

WHAT HAPPENS UNDERGROUND STAYS UNDERGROUND

**A Study of Experiences
of Gender-Based Violence
and Sexual Harassment
of Women Workers in the
South African Mining Industry**

Factfinding led by
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JANUARY 2021

**LAWYERS FOR
HUMAN RIGHTS**
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Report Summary

Historically, the South African mining sector has been rooted in racial and gender discrimination, as well as the exploitation of migrant labor. Women were prohibited by law from working underground in mines from the beginning of the industry in the country in the 19th century until 2002. Subsequently, quotas were introduced under the Mining Charter,¹ a regulatory document intended to address the historic inequities of the extractive industry in South Africa, and initially requiring that 10 percent of all miners be female. However, neither the Mining Charter, nor the Minerals and Petroleum Resources Development Act (MPRDA)², nor the Mine Health and Safety Act³, includes gender-specific occupational health and safety provisions, or specifically requires industry to structurally accommodate women workers. As a result, women have been incorporated into a hyper-masculine sector that may not consider their specific needs. This includes, most crucially, the basic need for a workplace that is free of gender-based violence and harassment. In fact, women working in the mining sector report being subject to sexual and gender-based violence and harassment, both inside the mines and within the mining communities where they live, with little, if any, recourse.

Gender-based violence and harassment (GBVH) is defined under International Labor Organization (ILO) Convention 190 on Violence and Harassment to include all forms of sexual and gender-based violence and harassment. In the mining sector, it can be attributed to a range of complex political, social and economic factors.⁴ Within a numerically and culturally male-dominated sector, women workers find themselves outnumbered and frequently subordinated in terms of their professional development and personal security. Structurally, the dark and isolated characteristics of underground mines also enable the persistence of GBVH against women workers. A comprehensive response to GBVH in the mines therefore requires addressing both the drivers of this phenomenon, and the specific instances as they arise.

This study recognizes the significant scholarly attention devoted to understanding gender biases within South Africa's mining sector, including the prevalence of GBVH in the mines, as well as the fact that in recent years, GBVH against women has gained greater recognition as an urgent human rights issue. By adding further voices of GBVH survivors and their colleagues to this discourse, it seeks to further unpack systemic links between the mining industry and gender-based violence.

This study was embarked upon by the Solidarity Center with support on the ground from Lawyers for Human Rights. Primary field research was conducted by Sheila B. Keetharuth, former United Nations Special Rapporteur on Eritrea and former member of the Working Group on Extractive Industries, the Environment and Human Rights Violations in Africa, African Commission on Human and Peoples' Rights. She also spearheaded the drafting team. The Solidarity Center and Lawyers for Human Rights wish to express their gratitude to everyone—and particularly the women mineworkers—who contributed their stories, views and expertise to help bring this project to completion.

Within a numerically and culturally male-dominated sector, women workers find themselves outnumbered and frequently subordinated in terms of their professional development and personal security

Methodology and Study Design

The methodology for this project included primary research through interviews with informants in the field in Cape Town, Johannesburg, KwaZulu-Natal, Mpumalanga and Rustenburg, South Africa. Twenty substantive interviews were conducted between August 12 and 23, 2019. The interviewees included representatives from women's structures within mining unions, the South African Human Rights Commission, the South African Commission for Gender Equality, the Bench Marks Foundation, the Wits Mining Institute, the Hlanganisa Institute for Development in South Africa (HIDSA), the Minerals Council South Africa, the Center for Applied Legal Studies (CALS) and Workers World Media Productions (WWMP). Five women currently working or who had previously worked in mines in KwaZulu-Natal and Rustenburg were also interviewed.

Follow-up and additional group interviews were conducted between February 27 and March 6, 2020 in Johannesburg, Rustenburg and Wonderkop, in Gauteng Province, including with an additional 11 workers. These interviews included women who work or have worked in the mines, one man currently employed at a mine, the regional chairperson of the National Union of Mineworkers (NUM) Women's Committee, as well as other NUM members, members of the Mine Health and Safety Council's Women in Mining (WIM) structures, a member of the Women in Mining Rustenburg Tripartite Forum, and a female South African Police Services (SAPS) officer and police union representative. All mineworkers interviewed indicated that they would prefer to remain anonymous, to avoid possible retaliation or victimization. A senior professional at a major mining house interviewed requested anonymity. In any case, all names and employers have been omitted, and the interviews are instead identified by when and where they took place.

In designing the interviews, it was necessary to put interviewees at ease by allowing for a certain degree of natural flow in the conversation. Interviewers used an exploratory style by asking questions that varied in detail and form. The interviews were standardized by ensuring that the same four areas of study were covered:

1. Types and location of GBVH faced by women workers, as well as their possible underlying reasons.
2. Practical measures taken, policy implementation and legal compliance of mining companies that address GBVH in mines and mining communities
3. Factors contributing to reporting and recourse barriers that women mineworkers face in seeking to have GBVH addressed
4. The state's role in dealing with GBVH in the mining industry.

Key Findings:

- Inadequate awareness of and education on GBVH among men and women at all levels of the industry may obscure survivors' understanding about their rights and how to seek redress, and thus may protect and enable perpetrators of GBVH.

- Inadequate monitoring and supervision of workers inside the mines can embolden the perpetration of GBVH because it is difficult to collect evidence.
- Dominant patriarchal social norms that enable cultures of silence and victimization, and economic dependency of women on men, exacerbate reporting barriers.
- Available services and resources (education, health, justice, security and safety, legal advice and counseling) do not adequately prevent, protect and respond to GBVH. Consequently, poor delivery of such services leads to disappointment and broken trust between survivors and those who are charged with helping them.
- Certain business strategies can have deleterious effects on the well-being of women workers. For example, production bonuses that incentivize teams to work faster and harder can lead to male workers seeking sexual or monetary “compensation” from female team members, in exchange for doing their “share” of the work. Similarly, outsourcing the recruitment of female workers can create the opportunity for sexual exploitation by gatekeepers of lucrative jobs.
- The use of personal protective equipment (PPE) that is ill-suited for women workers and a lack of workplace accommodation for pregnant and breastfeeding workers perpetuates existing disadvantages and marginalization of women in mines. Further, failure to accommodate women in the design and placement of facilities such as bathrooms, changing rooms, bus stops and lifts can leave them vulnerable to violence and harassment.

Introduction

In South Africa today, approximately 54,000 women work in the mining sector, comprising roughly 12 percent of the total mining workforce.⁵ The industry has publicly committed to the promotion of women, noting that “mining companies are becoming increasingly aware of both the business and moral imperative of enhancing the representation of women across all levels and are attempting to increase the numbers of women through various initiatives.”⁶ Women occupy a wide range of positions in the industry, including as geologists, winch and locomotive drivers, mining engineers, rock mechanics, belt operators, middle managers and executives.⁷

However, significant challenges remain. Gender-based violence and harassment is a pervasive problem in the country that presents a particular threat to the health, safety and security of women workers in the South African mining industry—as the Minerals Council of South Africa, a mining industry employers’ organization, has itself recognized.⁸ As set out in this paper, women working in mines at times confront danger, violence and indignity in their work environments, in which GBVH appears both widespread and normalized. The experiences and views of the interviewees included here reflect a troubling, lived reality for these women who are striving to support their families. Beyond the primary trauma of experiencing GBVH itself, the secondary consequences of enduring these events can have a long-lasting impact on these women miners, their families and their communities. Such secondary consequences and costs of violence against women can include long-term physical illness; gynecological and reproductive health impacts; mental and emotional consequences, such as anxiety and depression; and effects on the health and development of all family members, including children.⁹

Gender-based violence and harassment is a pervasive problem in the country that presents a particular threat to the health, safety and security of women workers in the South African mining industry.

South Africa’s Constitution and Bill of Rights¹⁰ applies both vertically and horizontally, and thus extends to state and juristic entities such as mining companies. In terms of both national regulations and international standards, employers bear the responsibility to ensure that workplaces are free of sexual harassment and gender-based violence. Indeed, the safety and security of women workers is a human rights issue that requires specific workplace regulations and remedies.

In recognition of those obligations, this paper seeks to add to the growing discourse around GBVH in the mining context. It adds additional voices of survivors and their colleagues to this discussion, in order to shape recommendations on addressing GBVH on the basis of these views.

SECTION 2 outlines the relevant legal framework in South Africa.

SECTION 3 outlines the primary forms of GBVH experienced by women workers in the mining sector, with reference to a series of high-profile cases in South Africa and interviews conducted with women mineworkers during this project.

SECTION 4 identifies key factors enabling the high incidence of GBVH in mining, including the physical conditions of underground operations, poor supervision of underground teams, and the fact that women constitute a minority of the workforce.

SECTION 5 surveys the views of women workers as to the efficacy of efforts by mining companies to address GBVH. These include views on GBVH policies and training, reporting mechanisms and the culture of blaming survivors who make use of such mechanisms.

SECTION 6 examines broader structural issues that contribute to GBVH, including inadequate stakeholder cooperation and a lack of trust in government authorities.

SECTION 7 concludes with a series of recommendations.

Legal Framework

In the mining sector, the Minerals and Petroleum Resource Development Act 28 of 2002 (MPRDA) repealed provisions banning women from working underground. Also, in 2002, the first iteration of the South African Mining Charter introduced quotas requiring that 10 percent of the workforce be women. The charter was amended on September 27, 2018, replacing quotas for women workers with compliance targets for women ownership and employment at the board and executive level. In any event, the growth in the presence of women in the sector over the last two decades has been marked, rendering the importance of ensuring a safe work environment for these workers critical.

South Africa's Constitution prohibits sex- and gender-based discrimination and guarantees equal protection under the law, as well as fair labor practices and the right to dignity and personal security, including the right to be free from public and private violence.¹¹ The Constitutional Court has adopted a "substantive" approach to the right to equality that is cognizant of the social and economic context of discrimination. The Court has held that there is a duty on the state not to infringe on constitutional rights.

In the landmark Carmichele¹² judgment, for instance, the Court found that the constitutional rights to dignity, freedom and security, in combination with the Police Act, indicate that the police have an affirmative duty to ensure that women have "freedom from the threat of sexual violence." Carmichele has been followed in subsequent judgments that deal with violence against women.

South Africa's Constitution prohibits sex- and gender-based discrimination and guarantees equal protection under the law.

Various legislative measures have also sought to address gender-based violence and gender inequality, both within the field of labor law, as well as more generally. The Promotion of Equality and Prevention of Unfair Discrimination Act, mandated by Section 9(4) of the Constitution, prohibits unfair gender-based discrimination, including gender-based violence, pregnancy-related discrimination, denial of access to opportunities and systemic inequality, and places a positive duty on both state and private actors to promote equality.¹³ The Protection from Harassment Act broadens GBVH protection by addressing harassment and sexual harassment and covers workplace harassment.¹⁴ GBVH that occurs within domestic relationships is addressed under the Domestic Violence Act, which allows domestic violence courts to issue protection orders.¹⁵

With respect to GBVH in the workplace, the Employment Equity Act (EEA) presumes harassment based on gender, sex or sexual orientation to be a form of unfair discrimination.¹⁶ Under the EEA, affirmative action measures include "making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented." The act defines "reasonable accommodation" as any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment in the workforce of a designated employer. The Labor Relations Act prohibits sexual harassment in the workplace through its Code of Good Practice on Sexual Harassment, which provides

procedures to deal with complaints of sexual harassment and prevent its recurrence.¹⁷ In terms of South African common law, employers are required to “take reasonable care” to maintain a work environment that is safe and without risk to the health of employees, including reproductive health.¹⁸

Specific to mining, the Mine Health and Safety Act (MHSA) also places a specific duty on the employer to ensure that the working environment is safe and without risk for employees.¹⁹ The MHSA mandates establishment of Mine Health and Safety Council and Health and Safety Representative Committees in the mines with powers to develop guidelines for best practices and enforcement of the regulatory framework for workplace health and safety. Additionally, Section 2 of the MPRDA requires that mining rights holders compile annual reports on health and safety matters in the mines, although the act itself does not adequately address safety issues specific to women; regulations, for the most part, are gender neutral.

South Africa is also bound by its international commitments with respect to gender discrimination and GBVH.²⁰ While gender-based discrimination and violence have long been condemned by the international community, the legal definition of GBVH has not always been clear. However, in the past five years, the Committee on the Elimination of Discrimination Against Women, the expert body established to review progress for women in those countries that are state parties to the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), has issued a number of general comments on the matter.

The domestic legal framework around GBVH is widely regarded to be very progressive, but policies are lost in implementation.

South African law adopts the CEDAW definition of GBVH, which incorporates all forms of abuse and harassment, including sexual, physical, emotional and psychological harms. The domestic legal framework around GBVH is widely regarded to be very progressive, but policies are lost in implementation. During her visit in December 2015, UN Special Rapporteur on Violence against Women Dubravka Šimonović urged the South African government to strengthen the fight against GBVH through awareness and

education at all levels of society. She asserted that despite South Africa’s arsenal of progressive laws and policies to deal with gender-based violence, there had been little implementation, hence gender-based violence continued to be pervasive and constituted systematic human rights violations against women.²¹

Finally, it is worth noting that the ILO also passed its milestone Convention 190 on Violence and Harassment at Work, including gender-based violence and harassment, in 2019. South Africa has yet to ratify ILO Convention 190. It is beyond the scope of this paper, but additional reforms in law and in practice will be necessary to comply with that convention. A brief discussion of regional and international norms relevant to GBVH are included in the annex.

Experiences of GBVH in Mining

The purpose of this paper is to elevate additional voices of survivors of GBVH in the mining sector, to add to this discourse in the South African context. The women mineworkers interviewed reflected on their own experiences of GBVH, as well as those of their colleagues, and on a number of high-profile cases involving gruesome physical violence against women in South African mining workplaces. It is clear that GBVH in the mining sector, as in other environments, takes many forms: physical and sexual violence certainly, but also psychological violence and verbal harassment. It happens in many locations, including changing facilities, bathrooms, underground, in crowded lift carriages and during commutes to and from the workplace. Perpetrators range from supervisors to co-workers, and even third parties. And while not the focus of this report, it is important to note that GBVH is not only experienced by women in the course of work, but also in the communities surrounding these operations. Indeed, the Hlanganisa Institute for Development in Southern Africa (Hlanganisa) reports that mining communities have among the highest levels of gender-based violence in South Africa.²²

Risks to women mineworkers are pervasive. This makes for a difficult work environment, and such risks are never far from the minds of these employees. Indeed, in June 2019, more than 200 employees at Lanxess Chrome Mining, Ltd., in Rustenburg staged an underground sit-in to protest the sexual harassment and victimization of female workers.²³ All interviewees confirmed the widespread existence of at least some form of GBVH in the context of mining. The Mine Health and Safety Council has called gender-based violence “a silent demon that many individuals experience daily.”²⁴

In June 2019, more than 200 employees at Lanxess Chrome Mining, Ltd., in Rustenburg staged an underground sit-in to protest the sexual harassment and victimization of female workers.

No centralized statistics on GBVH for the mining industry exist. One employee of a mining house revealed that exact figures on the number of women facing GBVH could not be confirmed because even though it is prevalent, the company’s anonymous help lines and incident reporting lines provide no reports.²⁵ This year, in 2020, South African Police Service Crime Statistics, for the first time, show that mining areas accounted for 18 reported rapes; however, this is likely an inaccurate indicator of real prevalence, considering the high levels of underreporting.²⁶ Effective prevention of GBVH and true remedy when it does occur, must therefore be shaped with reference to the particular experiences and lived reality of women workers in the mining workplace. Some of these are set out below.

Physical and sexual violence and unwanted physical contact

The case of Binkie Mosiane is perhaps the most high-profile GBVH case in South Africa, clearly exposing the fault lines of GBVH at work in the mining sector. Mosiane, the mother of a young child, had just begun to work in one of the oldest and most labor-intensive mines in the country, the Anglo American Platinum’s Khomanani Mine, extending two kilometers down and across.²⁷ She was the only female among the 13 workers on her team. On February 6, 2012, Mosiane was found alive underground after

she had been attacked and raped. She died shortly thereafter. It took 20 months to arrest a contract worker at the mine, who was found guilty and received two life sentences.²⁸ The mining company reached an out-of-court settlement with her family.²⁹

The Bench Marks Foundation, an independent, non-profit organization monitoring corporate performance that was interviewed for this project, has done extensive investigation into and analysis of the circumstances of Mosiane's rape and murder. Bench Marks has reported that this violent crime took place in a work context permeated with the threat of gender-based violence, noting that at least one female geologist at the mine reported to the Bench Marks Foundation that she kept a knife in her pocket while on-site due to safety concerns.³⁰ A former colleague of Mosiane, interviewed for this paper, also conveyed that she had been subject to sexual harassment and was called names, but had never reported it.³¹ Another interviewee who worked with Mosiane explained that men at the time had complained that "they did work for her and when it was time to pay, she would duck and dive" and that they treated her death as "a joke."³²

Industry response to the event appeared tepid, at least initially. Contemporaneous press articles cite then-Chamber of Mines (now the Minerals Council) Spokesperson Jabu Maphalala stating that "the Chamber deals with safety issues such as rock falls, dust and noise, but does not deal with gender-specific safety issues."³³ Anglo American Platinum's 2013 Sustainable Development Report stated "[t]he company continues to monitor the progress in the case of Ms. Mosiane, the employee who was murdered underground at our Khomanani Mine in February 2012. In October 2013, the Rustenburg police arrested a 32-year-old suspect at Hoopstad in the Free State for the murder. The suspect was employed by a private contractor at the time of the incident and will appear in court in due course."³⁴ While the mine conducted its own investigation, the findings do not appear to be publicly available, and some interviewees suggested that the process was insufficient.³⁵

The Mosiane case continues to loom large in discussions around GBVH both for its particularly gruesome details and concerns around the efficacy of industry response to such incidents. Furthermore, real questions remain about progress in combating GBVH on mine sites in the intervening years. Interviewees suggested that fear of physical assault at work remains, while violent incidents suffered by women mineworkers continue to occur. Although the industry is now required to employ an increased number of women, interviewees conveyed that efforts to ensure truly safe workplaces for these employees have fallen short.

The case of Cynthia Setuke, another victim of rape and murder in a platinum mine in Rustenburg, stands out. She was attacked and murdered on October 9, 2013, by a fellow worker. Shortly before her death, she had reportedly complained that her workplace underground was dimly lit and isolated from other sections of the mine, making working conditions particularly unsafe.³⁶

Interviewees for this study reported that the racial legacy of mining has been preserved in positions below the middle management and supervisory level, and that this has a double discriminatory effect on women.³⁷ Another interviewee reported a sexual and physical assault by a male co-worker while traveling home after attending the wedding of a third co-worker.³⁸ A number of interviewees commented on the high prevalence of aggressive, non-consensual touch in the close quarters of their underground workspaces.³⁹ Indeed, one interviewee confirmed that a woman is sometimes

"touched on her breasts."⁴⁰ Two interviewees, a woman miner from KwaZulu-Natal and a public interest attorney, respectively, recalled a reported case wherein a man intentionally ejaculated on a woman in a mineshaft.⁴¹ Similar incidents were reported by a group of female mineworkers in the Rustenburg area, as well as a male mineworker from the same area.⁴²

A number of interviewees commented on the high prevalence of aggressive, non-consensual touch in the close quarters of their underground workspaces.

Lift carriages used to transport mineworkers deep into mine shafts represent an everyday trauma for some women. They are often tightly packed into a crowd of mostly male workers in these cages, as staff are transported from the surface. One mineworker reported that there are usually 60 to 70 people in a cage or "skip."⁴³ Some women reported that once inside, "you will have men touching, inappropriately moving against, spanking and otherwise groping the women."⁴⁴ One interviewee described witnessing a woman in the cage begging for help, as a male co-worker was "touching her private parts" while she was stuck and unable to move. Despite her repeated pleas, no one intervened.⁴⁵

One National Union of Mines (NUM) representative also recalled a recent incident at a mine in the Free State province in which 500 women were reportedly stripped naked by South African Police Service officers and security guards.⁴⁶ The reason for the search was reportedly a suspicion that women workers were hiding diamonds and minerals from *zama zamas* (informal miners, often unlawfully present in formal, underground mining operations) in their genitals. Reportedly, neither the police nor security guards found anything to substantiate these suspicions.

The mining house has purportedly denied NUM's allegations regarding the Free State incident. However, in another instance reported by South Africa's largest business newspaper, more than 40 women workers were suspended after they refused to strip as part of measures to stop workers from delivering food and other contraband to informal miners.⁴⁷ These incidents are notable as egregious, physical violations of women workers' rights to privacy, bodily integrity and dignity.

Verbal and Quid Pro Quo Harassment

According to interviews conducted, verbal harassment was the most frequent form of GBVH experienced by women mineworkers. Women workers reported frequently being referred to by male colleagues as "my sweetie" or "sweetness," "*dudlu utombazana*," "voluptuous," or "*bootylicious*," in reference to full-figured women.⁴⁸ This was reported as sometimes accompanied by unwanted touching.⁴⁹ Men also reportedly used the term "*uya gula*" to target slim women, suggesting that they appeared "sick, not well fed, less of a woman."⁵⁰

Such harassment also includes general and gender-based provocation. One reported example included an incident in which a female electrician was "shoved" underground and told that "she stinks and does not wash under her "privates."⁵¹ Interviewees reported men having visible erections in the close quarters of the lift cages transporting workers in and out of the mine shafts, and that women were frequently whistled at when they walked by male colleagues.⁵²

Interviewees expressed fears that when women ignore this harassment, male workers might go a step further to belittle the female worker with additional derogatory terms and objectifying language, or worse. One woman miner described that when a new female miner joins the workforce, she is often told by a group of male miners that “she is theirs and that they are dating.”⁵³ There appears to be little room for women miners to push back against such claims, for fear of escalating the objectification and victimization.

Other forms of harassment experienced by interviewees included requests for sexual favors from women miners in exchange for performing their physical work, and suggestions that men would pay for the ability to have sex with a woman colleague,⁵⁴ commonly known as *quid pro quo* harassment. As a general matter, interviewees pointed to the fact that machinery and equipment in the mines are not set up, used or designed in a manner that is sensitive to the particular needs of women, can enable an environment in which sexual favors from women are traded for assistance from men in completing tasks. Interviewees reported that the production-based team bonus structure common at many mines sometimes gives rise to a practice within groups of male mineworkers, who demand sexual favors (or sometimes money) from women co-workers in order to be “compensated” for their inability to “drill as deep or as fast” as the men. As one interviewee noted, “Production bonuses can drive the wrong behavior because it’s production at all costs, including at the cost of safety and potentially excluding people, sometimes women, who they don’t think can do the job.”⁵⁵

Notably, one male mineworker commented, “having three women and two men in a job created for five men creates an environment where men have to work harder. Productivity has gone down since women were introduced.”⁵⁶

Women may be pressured to provide sexual favors to male workers in positions of authority in exchange for career advancements, such as promotions, or changes.

Opaque policies and processes for promotions and mine workplace transfers may also play a role in leaving women at risk of sexual abuse. One expert noted that a lack of clear policy around these processes can leave women vulnerable to the whims of their (often male) supervisors when they seek professional advancement.⁵⁷ In these scenarios, women may be pressured to provide sexual favors to male workers in positions of authority in exchange for career advancements, such as promotions, or changes.⁵⁸ The incident that purportedly prompted the recent underground strike of some 200 miners at a

Rustenburg platinum mine centered on precisely such a scenario, in which a mine captain purportedly tried to demand sexual favors from a woman, in return for a full-time job.⁵⁹ Another interviewee reported that, for example, women who want to be moved from a night shift to a safer day shift sometimes trade sexual favors in order to obtain such a transfer.⁶⁰ Similarly, it was reported that mineworkers require strong relationships with their superiors in order to obtain roles above ground, which are less physically demanding, and that can result in women providing bribes or sexual favors in order to obtain such jobs.⁶¹

Enduring these daily humiliations and violations, and working within a system that is perceived by some women workers to require their submission to sexual *quid pro quo*, was viewed by the interviewees to be simply part of the job. Indeed, one mineworker reported, “what happens underground, stays

underground.”⁶² They fear losing hard-sought employment or experiencing heightened harassment and assault for revealing these behaviors and attacks to management or the authorities. Any effective effort at GBVH prevention in the mining workplace must therefore respond to concrete lived experiences and the fears that women workers have about revealing these violations to those with the power to change their circumstances as mine employees.

Unfair Discrimination

Interviewees also highlighted discrimination across a range of issues in discussions regarding GBVH. Strictly defined, workplace discrimination against women is not automatically regarded as GBVH under domestic law. Unfair discrimination refers to the differential treatment of a person based on inherent characteristics, which has the potential to impair a person’s dignity without a legitimate reason.⁶³ Alternatively, unfair discrimination may also arise where law or conduct perpetuates or does nothing to remedy existing disadvantages and marginalization against persons or groups that have been subjected to past discrimination, therefore having an unfair impact.⁶⁴

Interviewees repeatedly referenced particular indignities related to their gender in the context of their work in the mines that they regard as discriminatory, and which highlighted their particular vulnerability. These intersecting vulnerabilities, from the perspective of the mineworkers interviewed for this study, both reflect workplace cultures that do not place appropriate value on the needs of women employees and may, in fact, create a fertile environment for GBVH. This is particularly the case given that discrimination, especially when perpetuated against a minority group such as women in mines, reinforces perceptions of inferiority or difference and allows an environment where GBVH occurs or is normalized.

Discrimination, especially when perpetuated against a minority group such as women in mines, reinforces perceptions of inferiority or difference and allows an environment where GBVH occurs or is normalized.

For example, mines are obligated to provide personal protective equipment to all their workers in fulfilment of their workforce safety obligations. However, PPE used in mining is typically designed for the male physique and is inadequate in terms of both comfort and safety for female workers.⁶⁵ Among other issues, uniforms in most mines are one-piece overalls that present challenges to women when they need to use the toilets underground—which is likely more often than men due to menstruation. When wearing one-piece work suits, women must remove all their clothing, including their head lamp, hard hat, the battery belt tied to their waists and then pull the full suit down, to their underwear, before being able to use a toilet. Not only does this make them particularly vulnerable to the ordinary dangers of working underground, but also to the threat of sexual harassment and violence. In addition, PPE designed for men is often revealing, by virtue of being ill-fitting when worn by women. As one interviewee explained, “men stare.”⁶⁶

Problems related to the provision of appropriate PPE for women have been acknowledged by government and industry for some time, including in an illustrative guide published by the Mine Health and Safety Council in 2015.⁶⁷ The guide noted that “without proper PPE for women, they are more likely

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to be exposed to health and safety risks.”⁶⁸ More recently, the Minerals Council noted that “[e]nsuring that PPE and work clothing fits properly, and is fit for purpose, is key to allowing female employees to be fully and safely active in their jobs.”⁶⁹

Domestic law requires the employer to accommodate the employee as far as is reasonably practicable when unable to meet the inherent requirements of the job.⁷⁰ This can move beyond the direct duty of care to providing support through specific and sensitive accommodation. Further, the South African Basic Conditions of Employment Act prohibits employers from requiring or permitting a pregnant employee or an employee who is breastfeeding to perform work that is hazardous to the health of the employee or the health of her child. This requires employers who employ women of childbearing age to assess and control risks to the health of pregnant or breastfeeding employees and that of the fetus or child.⁷¹

The mining environment, particularly underground work, is especially harsh for expectant and post-natal women. The industry has acknowledged its obligations to female workforce in this regard, noting that: “[t]he fact that almost every woman who is physically able to work underground will be of child-bearing age also has implications for that work. No pregnant woman may work underground, and the mine is obligated to provide safe above-ground work during pregnancy, maternity leave and breastfeeding.”⁷²

Industry analysis has identified specific occupational health and safety concerns relating to pregnancy and has considered accommodations.⁷³

Despite these acknowledgments, however, interviewees conveyed continued challenges. “So many women get miscarriages because they’re trying to hide the pregnancy,” reported one interviewee, suggesting that job security is frequently in question when women announce their pregnancies.⁷⁴ Another expert in the field noted that once a woman has reported her pregnancy, a mine will generally try to find her “light duty.” If it cannot, it will impose early maternity leave, which can quickly become unpaid [leave].⁷⁵

Similarly, once a woman returns from maternity leave, she frequently goes back to the same job while she is still breastfeeding. As a general matter, female workers at that stage must consider the additional financial responsibility of a new child, balanced with the need to attend to their postnatal physical and psychological needs. In the mines, however, women not only lack the flexibility needed to breastfeed, they must also undergo testing for heat endurance, which can negatively affect breastfeeding.⁷⁶ Mandatory body mass requirements for underground workers may also have particularly negative consequences for new mothers.⁷⁷

These practices, the impact of which can only be experienced by women, perpetuate the existing disadvantages and marginalization of women in mines addressed by many interviewees. They may aid in entrenching a patriarchal culture in which women are undervalued and vulnerable to GBVH, frequently with limited access to recourse, as set out below.

Factors Facilitating GBVH in South African Mines

On the most basic level, and in the words of the industry itself, the single “best way to ensure women’s safety at work is to change the mindset of their male colleagues. In an often patriarchal and sexist South African work context, it is men’s attitudes to women that must change for workplaces to be safe.”⁷⁸

The prevalence of GBVH in South African mines is, of course, the result of a number of intersecting factors beyond the fundamental challenge of breaking down a deeply ingrained culture of sexism in a country with extremely high rates of gender-based violence.⁷⁹ These include: the physical conditions underground, the low ratio of women to men in those workplaces, and difficulties with effective supervision.

In an often patriarchal and sexist South African work context, it is men’s attitudes to women that must change for workplaces to be safe.

Conditions in the Mine

Sexual assault and harassment can occur both above and below ground at mines: in dressing rooms, washrooms, toilets, cages transporting miners underground, at the rockface and during the commute to and from work. Interviewees mentioned each of these locations as presenting possible danger to women mineworkers.

Traditional, deep-level mining, which is less mechanized and more labor intensive and often requires long underground commutes in crowded cages and locomotives, appears to be particularly dangerous from a GBVH perspective. One female mineworker explained, “the environment underground is designed for men. I am not saying women need to be taken care of. But being men who have benefitted from a patriarchal system, and it is dark, and they are around women. Men turn into animals.”⁸⁰

In general, incidents of GBVH appear more likely to occur at night, or in dark areas, such as around corners and in alleys that are not visible to people passing by and not recorded on cameras. Women workers can find themselves alone with perpetrators, outside of the range of cameras, with the nearest colleague very far away. The reality of this threat was expressed by a NUM interviewee: “Most of the underground facilities are still dark. There is just not enough light, to the extent that you will not recognize your attacker. If your attacker comes from behind, you will not recognize that person... or who you are really working with....”⁸¹

Moreover, without adequate lighting, cameras or witnesses to corroborate their stories, victims may be deterred from reporting GBVH because they feel they do not have sufficient “evidence” if they are forced to prove that the attack occurred. In contrast, workers above ground benefit from cameras that can record such incidents, and as such, the opportunistic nature of GBVH may be less prevalent in these environments.⁸²

Interviewees indicated that women underground are especially vulnerable when they use ablution facilities, given that these are frequently located in remote areas that are difficult to access, or where

women miners are expected to use the same facilities as men. Alternatively, a thin partition is sometimes the sole divider between men's and women's toilets.⁸³ The Minerals Council has noted as a priority area for improvement the basic addition of "lockable toilets" to improve safety for women in the mines.⁸⁴

Change areas on mine sites represent another location where women miners may face risk. Workers switch from their regular clothes to work uniforms in the change areas, where there is frequently no or limited security.⁸⁵ Further, given that up until the legislated inclusion of women in the sector there were no designated change areas designated for women, those that exist today remain small and lack adequate privacy.⁸⁶

Sexual harassment and violence are also reported to occur during commutes, making the trip to and from work a regular source of stress for women workers. Seemingly innocuous routines such as the early morning bus ride and the evening walk back home from the bus stop are especially risky. In these scenarios, the harassment can come from third parties.⁸⁷

It must be recognized that in order to address these risks at the operational level, some mines have put in place a range of measures. These include mandatory "buddy systems" for women going underground; improvements in dressing rooms and toilet facilities, such as adding locks on the doors; scheduling shift rotations in a way that prevents women from having to leave or arrive at work late at night; and improvements in women's work wear.⁸⁸ Despite these efforts however, many of the women interviewed indicate that these measures are inadequate or poorly implemented, such that they regularly fear for their safety at work.

Low Ratio of Women Mineworkers

Today, women comprise just 12 percent of the mining workforce in South Africa.⁸⁹ While this is a significant increase over the last decade, women still remain in the minority underground. Interviewees indicated that this leaves women miners particularly isolated and vulnerable to abuse, particularly when they are the only woman on a team of men. This sentiment was echoed in 2015 when the Center for Applied Legal Studies at Witwatersrand University submitted evidence pertaining to gender-based violence underground to Dubravka Šimonović, the Special Rapporteur on violence against women, its causes and consequences. "The phenomenon [of GBVH] is occurring in part due to the regulation that

requires 10 percent of all mineworkers to be female. This small percentage, however, means that women are a minority of underground workers and, as such, are extremely vulnerable to sexual violence," said the Center.⁹⁰

Government and industry have also acknowledged that the limited number of women underground presents a safety threat for these workers. South Africa's Mine Health and Safety Council has identified a "buddy system" for women as an important "primary intervention" to create an organizational climate that proactively prevents workplace violence and sexual harassment.⁹¹ The industry has likewise acknowledged

South Africa's Mine Health and Safety Council has identified a "buddy system" for women as an important "primary intervention" to create an organizational climate that proactively prevents workplace violence and sexual harassment.

that “the fact that there are very few other women working near them” indeed presents a safety risk to its women miners.⁹²

Underground Supervision

Interviewees also expressed concerns about the level of supervision that teams working underground are afforded, particularly in combination with other challenging elements of the workplace identified above—including dimly lit areas, limited video recording and the low number of women mineworkers in underground teams as a general matter.

In such environments, robust, regular supervisory practices become particularly important. Although the Mine Health and Safety Act requires that companies must staff mines with due regard to health and safety,⁹³ the simple fact that teams of workers can be spread out over several miles makes it more difficult for supervisors to be able to keep a watchful eye on everyone. Thus, a sole woman miner working within a geographically isolated group of male co-workers may not be seen by a supervisor for several hours. One mineworker explained that while it should be the duty of supervisors to pass through the area that they are working every 30 minutes, underground miners may not see a supervisor for a full day.”⁹⁴

Another interviewee, a control room operator, expressed concern that technology has been used as a cost-effective replacement for, rather than an enhancement of, proper supervision. Although technological tools can in some cases offer innovative security solutions for women workers, these benefits can be entirely undone when the technology is not backed by adequate supervisory mechanisms. The interviewee reported that sometimes women work alone in an office or as belt operators during night shifts where they are unsupervised for long stretches of time. In such cases, it is not uncommon for female employees to be handed radios to call out for help, but nothing stops a perpetrator from taking these radios away from them at any time.⁹⁵ The view of interviewees ultimately appeared to be that physical supervision of the workplace—even when it may cost more and require regular visits to remote workspaces—is a critical step in addressing the safety needs of women workers in the mines.

Addressing GBVH in the Mines

Critical to preventing GBVH in mining workplaces are, *inter alia*, awareness and enforcement of policies in line with legislation; accessible, effective reporting mechanisms; and protection for workers from retaliation or reprisals by employers or co-workers for filing relevant workplace violence or harassment complaints.⁹⁶ While an assessment of the full suite of measures that must be implemented to provide comprehensive protection to women mineworkers from GBVH in the workplace is beyond the scope of this analysis, interviewees repeatedly commented on these elements in particular, describing challenges faced by survivors of GBVH in seeking and obtaining recourse. This appeared to be the case even where companies had made available such mechanisms and support services, suggesting that the existence of a reporting mechanism is insufficient when it is not underpinned by policy and awareness training,

Inadequate Policies and Awareness⁹⁷

Interviewees commented that women workers, their male colleagues and even the broader communities in which they lived were frequently unaware of the rights of women workers in respect of GBVH, or of the resources that may be available to combat GBVH. Most interviewees expressed views that mineworkers across the gender spectrum often do not know of the existence of GBVH policies, even when they are purportedly in force at their workplaces.

Some interviewees highlighted that some mining companies have harassment policies that are unclear or inadequate to deal with the realities of what women mineworkers face. Others noted that written GBVH policies are displayed in the offices of managers but are unknown to workers on the ground. One interviewee noted that sometimes, “[w]hen you go to the managers’ offices you will find those policies in place and our members do not access those offices. So, they put up those policies on the wall just for compliance but deliverance, they don’t do it.”⁹⁸ Workers also noted that where GBVH policies are found posted in shafts, they can go unnoticed due to low literacy rates or language barriers.

The study found that “the majority of mining employees do not know the procedures on reporting sexual harassment.”

Concerningly, these are not new findings. Such reports echo data gathered several years ago in a study commissioned by the Mine Health and Safety Council. After interviewing some 285 individuals, the study found that “the majority of mining employees do not know the procedures on reporting sexual harassment. There is also no access to documents and policies on sexual harassment in their workstations. Lack of support

and resolution of cases of sexual harassment is also a factor for not reporting.”⁹⁹

Another problem identified by interviewees is that rather than develop a specific policy against GBVH, some mining companies simply refer to their general codes of conduct, business integrity policies or company values. A distinct position against GBVH and the manner with which it will be dealt is frequently absent in this type of document or lost in the general nature of the statement. This stands in contrast to best practice, which requires the development of specific, comprehensive policies on workplace violence and sexual harassment in line with existing legislation, and which must:

- Define workplace violence and harassment in precise terms and state clearly the organization's zero tolerance for these acts
- Identify stakeholders' responsibilities and accountability
- Outline the procedures to report and resolve such incidents
- Clearly describe the consequences of violating the policy (and, by extension, the law).¹⁰⁰

While a policy against GBVH cannot be sufficient in and of itself to ensure prevention of the acts, the existence and broad awareness of such a policy is an essential component of a comprehensive approach to ensuring the safety and protection of women in mining workplaces. A key element of deterrence is the knowledge that a perpetrator will be held accountable. This cannot be achieved without policy commitment.

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Insufficient Training

Interviewees spoke repeatedly about the lack of training, even when sufficient GBVH policies are in place at mining operations and companies.¹⁰¹ Where such policies exist, but employees do not know why they matter, or how to interpret them, the likelihood that these documents will provide a true safeguard against GBVH is limited. Mandatory training for all employees is therefore essential to grounding these policies in the reality of mining workplaces and ensure broad awareness and understanding of these positions.

To this end, the Mine Health and Safety Council has committed to supporting South Africa's Women in Mining Regional Tripartite Forums and Women in Mining (WIMSA) Committees in providing regular educational training around GBVH to relevant stakeholders.¹⁰² One such group, the Women in Mining Rustenburg Tripartite Forum frequently provides educational training to mining employees. It has identified sexual harassment as one of five key challenges facing the industry.¹⁰³ Through workshops on GBVH it has conducted, the group has found that men frequently profess to simply not know that "touching a woman or saying certain things [without her consent]" constitutes sexual harassment.¹⁰⁴

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Similarly, an interview with a senior professional at one major mining house that had recently issued a policy on bullying, victimization and harassment¹⁰⁵ indicated that workers were "surprised" that sexualized jokes and inappropriate photos on phones constituted harassment. Reportedly, male employees also queried a policy position barring colleagues from entering into even a consensual relationship, which can raise issues of power imbalances and financial benefits.¹⁰⁶

There can be no question that training on GBVH and related policies is essential to preventing such violence in the mines. Yet, the way information is conveyed in such training is equally critical. Indeed, it is not enough to simply provide training or policy information; Efforts must suit the realities of the

mining workplace and take into account language, use of audio-visual tools, timing of training and the consideration of men-only groups.

Interviewees suggested that training may not always be structured this way. First, it was reported that such training sessions are sometimes held after workers finish shifts. While the sessions may be mandatory, the level of engagement and understanding by the attendees in those circumstances can be limited by exhaustion and hunger.¹⁰⁷ Additionally, rather than establishing regular, routine education to raise consciousness of GBVH among entire workforces, some interviewees reported that such sessions appear to be held almost as an afterthought: either at the end of the working year in December, or only in response to an incident being reported. As one former miner reported, the training sessions seem to be “just a stop and fix” rather than embedded into daily discourse, like other health and safety matters.¹⁰⁸ This stands in contrast to recommended practice, which promotes the provision of sexual harassment prevention training as part of continuous health and safety programs in mines as essential.¹⁰⁹

Educational pamphlets and brochures distributed at some mines were understood to shift the burden of preventing GBVH onto female workers, rather than establishing that preventing GBVH was the responsibility of all workforce members.

It was reported that educational pamphlets and brochures distributed at some mines were understood to shift the burden of preventing GBVH onto female workers, rather than establishing that preventing GBVH was the responsibility of all workforce members. The Center for Applied Legal Studies at the University of Witwatersrand, which has analyzed gender-based violence in mining for several years, reported reviewing pamphlets issued by the Mine Health and Safety Council that included such recommendations as “Ensure that your colleagues are on your side, or that they speak out for you,” “Go get counseling so that you are not taking out your anger on other people if you get sexually harassed,” and “Make sure you don’t get into a taxi or bus alone.”¹¹⁰ Such advice centers on efforts that must be made by women workers to prevent or remedy

sexual harassment or violence, rather than on the obligations of the workforce as a whole to identify, prevent and remedy such acts.

In a similar vein, women interviewed described being told by mine personnel that their clothing was too suggestive, and that these outfits amounted to harassment of men.¹¹¹ Interviewees reported being instructed to comply with a dress code that appears to only apply to women: skirts must, for example, touch below the wearer’s knees. The code was not only applicable on mine sites but also during transit to and from the workplace.¹¹² The dress code applied to women only, while men were permitted to wear shorts and “muscle shirts.”¹¹³ In sum, interviewees reported that they were required to dress a certain way to avoid harassment, rather than employers instituting proper structures and mechanisms to ensure that such behaviors were prevented and to make it understood that a woman’s mode of dress never constitutes an invitation for sexual attention

Based on the interviewees accounts, it is clear that even where sufficient harassment policies exist, written frameworks do not necessarily translate to a shift in operational culture. Extensive, thoughtful and regular training is essential to ensure that policies are respected and enforced, in order to create a workplace in which women workers’ dignity, bodily integrity and privacy are protected.

Ineffective Reporting Mechanisms¹¹⁴

Women mineworkers interviewed identified an additional, key issue in preventing and remedying GBVH—the often lengthy, uncomfortable process of reporting such incidents, at times to individuals the interviewees did not trust to handle matters appropriately or sensitively.

This is of significant concern. Simple, compassionate and transparent reporting mechanisms are critical, both in ensuring recourse and in prevention of GBVH. One interviewee stated that this is particularly the case in South Africa, where a very small number of women report rape cases at all.¹¹⁵ In 2016, the UN Special Rapporteur on violence against women noted in her report on South Africa that despite some commendable measures in improving national mechanisms for reporting GBVH, such efforts were unevenly implemented throughout the country and those willing to report acts of GBVH continued to face re-victimization. She highlighted an urgent need to create standard operating procedures and a conducive environment for reporting cases, meeting victims with understanding, sympathy and foremost knowledge of a positive duty to protect women.¹¹⁶

Simple, compassionate and transparent reporting mechanisms are critical, both in ensuring recourse and in prevention of GBVH.

Regarding internal reporting mechanisms, a number of interviewees suggested that standard operating procedures for reporting GBVH were nonexistent, or at least unknown to them; where they did exist, the convoluted nature of the processes discouraged reporting.¹¹⁷ Indeed, one woman observed that the “piecemeal approach” to handling GBVH at the mine where she works is fundamentally inadequate.¹¹⁸ Such approaches mean that victims lack clarity about the reporting process, certainty in respect to outcomes and concerns around the sensitivity with which their experiences will be treated. Numerous examples were reported during the course of the study. One interviewee, a woman worker at a major mining house, indicated that to her understanding, in order to report an incident, the victim must go through her union. If she is not a member of the union, she must go directly to the mine’s safety department. The safety department will then bring the matter to the production manager, who will flag it for the attention of the general manager or section manager.¹¹⁹ This process is overly complex, cumbersome and compromises a victim’s ability to remain anonymous. Similarly, another worker stated that a survivor has to first report to her team leader, then to her foreman, and then to the mine safety department.¹²⁰ Only after traveling through this chain of command do the matters appear to arrive at a disciplinary committee, by reaching the human resources department.¹²¹

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In an interview, a NUM representative described the procedure for lodging a complaint with her union as involving a first report to an internal mine supervisor and, if the issue is not successfully resolved, then approaching the human resources department as well as the union office by speaking to a “women’s representative.” Only after the complaint has reached that point will the union begin its investigation.¹²²

One group of interviewees explained that when they attempted to lodge a complaint, the company safety department would simply try to avoid engagement and instead have the union deal with the situation. If the worker is not a union member, the union will be unable to assist with the matter, and the report effectively stalls.

Where women workers understand that a process effectively protects their abusers, they simply will not make use of that process.

Consequently, even at mines with an GBVH policy in place, an ineffective or unclear reporting process renders it ineffective in preventing or remedying incidents. As one interviewee pointed out, top management might hold progressive views on the subject, and the relevant policy may reflect them, but that will not matter to GBVH survivors and will not be a deterrent to future incidents if operational management fails to support the reporting process.¹²³ Where women workers understand that a

process effectively protects their abusers, they simply will not make use of that process.

Distrust of Reporting Mechanisms

In addition to complexities related to the efficiency of reporting processes and mechanisms, interviewees further expressed worries about insensitivity by or distrust of those charged with handling such complaints.¹²⁴ This distrust appears to directly impact survivors' willingness to make use of the available reporting mechanisms. Interviewees frequently perceived there to be a dearth of specifically trained and designated GBVH officers on mine sites. In their view, this leaves oversight of these issues to operational human resources departments and mine managers, who may lack the requisite training or incentive to handle such matters appropriately¹²⁵—including by respecting confidentiality where appropriate and following a survivor-centered procedure more generally.

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In one egregious example, an interviewee told of a woman who reported harassment to her supervisor, who then slapped her for alleging the incident took place. She indicated that this was not uncommon: supervisors are usually men, and the perception is that they are more likely to believe other men in such circumstances. After the interviewee informed the human resources department of the circumstances, including being slapped for her attempt at reporting, her supervisor was made to apologize to her. This was the supervisor's only sanction.¹²⁶

Inappropriate handling of such cases, as reported by interviewees, ultimately discourages reporting of GBVH at all. A study undertaken by one mining house across its multiple mines found these views to be widely held. The study was prompted by what appeared to be a low level of formal reporting of GBVH incidents, and it ultimately found that women often did not feel safe to file reports. This was related to a distrust of human resources systems, or fear of potential victimization by colleagues.¹²⁷ However, an employee of a mining house interviewed for this report, noted that since the company had initiated GBVH awareness-raising campaigns at its mines and strengthened reporting mechanisms for bullying,

victimization and harassment, individuals appeared more likely to report incidents.¹²⁸ Although verification of this particular conclusion was not possible within the limits of this report, global best practice indicates that “[s]ystems for reporting and making complaints should be effective, transparent, and trusted. Any worker—as well as bystanders and witnesses—should be able to make complaints confidentially to the employer through multiple routes. If complaints are not handled properly, confidentiality is breached, no independent investigation is carried out, or if the outcome is not considered to be fair or appropriate, workers will lose trust in the system and may not report future cases.”¹²⁹

Victimization¹³⁰

Concerns expressed by interviewees about a lack of discretion by human resources officers when reports were made were directly tied to fears of being negatively “labeled” as “a troublemaker” or “problematic,”¹³¹ or simply seeking money.¹³² Interviewees voiced concern about such labels being “spread throughout the mine,” with a range of adverse consequences for the reporting employee.¹³³ One interviewee reported that once such a reputation attaches, “you [then] have to work twice as hard as everyone else to prove your worth, and you may be transferred to a different mine shaft.”¹³⁴ She noted that, “when you do report, even though it is rare, you often lose the case, are transferred, or are demoted.”¹³⁵ Another interviewee characterized circumstances for many women mineworkers as difficult in the first instance, with communities continuing to see mining as a predominantly male occupation. This can translate into a GBVH survivor feeling somehow responsible for what has happened to her, given her decision to work in that environment.

When you do report, even though it is rare, you often lose the case, are transferred, or are demoted.

Fears of victimization appeared to translate directly into an unwillingness by the women mineworker interviewed to engage in a reporting process, even when it was made available. Yet all of the women interviewed for this report had stories of experiencing GBVH, or knew someone who had, either at the workplace, or by a colleague outside of work.

In one such incident, a woman was sexually and physically assaulted by a male co-worker while traveling home after attending the wedding of a third co-worker. The woman laid charges against the co-worker with the police. When she returned to work, her colleagues at the mine had already heard about the incident and her subsequent report to the police. She was then negatively “labeled” for reporting the incident and for identifying her co-worker. As a result of pressure from her co-workers, she dropped the case.¹³⁶

Hostility from co-workers for reporting GBVH featured prominently among interviewees as a reason to use reporting mechanisms sparingly. Interviewees suggested that the practice of “victim blaming” could come from women co-workers, who questioned their motives for reporting attacks, as well male co-workers, who resented them for exposing their fellow male colleagues.¹³⁷ The phenomenon of victim blaming by other women miners was attributed to the fact that women in the mines are often pitted against each other for better jobs.¹³⁸ Prevalent patriarchal beliefs also appeared, at times, to

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result in women rationalizing and downplaying what had happened to them or convincing themselves that the incident was somehow a result of their own behavior.¹³⁹

Women also reported being conditioned to consider the consequence that reporting GBVH incidents would have on a male perpetrator and his family.¹⁴⁰ Another dimension of this, which recurred throughout interviews, was that many women did not report because they were worried about retaliation by or impact on families of the alleged perpetrators, many of whom lived in the same community as the workers, and where they all knew each other.¹⁴¹ One woman miner in Rustenburg warned that if a woman reports a co-worker for GBVH, “he either hires to kill you, bewitch you, [or] sends people to hurt you.”¹⁴²

The already challenging workplace dynamics are made infinitely more difficult for women mineworkers in these circumstances. The risk/benefit analysis for most women renders reporting pointless, or even harmful. In addition to the barriers to reporting set out above, in many cases, the ultimate decision against reporting is a practical one: Interviewees felt that reporting GBVH may place women at risk of being marked for retrenchment by their supervisors, with one interviewee suggesting that women mineworkers are conditioned to consider the negative impact reporting might have on themselves and their ability to work in the future.¹⁴³ For many women, this risk is simply too great, particularly given the country’s staggering unemployment rates and small quotas for women in the mining industry. An interviewee from HDSA explained: “So, if there is 100 women going for maybe 10 jobs that are on offer, the 10 that do make it in also get some kind of status symbol. And because the mine does not [may not] provide a service for rape survivors, it is also very difficult for them to go and report to ... Thuthuzela Care Centers (government facilities introduced as part of South Africa’s anti-rape strategy), because of the status that they already have. It breeds a culture of silence. They have to deal with it in one way or another because the other 90 [women] are still waiting.”¹⁴⁴

Given the ubiquity of victimization within and outside of the workplace, and its effect on a survivor’s likelihood of reporting abuse, it is imperative that companies prioritize and emphasize confidentiality through victim-centered reporting mechanisms and monitoring systems.

Addressing GBVH: Structural Barriers

In addition to various challenges encountered by women survivors of GBVH in the mines and as set out above, interviewees identified a number of more systemic obstacles that may work to preclude effective prevention and recourse of GBVH incidents when they occur in the mining workplace. These include a perceived lack of cooperation around this issue among key stakeholders, including industry and labor, an ingrained lack of trust in local government authorities and historically limited investment in mining communities. Together, interviewees identified these issues as contributing to their own lack of faith in the possibility of sensitive, fair resolution of GBVH incidents and the broad prevention of these incidents in the first place.

Industrial Relations¹⁴⁵

A number of interviewees reflected on what appeared to be limited cooperation between unions and companies in respect to tackling the GBVH challenge. From their perspective, this is rooted in the different imperatives that drive each of these entities and underlying tensions between them.¹⁴⁶ One interviewee, a NUM member, explained that GBVH training can become ground for competition, noting, “The employers take you for development, provided you move away from the trade unions. So, you will find that you’ve got women that would say, I know my rights, I know what the trade union has done for me, so if I have to get trained for me to be more exploited, I’d rather stay here.”¹⁴⁷

The same interviewee noted that NUM had encountered difficulties in conducting workshops on GBVH on “company time,” stating that, for instance, “the employer will tell you that if you want them out for training as ordinary members, the money has to be deducted from their salaries.”¹⁴⁸ This means that if the union takes responsibility to train and educate workers, it has to do so during the workers’ time off, which presents similar issues as set out above in terms of effectiveness. Members are frequently tired and busy with other tasks in their time above ground. Interviewees suggested that achieving broad-based understanding of rights and obligations in terms of GBVH would seem to require a collaborative, cohesive approach between labor and industry.

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This is not to say that there have been no positive developments by both labor and industry, as well as government, toward addressing GBVH in the mines. In 2011, South Africa’s Mine Health and Safety Council commissioned and published a lengthy study, *Safety and Security Challenges Impacting on Women in the South African Mining Industry*, which definitively identified GBVH as a problem, and put forward a range of recommendations, including practical guidelines for the prevention of violence and sexual harassment in the mining industry.¹⁴⁹

More recently, between 2019 and 2020, the South African Minerals Council, the main mining industry body in the country, published the White Paper on Women in Mining and set aside a budget to guide implementation of certain priorities identified.¹⁵⁰ The five-page document acknowledges the low percentage of women in the mining workforce despite that “the participation of women in business has been shown to positively influence the bottom line of companies and to contribute to enhanced sustainability” and notes that “for mining companies, gender-inclusive workplaces lend themselves to being safer.”¹⁵¹ Additional findings include, importantly, that “once employed, on-the-job challenges at mining operations lead to women leaving mining roles.” According to the Minerals Council, those primary challenges include pregnancy and maternity leave, safety and security, and failure of workplaces to accommodate the needs of women, such as through appropriate sanitation and ablution facilities.¹⁵²

Plans set out in the document indicate that a Minerals Council task team would be set up to oversee implementation of the white paper’s specific priorities for action, including to: “develop policies and programs that advance and protect women, e.g. policies on gender-based violence, sexual harassment and alternative placement during pregnancy,” as well as to “adapt workplaces to accommodate women, including: ablution facilities, sanitary bins and emergency sanitary pads, lockable toilets, changing rooms, child-care and lactation rooms, ensuring safety of women (through improved security, moving away from crowded cages, and the installation of alarms and cameras).”¹⁵³

Such acknowledgements and recommendations would appear to be important practical steps toward elimination of GBVH against women on mine sites. Likewise, the white paper itself could be an important tool for affected women mineworkers to use in holding employers and the industry as a whole accountable. Certainly, from the perspective of the women mineworkers, the trade-off between additional profit and their employer being able to ensure their safety, should hardly be a choice at all.

Lack of Trust in Government Authorities¹⁵⁴

In addition to concerns about human resources departments on mine sites, many interviewees highlighted that women do not report GBVH cases because they also do not trust social workers or the police assigned to their cases.¹⁵⁵ Interviewees expressed concerns about confidentiality, competence and an insistence that survivors “bring evidence” to bolster their claims before investigations would be launched. One former mineworker explained her conundrum: “In most cases when you report, they just

Women do not report GBVH cases because they also do not trust social workers or the police assigned to their cases.

say, ‘If you are serious, bring evidence.’ How could you bring evidence from underground because we’re not allowed to use cellphones underground?”¹⁵⁶ Similarly, a woman mineworker from another operation confirmed, “[s]o there is no one who can say, ‘yes, I saw him,’ So even if you were to report, there is no one, there is no witness who witnessed it. So, it’s your word against the perpetrator’s.”¹⁵⁷

During an interview, a shop steward from the South African Police Service who used to work with victims of domestic violence and rape commented that if a woman is raped at a mine the police would only become aware of it if she were to report the incident, since “mines are private and the police are only permitted in with permission.” From the perspective of the interviewee, women generally do not speak up because there is a culture of silence around GBVH in the mines.¹⁵⁸

However, interviewees attributed their decision not to report such crimes to a range of factors. Independent studies have shown that women in the Rustenburg area in the heart of South Africa's platinum belt are both highly vulnerable to rape, and extremely reluctant to report due to fear and shame.¹⁵⁹ Interviewees also voiced doubts about the efficacy of the criminal justice system and its ability to approach such matters in a survivor-centered manner. Instead, they expressed fears of being forced to contend with further victimization during police investigations.¹⁶⁰ In an interview with Médecins Sans Frontières (MSF), which runs a sexual and gender-based violence project in Rustenburg, this issue was discussed in detail. MSF explained that GBVH may not be reported because some healthcare centers insist that women must approach the police first, which can be a "frightful ordeal."

Fear or distrust of the police can also have direct consequences for the health of survivors of GBVH. MSF noted that the government-operated Thuthuzela Care Centers, the only available service providers dealing with GBVH in many areas, actually ask for a police case number before they treat the survivor.¹⁶¹ For those who fear the police, seeking care from such facilities is not an option.

Finally, even where survivors are open to seeking justice through the legal system, interviewees noted that they could not be confident of their personal security in the aftermath, and thus may decline to pursue charges. It appeared that interviewees held the view that where perpetrators were sanctioned, survivors may still be at risk of being sent to or forced to return to the same place of work as the perpetrator. Indeed, in cases where reaching production targets can be impeded as a result of moving employees around, this can have difficult consequences for survivors. In the words of one former mineworker, "People have had to go back to the same place to work with the same people... They believe in teamwork... We won't meet the target of production because if you're going to move around people, each and every person will come and report a certain matter."¹⁶²

Even where survivors are open to seeking justice through the legal system, interviewees noted that they could not be confident of their personal security in the aftermath, and thus may decline to pursue charges.

The same concerns regarding the risk of being victimized at work for having used internal reporting mechanisms appeared to weigh as heavily on interviewees with respect to seeking redress through the criminal justice system. To some, it may seem better just to keep quiet than risk stigmatization or victimization in the workplace.

Mining Methods and Community Impacts

A number of interviewees highlighted the nature of mining as a particular systemic issue that poses additional challenges for the eradication and prevention of GBVH. An evolving business practice of hiring subcontracted workers for platinum mining results in a constant influx of new, unknown and often temporary workers. One interviewee suggested that this may impact the security of women workers, given that it allows for increased anonymity in the workforce.¹⁶³

Another aspect of modern mining that gave some interviewees cause for concern is the rising incidence of unauthorized or informal mining within particularly large and old operations. For example, there have

been reports of women being assaulted by men entering mines illegally through unauthorized entry points. The rape of a female worker by a suspected illegal mineworker at Thembelani Mine in Rustenburg in March 2015 was a brutal manifestation of this danger.¹⁶⁴ One interviewee indicated that mine sites are not always as secure as people believe, and it is “easy” in some cases for unauthorized individuals to gain access.¹⁶⁵ Unauthorized individuals underground pose a challenge to existing supervisory mechanisms by exposing women workers to individuals and groups who are more difficult to identify.

The very size and structure of mining companies also seems to factor into their ability and willingness to robustly pursue an end to GBVH at their operations. One interviewee suggested that mines with shorter lifespans, which do not have future business prospects, may prioritize profit maximization over sustainable business. Such “non-core” issues as GBVH training and education campaigns, are more likely to be neglected, along with other necessary interventions identified by the Minerals Council in its white paper, such as upgraded security and lighting underground. Women mineworkers contrasted the situation at one workplace when it was under the control of a major, publicly listed multinational company versus when the individual mine was purchased by a smaller company. They noted that the former espoused values of safety, passion and teamwork, while the latter “has no values”, and “has turned the mine houses into slaughterhouses. As a result of [the major company] leaving...the norms have changed.”¹⁶⁶

Conclusion

While South African law has made strides in addressing non-discrimination, violence and harassment through a plethora of post-apartheid equality and labor laws, it has not adopted a sufficiently gendered lens through which to view occupational health laws or sector-specific regulation, such as mining. As a result, while women have been integrated into the mining sector over the past 20 years, the workplace has not been transformed, or even meaningfully altered, to accommodate them. This lacuna illustrates the ways a gendered lens and greater awareness of the context of a national crisis with regard to GBVH must be integrated into occupational health and safety laws, regulations and workplace policies. Additionally, a substantive understanding of equality requires not only the use of quotas, but also that the workspace and arrangements be transformed to accommodate women working in the mining sector, to respect and promote their inherent dignity and to solidify their status as valued workers alongside their male counterparts.

A gendered lens and greater awareness of the context of a national crisis with regard to GBVH must be integrated into occupational health and safety laws, regulations and workplace policies.

The new ILO Convention 190 provides valuable guidance on state and employer obligations—including in the context of occupational safety and health. The convention prohibits “a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm” that is “directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.”¹⁶⁷ This definition covers a broader spectrum of abuses that women workers report experiencing at work, including those interviewed for this report. Importantly, its provisions apply to “the world of work including in the course of, linked with or arising out of work.” This means that its protections extend beyond the formal areas in which work takes place to include all public and private spaces linked to the workplace, including on transportation, in break rooms or canteens, bathrooms and other places. This reflects the experiences of women workers, including those interviewed for this paper, who have been subject to violence and harassment in multiple places linked to work. It is yet to be ratified by South Africa.

This paper suggests that the persistence and prevalence of GBVH in South African mines, as experienced by the interviewees, is the result of an amalgam of factors. These include the particular socioeconomic context, patriarchal gender norms, barriers to effective management of the issue at the mine site level and perceived inadequacies of government authorities. Although the factors underlying and sustaining GBVH in mining are complex, multifaceted and interrelated, it is a mistake to conclude that they are impossible to resolve, as appears to have been recently recognized—at least in part—by the Minerals Council itself, in its recently published white paper. Appropriate, comprehensive responses to GBVH must ultimately be the product of broad and deep consultation with affected women and their representatives.

Although the factors underlying and sustaining GBVH in mining are complex, multifaceted and interrelated, it is a mistake to conclude that they are impossible to resolve.

The call for such widespread interventions, and indeed an overhaul in the way that mining workplaces operate in respect to this issue, appears to be growing louder. Recognition by the Minerals Council that mining companies led by women are more profitable, and that gender-inclusive workplaces are safer, matters.¹⁶⁸ And the Mine Health and Safety Council's focus on the issue of GBVH suggests that experiences like those described by the women workers interviewed for this paper cannot continue to be the norm.

In terms of its obligations under international law, South Africa must pursue “by all appropriate means” and “without delay” a policy of eliminating discrimination against women, including gender-based violence against women. This obligation is of an “immediate” nature and delays cannot be justified on cultural, economic or religious grounds. Under CEDAW, the failure of a state party to take all appropriate measures to prevent acts of gender-based violence against women when its authorities knew or should have known of the danger of violence, or a failure to investigate prosecute and punish/provide reparations to victims of such acts, provide tacit permission or encouragement to acts of gender-based violence against women.¹⁶⁹

The series of high-profile cases of violence against women in the mines of South Africa, as well as the subtler, but perhaps more pervasive incidents of discrimination and harassment against women mineworkers as told through the stories of the interviewees in this paper, highlight that women working in the mining sector are indeed exposed to particular dangers. In these circumstances, the failure to prevent GBVH amounts to granting tacit permission to perpetrators. Action must be taken when the stakes are so high.

Recommendations

- 1. South Africa must immediately ratify ILO C190 on Violence and Harassment at Work.**
- 2. South Africa must ensure that occupational health and safety laws and policies, as well as sector-specific laws and policies, clearly obligate employers to prevent and eliminate GBVH:**
 - The Mining Charter should be amended to extend employer obligations with respect to prevention and elimination of GBVH, and require special measures be adopted for women working in mining, who face particular risks of GBVH.
 - Compulsory GBVH risk assessments should identify safety lacunas and be undertaken, in consultation with workers and unions.
 - It should be a stand-alone precondition for acquiring a mining license that right holders commit to the prevention and elimination of GBVH.
- 3. Employers must adopt reporting systems that are confidential and independent:**
 - Women working underground require an efficient incident reporting system that is easily accessible. Such reporting systems must also ensure confidentiality, with anonymity afforded to the reported and/or survivor.
 - Mines must collaborate with the SAPS and external medical and psychosocial support facilities to deal with emergency incidents that are reported. An adequate response to GBVH and harassment will further encourage reporting and awareness.
 - All workers should be informed that victims of sexual assault have the right to press separate criminal or civil charges against their perpetrators.
- 4. Mandatory and effective education and training with respect to laws and policies on GBVH:**
 - Increasing awareness is critical. Policies addressing GBVH should be printed in all official languages, displayed conspicuously throughout the mining shafts, and should be widely and regularly promoted through interactive workshops.
 - Policies should be included in employment contracts, clearly stating the repercussions for GBVH violations.
 - Regular gender-sensitivity training should be made available. Programs must be launched to train male workers about gender sensitivity and discuss GBVH.
 - In order to facilitate positive systemic change, industry must provide education and counseling to rehabilitate perpetrators in cases that are not likely to reach the level of criminal prosecution.

5. Women should be fully and equally integrated in the mining sector:

- Underrepresentation, not only below ground in the mines but also in positions of power within the mining industry, must be addressed.
- Mines and mining companies should regularly review the representation and participation of women in senior-level decision-making structures.
- Employers should increase the number of women represented in the mines at all operational levels, and in positions on the mines with key decision-making authority.
- Operational environments must be adapted to ensure the basic safety of women mineworkers, including establishing safe, private ablution facilities; improving security through the installation of lights, alarms and cameras; and providing specific protections in areas identified as high risk, including cages and remote underground workplaces.

Annex

International Law on GBVH

South Africa is bound by its international commitments with respect to prevention and elimination of gender discrimination and GBVH.¹⁷⁰ While gender-based discrimination and violence have long been condemned by the international community, the legal definition of GBVH has not always been clear. However, in the past five years, the Committee on the Elimination of Discrimination against Women, the expert body established to review progress for women in those countries that are state parties to the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) has issued a number of general comments on the matter. The International Labor Organization (ILO) passed its milestone Convention 190 on Violence and Harassment at Work, including gender-based violence and harassment, in 2019. South Africa has yet to ratify ILO Convention 190. It is beyond the scope of this paper, but additional reforms in law and in practice will be necessary in order to comply with that convention.

1. CEDAW

CEDAW was passed over four decades ago, but the text did not address gender-based violence. However in its General Recommendation No. 19 of 1992 the CEDAW Committee specifically condemned gender-based violence as an impermissible form of discrimination under the CEDAW.¹⁷¹ More recently, in Recommendation No. 35 of 2017, the Committee defines gender-based violence against women as involving “multiple forms including acts or omissions intended or likely to cause or result in death or physical, sexual or psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.” It recognizes that gender-based violence is often exacerbated by factors such as migration and the globalization of economic activities, including extractive industries.¹⁷²

Recommendation 35 obligates states to pursue “by all appropriate means” and “without delay” a policy of eliminating discrimination against women, including GBVH. Under Article 2(e) of CEDAW, states are responsible for failure to take all appropriate measures to prevent, investigate, prosecute and provide reparation for acts or omissions of non-state actors that result in gender-based violence against women. States are also obligated to ensure that their laws and institutions function effectively in practice and that these laws are diligently enforced. The failure of a state party to take all appropriate measures to prevent acts of gender-based violence against women when its authorities knew or should have known of the danger of violence, or a failure to investigate, prosecute and punish/provide reparations to victims survivors of such acts, is considered to provide tacit permission or encouragement to acts of gender-based violence against women, and constitutes a human rights violation.

2. ILO

Although not yet in force, Article 1 of the ILO’s recent Convention 190 on Violence and Harassment promises to deliver to international law what will be the most concrete, comprehensive and inclusive legal definitions of GBVH in the workplace:

- (a) the term “violence and harassment” in the world of work refers to a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or

are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;

- (b) the term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex or gender disproportionately and includes sexual harassment.¹⁷³

In terms of C190, states are obliged to “respect, promote and realize” the right of everyone to a workplace free from violence and harassment.” Article 4(2) imposes a requirement on states to adopt an inclusive, integrated, gender-responsive approach to the prevention and elimination of violence and harassment at work, “in consultation” with “representative” employers and workers organizations. The broad framework envisaged by C190 for employers to address GBVH, includes taking psychosocial risks into account, adopting relevant workplace policies, and conducting violence and harassment assessments in order to identify risks that arise from working conditions and arrangements, from discrimination or gender, cultural and social norms, and third parties, which render workers more vulnerable to gender-based violence and harassment at work. Recommendation 206 recognizes that particular measures might be required in occupations and work arrangements in which exposure to GBVH might be more likely. This process is intended to guide states and employers in identifying gendered harms that might on their face be invisible and take steps to prevent and address GBVH at work.

3. GBVH at the African regional level

Regionally, the African Charter on Human and Peoples’ Rights (or Banjul Charter) reaffirms the rights of every human being to respect for life, dignity, security and to work under equitable and satisfactory conditions. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (or Maputo Protocol) imposes upon states the duty to condemn discrimination and violence against women. It condemns “harmful practices” affecting women, described as “all behavior, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity.”

In 2003, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (The African Women’s Protocol) defined “violence against women” as “all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivations of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.”¹⁷⁴ The African Women’s Protocol goes further than CEDAW and expressly prohibits all forms of violence against women, including sexual violence. Article 3(4) protects the right to dignity, which includes the state’s duty to protect women from “all forms of violence, particularly sexual and verbal violence.”¹⁷⁵ Article 4 protects the right to integrity and security of the person, which includes a duty upon states to “enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex whether the violence takes place in private or public.”¹⁷⁶

In addition, sub-regional bodies have introduced relevant binding instruments pertaining to women’s rights and sexual violence, such as the South African Development Community’s binding Protocol on Gender and Development (SADC Protocol).¹⁷⁷ Significantly, the African Mining Vision, adopted by the African Union in 2009, recognizes that the extractive industries may further exacerbate the existing gaps between men and women’s economic opportunities and proposes “progress towards equity and empowerment of women.”¹⁷⁸

Endnotes

- 1 Broad-Based Socioeconomic Empowerment Charter for the Mining and Minerals Industry, 2018
- 2 Mineral Petroleum Resources Development Act 28 of 2002
- 3 Mine Health and Safety Act 29 of 1996
- 4 The term gender-based violence and harassment (GBVH) is defined under Article 1(b) of ILO C190 on Violence and Harassment as “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.” The term is intended to include all forms of sexual and gender-based violence and harassment.
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- 9 Islahi, Fatima and Ahmad, *Nighat Consequences of Violence against Women on Their Health and Well-being: An Overview* (2015), online at www.academia.edu/37603617/Consequences_of_Violence_against_Women_on_Their_Health_and_Well_being_An_Overview
- 10 The Constitution of The Republic of South Africa (1996), online at justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf
- 11 Id. at Sections 9, 10, 12 and 23
- 12 Carmichele v Minister of Safety and Security 2001 (4) SA 938 (CC)
- 13 Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, Sections 8, 11 and 13, and Chapter 5, online at www.justice.gov.za/legislation/acts/2000-004.pdf
- 14 Protection from Harassment Act 2010, online at www.justice.gov.za/legislation/acts/2011-017.pdf. Under this law, harassment relates to conduct that would cause, mental, psychological, physical or economic harm and generally refers to stalking or accosting behaviors, harmful communications and sexual harassment. Sexual harassment refers to unwelcome attention, behaviors, suggestions, or messages of a sexual nature that cause offense, intimidation or humiliation, as well as promises of rewards or threats of reprisal aimed at securing compliance with sexual requests.
- 15 Domestic Violence Act (1998), Sections 1 and 4, online at www.gov.za/sites/default/files/gcis_document/201409/a116-980.pdf
- 16 Employment Equity Act (1998), Section 6, online at https://www.gov.za/sites/default/files/gcis_document/201409/278650.pdf
- 17 Labor Relations Act (1995), Section 187(e), online at www.gov.za/sites/default/files/41798_rg10851_gon773.pdf
- 18 Basic Conditions of Employment Act (1997), Sections 25 and 26, online at www.gov.za/sites/default/files/gcis_document/201409/a75-97.pdf. In sections 5 and 7, the Code includes specific requirements for identification of risks and implementation of appropriate actions to avoid any risks to the health of the pregnant employee or the unborn or breastfeeding child of the employee. Similarly, the act provides guidelines on the four consecutive months of maternity leave and the protection of employees before and after birth of a child from performing any hazardous work.
- 19 See, generally, Mine Health and Safety Act, 1996 (Act No 29 of 1996) and Regulations. It is worth noting that the Compensation for Occupational Injuries and Diseases Act, No 130 of 1993 (COIDA) has the effect of limiting employer’s liability.
- 20 South Africa has ratified and is bound by several conventions in this regard. The Convention on Elimination of all forms of Discrimination Against Women (CEDAW) requires states to condemn discrimination against women in all its forms, and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. South Africa, as party to the several International Labor Organization (ILO) conventions, is also obligated to protect women workers in mines from workplace discrimination and sexual violence and harassment as well as to ensure their health and safety at work. The most relevant ILO Conventions in this regard include the Discrimination (Employment and Occupation) Convention (C111, 1958), the Occupational Safety and Health Convention (C155, 1981), and the Safety and Health in Mines Convention (C176, 1995).
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- 27 Mining employee interview on August 23, 2019
- 28 Over a year had passed before anything had been done to find and convict the perpetrator. Eighteen months after Binkie Mosiane’s death, a Workers World Media reporter informed police of the case and requested a follow-up. Interview with *Workers World Media* on August 21, 2019, online at www.industrialunion.org/murder-exposes-rampant-sexism-in-south-african-mines
- 29 Interview, Centre for Applied Legal Studies, August 20, 2019
- 30 Interview, Bench Marks Foundation, August 12, 2019 and March 4, 2020
- 31 Interview with mineworkers, March 6, 2020
- 32 Interview with mineworkers, March 6, 2020
- 33 “Where is Justice for Anglo Platinum’s Murdered Female Underground Worker — Pinky Mosiane?” *Akanyang Africa*, January 24, 2013, online at akanyangafrika.wordpress.com/2013/01/24/where-is-justice-for-anglo-platinums-murdered-female-underground-worker-pinky-mosiane/
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- 35 Reported by a male mineworker interviewed on March 6, 2020, and in interviews with the Bench Marks Foundation on August 12, 2019 and March 4, 2020.
- 36 “Murder Trial Highlights the Plight of Women Miners,” *ENCA*, January 30, 2014, online at www.enca.com/south-africa/murder-trial-highlights-plight-woman-miners
- 37 Interview with researcher from the Bench Marks Foundation, August 12, 2019
- 38 Interviewed on March 5, 2020.

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40 Interviewed on August 15, 2019.

41 Interviewed on August 20 and 22, 2019, respectively.

42 Interviewed on March 5 and 6, 2020, respectively.

43 Interview on March 6, 2020

44 Interview on March 5, 2020

45 Interview on March 6, 2020

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49 Interview with male mineworker on March 6, 2020

50 Interview with NUM member on August 21, 2019

51 Interview with Rustenburg women miners on March 5, 2020

52 Interview with male mineworker on March 6, 2020

53 Interview with women miners on March 5, 2020

54 Interview with male mineworker on March 6, 2020

55 Interview with former mineworker on August 23, 2019

56 Interview with male mineworker on March 6, 2020

57 Interview with CALS on August 20, 2019

58 Interview with female mineworker on August 15, 2019 (reported a story she heard of a woman being harassed by her supervisor responsible for promoting her demanding sexual favors)

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80 Interview with female mineworker, March 5, 2020

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82 Interviewed on August 23, 2019.

83 Interview on March 5, 2020

84 Minerals Council of South Africa, *Women in Mining*, March 2020, supra note 8

85 Ibid.

86 Asanda Benya, *Women, Subcontracted Workers and Precarity in South African Platinum Mines: A Gender Analysis, Labour, Capital and Society* 48:1&2 (2015), online at www.lcs-tcs.com/PDFs/48_12/5%20-%20Benya.pdf. This comment was also made during an interview on August 19, 2019.

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- 95 Id.
- 96 Article 9 of Convention 190 obligates states to adopt laws and regulations requiring employers to (a) adopt and implement with workers participation, a workplace policy on violence and harassment; (b) take into account violence and harassment and associated psychosocial risks in the management of occupational health and safety; (c) identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them; and (d) provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures. Article 9 of Recommendation 206 stipulates that members should adopt appropriate measures for sectors or occupations and work arrangements in which exposure to violence and harassment may be more likely.
- 97 Article 7 of Recommendation 206 of C190, provides that a workplace policy should: (a) state that violence and harassment will not be tolerated; (b) establish violence and harassment prevention programs with, if appropriate, measurable objectives; (c) specify the rights and responsibilities of the workers and the employer; (d) contain information or complaint procedures and investigation procedures; (e) provide that all internal and external communications related to the incidents of violence and harassment will be duly considered, and acted upon as appropriate; (f) specify the right to privacy of individuals and confidentiality, as referred to in Article 10(c) of the Convention, while balancing the right of workers to be made aware of all hazards; and (g) include measures to protect complainants, victims, witnesses and whistle-blowers against victimization and retaliation.
- 98 Interviewed on August 21, 2019
- 99 Interview on August 15, 2019 where the interviewee says, "[...] they failed to report because they were scared. Because every time they wanted to report something, it was like 'you are gonna get fired, you must just keep quiet.'" *Safety and Security Challenges Impacting on Women in the South African Mining Industry*, LIZungu (2013), online at mhsc.org.za/sites/default/files/public/research_documents/SIM%20130903%20Report.pdf
- 100 ILO, Code of Practice on Workplace Violence in Services Sectors and Measures to Combat This Phenomenon, Meeting of Experts to Develop a Code of Practice on Violence and Stress at Work in Services: A Threat to Productivity and Decent Work (October 8–15 October, 2003), online at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/normativeinstrument/wcms_107705.pdf
- 101 Article 11 of Convention 190 requires states to seek to ensure that employers and workers and their organizations, and relevant authorities, are provided with guidance, resources, training or other tools, in accessible formats as appropriate, on violence and harassment in the world of work, including on gender-based violence and harassment; and initiatives, including awareness-raising campaigns, are undertaken.
- 102 Mine Health and Safety Council News, September 2019, online at <https://www.mhsc.org.za/sites/default/files/public/publications/MHSC%20News%20September%202019.pdf>
- 103 Presentation from the Women in Mining Tripartite Forum, Rustenburg, October 2018, online at <https://mhsc.org.za/sites/default/files/public/publications/Women%20in%20Mining%20Tripartite%20Forum%20%20PRESENTATION%202019.pdf>. The Forum has identified five challenges facing the mining industry: sexual harassment, PPE, ablution facilities underground, policies not being reviewed on time, and maternity policies.
- 104 Interview, Women in Mining Tripartite Forum, March 6, 2020
- 105 Interview with a senior professional at a mining house on March 4, 2020
- 106 Interview with a senior professional at a mining house, March 4, 2020
- 107 Interview, Bench Marks Foundation, on August 12, 2019
- 108 Interviewed on August 23, 2019.
- 109 *Safety and Security Challenges Impacting on Women in the South African Mining Industry*, LIZungu (2013), online at mhsc.org.za/sites/default/files/public/research_documents/SIM%20130903%20Report.pdf
- 110 Interview on August 20, 2019
- 111 Interview with woman mineworker in Rustenburg on February 27, 2020
- 112 Ibid.
- 113 Ibid.
- 114 Under Article 10 of Convention 190 states shall take measures to (b) ensure access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms including (i) complaint and investigation procedures, as well as, where appropriate, dispute resolution mechanisms at the workplace level and (iv) protection against victimization or retaliation against complainants, victims, witnesses and whistle-blowers, etc.
- 115 Interview of Workers World Media Productions (WWMP) representative on August 21, 2019. Many rape victims do not report the crime due to stigma, a lack of support from their communities and a distrust in the police. See africacheck.org/reports/are-40-of-south-african-women-raped-in-their-lifetime-and-only-8-6-of-perpetrators-jailed/
- 116 UNHRC Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on Her Mission to South Africa A/HRC/32/42/Add.2 (2016), online at www.refworld.org/docid/57d90a4b4.html
- 117 Interviews in Marikana on August 15, 2019 and in Rustenburg on March 5, 2020
- 118 Interviewed on August 23, 2019
- 119 Marikana mineworker interviewed on August 15, 2019
- 120 Interviewed on August 15, 2019
- 121 Another woman worker at Marikana interviewed on August 15, 2019
- 122 Interview with NUM on March 3, 2020
- 123 Interviewed on August 19, 2019
- 124 See Article 10 of Convention 190, supra 116
- 125 Interview with a senior professional from a mining house on March 4, 2020
- 126 Interview on March 5, 2020
- 127 Interview on March 4, 2020
- 128 Interview on March 4, 2020
- 129 *Addressing Violence and Harassment Against Women in the World of Work*, ILO, UN Women, 2019, online at www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/publication/wcms_731370.pdf
- 130 See Article 10 of Convention 190, supra 116

131 Interview on March 5, 2020

132 The CALS interviewee said on August 20, 2019, “This practice as well exposes the women to being framed as gold diggers, not being believed. ‘You just want the money.’ Yet it is the unions who initiated this sort of resolution.”

133 Interview on March 5, 2020

134 Interview on March 5, 2020

135 Interviewed on March 5, 2020

136 Interview on March 5, 2020

137 Interview with MCSA representative on August 19, 2019

138 Interviews on March 2 and 5, 2020

139 Interview on March 5, 2020

140 Interview on March 5, 2020

141 Interview of a senior professional in a mining house on March 4, 2020

142 Interview with woman mineworkers in Rustenburg on March 5, 2020

143 Interview on March 5, 2020

144 Interview on August 18, 2019

145 Article 5 of Convention 190 emphasizes that in order to prevent and eliminate violence and harassment in the work of work, “each Member shall respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining... and the elimination of discrimination in respect of employment...”. Article 3 of Recommendation 206 on C190, emphasizes that states should ensure that all workers and employers, including in those sectors, occupations and work arrangements that are more exposed to violence and harassment, fully enjoy freedom of association and the effective recognition of the right to collective bargaining.

146 HDSA interviewee stated on August 14, 2019

147 Interview on August 21, 2019

148 NUM member, confirmed on August 21, 2019

149 Mine Health and Safety Council, *Safety and Security Challenges Impacting on Women in the South African Mining Industry*, November 2014, online at mhsc.org.za/sites/default/files/public/research_documents/SIM%20130903%20Report.pdf

150 Minerals Council of South Africa, *Women in Mining*, March 2020, online at www.mineralscouncil.org.za/industry-news/publications/position-papers/send/37-position-papers/1218-white-paper-women-in-mining

151 Ibid.

152 Ibid.

153 Ibid.

154 Under 17(g) of R206, support, services and remedies for victims of gender-based violence and harassment should include measures such as specialized police units or specially trained officers to support victims.

155 CALS interview, August 20, 2019; interview of a senior professional in a mining house, March 4, 2020

156 Interview on August 23, 2019

157 Interview on August 15, 2019

158 Interview on March 6, 2020

159 Médecins Sans Frontières, “Drivers for survivors: Changing Lives in Rustenburg,” online at www.msf.org.za/stories-news/news-our-projects/drivers-survivors-changing-lives-rustenburg

160 Interview of Bench Marks Foundation representative August 12, 2019

161 An interviewee from MSF said on August 16, 2019, “...so that’s what was sort of frustrating to them that ‘If I go to the health center, they want me to come with a case number.’”

162 Interview on August 23, 2019

163 Interview of a Bench Marks Foundation representative, August 12, 2019

164 Anglo American Platinum press release, March 10, 2015, online at www.angloamericanplatinum.com/media/press-releases/2015/10-03-2015

165 Interview on March 6, 2020

166 Interview on March 5, 2020

167 ILO Convention 190, I. Definitions, Article 1(a)-(b)(2019)

168 Minerals Council of South Africa, *Women in Mining*, supra note 8

169 CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19

170 South Africa has ratified and is bound by several conventions in this regard. The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) requires states to condemn discrimination against women in all its forms, and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. South Africa, as party to the several International Labor Organization (ILO) conventions, is also obligated to protect women workers in mines from workplace discrimination and sexual violence and, as well as to ensure their health and safety at work. The most relevant ILO Conventions in this regard include the Discrimination (Employment and Occupation) Convention (C111, 1958), the Occupational Safety and Health Convention (C155, 1981), and the Safety and Health in Mines Convention (C176, 1995). The Violence and Harassment Convention (C190, 2019) is particularly relevant, although not yet in force.

171 It referred to “violence that is directed against a woman because she is a woman or that affects women disproportionately” and that constitutes a human rights violation, which broadly “includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

172 In Recommendation No. 35, the Committee explains that gender-based violence is a social, rather than an individual problem, requiring comprehensive responses beyond individual perpetrators and victims/survivors. It further explains that it is one of the fundamental social, political, and economic means of subordinating women, and one of the central obstacles to achieving substantive equality between men and women.

173 Article 1(2) of ILO C190

174 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (The African Women’s Protocol) 2003, online at www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf

175 Ibid

176 Ibid

177 South African Development Community, *Protocol on Gender and Development*, 2008, online at www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf

178 African Union, *African Mining Vision*, 2009, online at www.africaminingvision.org/amv_resources/AMV/Africa_Mining_Vision_English.pdf



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