africa.pdf

¹¹⁵UNEPFI (United Nations Environment Programme's Financial Initiative). *Country Case Studies South Africa*, 2012, http://www.unepfi.org/fileadmin/publications/water/chief_liquidity3-2South_Africa.pdf

6. Coal of Africa Limited

This section presents Coal of Africa Limited (CoAL), its assets, its reporting and approach to the environment and corporate social responsibility.

6.1. Company profile

CoAL **explores, develops, and mines thermal and coking coal projects** in South Africa.¹¹⁶ The company is based in Mount Pleasant, Australia, but its **assets are located in Limpopo Province in South Africa.**

The company produced 2.5 million tonnes of coal¹¹⁷ in Financial Year 2013¹¹⁸ and 0.09 million tonnes¹¹⁹ in Financial Year 2014, **a sharp decrease due to the closing of its mines.** In 2013, 1.0 million tonnes of coal (or 40%) were exported and only 0.03 million tonnes (or 31%) in 2014.¹²⁰

Coal of Africa Limited is a so-called “**junior**” **coal mining company**, as opposed to “major” coal companies active in South Africa (e.g. Glencore, Anglo American, Sasol, and BHP Billiton). CoAL is quoted in Johannesburg, London and Perth.¹²¹ **CoAL does not currently operate any mines:** the Vele Mine has been closed and Makhado is a mine project that received Mining Rights only in May 2015, and whose construction phase has not started.

The company has been experiencing **financial problems** for a number of years. The share price has lost **90% of its value in the last four years**, falling from 87 US cents in June 2011 to below 7 US cents in July 2015.

Moreover, CoAL is **struggling to pay back a debt of USD 22 million** to Rio Tinto and another company. This debt has been owed since 2010 and stems from the purchase of assets of the Chapudi Coal Project in 2010.¹²²

At the same time, CoAL is **also struggling to sell one of its assets** to obtain some liquidity: since November 2014, a potential buyer of the Mooiplaats mine (which is also closed) has been consistently postponing its acquisition of the mine for a price of USD 20 million.¹²³ In July 2015, CoAL announced that the sale and purchase agreement with the potential buyer would not be extended.¹²⁴ CoAL is trying to find other buyers willing to acquire the mine.

6.2. Coal of Africa’s assets

CoAL’s operations and projects are all located in Limpopo:¹²⁵

¹¹⁶Coal of Africa website, <http://www.coalofafrica.com/about-us/strategy>

¹¹⁷Coal of Africa Limited, *Integrated Annual Report 2014*, www.coalofafrica.com/downloads/COA-IR14.pdf

¹¹⁸The financial year of Coal of Africa Limited ends on June 30.

¹¹⁹Coal of Africa Limited. *Integrated Annual Report 2014*, www.coalofafrica.com/downloads/COA-IR14.pdf

¹²⁰Ibid.

¹²¹Coal of Africa website, <http://www.coalofafrica.com/about-us/strategy>

¹²²Coal of Africa website, *Soutpansberg Deferred Consideration amendment agreement signed 12 May 2015*, <http://www.coalofafrica.com/investors-and-media/corporate-publications/2015>

¹²³Coal of Africa website, *Mooiplaats Disposal Update 5 May 2015 and Mooiplaats Update 2 July 2015*, <http://www.coalofafrica.com/investors-and-media/corporate-publications/2015>

¹²⁴Ibid.

¹²⁵Coal of Africa Limited. *Integrated Annual Report 2014*, www.coalofafrica.com/downloads/COA-IR14.pdf



Figure: Map of South Africa. Numbers 1, 2, 3 and 4 correspond to the assets of CoAL in Limpopo (5 and 6 correspond to assets sold or up for sale).¹²⁶

CoAL operations and projects comprise:¹²⁷

- **Vele Colliery**, a thermal and semi-soft coking coal colliery, which has suspended production in anticipation of the plant modification process to enable the production of a dual saleable product basket to include semi-soft coking coal.
- **Makhado Project**, a thermal and hard-coking coal resource, positioned to be the “crown jewel development” for CoAL. The project received its new order mining right (NOMR) in May 2015. An appeal is pending against this mining right.¹²⁸ The company plans to start construction in 2016 (if financing is found and coal prices recover).
- **Greater Soutpansberg Project**, a long-term project in CoAL’s strategy, contiguous to the Makhado Project, with a significant thermal and hard coking-coal resource. Greater Soutpansberg Project is divided into three projects: Mopane, Chapudi and Generaal.

As shown in the table below, as of the publication date of this report, CoAL did not operate any mines. CoAL’s mines are either planned or closed.

¹²⁶Ibid.

¹²⁷Ibid.

¹²⁸The Vhembe Mineral Resources Stakeholders Forum, Mudimeli Community and Makhado Action Group. Appeal directed to the Director-General of the Department of Mineral Regulation. June 17, 2015.

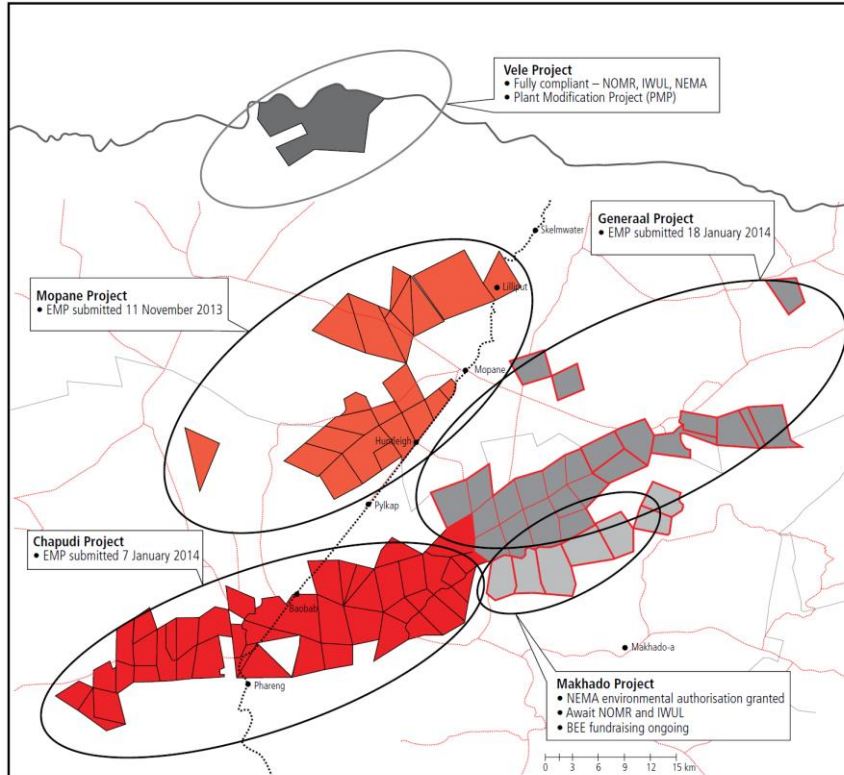


Figure: Projects of Coal of Africa Limited¹²⁹

Summary of CoAL’s assets

	Mine	Status
Vele Colliery	Mining Rights received. Mine constructed: the mine was operational for a few months	Closed
Makhado Project	Mining Rights received in May 2015. Mine not yet constructed	Project
Greater Soutpansberg Project	Consists of 3 mines. No Mining Rights received yet. Mines not yet constructed	Project
Mooiplaats mine	Mining Rights received. Mine constructed. The mine has been closed.	Closed and for sale

¹²⁹Coal of Africa Limited. “Makhado Factsheet”, April 2014, <http://www.coalofafrica.com/investors-and-media>

6.3. Coal of Africa's reporting

CoAL published an integrated annual report in 2014.¹³⁰ The report includes a **section on sustainable development, with information on environmental performance, employment, health and safety and stakeholder engagement.**¹³¹ The report is compiled according to Global Reporting Initiative (GRI) guidelines and the principles of the International Council on Mining and Metals (ICMM).¹³² In addition, on its website CoAL publishes information on environment and corporate social responsibility¹³³.

CoAL can be considered **relatively transparent on social and environmental matters.**

6.4. Coal of Africa's CSR and environmental approach

Coal of Africa Limited has taken a number of voluntary measures on the environment and on corporate social responsibility.

Regarding the environment, CoAL states that "Management is conscious of the area's environmental significance, and that it is host to the Mapungubwe World Heritage Site. CoAL has introduced a number of state-of-the-art environmental management programmes to ensure that the impacts of coal mining are mitigated."¹³⁴

On safety, CoAL is committed to the following: "The Company has expended significant effort in developing and implementing an extensive and comprehensive safety environment at all of its workplaces. A number of the Company's collieries have received awards for safety performance in the past, recognised by the South African Department of Mineral Resources and the South African Colliery Managers Association."¹³⁵

On community-centred development, CoAL states that "CoAL has developed a broad-based black economic empowerment (BBBEE) strategy, which seeks to maximise the benefit of mining for nearby communities."¹³⁶ Black Economic Empowerment (BEE) is a racially selective programme launched by the South African government to redress the inequalities of Apartheid by giving certain previously disadvantaged groups (such as Blacks) economic privileges such as the right to acquire equity interest in mining companies.¹³⁷

Moreover, CoAL mentions that it has established bursary schemes to "develop appropriate candidates who, on graduation, will be afforded professional career paths in the company."¹³⁸

CoAL conducted a number of impact assessment studies for Vele and Makhado, including an Environmental Impact Assessment (EIA), an Environmental Management Plan (EMP), a Social Labour Plan (SLP), a Heritage Impact Assessment and a Traffic Impact Assessment. These impact assessments are discussed in more detail in the next sections.

¹³⁰Coal of Africa Limited. *Integrated Annual Report 2014*, www.coalofafrica.com/downloads/COA-IR14.pdf

¹³¹Ibid

¹³²Ibid.

¹³³Coal of Africa Limited website, <http://www.coalofafrica.com/sustainability/enviroment>

¹³⁴Ibid.

¹³⁵Coal of Africa Limited website, <http://www.coalofafrica.com/sustainability/safety-health-HIVAids>

¹³⁶Coal of Africa Limited. *Integrated Annual Report 2014*, www.coalofafrica.com/downloads/COA-IR14.pdf

¹³⁷Bench Marks Foundation, *South African Coal Mining: Corporate Grievance Mechanisms, Community Engagement Concerns and Mining Impacts*. Policy Gap 9. 2014 http://www.bench-marks.org.za/research/policy_gap_9.pdf

¹³⁸Coal of Africa Limited website, <http://www.coalofafrica.com/sustainability/csr-led>

6.5. Coal of Africa's human rights approach

CoAL **does not have a Human Rights Policy** but it mentions in its Annual Report that it operates "in line with the South African Constitution, which governs the Company and promotes the preservation of human rights."¹³⁹

CoAL states that **it does not follow the principles laid out in the UN Guiding Principles on Business and Human Rights**. However, the UN Guiding Principles "**may serve as a basis for our work,**" according to the company's public relations consultants.¹⁴⁰

CoAL has **conducted a number of Impact Assessments that can be considered part of more comprehensive Human Rights Impact Assessments (HRIA)**. Further, CoAL has also taken a number of measures on corporate social responsibility and on the environment. It tracks certain indicators, such as its water consumption, energy consumption and health and safety data. CoAL engages with stakeholders as part of its Public Participation Processes as part of the implementation required of companies to obtain Mining Rights. This information is **incorporated in the Integrated Annual Report¹⁴¹ and on its website.**¹⁴²

However, according to the public information made available by CoAL, it has not incorporated a **grievance mechanism** into its operations.

Below is an assessment of CoAL's human rights approach.

¹³⁹Coal of Africa Limited. *Integrated Annual Report 2014*, www.coalofafrica.com/downloads/COA-IR14.pdf

¹⁴⁰Statement of Charmane Russell, Russell Associates. Interview on April 20, 2015.

¹⁴¹Coal of Africa Limited. *Integrated Annual Report 2014*, www.coalofafrica.com/downloads/COA-IR14.pdf

¹⁴²Coal of Africa Limited website, <http://www.coalofafrica.com/sustainability/emiroment>

Topic	Criteria	Assessment
Human rights commitment/policy	Does CoAL have a commitment to human rights?	Partly: some general commitment on human rights in the Annual Report
	Does CoAL have a HR policy? Signed by senior management?	No information
	Does the policy refer to international HR standards?	No information
Human rights due diligence	Does CoAL assess its HR impacts? And identify any changes over time?	Partly (in Impact Assessments) but not all human rights are addressed
	Does CoAL integrate the assessment findings into decision-making and processes?	Partly (on safety and the environment) but not all human rights are addressed
	Does CoAL track its performance?	Partly (some indicators on safety and the environment are available)
	Does CoAL report on its HR assessment and measures?	Partly (mainly on measures on safety and the environment) but not all human rights are addressed
	Does CoAL engage with stakeholders on HR?	Partly (CoAL has conducted stakeholder consultations)
Remedy	Does CoAL address harms to individuals if it causes or contributes to an impact?	No information
	Does CoAL have a corporate grievance mechanism?	No information

Table: Assessment of CoAL's human rights approach

7. Human rights and environmental issues at CoAL

Below is a summary the potential human rights impacts of both mines.

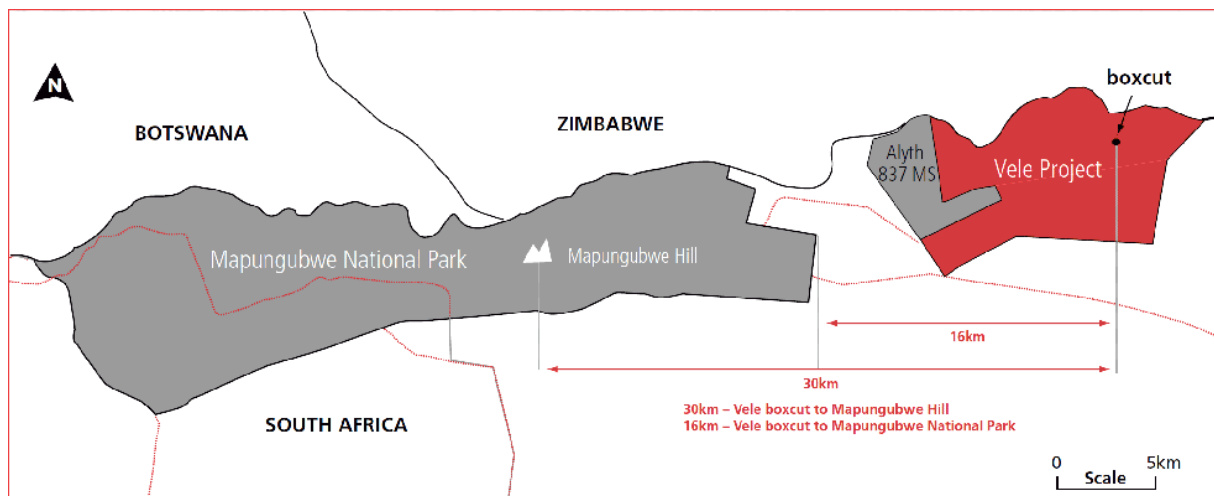
	Coal of Africa Limited	
Mines	Vele Mine	Makhado Mine Project
Operational (yes/no)	No (but operational from 2009 to 2013)	No (Mining Rights received in May 2015)
Location	Limpopo Province (North) (area with high water scarcity and high cultural heritage value) Mine will be surrounded by large vegetable and fruit farms Proximity to UNESCO Heritage Site and Nature Reserve (9km)	Limpopo Province (North) (area with high water scarcity and high cultural heritage value) Mudimeli village very close to the mine (250m) Mine will be surrounded by game farms
Main findings	<ul style="list-style-type: none"> - No proper consultation process according to interviewees (unbalanced presentations, knowledge imbalance) - Non-compliance on water licence in 2010 (fine of ZAR 9 million, USD 730,000) - Massive opposition of farmers and several environmental organisations because of impact on water - Appeal has been filed by several organisations - In 2014, CoAL wants to increase the mining area from 102 ha to 502 ha 	<ul style="list-style-type: none"> - No proper consultation process according to interviewees (unbalanced presentations, knowledge imbalance) - Chief of Mudimeli Community opposed to the mine. The mine has elected a Forum to consult with and to circumvent the Chief. - Massive opposition of farmers and one cultural organisation - Appeal has been filed by one organisation and several farmers
Main potential impact on human rights	<ol style="list-style-type: none"> 1. Right to water: high water consumption and water pollution and close proximity to Limpopo River (an international river) 2. Right to work: potential destruction of at least 5,650 agricultural and tourism jobs 3. Right to health: dust pollution from mining and truck transport to Musina (up to 856 trucks per day) 4. Threat to UNESCO Mapungubwe Cultural Landscape through dust pollution and truck traffic on the access road to the Heritage Site 	<ol style="list-style-type: none"> 1. Right to water: water pollution and high water consumption (limited access to water for Mudimeli villagers and farmers) 3. Right to health: dust pollution from coal mining and from trucks 4. Right to housing and safety risks for villagers: during blasting because rocks can be blown into the air. Houses can crack because of vibrations.

Table: Summary of the main characteristics and the potential human rights impacts of the Vele Mine and the Makhado Mine Project.

7.1. Vele mine

7.1.1. Description

Coal of Africa's Vele Colliery covers an area of **approximately 8,000 hectares in South Africa's Limpopo Province**.¹⁴³ The mine is located on the border with Zimbabwe and 9 km from the Mapungubwe National Park.¹⁴⁴ The Vele Colliery **started production of thermal coal in January 2012 and stopped in 2013**¹⁴⁵ after it became clear that "the coal was of a lower grade than believed."¹⁴⁶ Vele has a target production of 2.7 million tonnes per year run-of-mine (ROM).¹⁴⁷ The mine site covers large farms that produce citrus and vegetables. Farmers are white and live on their farms together with about **1,000 permanent farmworkers and 4,650 temporary farmworkers**.¹⁴⁸



Map of the Vele Colliery¹⁴⁹

¹⁴³ Coal of Africa Limited, "Vele Colliery Fact Sheet," April 2012, <http://www.coalofafrica.com/investors-and-media>

¹⁴⁴ Coal of Africa Limited website, <http://www.coalofafrica.com/our-business/operations/operation-vele>

¹⁴⁵ Coal of Africa Limited website, <http://www.coalofafrica.com/our-business>

¹⁴⁶ Other factors included the fact that the Mulilo power station to be built close to the mine was stalled and the fact that coal prices remained low. Source: Centre for Applied Legal Studies, *Changing Corporate Behaviour: The Mapungubwe Case Study, A Research Report*. University of the Witwatersrand, Johannesburg, 2014.

¹⁴⁷ Coal of Africa Limited website, <http://www.coalofafrica.com/our-business>

¹⁴⁸ Mapungubwe Action Group et al, "Affidavit in support of the Notice of Appeal", 2011, : <http://cer.org.za/wp-content/uploads/2011/08/Signed-Affidavit-of-Nicholas-Charles-Hiltermann-pages-1-10.pdf> and <http://cer.org.za/hot-topics/mapungubwe>

¹⁴⁹ Coal of Africa Limited website, <http://www.coalofafrica.com/our-business/operations/operation-vele>



Aerial photo of Vele mine¹⁵⁰

7.1.2. Opposition and public participation process

At Vele, CoAL claims to have undertaken an “**extensive and rigorous stakeholder engagement process**” with a number of land claimant communities, as well as landowners in the area¹⁵¹ in line with South African legislation. According to CoAL, “**more than 100 meetings have been held at each of Vele and Makhado** to date with individual representatives and groups.”¹⁵²

Many of those interviewed around Vele¹⁵³ by Bench Marks and Bread for all considered the consultation meetings organised by Coal of Africa and its consultants more as “**public relations exercises**” carried out to fulfil the criteria for applying for Mining Rights than as meetings that allowed for a balanced presentation and discussion of risks and opportunities related to the project. Interviewees criticised the fact that the **meetings did not allow enough space for discussions and questions**: presentations by specialists hired by the company were very lengthy and time for discussions and questions was kept very short. Interviewees indicated that “the company officials were speaking with very **complicated words that we do not understand**”, “we were not properly informed”, and “there was no discussion on hydrological maps or acid rains.”¹⁵⁴

A UNESCO research team who visited the mine site and spoke with the different stakeholders in 2012 came to the following conclusion:

¹⁵⁰ Coal of Africa Limited.

¹⁵¹ Email from Charmane Russel, Russel and Associates. Coal of Africa’s response to questions submitted by Bench Marks Foundation. March 4, 2015.

¹⁵² Ibid.

¹⁵³ Interviews with affected farmers around Vele. April 15, 2015.

¹⁵⁴ Ibid.

From the presentations of the leaders of the local communities it was clear that **none of the communities feel that they have been properly consulted or indeed consulted at all** – neither by Coal of Africa nor by the consultancy the company hired to produce the Heritage Impact Assessment (HIA). **None of the community representatives were willing to give any legitimacy to the HIA**, because: (a) **they do not feel that they have been properly consulted** by the consultancy firm producing it and (b) because they feel the **tendency of the consultancy firm to present all activities of Coal of Africa in the most positive way “imaginable.”**¹⁵⁵

The UNESCO research team also observed that “the specialists commissioned by CoAL **passionately advocated the position of CoAL** and did not present possible alternative scenarios.”¹⁵⁶

Many of those interviewed by Bench Marks and BFA¹⁵⁷ also criticised the **knowledge imbalance in the meetings**, as Coal of Africa was represented by experts from consulting firms while affected stakeholders had no access to advice from independent specialists.

In April 2015, an Appeal¹⁵⁸ was filed by the Vhembe Mineral Resources Stakeholders Forum¹⁵⁹ against the amended Environmental Authorisation¹⁶⁰ of the Vele mine (see below for more).

Non-compliance and fine

In 2010, CoAL **unlawfully commenced several listed activities under the National Environmental Management Act (NEMA) without the required authorisations** and paid an administrative **fine of ZAR 9 million**¹⁶¹ (USD 730,000, CHF 680,000). This is **one of the highest fines received by a mining company for non-compliance**. In 2010, CoAL made unlawful (unauthorised) use of water under Section 21 of the National Water Act. The **Department of Water Affairs issued a directive** to the company to cease all unlawful water use.

Opposition, interdict and appeal

Opposition to the mine started at a very early stage, in 2009. From the beginning, this opposition was **very strong and reached a level unprecedented** in South Africa. Forms of contestation included **opposition on consultation meetings, the building of an NGO coalition, and the filing of an interdict**¹⁶² **and an appeal** against the mine’s various

¹⁵⁵UNESCO.. *Mission Report: Reactive Monitoring Mission to Mapungubwe Cultural Landscape: World Heritage Property (South Africa) (C1099)*, January 15-20, 2012, whc.unesco.org/document/117238

¹⁵⁶Ibid.

¹⁵⁷Interviews with affected farmers around Vele. April 15, 2015.

¹⁵⁸The Vhembe Mineral Resources Stakeholders Forum and six land owners, “Appeal against the Environmental Authorisation Amendment for the Vele Colliery”, April 2015.

¹⁵⁹The Vhembe Mineral Resources Stakeholders Forum is an association of affected farmers and other stakeholders in the Vhembe district.

¹⁶⁰Coal of Africa. *Vele Colliery: Environmental Authorisation Amendment in terms of the National Environmental Management Act, 1998 FINAL REPORT*, 2014, p. 16, http://www.coalofafrica.com/vele-documents/Section-2AG/001-Amendment-to-Environmental-Authorisation-Vele-Colliery_july2014.pdf

¹⁶¹Center for Applied Legal Studies, University of the Witwatersrand, Johannesburg, Email communication, April 17, 2015[EXACT DATE].

¹⁶²“An interdict is a court order that may be sought in order to enforce a right. It is usually sought by way of application proceedings which are relatively inexpensive and are far less time consuming than trial proceedings”. Source: ENSAfrica website, “A brief discussion on interdicts,” <https://www.ensafrika.com/news/a-brief-discussion-on-interdicts?id=209&STitle=ENSight>

authorisations. Despite this opposition, the Department of Mineral Resources granted CoAL the necessary authorisations to mine the Vele Colliery.

In February 2009, South Africa's Environmental Affairs and Tourism Department raised "**significant concerns**" about CoAL's Vele Colliery and did not support the project. An official noted that the proposed development had the potential to cause both local as well as trans-boundary impacts, which included air and water pollution."¹⁶³ In April 2009, environmentalists also began mounting a challenge to the building of the Vele mine in the vicinity of the Mapungubwe World heritage site.¹⁶⁴

In August 2010, a coalition of NGO organisations, concerned about the granting of mining rights to CoAL launched **interdict proceedings** against the company.¹⁶⁵ The coalition was represented by the Centre for Applied Legal Studies (from the University of Witwatersrand in Johannesburg) and comprised the Mapungubwe Action Group, the Endangered Wildlife Trust and WWF South Africa, among others.

In July 2011, the same NGOs, represented by the Centre for Environmental Rights, launched **an appeal with the Water Tribunal** against the decision to award an Integrated Water Use Licence (IWUL) to CoAL.¹⁶⁶ The grounds of the Appeal are detailed in sections below. The Appeal was rejected, allowing full operations to start at the beginning of 2012.

As noted above, in April 2015 an Appeal¹⁶⁷ was filed against the amended Environmental Authorisation¹⁶⁸ that foresees an area for opencast pits five times larger than previously planned. The grounds of the Appeal include the following:

- CoAL's subsidiary (Limpopo Coal Limited) failed to consult the Vhembe Mineral Resources Stakeholders Forum;
- The Forum **was denied the opportunity to proffer comment**;
- The company used **outdated specialist reports** on the basis that there would be no change to the project footprint.

July 2014: Increased area in updated Environmental Authorisation

CoAL consistently states it wants to "**minimise the visible surface impact at Vele.**" Specifically, it says on its website: "In working to minimise the visible surface impact at Vele, CoAL has amended its original mine plan to include an underground component where 40% of coal will be sourced. Plans are in place to rehabilitate the surface mine simultaneously with mining activities – **at no time will the open pit be larger than 50 hectares.**"¹⁶⁹ However, and in total contradiction to previous statements, in 2014 CoAL filed an amended Environmental Authorisation (referred to above) that asks for an increase of the total area of

¹⁶³ Mining Weekly (Swanepoel, E). "CoAL's Vele project raises environmental concerns," February 20, 2009, <http://www.miningweekly.com/article/coal-vele-project-raises-environmental-concerns>

¹⁶⁴ Tempelhof, E., *Mynontwikkeling Verpleterend vir Mapungubwe* ('Mine Development Destructive of Mapungubwe'), Beeld, April 2009.

¹⁶⁵ Centre for Environmental Rights website, "Mapungubwe Hot Topic," <http://cer.org.za/hot-topics/mapungubwe>

¹⁶⁶ Ibid. Centre for Environmental Rights website. Accessed under: <http://cer.org.za/hot-topics/mapungubwe>

¹⁶⁷ The Vhembe Mineral Resources Stakeholders Forum and six land owners. "Appeal against the Environmental Authorisation Amendment for the Vele Colliery", April 2015.

¹⁶⁸ Coal of Africa. *Vele Colliery: Environmental Authorisation Amendment in terms of the National Environmental Management Act, 1998 FINAL REPORT*, 2014, p. 16, http://www.coalofafrica.com/vele-documents/Section-2AG/001-Amendment-to-Environmental-Authorisation-Vele-Colliery_july2014.pdf

¹⁶⁹ Coal of Africa Limited website, <http://www.coalofafrica.com/sustainability/environment>

the project to 502 hectares, **an area five times larger than that which CoAL planned to use at the start of the project** (102 hectares).

The major change comes from a **new and large open pit** (the North pit, 290 hectares in size). This pit is much larger than those previously planned. Moreover, the pit will be even closer to the Limpopo River than the others.¹⁷⁰ This change has been made **without conducting new Environmental Impact Assessments**. In fact, consultants have been asked only to write opinions stating that their “**baseline findings are still valid** in respect of the amendments requested.”¹⁷¹

In July 2014, the Save Mapungubwe Coalition noted that, regarding the amended Environmental Authorisation, “**no further studies** have been conducted to support the amendments and thus **no up-to-date baseline** to gauge the impact on the environment. Therefore it is **impossible to establish both the individual and the cumulative impact** of these activities. Additionally, there is inadequate justification of why no further studies have been undertaken.”¹⁷² The previous studies were done in 2011, 2010 and 2009.

CoAL’s own heritage consultant admits to another important change: that the new North pit (which will be the largest pit at the mine) “**contains a number of gravesites and archaeological sites**.”¹⁷³ He also acknowledges that there are “probably other isolated graves not yet identified.”¹⁷⁴ It seems that the consultant was not asked to conduct additional research on the new area to be “disturbed” by the company.

As noted above, one of the complaints in the Appeal filed in April 2015 against the amended Environmental Authorisation is the “**use of outdated specialist reports on the basis that there would be no change to the project footprint**.”¹⁷⁵

7.1.3. Impact on the right to work

The company’s operations may have significant negative impacts on the right to work,¹⁷⁶ with potentially thousands of jobs being destroyed.

The company states that “the **coexistence of mining, local communities and agriculture** is top of mind to maximise socio-economic development in the region.”¹⁷⁷ Many of those interviewed by Bench Marks and BFA, however, reported that **the significant water consumption and likely pollution of underground water from the coal mining activities**

¹⁷⁰ Coal of Africa. *Vele Colliery: Environmental Authorisation Amendment in terms of the National Environmental Management Act, 1998 FINAL REPORT*, 2014, p. 16, http://www.coalofafrica.com/vele-documents/Section-2AG/001-Amendment-to-Environmental-Authorisation-Vele-Colliery_july2014.pdf

¹⁷¹ WSM Leshika Consulting (Pty) Ltd., Consultant Declaration, July 2014, <http://www.coalofafrica.com/vele-documents/Section-2AG/Consultant-Declaration-amended-EA-Groundwater.pdf>

¹⁷² Save Mapungubwe Coalition, “Comments on the draft Amendment to the Vele Colliery Environmental Authorisations by the Save Mapungubwe Coalition”, July 2014, and email communication with Robert Krause (Centre for Applied Legal Studies, University of Witwatersrand), July 1st, 2015.

¹⁷³ Jacana Environmentals cc., “Specialist Declaration: Heritage on Vele,” July 2014, <http://www.coalofafrica.com/vele-documents/Section-2AG/ConsultantDeclaration-amendedEA-Heritage.pdf>

¹⁷⁴ Ibid.

¹⁷⁵ The Vhembe Mineral Resources Stakeholders Forum and six land owners, “Appeal against the Environmental Authorisation Amendment for the Vele Colliery,” April 2015.

¹⁷⁶ The right to work is enshrined in the Universal Declaration of Human Rights: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” See <http://www.un.org/Overview/rights.html>

¹⁷⁷ Coal of Africa Limited. “Corporate Factsheet,” February 2013, <http://www.coalofafrica.com%2Ffactsheets%2Fcorporate-factsheet-feb2013.pdf>

will negatively affect agriculture in the region and thus lead to the destruction of many agricultural jobs.¹⁷⁸

Further, interviewees around Vele reported that the **truck transport of coal from Vele to Musina, as well as coal mining activities in general**, will cause dust pollution and negatively affect agriculture and tourism in the region (including the Mapungubwe Cultural Landscape, which is downwind from the mine). One interviewee stated: “We already had dust when the mine was operating. We fear dust pollution because we are down the wind. We also fear that our farm will become worthless because of mining.”¹⁷⁹

CoAL claimed in March 2015 that during the construction period, employment levels would peak at “approximately 2,500 and at operational phase 1,000 jobs would be created.”¹⁸⁰ However, the new Environmental Authorisation filed in July 2014 mentions a lower number: “during the operational phase the project will employ approximately 450 permanent employees with varying skills.”¹⁸¹ According to the Appeal filed by NGOs in 2011, “there are approximately **1,000 farmworkers in the area who would be at risk of losing their jobs** as a result of the proposed colliery.” The **number of temporary farmworkers is “around 4,650** and varies throughout the year.”¹⁸² Therefore, the **total number of jobs at risk is approx. 5,650.**

The Appeal also states:

should dust control measures not be effective, a **potential for job-losses of many more farmworkers arise if, as a result, farmers in the area lose their Good Agricultural Practices (GAP) accreditation, essential for export.** This does not account for the potential job losses of those employed in the hunting and tourism industries in the area, irrespective of whether Mapungubwe loses its status as World Heritage Site or not.¹⁸³

The Limpopo Valley comprises many farms, some of them very large, such as ZZ2, a large tomato company with 1,800 employees just in Limpopo Province.¹⁸⁴ Many of these farms could be affected by lower water availability, water pollution and/or dust pollution.

Many interviewees reported that coal mining is “here to last for 10 or 20 years while we are farming and working in our game farms **since generations in a sustainable manner**”.¹⁸⁵ This is also emphasised by Sean Muller, an economist and lecturer at the School of Economics at the University of Cape Town, who points out that “**mines are finite resources.**

¹⁷⁸Interviews with affected farmers around Vele. April 15-16, 2015.

¹⁷⁹Ibid.

¹⁸⁰ Email from Charmane Russel, Russel and Associates. Coal of Africa’s response to questions submitted by Bench Marks Foundation. March 4, 2015.

¹⁸¹Coal of Africa. “Vele Colliery: Environmental Authorisation Amendment in terms of the National Environmental Management Act, 1998 FINAL REPORT,” 2014, p. 18, http://www.coalofafrica.com/vele-documents/Section-2AG/001-Amendment-to-Environmental-Authorisation-Vele-Colliery_july2014.pdf

¹⁸²Mapungubwe Action Group et al, “Affidavit in support of the Notice of Appeal,” 2011, <http://cer.org.za/wp-content/uploads/2011/08/Signed-Affidavit-of-Nicholas-Charles-Hiltermann-pages-1-10.pdf> and <http://cer.org.za/hot-topics/mapungubwe>

¹⁸³Ibid.

¹⁸⁴ZZ2 website, <http://www.zz2.biz/>

¹⁸⁵Interviews with affected farmers around Vele, April 15-16, 2015.

Activities like **farming and tourism can**, if done in a sustainable manner, **in principle continue in perpetuity.**¹⁸⁶

7.1.4. Right to water

The Vele mine has the potential to heavily affect the **right to water**¹⁸⁷ of farmers, farmworkers and communities living around the mine.

The Environmental Impact Assessment for Vele states the following: “The water balance of the aquifer will not be affected if the net river loss of 84.5 million liters/day prior to the development is not exceeded and abstraction is reduced to 7 million liters/day.”¹⁸⁸ This is criticised by the Appellants because **“there is no indication how these figures were calculated** and therefore the assertion cannot be critically evaluated.”¹⁸⁹

Many interviewees fear that, due to high water consumption and the likely pollution of underground water, **coal mining activity will negatively affect their access to water and the right to water** of farmers and farmworkers around the Vele mine.¹⁹⁰

At Vele, CoAL will use two different mining methods that have different environmental impacts: **opencast mining** and **underground mining**.

Most opencast mines are surrounded by well fields: that is, a series of boreholes whose purpose is to lower the water table to ensure that the opencast pit is dry at all times during operations. **Lowering the water table** has significant implications for farmers and nearby communities as it will lead to the drying up of their wells and boreholes.

The **underground mining method** is also problematic as most underground coal mines work on a bord-and-pillar method of extraction, which will lead in the future to:

- **Land subsidence;**
- **Sinkholes;**
- **Acid mine drainage (and thus water pollution);** and
- **Spontaneous combustion of abandoned workings**¹⁹¹

This situation brings the following risks to, and impacts on, the right to water:

- farmers will not be able to find **sufficient water to irrigate their fields**, and
- farmers and farmworkers will not be able to get **sufficient drinking water and water for sanitation purposes**.

¹⁸⁶Mapungubwe Action Group et al, “Affidavit in support of the Notice of Appeal,” 2011, <http://cer.org.za/wp-content/uploads/2011/08/Signed-Affidavit-of-Nicholas-Charles-Hiltermann-pages-1-10.pdf> and <http://cer.org.za/hot-topics/mapungubwe>

¹⁸⁷ The right to water is defined as follows: “The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.” UN CESG, General Comment 15, para.2. In July 2010, the United Nations General Assembly explicitly recognised the human right to water and sanitation. See: http://www.un.org/waterforlifedecade/human_right_to_water.shtml

¹⁸⁸Coal of Africa Limited. *Environmental Impact Assessment/Environmental Management Programme. Vele Colliery*, 2011.

¹⁸⁹“The Vhembe Mineral Resources Stakeholders Forum and six land owners,” Appeal against the Environmental Authorisation Amendment for the Vele Colliery,” April 2015.

¹⁹⁰Interviews with affected farmers around Vele, April 15-16, 2015.

¹⁹¹Christine Colvin, Angus Burns, Klaudia Schachtschneider and Ashton Maherry,. *Coal and water futures in South Africa*, World Wildlife Fund and the Council for Scientific and Industrial Research, 2011.

Moreover, the mine is located within **the flood plain of the Limpopo River, which floods about once every 10 years**. The region is known for its “flash floods” where large areas can flood within a short time. There is a **high risk that the river will be polluted by chemicals or coal particles during a flood**. It is noteworthy that the Vele Mine is adjacent to the Limpopo River, which is an international waterway shared between four countries: South Africa, Botswana, Zimbabwe and Mozambique.¹⁹²

The Vele mine already **experienced heavy floods in 2012** and CoAL had to stop its operations. The company stated that there was **no damage to the mine and no pollution occurred during that flood**.¹⁹³ According to the company, the water level in the pit increased by only three meters, which indicated that the flood protection berms were functioning well.¹⁹⁴ However, former workers at Vele interviewed by the research teams said that, during the floods, **“bulk diesel and other chemical storage facilities were not properly anchored and simply washed down the river.”**¹⁹⁵

7.1.4. Right to health

The operations of CoAL will likely **negatively affect the right to health**¹⁹⁶ of people living around the mine and along the road to Musina.

Farmers around Vele who were interviewed expressed fear **that the impact on their right to health will be threefold**:

1. **dust created by blasting, crushing** and transport of coal at the mine site;
2. **dust created by trucks transporting coal** from Vele to the town of Musina;
3. **pollution of groundwater.**¹⁹⁷

First, the dust created by blasting, crushing and transport of coal at the mine site will affect not only mine workers but also farmers and farmworkers living and working close to the mine site.

Second is the **dust created by trucks transporting coal from Vele to the town of Musina**,¹⁹⁸ a distance of 50 kilometers. During the first five years of operations, the coal will be transported by road, after which CoAL plans to build a railroad. One alternative would be to build the railroad before starting mining at Vele. This would greatly reduce the impacts along the road to Musina. This option has not been chosen by CoAL, probably because it is more expensive.

¹⁹²Wikipedia website, “Limpopo River,” https://en.wikipedia.org/wiki/Limpopo_River

¹⁹³Interview with the management of Coal of Africa Limited, April 20, 2015. Those present were: David Brown, CEO, Florence Duval, Group Corporate Affairs Manager, and Charmane Russel and Alan Fine of Russell and Associates, CoAL’s public relations consulting company.

¹⁹⁴Ibid.

¹⁹⁵Interview with former workers of Vele, April 19, 2015.

¹⁹⁶The **right to health** is defined as the economic, social and cultural right to a universal minimum standard of health to which all individuals are entitled: “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services”. Source: UN High Commissioner for Human Rights, [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

¹⁹⁷Interviews with affected farmers around Vele, April 15-16, 2015.

¹⁹⁸Its Engineers (Pty) Ltd., “Traffic Impact Assessment, Limpopo Coal Company (Pty) Ltd. Vele Colliery,” 2011, http://www.coalofafrica.com/assets/vele-documents/Traffic_Impact_Assessment_Report_IU_31_May_2011.pdf

To deliver the coal to Musina, between **255 and 854 heavy transport trucks**¹⁹⁹ will be **required per day**. This means **one heavy truck (weighing 60 tonnes) will pass every 1.6 minutes (day and night)** in the peak period (after the fifth year).

The Environmental Authorisation of CoAL states: “Regular watering (e.g. haul roads) and application of dust suppressant (e.g. Dustex) is recommended.” But interviewees believe the dust control measures will not be sufficiently effective and therefore they **fear an increased rate of respiratory problems and other diseases**.

Many interviewees asserted that the truck transport of coal from Vele to Musina will negatively affect the **safety of other road users** (including agricultural or tourism vehicles).

Thirdly, the right to water of people living close to the mine can be affected by **pollution of groundwater**. This contamination can reach the boreholes of farmers and farmworkers near the mine. Sulfuric acid forms when coal is exposed to air and water, creating an acid run-off with **heavy metals such as copper, lead, and mercury** that can leach into streams and groundwater. Drinking water polluted with heavy metals can **cause ailments such as kidney disease**, with children and the elderly being especially susceptible.

7.1.5. Heritage and biodiversity impacts

The Vele mine is nine kilometres from the **Mapungubwe Cultural Landscape (MCL)** and the Mapungubwe National Park. The MCL is an open, expansive savannah landscape at the confluence of the Limpopo and Shashe rivers.²⁰⁰ It was declared a National Heritage Site in 2001 and was added to the World Heritage List in 2003.²⁰¹

According to CoAL, in 2012, the company and the Department of Environmental Affairs (DEA) commissioned a Heritage Impact Assessment (HIA) on behalf of UNESCO to determine the impact of the mining activities at Vele Colliery on MCL.²⁰² The finding of the HIA was that the “impacts of mining **on the MCL were minimal**.”²⁰³

But according to the estimates of the Mapungubwe Action Group (cited by UNESCO), there will be “increased pollution in the form of **dust, smell, noise and light** [...] the number of trucks at full production capacity at Vele will be one every 1¾ minutes throughout the day & night; these impacts would lead to a **loss of exclusivity and sense of place**, a loss of the **wilderness experience** that tourism companies are selling in the area.”²⁰⁴ This also was of great concern to the UNESCO mission team that was “**particularly alarmed** by the group’s estimation of such pollution from transports.”²⁰⁵

¹⁹⁹ Ibid.

²⁰⁰ “Mapungubwe developed into the largest kingdom in the sub-continent before it was abandoned in the 14th century. What survives are the almost untouched remains of the palace sites and also the entire settlement area dependent upon them, as well as two earlier capital sites, the whole presenting an unrivalled picture of the development of social and political structures over some 400 years.” Source: SA-Venues website, <http://www.sa-venues.com/unesco-site-mapungubwe.htm>

²⁰¹ UNESCO website, <http://whc.unesco.org/en/soc/1889>

²⁰² Email from Charmane Russel, Russel and Associates. Coal of Africa’s response to questions submitted by Bench Marks Foundation. March 4, 2015.

²⁰³ Ibid.

²⁰⁴ UNESCO.. *Mission Report: Reactive Monitoring Mission to Mapungubwe Cultural Landscape: World Heritage Property (South Africa) (C1099)*, January 15-20, 2012, whc.unesco.org/document/117238

²⁰⁵ UNESCO.. *Mission Report: Reactive Monitoring Mission to Mapungubwe Cultural Landscape: World Heritage Property (South Africa) (C1099)*, January 15-20, 2012, whc.unesco.org/document/117238

In 2011, the Save the Mapungubwe Coalition signed a **memorandum of understanding (MoU) with Coal of Africa.**²⁰⁶ The aim of the MoU was to **begin a process of constructive engagement** that would result in the mine taking steps to mitigate the negative impacts of coal mining on the environment, specifically on scarce water and precious heritage resources. However, in December 2012, the **Save Mapungubwe Coalition pulled out of the MoU.**²⁰⁷ The decision to pull out followed nine months of negotiations, which “**were going nowhere**”, according to the NGOs.²⁰⁸ The NGOs reported that “the biggest stumbling block is the **mine’s non-compliance in terms of its water use**. Indeed, research commissioned during negotiations revealed **past and ongoing non-compliance with water legislation** at Vele Colliery, and **damage to the environment that now requires remediation,**”²⁰⁹.

In October 2014, CoAL announced that it had signed a **Biodiversity Offset Agreement, the first of its kind in South Africa, with the Government,**²¹⁰ which seeks to ensure the sustainability and integrity of Mapungubwe, and its listing with UNESCO.

The Endangered Wildlife Trust, which is part of the Save Mapungubwe Coalition, qualified this Agreement as “**a joke or an administrative penalty** the company has to pay to be allowed to mine.”²¹¹

Among other things, the Save Mapungubwe Coalition is concerned about:

1. “the **exclusion of all interested and affected parties** from the development of the agreement contrary to the licence conditions;
2. the **failure to include the increase in the conservation area of the Mapungubwe National Park** and World Heritage Site as an objective of the agreement;
3. the **relatively low value of the offset**. ZAR55 million [USD 4.5 million, CHF 4.2 million] in five equal instalments over 25 years is not substantial in 2038 terms.”²¹²

The **Government of South Africa originally intended to delimit a buffer zone on the east side of the World Heritage Site** (see map below). But it then **redesigned the plan in order to allow CoAL to mine close to the heritage site**. The UNESCO mission team noted that the delimitation of the **buffer zone provided by South Africa did not include the zone** (comprising the Vele mine) east of the World Heritage site core area: “It is clear that the current status **does not protect in an effective way the Outstanding Universal Value (OUV) of the property.**”²¹³ The Mission emphasised: “We reiterate that the **industrialisation of the declared MCL WHS buffer zone is unacceptable.**”²¹⁴

²⁰⁶ Save Mapungubwe Coalition website, <http://www.savemapungubwe.org.za/appeal.php>

²⁰⁷ Ibid.

²⁰⁸ Moneyweb, “Environmentalists exit Coal of Africa agreement,” December 2012, <http://www.moneyweb.co.za/archive/environmentalists-exit-coal-of-africa-agreement/>

²⁰⁹ Ibid.

²¹⁰ The agreement was signed with the Department of Environmental Affairs and SANParks, a governmental body that manages the national parks in South Africa.

²¹¹ Interview with Endangered Wildlife Trust, June 26, 2015.

²¹² Center for Environmental Rights, media release, October 2014, <http://cer.org.za/news/media-release-save-mapungubwe-coalition-calls-the-biodiversity-offset-agreement-for-vele-colliery-vague-inadequate-and-unenforceable>

²¹³ UNESCO. *Mission Report: Reactive Monitoring Mission to Mapungubwe Cultural Landscape: World Heritage Property (South Africa) (C1099)*, January 15-20, 2012, whc.unesco.org/document/117238

²¹⁴ Ibid.

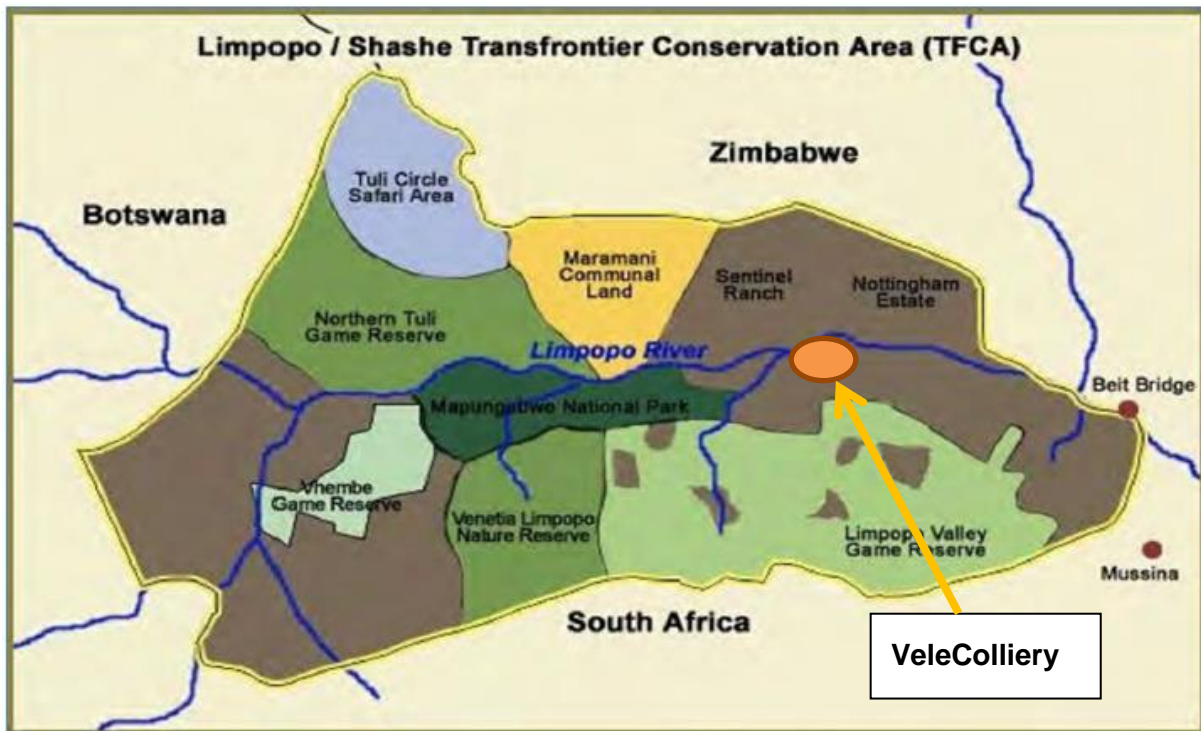


Figure: Map showing the buffer zone originally in the nomination dossier from 2003. The Vele Mine falls within the buffer zone.

Moreover, according to the Centre for Applied Legal Studies, the **significant increase in the mine area (from 102 to 502 ha)** laid out in the Environmental Authorisation of CoAL “**should be reflected in the Biodiversity Offset Agreement**, as this agreement was concluded without taking the new amendments into consideration.”²¹⁵

Finally, it seems that **not all heritage sites or graves have been registered by the company’s consultants**. Former workers at Vele interviewed by the research teams said that “**a grave was hit by earth moving machinery during the construction phase** of the mine and all the workers decided to temporarily stop the work.”²¹⁶

7.1.6. Conclusion on Vele

In conclusion, the project would not only result in major environmental problems such as water scarcity, water pollution, and dust emissions, but also in impacts on basic human rights such as the right to water. It would also cause a loss of thousands of jobs, particularly due to adverse effects on agricultural production and tourism.

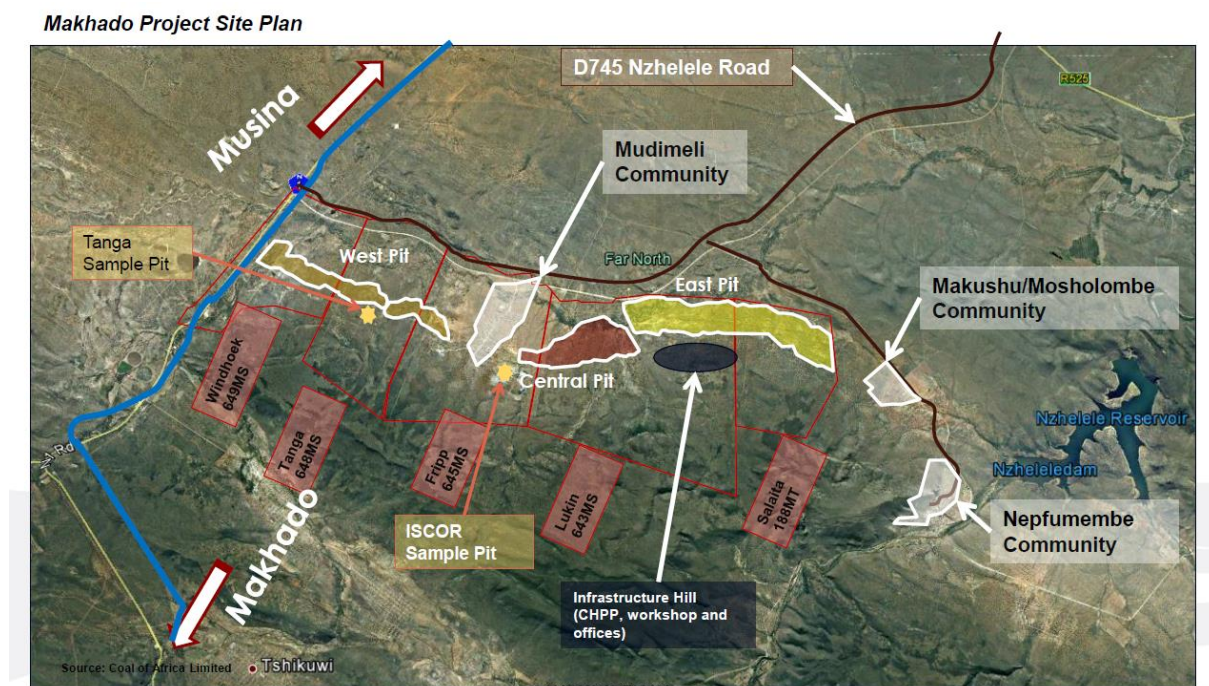
²¹⁵ Save Mapungubwe Coalition, “Comments on the draft Amendment to the Vele Colliery Environmental Authorisations by the Save Mapungubwe Coalition”, July 2014. Email communication with Robert Krause (Centre for Applied Legal Studies, University of Witwatersrand).

²¹⁶ Interview with former workers of Vele, April 19, 2015.

7.2. Makhado mine project

7.2.1. Description

Makhado is a mine project 74% owned by CoAL²¹⁷ situated in the Vhembe district of Limpopo Province. As it is a mine project, and the company received the Mining Rights only in May 2015, it has not yet been constructed. However, an appeal against the Mining Rights is pending.²¹⁸ CoAL plans to produce 2.3 million tonnes per annum of hard coking coal and a further 3.2 million tonnes per annum of thermal coal over the 16-year life span of the mine for domestic or export markets.²¹⁹ A total of **seven communities are affected by the Makhado Project**. The **most affected is the Mudimeli Community, which will be surrounded by the West and Central pits**.



Map of Makhado Mine with the Mudimeli Community surrounded by the West Pit and the Central Pit.²²⁰

7.2.2. Opposition and public participation process

At Makhado, CoAL undertook an “**extensive and rigorous stakeholder engagement process with a number of land claimant communities, as well as landowners in the area**”²²¹ in line with South Africa legislation. According to CoAL, “**more than 100 meetings have been held at each of Vele and Makhado to date with individual representatives and groups.**”²²²

²¹⁷ Coal of Africa Limited, announcement on May 18, 2015, “Mining Right granted for the Makhado Project,” <http://www.coalofafrica.com/investors-and-media/corporate-publications/2015>

²¹⁸ The Vhembe Mineral Resources Stakeholders Forum, Mudimeli Community and Makhado Action Group, appeal directed to the Director-General of the Department of Mineral Regulation, June 17, 2015.

²¹⁹ Coal of Africa Limited, announcement on May 18, 2015, “Mining Right granted for the Makhado Project,” <http://www.coalofafrica.com/investors-and-media/corporate-publications/2015>

²²⁰ Photo by Coal of Africa Limited.

²²¹ Email from Charmane Russel, Russel and Associates, Coal of Africa’s response to questions submitted by Bench Marks Foundation. March 4, 2015.

²²² Ibid.

Despite CoAL's claims to have undertaken an exhaustive public participation process, as noted earlier many interviewees at Makhado²²³ and Mudimeli²²⁴ considered the consultation meetings organised by Coal of Africa and its consultants **more as "Public Relations exercises" in order to fulfil the criteria for applying for Mining Rights than as meetings that allowed for a balanced presentation and discussion of risks and opportunities related to the project.** Interviewees criticised the fact that the meetings did not allow **enough space for discussions and questions.** They also criticised the **knowledge imbalance** in the meetings, as Coal of Africa was represented by experts from consulting firms while affected stakeholders had no access to advice from independent specialists.

Interviewees²²⁵ reported that, during an information meeting about the Chapudi Project on December 7, 2013, an official of CoAL said that **"mining will be conducted in the area, whether you like it or not."**

According to Johan Fourie, a lecturer in development studies at the University of Venda, **"proper consultation and negotiation did not take place because all criticisms, rejection of their mines by people and communities, and even sound advice were merely wiped off the table** or responded to by their referring us to untested and unacceptable mitigating measures promised."²²⁶

Chief Mudimeli circumvented

A core problem in the consultation process is the fact that the Mudimeli Chief is not part of it. Mudimeli is the community that will be the most impacted by the mine. Mudimeli is a community of historically disadvantaged South Africans, under the leadership of Chief Phineas Mudimeli, **comprising some 3,000 members.**²²⁷ The community resides on the Fripp farm, which forms part of the mining area. It will be **as close as 250 meters from the closest opencast pit.**

CoAL claims that it is **"engaging with the traditional leaders of the affected communities through the Makhado Chiefs' Forum,** chaired by the King of the VhaVenda. Engagement with the communities also takes place through the democratically elected **Makhado Colliery Community Consultative Forum (MCCCF)** comprising representatives from the seven affected communities."²²⁸ But the chief of the most affected community, **Chief Mudimeli, is not a member of the MCCCF.**

The elections for the MCCCF are seen by interviewees as **"a massive insult" to Chief Mudimeli.** Community members claim this **election was an attempt of CoAL to circumvent Chief Mudimeli, who was opposed to the mine since the beginning.** On June 6, 2012, Chief Mudimeli and his Royal Council filed a resolution **asking the company to postpone the elections, but the company went ahead.** The Mudimeli Community then declined to participate in the elections, which were attended only by a minority of people

²²³Interviews with affected farmers around Makhado, April 17, 2015.

²²⁴Interviews with community members at Mudimeli Village, April 19, 2015.

²²⁵Interviews with affected farmers around Makhado, April 17, 2015.

²²⁶Interview with Johan Fourie, lecturer at the University of Venda, April 18, 2015.

²²⁷The Vhembe Mineral Resources Stakeholders Forum, Mudimeli Community and Makhado Action Group. Appeal directed to the Director-General of the Department of Mineral Regulation, June 16, 2015.

²²⁸Coal of Africa Limited, *Integrated Annual Report 2014*, pp. 19-20, www.coalofafrica.com/downloads/COA-IR14.pdf

residing on the Fripp farm, mainly from tenant communities (and not from the Mudimeli community).

Opposition, interdict and appeal

In fact, similar to Vele, **opposition to the Makhado Mine is very strong and has reached an unusual level in South Africa**. The significance of this opposition stems from the fact that **one black village community – Mudimeli - is uniting with white farmers and eco-tourism businesses**, not only to oppose the development of the mine but also to demand that alternative development opportunities be seriously considered.

As early as 2012 the Mudimeli Community, on whose land the Makhado mine is situated, raised objections with the Department of Mineral Resources in Polokwane. The Bench Marks Research Team had the opportunity to engage with members of the Mudimeli Royal Council and their lawyer, Christo Reeders, in January and April 2015. At that time their position remained consistent with the sentiments they expressed in 2012. “There is a huge fight coming, our community will be surrounded by a mine and no one is talking to us,” said Jonathan Mudimeli, chairperson of the Mudimeli Royal Council. He continued, “We are extremely concerned about our water. We are scared about losing our livelihoods”.

In 2014, this **opposition led to an interdict** on water use granted to three groups opposed to the Makhado Mine:²²⁹ the Vhembe Mineral Resources Stakeholders Forum, the Makhado Action Group and the Mudimeli community.

In May 2015, and despite the opposition and the interdict, the Department of Mineral Resources granted CoAL the Mining Rights for its Makhado Project. On June 17, 2015, **the Mudimeli community and two organisations²³⁰ filed an Appeal²³¹ against the granting of the Mining Rights**.

The grounds of the Appeal were:²³²

- CoAL’s **failure to have consulted the Mudimeli Community** adequately or at all;
- The **deficient Environmental Impact Assessment**;
- The **inadequacy of water studies carried out by CoAL** (see sections 7.2.3, Right to water, and 7.3.1, Cumulative impacts on the right to water).

7.2.3. Right to water

The Makhado mine may have very important negative impacts on the right to water of surrounding communities and farmers downstream.

According to the Environmental Impact Assessment of the Makhado Colliery Project, “the most important cumulative biodiversity impact of the proposed coalmine is probably the **potential cumulative impacts of water abstraction, water quality changes, change in**

²²⁹ *Business Day Live*, “Court grants interdict to stop some work on CoAL mine,” December 12, 2014,

<http://www.bdlive.co.za/business/mining/2014/12/12/court-grants-interdict-to-stop-some-work-on-coal-mine>

²³⁰ The two organisations are the Vhembe Mineral Resources Stakeholders Forum and the Makhado Action Group, both of which represent mainly farmers.

²³¹ The Vhembe Mineral Resources Stakeholders Forum, Mudimeli Community and Makhado Action Group, Appeal directed to the Director-General of the Department of Mineral Regulation. June 17, 2015.

²³² *Ibid.*

the hydrology and sedimentation of the Mutamba River and riparian wetland floodplain ecosystems.²³³

According to the Appellants against the Mining Rights of Makhado, the **groundwater report made by the consultants of CoAL is not adequate.** The peer reviewers' recommendations from the Institute for Ground Water Studies, University of the Free State, were never implemented and the additional work recommended never carried out. Under the circumstances, the Appellants consider the groundwater report to be **"defective, inconclusive and unpersuasive."**²³⁴ According to the Appellants, CoAL "failed to act upon the findings of its own studies in order to ensure that adequate measures would be taken to guarantee the right to water to the communities".²³⁵

Similar to Vele, many interviewees at Makhado²³⁶ and Mudimeli²³⁷ assert that, **due to high water consumption and the likely pollution of underground water, the coal mining activities will negatively affect access to water and the right to water** of the Mudimeli community and surrounding communities, as well as their ability to farm.

The management of CoAL **confirmed that boreholes will go dry because of the mine.**²³⁸ Each mine has to pump water from the opencast pits in order to work in dry conditions. This creates a "depression cone" and all boreholes within this cone may go dry. However, CoAL claimed that **it would construct new and deeper boreholes for affected villagers or provide drinking water** through the tap water network of the Municipality.²³⁹ Interviewees pointed out it would be difficult for affected villagers to force CoAL to build the boreholes or to provide the needed water if the company does not fulfil its promises.²⁴⁰ And it is difficult for the villagers to trust the company, as Mudimeli's Chief has already been excluded from the company's consultation process.

Fanie de Lange, of the Institute of Groundwater Studies at the University of the Free State, warns that **it is not only the availability of water** that will be affected by the proposed mining operations by Coal of Africa (CoAL) in the Vhembe area in Limpopo, **but also the water quality.** De Lange says that **pollution can be widely distributed through the network of underground water channels.** Farmers who are close to the mine operations can have **problems with contaminated water.** De Lange anticipates that the mine will have a **negative impact on the availability of water in the entire Vhembe district.,** where underground water resources are replenished solely by rain. De Lange **does not think there is enough water in this area for mining.**²⁴¹

²³³ Coal of Africa Limited, *Environmental Impact Assessment/Environmental Management Programme*, 2011, p. 186.

²³⁴ The Vhembe Mineral Resources Stakeholders Forum, Mudimeli Community and Makhado Action Group, Appeal directed to the Director-General of the Department of Mineral Regulation. June 17, 2015.

²³⁵ Ibid.

²³⁶ Interviews with affected farmers around Makhado, April 17, 2015.

²³⁷ Interviews with community members at Mudimeli Village, April 19, 2015.

²³⁸ Interview with the management of Coal of Africa Limited, April 20, 2015. Those present were: David Brown, CEO, Florence Duval, Group Corporate Affairs Manager and Charmane Russel and Alan Fine of Russell and Associates, CoAL's public relations consulting company.

²³⁹ Ibid.

²⁴⁰ Interviews with community members at Mudimeli Village, April 19, 2015.

²⁴¹ Fanie de Lange, University of Free State, cited in "There is no water for mining, says an expert," http://natagri.ufs.ac.za/dl/Userfiles/Documents/00004/4130_eng.pdf

In 2011, an independent review of the CoAL's Environmental Impact Assessment of was commissioned by 13 organisations.²⁴² The review came to the following conclusion: "It is vital that any **further approvals for CoAL's Makhado Colliery project be suspended, and existing permits be urgently revisited, revised or cancelled.** The project's existing parameters and mining design plan pose **unacceptable and predictable risks to local community livelihoods, an acute deprivation of vital water resources, and threats to the biodiversity of the project area as a whole.**"²⁴³

7.2.4. Right to health and right to livelihood

The life of the people of Mudimeli will be transformed by the mine. In this regard, many interviewees at Mudimeli reported that the **coal mining activities will cause dust pollution and negatively affect their health.** As noted above, the **village will be 250 meters from the closest pit** and will be surrounded by two open pits, West Pit and Central Pit.²⁴⁴ In concrete terms, that means the village will be affected by the daily explosions that take place in the open pit mine. The blasting will mean not only noise for the 3,000 villagers, but also a significant amount of dust laden with heavy metals. Trucks at the mine will also increase traffic, bringing more dust, especially during the dry season. Several studies have proven that dust from mines is dangerous for the health of surrounding communities, as it contains heavy metals.²⁴⁵ It can result in respiratory problems, lung damage, damage to the nose, throat, eyes and skin and gastrointestinal tract irritation through ingestion. To mitigate those risks, the mining company must either:

- relocate the affected communities; or
- take mitigating measures such as watering the roads and/or planting trees between the mine and the village to decrease the impact of dust.

Moreover, as CoAL will have to **do the blasting very close to the village**, community members fear that the impact of vibration on people and buildings will be most severe.²⁴⁶ There is a high risk that **houses will crack and that properties will be destroyed.** There is also a risk that blasting will throw stones and rocks into the air.

CoAL stated that there will be no relocation of the Mudimeli village²⁴⁷ despite the fact that, at an earlier stage, CoAL had plans to relocate it. Given the location of the Mudimeli community and the important negative impacts that the open pit mines can have on their daily lives, it is worrying that no relocation plan is being discussed between CoAL and the community. There should be an open and transparent discussion about the impact the pits will have on the village and the possible need for relocation.

The World Bank Group's International Finance Corporation (IFC) has developed Performance Standards for large-scale projects involving the private sector, which have been

²⁴² The 13 included Dzomo La Mupo and several other grassroots organisations, a farmers' union and the Makhado Action Group (one of the Appellants against the Mining Rights of Makhado).

²⁴³ Nostromo Research, *Mine not – Waste Not. A preliminary critique of the aspects of the CoAL Makhado Colliery Project Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP)*, 2011, p. 12, http://www.gaiafoundation.org/sites/default/files/documents/MineNotWasteNot_december2011.pdf

²⁴⁴ Interviews with community members at Mudimeli Village, April 19, 2015.

²⁴⁵ Massachusetts Institute of Technology "Environmental Risks of Mining," <http://web.mit.edu/12.000/www/m2016/finalwebsite/problems/mining.html>

²⁴⁶ Interviews with community members at Mudimeli Village, April 19, 2015.

²⁴⁷ Email from Charmane Russel, Russel and Associates, Coal of Africa's response to questions submitted by Bench Marks Foundation. March 4, 2015.

adopted by many mining companies worldwide. Under Performance Standard 5 (PS 5), “the company is required to offer displaced persons and communities compensation for loss of assets at full replacement cost and other assistance to help them improve or at least restore their standards of living or livelihoods. The company should also provide opportunities to displaced persons and communities to derive appropriate development benefits from the project.”²⁴⁸

It is also noteworthy that there is a Sample Pit, the “ISCOR Sample Pit,” close to the village. The pit was dug in the 1960’s by a company called ISCOR,²⁴⁹ and the **mine waste dump was then abandoned with coal containing rocks and soil**. Community members reported that **the vegetation was negatively affected around the Sample Pit**.²⁵⁰ Moreover, as the walls of the pit are very steep, there was a very high risk that children, goats, or cattle would fall in. After community members complained, CoAL fenced in the pit.²⁵¹ However, as of the date of this report, **the Sample Pit and its waste dump have never been rehabilitated**.



The ISCOR Sample Pit (East of the Mudimeli village), dug to assess the quality and quantity of coal in the soil.²⁵²

7.2.5. Heritage impacts

The Mupo Foundation, which works to preserve and revive cultural diversity and food sovereignty in South Africa,²⁵³ is opposed to the Makhado project because, as it states, its the mine “**will destroy our home, Zwifho (Sacred Natural Sites) and all of Mupo (Creation) in our territory**.” Further, “Venda is our ancestral home. [...] Our Zwifho (Sacred Natural Sites) are the source of life. Mining will destroy our Zwifho and Mupo. If we lose our

²⁴⁸ International Finance Corporation, *IFC Performance Standards on Environmental and Social Sustainability*, 2011, http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES

²⁴⁹ Interviews with community members at Mudimeli Village, April 19, 2015.

²⁵⁰ Ibid.

²⁵¹ Interview with the management of Coal of Africa Limited on April 20, 2015. Those present were: David Brown, CEO, Florence Duval, Group Corporate Affairs Manager, Charmane Russel and Alan Fine of Russell and Associates, CoAL’s public relations consulting company.

²⁵² Photo by Coal of Africa Limited.

²⁵³ The Mupo Foundation website, <http://mupofoundation.org/>

Zwifho, there will no longer be Venda people because our stronghold of our life is the Zwifho.”²⁵⁴

7.2.6. Conclusion on Makhado

In conclusion, the Makhado mine could have significant negative impacts on the basic human rights of the communities living in the area, especially the rights to water and health. There is also strong local opposition to the project, as evidenced by an appeal filed against CoAL for allegedly undertaking an inadequate water study and not having consulted the Mudimeli community in an adequate manner, which lives in immediate proximity to the planned mine.

²⁵⁴Dzomo la Mupo, “Objection to CoAL of Africa’s IWULA,” March 2013, <http://www.gaiafoundation.org/sites/default/files/documents/Dzomo%20la%20Mupo%20response%20to%20CoAL%27s%20IWUL.7March.pdf>

7.3. Regional cumulative impacts

This section deals with the regional cumulative impacts of the different projects of CoAL.

CoAL plans to construct not only the Makhado mine in the Vhembe district **but also three additional mines (Mopane, Generaal, Chapudi) that will all be much larger than the Makhado mine.**²⁵⁵

7.3.1. Cumulative impacts on the right to water

Many interviewees around both Vele²⁵⁶ and Makhado²⁵⁷ pointed to the cumulative high water consumption and pollution of underground water of the five projects of CoAL.

S. de Lange of the Institute for Ground Water Studies, University of the Free State, who conducted a review of the Makhado Coal Project Ground Water Impact Assessment Report, comes to the following conclusion: “It would be **highly irresponsible not to include all proposed projects within the region in a ground water investigation project. Cumulative effects and impacts should be considered before a Mining Right** is awarded to [CoAL].”²⁵⁸

Appellants to the Mining Rights of Makhado have requested a **Regional Strategic Environmental Impact Assessment**.²⁵⁹ This Impact Assessment should cover the water impacts of all projects of CoAL and water use for agriculture and tourism in the region. CoAL has agreed to conduct such an impact assessment but states it is not their responsibility to do so.²⁶⁰

7.3.2. Cumulative impacts on the right to work

A number of interviewees around both Vele²⁶¹ and Makhado²⁶² asserted that the coal mining activities at Vele, Makhado and three mines of the Great Soutpansberg Project, will endanger thousands of agricultural and tourism jobs (on game farms) due to **their cumulative high water consumption and pollution of underground water.**

The Mupo Foundation **has warned that up to an estimated 11,000 jobs could be lost in the agricultural and tourism sectors as a result of the destruction caused by the Mopane mine** (one of the three mine projects of CoAL). This impact would last well beyond the mine’s closure.²⁶³

²⁵⁵ Coal of Africa Limited, “Makhado Factsheet,” April 2014, <http://www.coalofafrica.com/investors-and-media>

²⁵⁶ Interviews with affected farmers around Vele, April 15, 2015.

²⁵⁷ Interviews with affected farmers around Makhado, April 17, 2015.

²⁵⁸ De Lange, S., Institute for Ground Water Studies, University of the Free State, *Makhado Coal Project Ground Water Impact Assessment Report*, June 2015.

²⁵⁹ The Vhembe Mineral Resources Stakeholders Forum and six land owners, Appeal against the Environmental Authorisation Amendment for the Vele Colliery, April 2015.

²⁶⁰ Interview with the management of Coal of Africa Limited on April 20, 2015. Those present were: David Brown, CEO, Florence Duval, Group Corporate Affairs Manager, Charmane Russel and Alan Fine of Russell and Associates, CoAL’s public relations consulting company.

²⁶¹ Interviews with affected farmers around Vele, April 15, 2015.

²⁶² Interviews with affected farmers around Makhado, April 17, 2015.

²⁶³ The Mupo Foundation, “Mupo Foundation and Dzomo la Mupo oppose the Mopane Coal Mine,” October 28, 2013, <http://mupofoundation.org/2013/mupo-foundation-and-dzomo-la-mupo-oppose-the-mopane-coal-mine/>

If one adds to this number the potential destruction of **approx. 5,650 jobs around Vele**,²⁶⁴ **many thousands of jobs could be destroyed** as a consequence of the CoAL's projects in the region.

7.3.3. Impact on the use of land

The Makhado project will have a total footprint of 3,800 hectares.²⁶⁵ If one calculates the total area of the Makhado and the three additional projects, **16,500 hectares will be “disturbed” or destroyed by CoAL’s operations.**²⁶⁶ This land will not be available for agricultural production or tourism.

The total amount of land associated with CoAL's Mining Rights **comprises 96,000 hectares**. This means that land owners in this area may risk **being forced to sell their properties** and that entire villages may risk **being relocated or negatively affected by the mines**, if it is not relocated.

7.3.4. Cumulative impacts on food security

Limpopo Province is **considered the “Bread and Fruit Basket of South Africa,” producing up to 60% of all (winter) fruit, vegetables maize meal, wheat and cotton.**²⁶⁷ Interviewees around both Vele and Makhado emphasised this point and argued that all of CoAL's mine projects may threaten the **food security of South Africa**.

7.3.5. Rehabilitation

Some impacts will continue after the mine has been closed and there is a significant risk that the land will no longer be suitable for cultivation. According to the Environmental Impact Assessment of the Makhado Colliery Project, it is **unlikely that rehabilitated areas “may be successfully cultivated in the post-mining state.”**²⁶⁸ According to Fanie de Lange of the Institute of Groundwater Studies at the University of the Free State, the **impact of a mine continues even after it has been closed**. Even if the mine is refilled, the material used for refilling is not as dense as the original soil and rock formations. **This leads to a continued negative impact on the groundwater table.**²⁶⁹

7.3.6. Conclusion on regional cumulative impacts

It is important not only to consider the impact of the five mining projects individually but also to assess their **cumulative impacts on water withdrawal, water pollution and land use**. These aspects can result in severe impacts on both the **right to work and food security** of the region and of South Africa.

²⁶⁴ Interviews with affected farmers around Vele, April 15-16, 2015.

²⁶⁵ Coal of Africa Limited, “Quick facts,” corporate brochure, March 2014.

²⁶⁶ Ibid.

²⁶⁷ Polokwane Food, Arts and Culture Fair website, http://www.polokwane.gov.za/index.php?view_page+2053

²⁶⁸ Coal of Africa Limited, Environmental Impact Assessment/Environmental Management Programme, 2011, p. 154.

²⁶⁹ Fanie de Lange, University of Free State, “There is no water for mining, says an expert,” TITLE OF NEWSPAPER, DATE, http://nataqri.ufs.ac.za/dl/Userfiles/Documents/00004/4130_eng.pdf

7.4. How can CoAL implement the Guiding Principles?

This section provides recommendations on how CoAL can implement the UN Guiding Principles.

CoAL must first **adopt a formal commitment to human rights and define a human rights policy**, which should refer to recognised international human rights standards such as the Universal Declaration of Human Rights and the eight ILO core conventions.

CoAL should then **implement the different elements of human rights due diligence**, beginning with conducting comprehensive **Human Rights Impact Assessments** of its mines.

Up to now, CoAL followed national mining legislation for its impact assessment work. The company focused on legally required assessments, such as Environmental Impact Assessments, Social Labour Plans and Heritage Impact Assessments. These suffer from the following weaknesses:

- They are conducted not with a **human rights perspective but rather with a risk-based approach** for the company;
- They do not permit the identification of **potential negative impacts on all human rights** (especially on the right to health and to food)
- They are prepared by **consultants who are paid by the mining companies and are not independent**.

Instead, CoAL should conduct **HRIAs covering all human rights**, keeping in mind that “addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.”²⁷⁰

Specifically, our research on Vele and Makhado shows that CoAL’s current approach has led to insufficient studies of impacts and insufficient measures (see corresponding sections above).

As a next step, CoAL should **integrate** the findings of the Human Rights Impact Assessments into decision making and processes and act upon these findings.

Last but not least, CoAL should introduce a mechanism to address harm, such as an **operational-level grievance mechanism**, which fulfils certain effectiveness criteria: namely, it should be “legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of learning.”²⁷¹

²⁷⁰Ibid.

²⁷¹Principle 31 of the UN Guiding Principles.

8. Box: Coal and its impact on health and climate change

The coal industry has tremendous impacts on health through air pollution and on climate change. Coal and coal waste products (including ash and boiler slag) release **approximately 20 toxic chemicals**, including some heavy metals which have a high human toxicity and are also dangerous if released into the environment.²⁷² The World Health Organization and other sources attribute “about one **million deaths per year to coal air pollution.**”²⁷³

Coal is known to be the **dirtiest energy source** and to have the largest carbon dioxide (CO₂) emission per kilowatt-hour (kWh). **Burning coal is the largest single source of climate-changing CO₂ emissions in the world.**²⁷⁴ Climate change is predicted have a huge impact on the Earth’s food systems and water, affecting food security and access to water for millions of people,²⁷⁵ and therefore infringing on their enjoyment of human rights. According to Mark Kenber, CEO of Climate Group, climate change is a “**major attack on human rights because it affects the poorest, most vulnerable people who haven't caused the problem.**” He argues that climate change deprives people of the basic human right to shelter, security, food and water.²⁷⁶

According to the executive secretary of the United Nations framework convention on climate change, Christiana Figueres, “the science is clear that **there is no space for new coal or unmitigated coal.**”²⁷⁷ The **offtake agreement signed between Vitol and CoAL may allow new coal mines to be opened (such as Makhado) or closed mines to be reopened (such as Vele).**

As noted earlier in the paper, Vitol is a key player in the coal industry, **as one of the top five coal traders in the world.**²⁷⁸ In 2014, Vitol traded over “**30 million tonnes of physical coal,**”²⁷⁹ corresponding to a market share of 2.6% of internationally traded coal.²⁸⁰ The greenhouse gas emitted by the burning of this coal traded by Vitol **amounts to the annual equivalent of approx. 74 million tonnes CO₂**²⁸¹ (1.4 times more than the total greenhouse gas emissions of Switzerland.)²⁸² The health impact of this coal is significant. Vitol, as a key player in the value chain of coal, **shares responsibility for the negative human rights impacts of the coal industry.**

The appropriate actions that Vitol could take in relation to its customers include the following:

²⁷² Wikipedia website, “Environmental impact of the coal industry,”

https://en.wikipedia.org/wiki/Environmental_impact_of_the_coal_industry#Air_pollution

²⁷³ The Next Big Future website, “Deaths per TWH by energy source,” <http://nextbigfuture.com/2011/03/deaths-per-twh-by-energy-source.html#more>

²⁷⁴ Greenpeace website, “The case against coal,” April 15, 2010: <http://www.greenpeace.org/international/en/campaigns/climate-change/coal/The-case-against-coal/>

²⁷⁵ IPCC, “Linking climate change and water resources: impacts and responses,” 2010, <http://www.ipcc.ch/pdf/technical-papers/ccw/chapter3.pdf>

²⁷⁶ Business and Human Rights Resources Center, interview with Mark Kenber, CEO of Climate Group, <http://business-humanrights.org/en/climate-group-ceo-says-climate-change-is-a-major-attack-on-human-rights-business-is-key-to-tackling-it>

²⁷⁷ Oliver Milman, “UN climate chief says the science is clear: There is no space for new coal,” *The Guardian*, May 4, 2015, <http://www.theguardian.com/environment/2015/may/04/un-climate-chief-says-the-science-is-clear-there-is-no-space-for-new-coal>

²⁷⁸ Vitol Corporate Brochure, <http://www.vitol.com/brochures/vitol-energy-2013/files/assets/common/downloads/publication.pdf>

²⁷⁹ Vitol website, <http://www.vitol.com/what-we-do/trading/coal/>

²⁸⁰ According to the World Coal Association, “overall international trade in coal reached 1142 Mt in 2011; while this is a significant amount of coal it still only accounts for about 16% of total coal consumed.” See <http://www.worldcoal.org/coal/market-amp-transportation/>

²⁸¹ With an average conversion factor of 2.457 tonnes of CO₂ for one ton of coal. Source:

<http://www.co2benchmark.com/DEFRA-conversion-factors>

²⁸² The total greenhouse emissions of Switzerland amount to 52.6 million of tonnes. Source: Federal Office of the Environment, 2015, <http://www.bafu.admin.ch/klima/13879/13880/index.html?lang=en>

- **Influence end users to burn coal in a “cleaner” manner** (e.g. power plants should install filters on smoke stacks in order to reduce the quantity of air pollutants emitted);

- **Influence end users to burn coal in a “more climate-friendly manner”** (e.g. power producers should build more efficient power plants in order to reduce their greenhouse gas emissions).

Those options, however, are difficult for Vitol to implement **due to its lack of leverage** on its customers and on the end users of its products.

9. How can Vitol implement the Guiding Principles?

This section provides recommendations on how Vitol can implement the UN Guiding Principles.

Similar to CoAL, Vitol should adopt a **formal commitment to human rights** and define a human rights **policy**, which should refer to recognised international human rights standards, such as the Universal Declaration of Human Rights and the eight ILO core conventions.

It should then implement the **different elements of human rights due diligence**. This begins with conducting **Human Right Impact Assessments**:

- Of **its own subsidiaries** (active in Trading, Exploration & Production, Refining, Shipping, Power production, and so forth);
- Of **its suppliers** (including suppliers of its subsidiaries active in trading).

Assessing human rights through a large number of suppliers is not an easy task. The commentary to Guiding Principle 17 indicates that:

Where business enterprises have **large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all**. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.²⁸³

Regarding the **prioritisation of suppliers for human rights due diligence**, one would expect that Vitol conducts HRIA for:

1. Its **biggest suppliers**;
2. Suppliers with whom **Vitol has signed offtake agreements** (as Vitol is bound to these suppliers over a long period);
3. Suppliers from whom **Vitol buys a large share of their production** (where it therefore has significant leverage);
4. Suppliers of **commodities that intrinsically carry high risks of negative human rights impacts** (e.g. oil or coal).

CoAL fulfils at least the last three criteria. Therefore, Vitol should have been conducted a **Human Rights Impact Assessment on CoAL** before signing any offtake agreement with the company.

In order to check whether a detailed HRIA is needed for a supplier, Vitol could usefully conduct a **“quick assessment”** of the human rights risks associated with buying coal from Vele and Makhado. The tables below provide an attempt at this “quick assessment”.

²⁸³Commentary to Principle 17 of the UN Guiding Principles.

Table: Assessment of Risks of Vele Mine

Criteria	Information	Assessment
Right to water	Coal mining has massive impacts on water High water scarcity in Vhembe District	High risk
Right to food	Coal mining has massive impacts on water Mine uses large tracks of farming land	High risk
Right to health	Many farm workers live close to the mine	High risk
Right to work	Agricultural and tourism jobs at risk	High risk
Right to remedy for victims of HR violations	South African courts work but high access barriers due to costs	Medium risk
Overall assessment		High risk

Table: Assessment of Risks of Makhado Mine Project

Criteria	Information	Assessment
Right to water	Coal mining has massive impacts on water High water scarcity in Vhembe District	High risk
Right to food	Coal mining has massive impacts on water Mine uses large tracks of farming land	High risk
Right to health	Village surrounded by two open pits	High risk
Right to work	Agricultural and tourism jobs at risk	High risk
Right to remedy for victims of HR violations	South African courts work but high access barriers due to costs	Medium risk
Overall assessment		High risk

Both mines of CoAL face high risks regarding several human rights. Vitol should therefore conduct a HRIA of CoAL's operations.

Depending on the conclusions of such an HRIA, Vitol should consider the **following options**:

- a. **Influence CoAL to take appropriate action** to reduce and mitigate its potential negative human rights impacts. Examples of actions to influence CoAL include:
 - asking CoAL to conduct a Strategic Regional Impact Assessment of the impact on water of all of its projects in Limpopo Province
 - informing CoAL of its responsibilities regarding human rights;
 - incorporating human rights clauses in its contracts with CoAL;
 - analysing the impact assessments made by CoAL and, if necessary, Vitol should conduct its own HRIA;
 - undertaking extensive dialogue with CoAL until appropriate measures are identified and implemented to ensure a minimum negative impact on human rights.
- b. **End the contractual relationship with CoAL** if it becomes clear that the measures taken by CoAL cannot avoid causing negative human rights impacts. In this case, Vitol can **buy coal from other suppliers whose mines face fewer or no human rights challenges**.

To take the measures mentioned under a), a **high ranking official should be appointed at Vitol, with group-wide responsibility for human rights issues**. Such an official must have **internal support** to integrate these issues into company operations. Indeed, according to the Guiding Principles, **effective integration should include the following**:

- c. “**Responsibility** for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
- d. **Internal decision-making, budget** allocations and **oversight processes** enable effective responses to such impacts.”²⁸⁴

Further, Vitol should **track its performance using human rights indicators**. It should also disclose its human rights assessment and measures in a publicly available report or on its website. Vitol should **engage with stakeholders** on human rights issues through meaningful consultation.

Finally, Vitol should make sure that it and its suppliers have a mechanism to address harm, such as a **grievance mechanism**.

²⁸⁴Principle 19 of the UN Guiding Principles.

10. Conclusion

Switzerland has become a **significant commodity trading hub**, with Swiss traders accounting for major market shares of key commodities. **Traders buy products from many suppliers that can and do cause negative human rights impacts.** This case study shows that trading activity in Switzerland can be linked with negative human rights impacts overseas.

The UN Guiding Principles on Business and Human Rights are not adequately implemented by companies, although the UNGPs were endorsed over four years ago. **Vitol has not implemented the UNGPs** to reduce its possible involvement in human rights violations.

This paper is one more example that underscores the following: **voluntary initiatives are not sufficient** to prevent the involvement of Swiss companies, including traders, in negative human rights impacts. Mandatory measures are necessary. **Switzerland needs a new law that will make human rights due diligence mandatory** for all of its multinational companies. For this very reason, Bread for all is part of a coalition of 70 organisations supporting the **Initiative for Responsible Multinational Corporations**,²⁸⁵ which requires every multinational company to conduct human rights due diligence.

²⁸⁵Initiative for Responsible Multinational Corporations (Konzernverantwortungsinitiative) website, <http://konzern-initiative.ch/>

11. About the authors

Bread for all

Bread for all is the **Development Service of the Protestant Churches in Switzerland**. *Bread for all* empowers people in Asia, Latin America and Africa to free themselves from poverty and dependency and it motivates people in the North to commit to a fairer world.

- **We empower people** to build sustainable livelihoods through over 350 development projects and programs in 50 countries in Asia, Latin America and Africa.
- **We inform and provide educational services** about development policy issues for the public at large in Switzerland.
- **We advocate** for international social, political and economic structures that provide the framework for a fair and sustainable development process worldwide. Our main concerns are the right to food, fair trade, and business and human rights.
- **We raise financial resources** for development projects and programs and provide monitoring and evaluation, based on defined quality criteria.

Bench Marks Foundation

Bench Marks Foundation is a non-profit, faith-based organisation owned by the churches in South Africa. It is a unique organisation in the area of corporate social responsibility (CSR) and monitors corporate performance against an international measuring instrument, the **Principles for Global Corporate Responsibility**; Bench Marks for Measuring Business Performance. Also known as the **Bench Marks Principles**, this document is shared by a number of churches and church agencies across four continents.

Bench Marks Foundation is part of an **international faith-based coalition** that also has partners in Australia, Hong Kong, Canada, the USA, Colombia and the United Kingdom. Our partners in South Africa are the South African Council of Churches (SACC), the Ecumenical Service for Socio-Economic Transformation (ESSET), Industrial Mission of South Africa, and the Justice and Peace Department of the South African Catholic Bishops Conference.

Among other actions, Bench Marks Foundation, together with its member churches, launched a code of conduct to govern business, called the **Church Leaders Call for Responsible Investment**. This Call is in line with the churches' belief in human dignity and that people control their destiny. It is also based on the belief that land, air, water and ecosystems are placed in our care to nurture and use responsibly and safeguard for future life. The Call speaks to the ultimate command: "love they neighbour as they self".